



WORKING PAPER SERIES

# ENVIRONMENTAL GOVERNANCE IN AFRICA

**LEGAL FRAMEWORK FOR PARTICIPATORY  
NATURAL RESOURCES MANAGEMENT:**

**PRIVILEGES OR RIGHTS IN MOZAMBIQUE?**

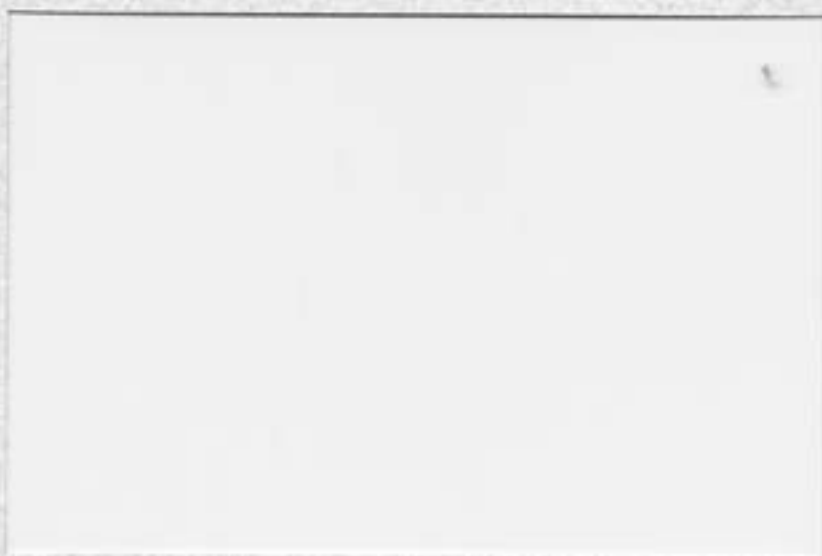
By

Alda I. A. Salomão<sup>\*</sup>  
September 2004



WORLD RESOURCES INSTITUTE

Institutions and Governance Program



Institutions and Governance Program  
World Resources Institute  
10 G Street, N.E., Suite 800  
Washington, D.C. 20002 USA  
jesser@wri.org / peterv@wri.org  
(202) 729-7600

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Alda I. A. Salomão\*  
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*EDITOR  
Jesse C. Ribot*



*World Resources Institute  
10 G St NE  
Washington, DC 20002  
[www.wri.org](http://www.wri.org)*

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\*Alda I.A. Salomão is the Founding Director of Centro Terra Viva, Environmental Law and Policy Program, Rua Reinaldo Ferreira No.72, Maputo, Mozambique. She can be reached at [asalomao@virconn.com](mailto:asalomao@virconn.com) or +258-1-308924.

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## ABSTRACT

This paper assesses the provisions of Mozambique's Wildlife and Forestry Law of 1999 and draws comparisons with provisions of the wildlife management acts of Namibia and Zambia. It assesses whether the legal provisions for community-based natural resource management (CBNRM) contained in these environmental laws produce the conditions for effective local community participation. It also assesses whether the legal provisions are sufficient to promote the dual objective defined for CBNRM: conservation and development. The analysis shows that what are commonly called "rights" in CBNRM discourse, are merely "privileges" in law. They are powers that can be given and taken at the discretion of state authorities without real transfer of decision-making powers and benefits to local communities. The analysis also found that the legal definitions of local community in all cases allow exclusion from CBNRM initiatives of anyone who does not engage in natural resources conservation. In other words, those who are not protecting nature are not part of "the community." In addition, the study found that communities are not systematically represented. Representation mechanisms proposed in laws, as well as procedures established for CBNRM processes, need to be better clarified for these initiatives to achieve their declared objectives. While upward accountability mechanisms for local actors can be found in most laws, downward accountability mechanisms for local decision makers are still lacking. Appropriate accountability mechanisms are absent from the Mozambican and other legislation. As the laws stand, local communities 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.

