

**LEGAL ASPECTS OF TRANS-BOUNDARY
NATURAL RESOURCES MANAGEMENT
IN SOUTHERN AFRICA-
A PAPER PREPARED FOR THE
IASCP CONFERENCE.**

By

Mutuso Dhliwayo

**Zimbabwe Environmental Law Association
C/o Environment Africa
P.O. Box A 639
Avondale
Harare
Zimbabwe
Email: mutusod@hotmail.com**

“The rivers of Southern Africa are shared by more than one country. Our mountain ranges do not end abruptly because some 19th century politician drew a line on a map. The winds, the oceans, the rain and atmospheric currents do not recognise political frontiers. The earth’s environment is the common property of all humanity and creation, and what takes place in one country affects not only its neighbours, but many others well beyond its borders” Dr Z.Pallo Jordan

Executive Summary

The concept of international peace parks and trans-boundary natural resources conservation areas (TBCA's) developed for the better management of shared natural resources is not new globally though it is in Southern Africa. While trans-boundary co-operations have been going on for a long time in other parts of the world, it's only now that they are taking root in Southern Africa. This is on the background of the realization that while the region has sound management practices to ensure that the shared and diversified resources of the region continue to be protected and sustainably utilized, there is room to improve through shared management of such resources.

If these shared resources are not managed properly, there is a potential for regional conflicts and disputes that can lead to the destruction of ecosystems that transcends national boundaries. On the other hand, if these shared resources are properly managed, they can be a vehicle for co-operation and prosperity for the whole region.

This paper looks at Trans-Boundary Natural Resources Management (TBNRM) initiatives in Southern Africa with special focus on how policies, laws and regulations can be harmonized for integrated management of ecosystems, which are not limited by the artificial boundaries between countries. The paper will go further to point out that harmonisation alone is not enough. If TBNRM is to realise its full potential, there is need for full participation as major stakeholders by those communities that are affected by these initiatives. These communities are important stakeholders.

The first part defines trans-boundary natural resources management and look at initiatives in Southern Africa. It goes on to look at the various opportunities that these initiatives offer. The second part looks at the reasons why trans-boundary initiatives fail. These include social, political and economic reasons. However, the writer will argue that there are two main reasons for the failure of these noble and well-intended initiatives.

The first one is due to differences in policies, laws, regulations and governance issues among countries involved in the management of the shared resources in question. The second one is lack of participation by communities who are affected by these initiatives. For the purposes of this paper, one TBNRM initiative will be used as a case study. This is the IUCN Regional Office for Southern (IUCN-ROSA) proposed Zimbabwe-Mozambique- Zambia (ZIMOZA) TBNRM that can be a model for the region because it is a community based initiative.

The third part will recommend the creation of common policies, legislation, laws and governance practises that are all in harmony for the effective co-management of shared resources and achievement of peace through community building. It will also recommend active participation of communities that are affected by these initiatives.

Introduction

Interest in trans-boundary¹ natural resource management is growing rapidly in Southern Africa. The process of managing natural resources shared by two or more nations represent a significant opportunity for both the development of peaceful co-operation and the effective and equitable management of resources to the benefit of the local, regional and international community. Trans-boundary or trans-border natural resources management refers to “any process of cooperation across international boundaries that facilitates or improves or purports to facilitate or improve the management of resources to the benefits of all parties concerned.”² This definition makes it clear that the cooperation has to be across boundaries or borders.

It appears as if the idea of TBNRM first emerged in the 1920’s and 1930’s. The TBNRM initiative between Canada and the United States in 1932 known as the Waterton –Glacier International Peace Park is the most well known earliest initiative. It has been described as an enduring monument of nature to the long existing friendship and goodwill between the people of and Governments of Canada and the United States.’’³

Generally, border communities share a number of relationships including historical and cultural similarities, kinship ties, development and tourism opportunities. They share diverse natural resources like forests, rivers, wildlife, fish and mountains. A TBNRM initiative like the proposed ZIMOZA provides a strategic arena for co-operation and development. It’s also an opportunity to strengthen the good relations existing between the three nations.