## ACRONYMS

<b>CBD</b>	Convention on Biological Diversity
<b>CBNRM</b>	Community-Based Natural Resources Management
<b>CBO</b>	Community-Based Organization
<b>CRB</b>	Community Resource Boards
<b>DINAC</b>	Direcção Nacional de Areas de Conservação (National Directorate for Conservation Areas)
<b>DNFFB</b>	Direcção Nacional de Florestas e Fauna Bravia (National Directorate for Forestry and Wildlife)
<b>FAO</b>	Food and Agriculture Organization
<b>IUCN</b>	World Conservation Union
<b>MET</b>	Minister of Environment and Tourism
<b>NGO</b>	Non-Governmental Organization
<b>RoM</b>	Republic of Mozambique
<b>RoN</b>	Republic of Namibia
<b>RoZ</b>	Republic of Zambia
<b>SADC</b>	Southern African Development Community

## ACKNOWLEDGEMENTS

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## INTRODUCTION

### **The Theory of Participation and Community-Based Natural Resources Management**

Participation is commonly defined in the development literature 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, and Ampadu-Agyei 1998). A basic tenet of the participatory approach is that all groups must be involved in all phases of decision-making processes. Advocates of Community-Based Natural Resources Management (CBNRM) argue that the principle of participation includes natural resources or biodiversity protection by, for, and with local communities (Western, Wright and Strum 1996). In cases where local communities are not participating, these advocates would assert that their needs and concerns regarding natural resources 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, Wright and Strum 1996). 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).<sup>1</sup>

The objective of this paper is to assess whether the legal provisions for community participation in natural resources management contained in Mozambican environmental laws take into account the various elements that shape the effectiveness of participation and promote the achievement of CBNRM objectives. 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. 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 (Agrawal and Ribot 1999). Reforms in support of political liberalization and democratization, while encouraging in some countries, have yet to devolve sufficient responsibilities and authority over natural

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<sup>1</sup> See, for example, 1) 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.

2) Western and Wright (1996) 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.

resources to local leaders, that would enable them to adequately address the needs of rural people. In most African nations, authority over nature remains centralized in law and practice. Most decisions are made with little, if any, participation from local people or state recognition of rural needs (Veit 2002).<sup>2</sup> Furthermore, ensuring that the powers devolved to local communities contribute to the efficient 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 1999). The paper shows that transfer of real decision-making powers to local communities has still a long way to go to be effective and that what other countries in our region commonly call “use-rights” are mere privileges that can be given and taken at the discretion of state authorities. Furthermore, the paper argues that procedures established for CBNRM processes as well as representation mechanisms proposed in laws still need to be better clarified and improved for these processes to achieve the objectives declared. While upward accountability mechanisms for local actors can easily be found in most laws, mechanisms for downward accountability of community representatives are generally lacking.

## **Objectives and Methods**

The analysis focused on the provisions from the Republic of Mozambique wildlife and forestry legislation (RoM law and regulation)<sup>3</sup>, drawing comparisons from related provisions from the Wildlife Management Acts of Namibia<sup>4</sup> (RoN Law) and Zambia<sup>5</sup> (RoZ Law). The framework used for this analysis was drawn from Ribot’s (2002; 2004) decentralization studies and is based on assessment of actors, powers and accountability mechanisms in the context of decentralized and participatory natural resources management (Ribot 2001). Shown below, many laws and policies tend to present “local communities” as a unitary entity while there are indeed distinct groups and sectors in actual “communities.” These different actors are analyzed in light of their inter-relationship, their representation structures and accountability mechanisms. The paper discusses both downward and upward accountability of empowered actors, in order to discern whether meaningful representation of community interests occurs. Similarly, the analysis of powers has been expanded to include the discussion not only of 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 uses). The paper concludes with a discussion of alternatives and incentives to balance community development interests and wildlife conservation objectives.

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<sup>2</sup> Veit (2002) argues that “...reforms in support of political liberalization and democratization, while encouraging in some countries, have yet to devolve sufficient responsibilities and authority over natural resources to local leaders to enable them to adequately address the needs of rural people. In most African nations, authority over nature remains centralized in law and practice. Most decisions are made with little, if any, participation from local people or state recognition of rural needs.”

<sup>3</sup> Law No.10/99 of July 7 and Decree No.12/2002 of June 6.

<sup>4</sup> Namibian Act No.5 of 1996 and Amendment regulations No.304 of 1996.

<sup>5</sup> Zambian Act No.12 of 1998.