In terms of potential, TBNRM provides a wide range of important benefits. These benefits can be grouped into four categories namely political, economic, social and cultural and ecological opportunities. These include reduction of conflicts, the promotion of peace, more effective management of natural resources and environments, promotion of the economic welfare of a region’s communities and the preservation and enhancement of cultural values.⁴

However, there are also constraints in TBNRM. There maybe significant imbalances between the countries involved to the extent that countries are more effective managing the shared resources on their own. These disparities may relate to economic, legal and institutional opportunities. Concerns are already being raised with respect to the establishment of the Gaza-Kruger-Gonarezhou peace park. South Africa is seen as the main beneficiary due to its better tourist infrastructure when compared to Mozambique

¹ Note that the words trans-boundary natural resources management, trans-frontier natural resources management, trans-border natural resources management and peace park will be used interchangeably in this paper. See also Hamilton, S.L., 1997 on the use of the terms trans-frontier, trans-border or trans-boundary.

See also Griffin, J on the interchangeably use of these terms.

² Griffin, 2000

³ Shine, C, 1997

⁴ Ibid. See also Katerere, Y (2001) and Griffin, J (2000) for more on the benefits of TBNRM

and Zimbabwe. The political tensions in Zimbabwe resulting from the on going land redistribution exercise are also impacting negatively on this project. At one point, landless peasants and veterans of the war of liberation occupied the Gonarezhou National Park, which forms part of the initiative. Other members, South Africa and Mozambique complained and this threatened to affect the implementation of initiative.

While it is true that there are many reasons for which TBNRM initiatives may be created, in most areas, the primary purpose is to improve the management of shared ecological unit or migratory species.¹ However, if TBNRM initiatives are not done properly, they have the power to create new tensions and reinforce pre-existing divisions among interested parties, to the detriment of international peace and resource management.

In some quarters TBNRM initiatives have been viewed with suspicion because they are perceived to challenge the very core of international legal order, grounded as it is on the sovereign right of control over activities within state borders. This has led to a dilemma between the emerging duty between nation states to co-operate for the joint management of natural resources that knows no political boundaries and at the same time not tempering with state sovereignty.

Today, many factors have contributed to an increase in conflicts throughout the world. These include struggles for independence from colonial rule, the break up of nations due to religious conflicts and competing claims for access to or control of natural resources. It is estimated that natural resources conflicts pose threat to peace at regional and international level. Disputes over trans-boundary natural resources management are being increasingly recognized, to the extent that it is positioned that conflicts involving the management of natural resources are becoming the most numerous source of international conflict.² These represent both an internal and external threat to environmental security.³ This explains why TBNRM initiatives have become an important area of study because if they are not addressed, these resource conflicts will become a contributory factor for future disputes.

From the foregoing, it is evident that there are a number of reasons for the creation of TBNRM initiatives and these vary from one region to another depending on the circumstances. Political boundaries between states are drawn for a number of reasons. These include demographic, geographic and security reasons and these do not take into account environmental management considerations. It is ironic that natural resources that do not recognize any boundaries are usually used to make boundaries. A good example is rivers. Historically, they have frequently been used by states to draw the lines that demarcate their frontiers. The Zambezi and Luangwa Rivers, which fall within the proposed ZIMOZA TBNRM, are used to mark boundaries between the three countries.

¹ Ibid

² Hocknell R.P, 2001

³ Ibid

Usually, natural resources and ecosystems disregard the artificial divisions between countries and extend beyond the range of action of any one state. It is therefore not unusual to see important watersheds or internationally significant natural areas transcending national boundaries. Under such a scenario, different parts of one ecosystem unit end up being managed by different institutions in accordance with different legal rules. This form of management is unsatisfactory for a number of reasons. First and foremost, in the absence of an appropriate management structure for the whole unit there is a high risk of conflicts over access to and use of the shared resources. Secondly this can lead to a duplication of effort by the various institutions. With better planning, the efforts of the different institutions can be put to other uses, thereby saving money and time. Thirdly it may result in conflicting management policies. This will lead to poor management of the natural resource in question.

In management terms, it will be preferable for the whole area to be administered as a single unit by one institutional body in accordance with a single management plan involving all the countries that share the resource in question. As de Klemm and Shine succinctly observes “ As a general rule, the fundamental protected area objectives of perennity and integrity are best met through comprehensive management instruments which address all types of activity or impact which could adversely affect the site”¹

When an integrated management plan comprises of all the countries involved is put in place, the international border became symbolic. Immigration and custom controls will be moved back to the park boundaries and uniform regulations being applicable throughout the TBPA. From the foregoing it is clear that legal measures are needed to accommodate the requirements for management and conservation of shared natural resources and border ecosystems.

International Law Applicable to the Management of a TBPA

The United Nations Charter² lays down the foundations for co-operation among nation states. While the Charter does not outrightly support and call for TBNRM, it can not be denied that by urging nations to co-operate, its aim is to reduce conflicts. Its preamble calls for nations “to employ international machinery for the promotion of the economic and social advancement of all people.”³ TBNRM initiatives are one way through which the calls for international co-operation under the Charter can be fulfilled. Regional Treaties like the Southern African Development Community (SADC),⁴ picks up this call and develops it further to suit specific areas and circumstances.

Customary International Law lays down very important principles that set the ball rolling for TBNRM initiatives. These are state sovereignty, state responsibility and good neighbourliness. State sovereignty refers to a nation’s right to act without outside interference. “A sovereign state exercise sovereign right over its national territory and the

¹ de Klemme and Shine

² Adopted on 26 June 1945

³ Preamble, United Nations Charter

⁴ Signed in August 1992 by all 14 members

natural resources under its jurisdiction, subject to any limitations under customary international law or which it has voluntarily accepted under a treaty.”¹ While sovereignty rights can on one hand foster TBNRM, on the other hand they can hinder it if they are not properly exercised. As Gracian Banda observes, “sovereign rights and authority may stand in the way of implementation and enforcement of agreed programmes and in a number of cases, sidelines effective participation of local communities and other stake holders in decision making.”²

State responsibility denotes an obligation or a duty. Each state has a duty or an obligation to act in a manner that ensures that its actions do not harm other states. The principle of good neighbourliness requires a state to be considerate of its neighbours’ rights in its activities. These principles complement rather than contradict each other.

SADC seems to support TBNRM initiatives as reflected in the 1992 SADC Treaty, which was signed by all fourteen members. It laid down the basis for regional co-operation for the management of shared natural resources in the region.

“Commitment to integration and a new regional community also reflects the cultural resources and environmental realities that many people as well as wildlife, natural resources and ecological zones have always transcended national boundaries in the region”³

While the treaty does not outrightly call for TBNRM, it can not be denied that it encourages development of economic, social, cultural co-operation and management of natural resources across borders. One of the component factors for the successful management of shared resources by nations is the harmonisation of their laws, regulations and policies. The Treaty attempted to pave the way for such harmonisation, by pledging all its members to a common goal outlined in Article 21, which calls for co-operation in the management and conservation of natural resources and the environment.

There are a number of policies and protocols all meant to encourage and strengthen TBNRM initiatives in the Southern African region. These include:

- SADC Wildlife Policy signed in Malawi in 1997 which promotes interstate co-operation in the management and sustainable use of ecosystems.
- SADC Protocol on Wildlife and Conservation and Law Enforcement signed in Maputo, Mozambique, 1999. This promotes regional co-operation in the development of common frameworks for conservation of natural resources, enforcement of laws governing these resources and their sustainable use.
- Forestry Sector Policy.

¹ Shine, C, 1997

² Banda, G, 2001

See also Mohamed, J.K.(2001) on the definitions of state sovereignty, state responsibility and good neighbourliness. Hocknell, R.P.(2001) is also very helpful on the definition of state sovereignty and how it impacts on TBNRM initiatives.

³ SADC Policy and Strategy for Environment and Sustainable Development, ELMS, 1994, P.3

➤ SADC Policy and Strategy for Environment and Sustainable Development.

Others include SADC Protocol on the Movement of the People, Regional Protocol on Shared Water Course Systems and SADC Tourism Protocol. All these protocols and policies show the importance of cooperation in the region. As the SADC Policy and Strategy for Environment and Sustainable Development notes “Regional cooperation is not an optional extra, it is a matter of survival.”¹

In order to promote this coordination and cooperation in management of shared natural resources across boundaries, the establishment of Trans-frontier Conservation Areas (TFCA’s) has become necessary. TFCA’s have been described as “relatively large areas that straddle frontiers (boundaries) between two or more countries and cover large scale natural systems encompassing one or more protected areas.”² Examples of TFCA’s in the region include Gaza –Kruger- Gonarezhou (Mozambique, South Africa and Zimbabwe), Drankensburg-Maloti (South Africa and Lesotho). Proposed TFCA’s are Chimanimani (Zimbabwe and Mozambique), Limpopo-Shashe (Botswana, South Africa and Zimbabwe) and ZIMOZA (Zimbabwe, Mozambique and Zambia).