Although the list is not exhaustive,<sup>6</sup> assessing the above mentioned 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, thus, help us identify gaps in the legislation and alternatives to overcome, so that the legal framework in Mozambique can become consistent with the objectives of participation pronounced in national and international dialogues.

## **NATIONAL AND REGIONAL NORMS FOR COMMUNITY PARTICIPATION IN WILDLIFE MANAGEMENT**

With the adoption of a Policy and Strategy for Wildlife and Forestry Development, through Cabinet Resolution number 8/97 of 1 April 1997, Mozambique embarked on a process to create potential opportunities for substantial community participation in forestry and wildlife management. The Mozambican Wildlife and Forestry Policy states that it is important that those who use and benefit more directly from wildlife to participate in the management planning processes. Local communities are, in fact, targeted as the principal actor in the implementation of the policy. The policy determines the objectives of wildlife and forestry management as including: (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.

Subsequently, Mozambique's 1999 Wildlife and Forestry Law (Law No.10/99) recommends an integrated management of natural resources that ensures "effective participation of local communities, associations and the private sector." It also establishes, as a principle, that wildlife and forestry resources must be managed to ensure harmony between local communities and local institutions of the State, so that customary practices and conservation principles are respected. Socio-economic community development is emphasized by recommending that the involvement of the private sector in natural resources management should aim at furthering local community progress.<sup>7</sup>

Although falling short from clearly conferring "participation rights" or even what other jurisdictions in our region call community "use rights," the Mozambican legislation follows a regional trend, as many countries in the Southern African Development Community (SADC) region 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. Such statements can be found, for example, in a cabinet resolution from

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<sup>6</sup> 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.

<sup>7</sup> See RoM law No10/99, Article 3(f).

the Republic of Namibia (Cabinet Resolution No.8th/16.03.95/005).<sup>8</sup> The objective advanced in this legal instrument 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.

SADC has also adopted a regional protocol promoting participation of local communities in wildlife management. This is the case of the 1999 SADC Protocol on Wildlife Conservation and Law Enforcement (SADC 1999, Article 7.4). This protocol asserts that State parties shall establish or introduce mechanisms for community-based wildlife management, shall integrate principles and techniques derived from indigenous knowledge systems into national wildlife management and law-enforcement policies and procedures. The protocol also 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.<sup>9</sup>

As reflected in both national and regional instruments, participatory community wildlife management has a dual objective, namely to ensure conservation of wildlife resources with the participation of local communities, and to promote the economic and social development of such communities through use of wildlife resources. In other words, these objectives promote sustainable use and management of natural resources with a poverty alleviation focus and a decentralization vision. They imply that communities should not only share the benefits resulting from the use of wildlife resources but should also participate in decision-making processes regarding wildlife management. To achieve these objectives, new forms of community participation are being institutionalized through decentralization of powers over wildlife resources. Included in the SADC region, countries such as Namibia and Zambia have adopted legislation establishing community participation mechanisms, including the so-called community wildlife use rights (Johnston and Dannenmaier 2000).<sup>10</sup>

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<sup>8</sup> The Namibia Policy on Wildlife Management, Utilization and Tourism in Communal Areas (Cabinet Decision No.8<sup>th</sup>/16.03.95/005)<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> See Johnston and Dannenmaier (2000) who state that “many developing countries are formulating sustainable use plans as a strategy for wildlife conservation outside of protected areas, and one of the more

Apparently, states are proposing to transfer some of their powers in wildlife management to ensure participation of locals in the decision-making process and to accommodate development interests and concerns of local communities. The following discussion evaluates the extent to which the Mozambican wildlife and forestry legislation addresses the principles and objectives of participatory natural resources management and CBNRM in practical terms, especially with regard to procedural aspects.