The proposed ZIMOZA TBNRM Initiative: A case study

This is an IUCN-ROSA facilitated TBNRM initiative.³

Suitable utilisation and management of natural resources provides a window of opportunity to a better life for many rural communities. Some of the poorest rural communities are surrounded by a wealth of natural resources in the form of wildlife, forestry and fisheries. The proposed ZIMOZA TBNRM is one such initiative that aims at unlocking this wealth of opportunities for the benefit of these communities and their respective nations, thus improving their way of life. This proposed TBNM initiative strengthens and enhances regional co-operation and thus improves inter-state relations, which leads to improved regional co-operation and stability. Such co-operation fosters the potential for regional conflict resolution.

Zimbabwe, Mozambique and Zambia share a common border. The ZIMOZA TBNRM initiative encompasses the administrative districts of Mague and Zumbu in Mozambique, Luangwa in Zambia and Guruve in Zimbabwe.⁴ It is a remote impoverished area with a great potential for tourism. The area has a fragile ecosystem. It is rich in natural resources, which are shared among the people in the area. These include fish in the Zambezi and Luangwa Rivers, wildlife, forestry and land. The people share cultural and historical ties. These border communities have not allowed the boundaries between their countries to interfere with their daily lives. They base their social, political economic and social relations on values that transcend the political and administrative divisions

¹ SADC Policy and Strategy for Environment and Sustainable Development, ELMS, p.3

² World Bank Report, 1996

³ IUCN-The World Conservation Union has a program on TBNRM and this is one of their many initiatives

⁴ Banda, G, 2001

between their respective countries. It is therefore clear that when the political boundaries between the three states were demarcated, they took no account of the cultural, political, economic and ecological values existing among these border communities. As Gracian Banda notes “The political boundaries therefore divided a single ecosystem and people with a common origin”¹. These factors contributed to the development of a TBNRM initiative for the area.

From the foregoing, it is clear that although there is no formal recognition as yet of this area as a peace park, there is a growing defacto realisation of the responsibility of the three countries to give effect to the aspirations of these border communities to the benefit of nature and people. It is hoped that by looking briefly into this TBNRM initiative which is still in its infancy, lessons and observations learnt will contribute to the objectives of determining the role, opportunities and difficulties in using TBNRM areas as a vehicle for peace and international cooperation both at regional and international level in the future.

The failure to involve local communities in the formulation of policies and laws regulating access to and utilization of natural resources shared by the three communities has led to conflicts and mismanagement of the resources. The involvement of local communities in TBNRM initiative is a crucial if they are to be a success. “Harmonious and co-ordinated sustainable development can only be achieved if consultation and participation by interested and affected parties is extensive, inclusive and appropriate”.² This is based on the principle of public participation, which advocates for the public to be involved in the formulation of environmental strategies and their implementation. Public participation was articulated in Principle 10 of Rio Declaration. If the public, which in this case are the communities that will be affected by this initiative are not involved there is a great danger of fuelling resource based conflicts which will threaten environmental and political security in the region.

Another threat to this well intended initiative is the difference in laws, regulations and policies. These communities share common natural resources. However access to and different laws, regulations and policies, regulate utilization of these resources. This lack of institutional harmonisation of laws and policies over use and management of shared resources often results in unequal access to resources between the communities involved.

Fisheries (Luangwa and Zambezi Rivers)

In Zimbabwe the law that regulates access to fish as a natural resource is the Parks and Wildlife Act (Chapter 20:24). The Department of National Parks and Wildlife Management (DNPWM) is responsible for the sustainable management of fish. The management of the country’s fishery resource is an important aspect of strengthening people’s livelihood as well as maintaining the country’s biodiversity.

¹ Banda, G, 2001

² Simuunza, I

In Zambia, fisheries are a very important sector of the economy. It is a major source of animal protein and employment. The sector employs about 30 000 full-time fishermen.¹ The Fisheries Act No 21 of 1974 is the main law that regulates the exploitation of fish as a resource. The Zambian fisheries policy throughout the years over emphasised increased fish production in order to achieve self-sufficiency and maximize employment creation. This was done at the expense of resource sustainability and has resulted in the over exploitation of fish as a resource.

In Mozambique, fisheries are an important sector of the economy and a major source of animal protein. The Fishing Law (Law Nr 3\90 is the law that regulates access to fish as a resource. The aim of the fisheries policy is to put in place sustainable conservation measures for fishing resources. The main weakness of the Mozambican policy is that there is more emphasis on state control without reference to community rights of access to the resource.

In terms of section 94 of the Parks and Wildlife Act, the Zimbabwean government requires people who engage in fishing to have fishing permits. Fishing regulations made under the main Act also makes it mandatory for people to form a co-operative if they want to engage in commercial fishing. Furthermore these regulations also set quotas for the number of fish that one is allowed to catch and keep. There are a number of complaints levelled against these requirements, which can lead to conflicts if not addressed. A fishing permit is issued in Harare which is hundred of kilometres away. By contrast, their Mozambican and Zambian counterparts whom they share the Zambezi river with for fishing, get fishing permits at the district level and not in Maputo and Lusaka, their respective capital cities. Moreover, their counterparts do not need to form a co-operative in order to engage in commercial fishing. This means that they do not incur any significant costs or stumbling blocks in getting a fishing permit and engaging in commercial fishing.

As a result of the highlighted stumbling blocks, there is more commercial fishing in Mozambique and Zambia than in Zimbabwe. When compared, the Zimbabwean side has more fish than the Zambian side. Logically one would have expected that Zimbabweans should benefit more than the Zambian side since their side has more fish. However, Zimbabweans complain that they do not benefit from this situation. Due to constraints placed by the Zimbabwean law, not many can engage in commercial fishing. As a result Zambians end up encroaching into the Zimbabwean side of the river to harvest fish since there is more fish. Thus Zimbabweans feel that they are not benefiting from the abundance of fish as a resource. According to them, they feel that the Zambians then unjustly use the benefits of this abundance of fish.

While Zimbabwean sees the co-operative requirements as a disadvantage, the Zambians see it as an advantage. They want the government to help them to form co-operatives. They note that other fishermen in Northern and Central provinces have associations. These enable them to get loans for boat making and to practice aquaculture. The Luangwa community has an area of about 2km along the Zambezi River that is suitable

¹ Ibid.

for fishing. This is a very limited area, which is not able to meet the community's fishing needs. As such they need to venture down stream the Zambezi River to do commercial fishing. When they talked to their Mozambican counterparts, they were told they could not do so as individuals but as an association. Since the association does not exist at the moment, they cannot fish in Mozambican waters. They strongly feel that co-operatives will open windows of opportunities for them.

From the foregoing it is evident that the lack of institutional harmonisation of laws and policies around use and management of resources between these communities leads to unequal access to fisheries as a resource. Zambia and Mozambique have less stringent regulations for fishing and this facilitates greater access to the resource and benefits to their border communities to the disadvantage of the Zimbabwean communities along the border. This has resulted in flourishing fishing communities in the Mozambique and Zambian communities while Zimbabwe's is impoverished. This fuels tension between the three communities as Zimbabwean communities feel that the government is hindering their ability to develop commercial fishing when compared to the other two. The Zimbabwean community therefore lacks motive to engage in sustainable methods of natural resource management when it comes to fish.

Another source of conflict is the different breeding seasons. In Zambia, breeding seasons close on the 1st of December and opens on the 28th of February. In Zimbabwe, they close on the 31st of December and open in April. In Mozambique, they don't have breeding seasons. They fish through out the year. However, the Mozambicans have breeding ponds where they don't fish and these compensate for the breeding seasons in Zambia and Zimbabwe. But as may be expected, no one notices this.

Zambians and Zimbabweans accuse the Mozambicans of fishing all year round without taking into account the breeding ponds. As a result they feel that Mozambicans are benefiting more from fish as a shared resource than they are. The one-month that Zimbabwean fisherman continues to fish after Zambia has closed for the breeding season causes conflicts between Zambian and Zimbabwean fisherman. Zambian fishermen have to buy fish from their Zimbabwean counterparts during this one-month difference. This situation is reversed when Zimbabwean fishermen close their season while the Zambians open theirs. Zimbabwean fishermen are forced to buy fish from their Zambian counterparts. The Mozambicans are the worst. Since they fish all year round, both Zimbabweans and Zambians have to buy fish from them when they close for breeding seasons.

To manage this conflict, the breeding seasons of the three communities should be harmonised. This will resolve this conflict, as it should provide them with equal access to fish a resource. This will also make management easier as enforcement of the law will be easier.