## **MOZAMBICAN FRAMEWORK FOR COMMUNITY PARTICIPATION**

### **Right to Participate in Forestry and Wildlife Management and to Accrue Benefits**

According to the Mozambican national wildlife and forestry policy, and the principles of wildlife management included in the law, communities must be “involved” in natural resources management, and the government has the obligation to “consult” local communities when taking decisions related to natural resources management. In other words, community participation is a strategic tool for governments to achieve good results in environmental management, in the belief that exclusion of locals will jeopardize conservation objectives. Therefore, rather than being recognized as a “right” of communities which would eventually allow a pro-active attitude, participation is presented as a “necessity” where communities must wait for government initiative in order to participate. Article 33 of the law 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 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. Accordingly, and illustrative of this assumption, management powers are to be “delegated” and not transferred to local communities and other actors.<sup>11</sup> Concrete rights and related decision-making powers that would support the policy rhetoric on community participation and decentralization mentioned before are not established by any provision of the law and its regulation.

In general, community intervention takes place through what the legislation calls “consultation”—a means for communities to intervene, for example, in the design of management plans, in monitoring activities or in decisions on forestry concessions. Despite the fact that the law includes procedural guidelines for consultation processes,<sup>12</sup> nothing is said about the weight of community positions and the treatment to be given by the government to such positions in the decision-making processes—leading, for example, to the establishment of national parks and reserves, attribution of logging and hunting concessions, and affecting the level and distribution of natural resources benefits. Weak participation opportunities are included in the regulation where it is stated that

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popular approaches is to grant wildlife use rights, which imbue communities and individuals with legal rights for wildlife use.”

<sup>11</sup> Op cit. Article 33.

<sup>12</sup> Ibid. Article 17(2).

communities have the right to participate in design of management plans for conservation areas.<sup>13</sup> Participation in major and relevant decisions, namely those involving big projects, valuable resources and relevant benefits, are tightly kept in government hands with communities having a peripheral role. For example, the law establishes that communities should receive a percentage of taxes related to use of forestry and wildlife resources, but failed to establish the criteria for determining the percentage. As a consequence, the government wrote a regulation specifying the level of revenues that communities will receive, without any reference to community participation in this decision. In this case, the regulation determines that communities will receive twenty percent of the revenues resulting from wildlife and forestry management.

In assessing regional positions on the “rights” vs. “needs” dichotomy discussed above, we find that there is a generalized resistance in attributing real, and thus irrevocable, rights to local communities in natural resources management. Some countries in our region, however, have tried to adopt more progressive approaches not only by leaning more to the rights approach but also by including more specific procedural guidelines for community participation. In fact, after complying with procedures established for community participation in wildlife management, i.e. forming conservancies in Namibia<sup>14</sup> or community resources boards in Zambia,<sup>15</sup> communities have the right to make decisions about use of wildlife and other resources existing in their areas. Approval requirements and procedures, however, imply that governments are providing participation *privileges*, that can be given and taken, and not exactly participation *rights*. In general, this analysis shows that where space has been opened in legal frameworks for community participation in decision-making processes over natural resources, governments have reserved for themselves the discretionary power to withdraw community “rights.”

### **Procedures for Community Participation**

Procedures for community participation pertaining to wildlife management and benefit sharing will determine how accessible decision-making processes are and, consequently, will determine to a large extent how genuine the principles of community participation proclaimed in laws are. Local communities in Mozambique must follow procedures that are complex, costly and time-consuming. Communities intervene through “local committees for natural resources management,” which have a seat on local councils for natural resources management. While local committees are comprised of elected or selected community members, local councils involve representatives from a multi-sectoral group, including representatives from the state, the private sector, NGOs and local communities. According to Article 96 of the regulation, local councils for management of natural resources must be constituted following the procedures included in the Law of Associations (Law No.8/91), which has received considerable criticism

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<sup>13</sup> Ibid. Article 10.

<sup>14</sup> Namibian Act, Section 24A.

<sup>15</sup> Zambian Act, Section 6.

from non-governmental organizations because of its cumbersome procedures and vagueness.

That central governments retain, in all cases, the legislative powers to determine the rules that communities must follow to access environmental decision-making processes and wildlife benefits, is not a surprise. It is consonant with the widespread delegation-of-powers approach. However, questions can be raised about the extent to which the institutional structures and procedures proposed for community representation and participation (including modes of selection of members of community committees and of community representatives in local councils) are relevant and appropriate. Imposition of complex procedures is not unique to Mozambique, as Zambia and Namibia also require a considerable number of formalities for community involvement. Local communities in Zambia must organize themselves and apply for registration as Community Resources Boards (CRB). Such boards must 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 established.<sup>16</sup> Similarly, in Namibia communities are required to form conservancies<sup>17</sup> in order to apply for participation in wildlife management. According to the interpretive guide for the Namibian law, prepared by the Minister of Environment and Tourism (MET), communities must identify conservancy members and select a conservancy committee as a first step. Secondly, the conservancy should then define its boundaries and develop a constitution. After this step, the conservancy applies to MET for registration in a prescribed form, and, with approval by the Minister, the conservancy must be registered and gazzetted. It is only after all these steps that finally the conservancy may become operational and establish enterprises.<sup>18</sup>

Considering the reality of most rural communities and the bureaucracy involved in institutional formalization, the procedures imposed by the government might just have the effect of removing opportunities for extensive community participation in management of wildlife and other resources. Therefore, the challenge for Mozambique, and for other countries in the region, is to try to avoid lengthy and cumbersome processes that undermine participation.

## **Actors, Representation and Accountability Mechanisms**

### *Actors*

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

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<sup>16</sup> Zambian Act No.12 of 1998, Section 6(1)(3).

<sup>17</sup> 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.

<sup>18</sup> See on this regard Section 155B of the Namibian Regulations No.304 of 1996.

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, Article 1(5)).<sup>19</sup> Although this 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 (see Zerner 2000; Gibson 1999). Determination of management powers and benefits at the local level, therefore, should be responsive to the community as a whole, taking into account the diversity of local groups and interests that co-exist in most places (see Ribot 1999).

Specifically on actors and representation, there are many actors who can interact in natural resource management at the local level. In fact, Article 33 of the law determines that natural resources management powers may be delegated to various groups including local communities, the private sector and NGOs.<sup>20</sup> Additionally, and as a representation mechanism, Article 31 establishes the creation of local councils for natural resources management, which shall be composed by representatives from local communities, from the private sector, from associations and from local state authorities. In Article 97, the regulation provides for the mandate of local councils, but its content indicates what the councils must take into account when performing their functions. These councils seem to have been conceived to perform advisory roles before government agencies, but the form of selection of sectoral representatives, responsibilities of the different actors and the relationship among them, is not clearly specified. For example, it is not clear how the actors represented in local councils will interact and resolve, among other matters, problems of conflict of interests. It is also unclear how these councils, with such a diversity of members, will perform their representation roles as indicated in Article 98 of the regulation.

While recognition of the diversity of community actors is a very important step, there is need to clarify the mandate, powers and operational procedures of local councils and this remains a priority in the Mozambican process of institutionalizing CBNRM. At the lowest level, an Annex of the Regulation on Distribution of the twenty percent, establishes that local management committees (CGC) must be created, comprising elected community members only with a mandate of ensuring respect for community rights and obligations on sustainable natural resources management (Article 7).

The focus of definitions of “local communities” differs in our region. While the definition in the Mozambican law focuses on the residential aspect, 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,” thus stressing the investment and benefit accrual aspects.<sup>21</sup> As we tried to point out earlier, and considering the diversity of actors

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<sup>19</sup> See Law No. 10/99, of July 7, Article 1(5).

<sup>20</sup> See also Article 99 of the regulation.

<sup>21</sup> See Zambian Act No.12 of 1998, Section 2.

in community areas, it seems appropriate to re-think the two definitions presented above in a way that provides a combination of both the residential and investment aspects. This exercise would probably give proper coverage to the multi-sectoral representation nature of local councils, although it would not automatically resolve the conflict-of-interest issue. It is also interesting to note that definitions of local community in all cases allow exclusion from CBNRM initiatives of anyone who does not engage in natural resources conservation. In other words, those who are not protecting nature are not part of “the community.”

Provisions from the Namibian and Zambian laws related to local actors also 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 claims over benefits resulting from wildlife.<sup>22</sup> It is these committees and boards that interrelate with both the government and the private sector in the name of the community.