Land Use Systems

The three communities have different land uses along the Zambezi River. Stream bank cultivation is rampant on the Zambian and Mozambican sides while on the Zimbabwean side, its mainly wildlife management. The Zambian and Mozambican communities see stream-bank cultivation as a traditional practice. Given the low agricultural potential of the area due to low rainfall, stream bank cultivation is preferable due to the fertile soils. The two communities who regard it as a source of livelihood do not view a blanket ban on stream bank cultivation positively. From this, a perception develops that stream bank cultivation is legal in Zambia and Mozambique, while not allowed in Zimbabwe. This massive stream bank cultivation has resulted in siltation of the Zambezi and Luangwa Rivers destroying wildlife habitats especially fish breeding areas along the banks of the two rivers. Zimbabweans therefore feel that authorities are being too strict while those in the other communities are lenient. However under Mozambican and Zambian laws, stream bank cultivation is not allowed. Zambian agricultural authorities are continuously fighting running battles with the communities in their bid to enforce laws against stream bank cultivation.

Water Resources

Dam management plans are very important to avoid conflict between the three communities. Zumbu and Mague are downstream the Zambezi and Luangwa rivers and are also located between three major dams: Kariba, Mulungushi and Cabora Bassa. During rainy seasons, Kariba and Mulungushi dams are opened to release excess water and the Mague and Zumbu communities are on the receiving end. There is flooding, loss of lives, destruction of property, livestock and crops. Ironically during drought years most of the water in the Zambezi and Luangwa River is captured up stream and stored in the Kariba and Mulungushi dams, leaving the Mogue and Zumbu communities, which are downstream, with little water and this fosters conflicts. The proposed ZIMOZA TBNRM initiative should facilitate a resolution mechanism for solving this problem. Proper planning by the three countries should be able to resolve this conflict amicably. As Gracian Banda points out “ The communities, especially in Mozambique where the problem seem to be acute, think this is a problem of lack of proper planning and joint planning among the dam owners.”¹

Harvesting/Cropping of Wildlife

There is lots of wildlife in the area. These include elephants, crocodiles and hippos. This has resulted in conflicts between them and people. They destroy crops and in some cases, have led to loss of life. When these problem animals causes havoc on people’s lives, property and crops, they are not compensated. There is a general perception among the Zambian and Mozambican communities that Zimbabwe is benefiting more from wildlife as a resource than them and this creates conflicts. They feel that they are keeping these animals, especially elephants for the Zimbabweans to crop while they have to bear with

¹ Banda supra

the brunt of problem animals. This is an apparent reference to the Convention on International Trade on Endangered Species (CITES) Convention.

Under appendix II of the Convention, Zimbabwe is allowed to cull elephants for sustainable management. This is not the case with Zambia and Mozambique. However this negative perception is surprising when one takes into account the fact that Zambia and Mozambique, like Zimbabwe have community based Natural Resource Management (CBNRM) programmes like Zimbabwe. Zimbabwe has Communal Areas Management Programme for Indigenous Resources (CAMPFIRE); Zambia has ADMADE while Mozambique has TChuma TChato. All these involve participation by local communities although there are some differences. As Gracian Banda notes;

What seems the major difference between the three programmes is the extent of involvement of the local communities as well as the institutional frameworks through which the local communities participate in the programmes. It is noteworthy, for example, that communities on the Zimbabwean side of the border have received more substantial benefits from wildlife management under CAMPFIRE than the other countries. This could be attributed to the fact that CAMPFIRE in Zimbabwe, unlike the other two countries, is able to cull elephants whose proceeds are more than those from small wildlife”.

This poses great danger to the sustainable management of elephants. If the other two communities do not derive any benefit, they won't have any motive to engage in sustainable management. This may actually encourage poaching by those communities who feel that they are not getting any access to the resource under the current institutional arrangements.

Linked to the foregoing is the problem of crocodiles. This problem is more pronounced on the Zambezi River. The Mague and Zumbu communities are at the mercy of these crocodiles. Lives have been lost and will continue to be lost in the future and yet they are not allowed to cull or crop them. Institutional arrangements can be put in place for the sustainable harvesting of these crocodiles. Their eggs and skins can be sold and the benefits shared among the communities involved.