While there is generally reference to actors other than rural farmers, poachers and state agencies, namely NGO’s and the private sector, the distinct but crucial role that these actors can and should play in shaping community development and natural resources conservation does not receive significant coverage in the laws. NGO involvement in Namibia seems restricted mainly to helping the government assist communities in establishing conservancies, and the need for partnerships between communities and the private sector is mentioned without specific guidelines aimed at ensuring private-sector meaningful contribution to conservation objectives and community development. Additionally, the role of chiefs and/or local leaders in the local development process is insufficiently clarified despite the significant influence that they have in many rural communities.<sup>23</sup>

### *Representation and Accountability*

The purpose in examining representation and accountability issues is to: (1) identify to whom the actors receiving powers in the name of decentralization (even where powers are merely delegated) are accountable, and (2) identify the mechanisms established for such accountability to effectively occur. Assessment of representation and accountability is made with reference to local populations, whose interests local representatives are supposed to defend (downward accountability), and to the central state which is the guardian of natural resources (upward accountability). The basic question is whether the actors who retain and/or receive powers over nature truly represent and are responsive to the population affected by such powers. Article 98 of the Mozambican wildlife and forestry regulation states that local councils may, whenever requested, represent the

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<sup>22</sup> See Ibid. Section 6, and Namibian Act No. 5 of 1996, section 24.A.

<sup>23</sup> 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.”

interests of their members before the State, with the objective of defending interests related to resources management, conservation, use and benefits. Our concerns regarding the level and effectiveness of local council representation is not addressed, since this regulation omits any guidelines on either upward or downward accountability.

Like Mozambique, Zambia and Namibia have established representative participation. 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 (1996) analysis, despite being probably the most commonly evoked and effective mode of representative accountability, elections do not necessarily ensure comprehensiveness of representation or accountability. Rural elites, for one, can always try to manipulate candidacies, electoral processes and those in elected positions. Additional accountability mechanisms are usually necessary to assure representation.

With regard to mechanisms of accountability of local representatives, other mechanisms for increasing local or downward accountability, other than elections, could include: 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; and earned income taxation systems (Ribot 1996). There is no space in the Mozambican legislation for communities to decide which form(s) of accountability to adopt, electoral or otherwise.

Finally, since the government contradicts itself by promoting community participation while retaining all meaningful management powers, the question emerges as to whether or not mechanisms for central government accountability are included in the laws. The conclusion of this work is that such mechanisms are absent from the Mozambican and other legislation. The question of selecting accountable representatives is crucial, since it is these representatives who might decide, in the name of communities, the general use of wildlife and the beneficiaries.<sup>24</sup> Agreeing with 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."

### **Powers to Manage Natural Resources**

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 to influence the natural resource management process. The nature of decentralization depends to a significant degree on who gets to exercise power and the accountability relations to which they are subject

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<sup>24</sup> The representatives make such decisions via formulation of a management plans, for example.



(Agrawal and Ribot 1999). Consequently, while local actors form the institutional basis of decentralization, decentralization cannot be said to take place until such actors hold significant powers, including power to create or modify rules power to make decisions about how a particular resource or opportunity is to be used implement and ensure compliance, and adjudicate disputes (Agrawal and Ribot 1999). This section focuses on powers being transferred to local communities. The section examines the degree to which communities are able to: determine natural resources uses and quantities, design management plans, shape community costs and benefits, negotiate and establish partnerships, and adjudicate disputes. But as advocates of decentralization assert, 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 such reforms are not likely to accomplish the stated aims of decentralization (see Gibson 1999).

### *Power to Determine Natural Resources Uses and Quantities*

Restrictions on community access to wildlife and other resources can potentially be made through: 1) territorial criteria—limiting areas where communities can participate in management and accrue benefits, 2) quotas—limiting the quantity of resources that communities can utilize, and 3) types of uses—consumptive versus non-consumptive, or commercial versus non-commercial. The cumulative consequence of these restrictions on community access to resources is substantial. What first appears as an opportunity for community participation and development can be greatly reduced by zoning community areas, limiting permissible uses for communities and allocation of use rights.

As a general norm, local communities in Mozambique have the right to use resources existing within community areas and other areas for consumptive purposes. Hunting for this purpose is subject to a license to be issued by local councils according to customary norms and practices.<sup>25</sup> 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 and 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 resources.<sup>26</sup> 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.<sup>27</sup>

To what extent are communities empowered to accrue benefits from natural resources, especially those resulting from non-consumptive uses within and outside community areas? In current legislation, the government decides through licensing processes. Examples from the region show different approaches to this matter. Namibian law prohibits communities from using resources in any land owned by the state (including

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<sup>25</sup> Op cit. Article 15(3).