Restriction of Movement and Trade

The political boundaries between the three communities are seen as a restrictive instrument to the movement of people and their goods. As pointed out earlier on, these border communities are bound together by a number of factors including ecological, historical, cultural similarities, kinship ties, developments and tourism opportunities, poverty, deprivation and isolation and mutual support in times of need. Communities along the border have engaged in trade without any significant restrictions on the movement of goods and service across borders since time immemorial. However with the emergency of nation states all this changed. As Dr Katerere observes “with the establishment of nation states and a growing sense of nationalism, communities that once

co-existed are now divided and are expected to respect international boundaries and bureaucratic systems that govern the movement of goods across borders”.¹

This emergence of nation states has come at a price. What was once routine trade between the border communities is now subject to export and import and control regulations rendering many long established trade practices illegal.² Linked to trade opportunities is the aspect of people across the political boundaries. The immigration regulations need to be looked into.

Zambians and Zimbabweans do not need a visa to enter each other's country since they are all members of the commonwealth. However, both Zambians and Zimbabweans need a visa to enter Mozambique and vice versa. There is need to be realistic here. We are dealing with border communities living several hundreds to thousands of kilometres from capital cities. Some of them do not have national identity cards due to the lack of the relevant government institutions at the local level and to expect them to have a visa in order to visit a neighbouring community is asking too much.

The restrictions imposed by the border demarcations are also hampering sustainable management of resources. If game scouts chase a Zimbabwean poacher from Mozambique or vice versa, they cannot continue to pursue him once he has crossed the border due to immigration restrictions and this frustrates conservation efforts. It is important for the ZIMOZA TBNRM initiative to recognize the inter-dependence of the border communities and therefore transform the image of the international border into one that promotes social economic and environmental linkages.

¹ Katerere, Y, 1997

² Ibid

Recommendations

The preceding sections have shown that depending on how TBNRM initiatives are implemented; they can be a vehicle for regional peace, stability and economic prosperity or a source of conflict. I have also, in the course of the discussion alluded to some of the measures that can be taken to ensure that the SADC goal of community building both at international and local community level is realised. I will use this section to re-emphasize the need to harmonise different management systems, policies and laws and the need for participation of indigenous communities in these initiatives.

There are a number of reasons why TBNRM initiatives fail to fully realise their potential benefits. These may be political, social and economic factors as the case study has shown. However, this failure is mainly due to differences in laws, policies and management systems between the countries involved. Commenting on the failure of TBNRM Claire Shine makes the following observation: “Trans-boundary natural resources management failure can be caused or exacerbated by weaknesses in the legal and institutional framework for the protected area management, in the arrangements between neighbouring states”.¹ This is very true in the SADC region. There is very little harmonisation of laws; policies and management systems that regulate shared natural resources. As the study on the proposed ZIMOZA TBNRM initiative has shown, this lack of institutional harmonisation on the use and management of shared resources has resulted in unequal access to resources between communities of the three countries. This has resulted in resource-based conflicts at the community level.

When it comes to TBNRM, a harmonised institutional and legal framework is the best mechanism to resolve conflicts that may arise. It can be argued that when it comes to TBNRM conflicts, those neighbouring countries that commit them to joint consultation and management arrangements will be better placed to deal with any cross-border problems through negotiated solutions. These differences in laws, policies and management systems, do not augur well for TBNRM. There is need for cooperative law enforcement between the countries involved. However, different and at times conflicting laws with respect to things like wild life harvesting, trade, customs and immigration makes law enforcement difficult. Pointing out the need to harmonise the legal and institutional framework for better management of TBNRM, Chatiza, makes the following observation: “the legal and other forms of constraints and/or frameworks governing behaviour across borders have a direct bearing on the extent to which trans-frontier livelihoods or economies thrive and by extension affect the communities resource exploitation and management.”²

There is need for a comprehensive management programme for the ZIMOZA initiative. A number of legal and political instruments are required to give effect to this proposed TBNRM initiative. A formal agreement between the three countries will be the best way to manage these shared resources. This will lay a strong legal basis for future co-

¹ Shine supra

² Chatiza, K

operation on the management of these resources. The legal framework under which the ZIMOZA initiative will be implemented is the Draft ZIMOZA Agreement.¹

The three countries should be encouraged to formulate joint legal instruments that will facilitate their harmonious management of the shared resources. The legal instruments should focus on the standardisation of management categories and permitted and prohibited activities. Both the management principles in Article 3.4 and Management Objectives in Article 5 .1(j) of the Draft Agreement endorses the need for the harmonisation of policies, legislation and programmes in the Area. This may actually call for the amendment of each country's laws and policies to incorporate these principles and objectives. It is recommended that special attention be given to the fisheries and wildlife resources. There is need to standardise the issuance of fishing permits and harmonisation of closed seasons between the three communities so as to avoid conflicts.