<sup>26</sup> Ibid. Article Ibid. Article 15(1).

<sup>27</sup> Ibid. Articles 9 and 12.

federally owned communal land) but they have the power to decide on consumptive and non-consumptive uses to be exercised within conservancies.<sup>28</sup> In Zambia, community resource boards have also the power to manage wildlife within its jurisdiction but within quotas set by the Wildlife authority.<sup>29</sup>

### *Power to Design Management Plans*

Socio-ecological pre-assessments and resource-management plans can be an important component of sustainable natural resources management. As mentioned earlier, 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, apart from not explaining the meaning of the term “involved,” the law is also silent about the role that community knowledge and experience should play in the choices made in such plans. Despite repeated recommendations by the Convention on Biological Diversity (CBD) that community knowledge and experience should be considered in management plans, no changes have been made to the national wildlife and forestry policy. Furthermore, even where the power to design management plans has been devolved to the locals, such as in Namibia, overly complex technical requirements usually imposed by governments in the elaboration of such plans<sup>30</sup> so that that most communities will always need government or NGO assistance to be able to make a meaningful contribution to the design of plans.

### *Power to Determine Community Costs and Benefits*

The Mozambican wildlife policy and other laws establish that communities should be exempt from paying taxes for consumptive uses of wildlife and forestry resources, and that they should share revenues and other benefits from wildlife management. For this purpose, the government must reserve a percentage of taxes to benefit communities.<sup>31</sup> According to the Mozambican regulation, communities are entitled to twenty percent of total revenues and the government is designing guidelines indicating how communities should use this money. The November 2002 version of the draft guidelines determine that the funds can be used for the community to acquire goods and services that benefit the whole community and not for private interests. Members of local community committees must vote to determine how to spend revenues and in case of doubts or conflicts the issue must be taken to the multi-sectoral committee. It is not clear, however, how the twenty-percent figure was reached and what role communities played in setting it. In general, local communities are expected to participate in such decisions through local councils

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<sup>28</sup> See Namibian Amendment Regulations No.304, Section 155B(3)(c).

<sup>29</sup> Zambian Act No 12 of 1998, Section 7(2)(b).

<sup>30</sup> 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.

<sup>31</sup> Ibid. Article 35(3)(5).

and in monitoring activities.<sup>32</sup> Areas these funds are earmarked for include monitoring and control of problem animals and illegal poachers. Furthermore, such funds should also be used to promote local development, but there are no indications as to what percentage of the twenty percent should go to different components. This latter aspect would help to assess the role of the law in promoting community development and could also be an important means to avoid conflicts over choices for revenue use. More controversial, however, is that the guidelines specify that goods acquired by communities belong to the State.<sup>33</sup>

Namibia has adopted a different approach. Their new laws explicitly give communities the power to determine how benefits from management of wildlife resources in conservancies 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.”<sup>34</sup> Conservancy constitutions must always 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.<sup>35</sup>

In contrast, the government of Zambia maintains a tight control over community decisions on costs and benefits from natural resources management. For example, negotiation of co-management agreements with the private sector must be made in conjunction with the Zambia Wildlife Authority (ZAWA), and acceptance of any grants or donations from any sources within or outside the country must have the approval of ZAWA or the Minister, respectively. While one might argue that ZAWA involvement aims at protecting community interests against private-sector hegemony, what matters is that 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 no identification of interests and aspirations of communities are made before allocating wildlife conservation responsibilities. One of the CBNRM objectives should be to maximize benefits and minimize costs to local communities. An assessment of the costs associated with community involvement in natural resource management should be required to help ensure that costs do not exceed the benefits.<sup>36</sup>

### *Power to Negotiate and Establish Partnerships*

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<sup>32</sup> Ibid. Article 37.2.

<sup>33</sup> Ibid. Article 14.

<sup>34</sup> See Namibian Regulations No.304 of 1996, Section 155B.

<sup>35</sup> Ibid.

<sup>36</sup> 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.