As for wild life like elephants, there is need to standardise their culling/harvesting by three border communities. Currently, it's the only the Zimbabwean side that is benefiting more, yet the problems resulting from living with wildlife is shared equally by three communities. Designations under Multilateral Environmental Agreements (MEAs) like the Convention in International Trade in Endangered Species (CITES) can also constitute an important vehicle of international cooperation in the management of shared resources. Unfortunately it is not being applied equally in the three border communities. Zimbabwe is allowed to cull elephants under appendix II of the CITES convention while Mozambique and Zambia are not allowed and this has resulted in conflicts. It is recommended that CITES should apply equally and consistently on the border communities.

There is also need for a joint legal instrument to safeguard the community migratory wildlife and fisheries. The migration of fish and wildlife should be protected by legislation that recognises their life cycles, the time that these species spend in each country breeding. There should also be provisions to ensure that the preservation of their habitats and stopovers in different countries.

A common management plan is very important. This avoids conflict and ensures that the proceeds from TBNRM are shared equally. Article 7 lays down the institutional arrangements. These are Trans-boundary Ministerial Committee, Trans-boundary Technical Committee and Trans-boundary Local Area Committee. This helps in the effective implementation, co-ordination and management of programmes.

Involvement of Non Governmental Organisations (NGO's) is also very important in TBNRM. As already noted, IUCN-ROSA is playing a very important role in this initiative. IUCN-ROSA mobilised local communities in the area to get involved and is providing the technical and financial assistance to make this initiative a success. It drafted the ZIMOZA Draft Agreement and is pushing the governments involved into action.

¹ This is the legal framework under which the ZIMOZA TBNRM initiative will be implemented. It was drafted by IUCN-ROSA and waits signing by the respective governments. Should have been signed last year but was deferred for further consultations.

In all these efforts to strengthen and safeguard TBNRM initiatives, the role of communities should never be underestimated. Chances for peace are likely to be enhanced if the interests of local communities are taken into consideration in the management of these shared resources. Their participation is critical to the success of these initiatives. There has been a tendency by governments to sideline the local communities. Indigenous communities are now widely acknowledged as important players in natural resources management. Article 8j of the Convention on Biological Diversity and Chapter 26 of Agenda 21, all point to the need to involve indigenous communities in the management of natural resources.

The Draft Agreement recognises the importance of involving local communities. Article 4.1 states that:

“The parties shall, in the management of and conservation of the environment and natural resources, respect, recognise, and promote the rights of and responsibilities of local communities in the area”¹

The Agreement should reflect the interests of the communities involved. The trend in international and regional agreements have been to represent the interests of governments and not communities. It is strongly recommended that any legal instruments that may be developed in TBNRM, should take cognisance of their traditional values, rights and production skills. They should strengthen instead of weakening the indigenous communities.

¹ Draft ZIMOZA Agreement

Conclusion

TBNRM in the SADC Region has the potential to act as a stimulus to regional co-operation, stability and development if properly planned and implemented. The SADC Treaty laid down the foundation for co-operation in the management of shared resources. Countries should seize this opportunity and forge ahead to fulfil this potential.

In the absence of a comprehensive management programme for TBNRM, there are a number of key threats, which may contribute to a reduction in biodiversity and may foster regional conflicts and threaten the SADC goal of community building both at regional and international level. Legal mechanisms play a very important role. Harmonisation of laws, policies and regulations relating to shared resources is very important. This harmonisation will lead to better management of the resources by the respective nations and naturally lead to greater shared benefits.

Community participation by the indigenous communities is also of equal importance. It should not be piecemeal participation. By participation, I mean the right to be consulted and involved in decision-making and implementation and the right to seek redress. These communities are major stakeholders. More often than not, we have seen the government not fully involving communities in decisions that affect their lives. Their participation or lack of it can be a pointer as to whether TBNRM will be a success or a failure.

However, in some cases countries are better off managing their own resources without involving other nations. If this is the case, TBNRM should not hinder these efforts. In any case, TBNRM should never be seen as a substitute to natural resource management within each country involved. It should be seen as complimentary.

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