The Mozambican legislation is ambiguous about empowering local populations to negotiate on equal terms. Article 3 of the law 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 sector,<sup>37</sup> they share with Mozambique that no guidelines are included to ensure effective contribution by the private sector to community development and wildlife conservation, nor to protect communities against possible misconduct by this sector.

Economic and financial superiority of the private sector represents a threat to communities who generally negotiate from a position of weakness. This inequality in negotiating positions is not addressed in law. One way of leveling the playing field is through the design and adoption of standard or model contracts for all partnership agreements. These contracts may be a good alternative for 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 each party. Basic provisions could be related to wildlife protection and conservation roles and responsibilities, including the economic and social benefits that communities would expect to receive by entering into wildlife management 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.

#### *Powers to Adjudicate Disputes*

The power to resolve disputes over wildlife resources is one important aspect of participation. The independence and accessibility of the adjudicating bodies is key (Ribot 1999). 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 in the hands of the government or of any other party. Alternative dispute mechanisms—including access to courts, arbitration, mutual conciliation and traditional dispute-resolution schemes—should always be considered, as this diversity of mechanisms provides better opportunities for access to justice.

Dispute resolution mechanisms have not been included in the Mozambican and Zambian laws, although in the case of Mozambique the law determines that disputes at the local level must be resolved according to traditional norms. In Namibia dispute resolution mechanisms are completely left in the hands conservancy committees. Here, the law establishes that the conservancies shall provide for a procedure for dispute resolution in their constitutions. Although the government may alter such provisions in the approval

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<sup>37</sup> See Section 7(a) of the Zambian Act No.12 of 1998 and Section 155B, of the Namibian Regulations No.304 of 1996.

process, it appears that the idea was to give communities the power to decide how conflicts will be resolved.<sup>38</sup>

Although often proposed, the option of locating dispute resolution with traditional authorities may be problematic. Provisions for recourse to customary law and dispute resolution schemes have often been proposed in legislation in Mozambique, but the mechanisms through which customary and formal legal frameworks will co-exist and inter-relate have not been assessed and established. Determination of forms and powers to adjudicate at the community level involves multiple overlapping systems of law. It is important, therefore, to study how the written and oral systems of law coexisting in Mozambique and in many African countries can be used to promote community progress and sound wildlife resources management.

## CONCLUSION

Environmental conservation and community development are two sides of a coin. Despite the rhetoric on decentralization and local community participation in policies and laws, the Mozambican legislation stands out for its lack of significant provisions to accommodate the CBNRM principles and objectives. Substantive provisions that would, in principle, allow effective participation are not supported by the necessary procedural guidelines. The legal provisions analyzed show that the Mozambican law still has a considerable way to go before it can adequately translate discourse into practice.

In Mozambique, the powers to decide and control, that are essential for meaningful community participation in management of wildlife resources, are not being transferred, delegated or significantly shared. As the law stands, communities 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, benefit, and 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, such as in Namibia and Zambia, the government reserves for itself, through approval and other mechanisms, the power to sanction choices made at the community level.<sup>39</sup> Illustrative of this type of

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<sup>38</sup> See Namibian Amendment regulations No.304 of 1996, section 155B(3)(i).

<sup>39</sup> 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.<sup>39</sup> However, this must be determined through a transparent

control is 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 councils.<sup>40</sup>

Specific provisions directed at addressing the balance between conservation strategies and effective community development are also absent from the laws, which tend to favor conservation aspects only. 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 region.<sup>41</sup> But, are there strategies to ensure that these organizations will defend the diverse interests of different community members? Are there mechanisms in place to hold the governments that created these institutions accountable to the people or to representative local institutions?

While there are important and progressive principles and laws for participatory natural resources management, especially in Mozambique, the gaps identified throughout this paper must be carefully addressed in order to properly implement CBNRM initiatives and achieve the desired objectives. Some of the issues that must be attended to include:

- Defining Community: “Local community” must be defined to reflect the whole array of local groups, interests and socio-economic and political differences. The structures to be chosen for community representation must, therefore, be aware of and responsive to the diverse ensemble of local actors.
- Representation: Pay attention to the choice and accountability of local authorities. Community recognition and legitimacy of representatives will be determined by how representatives are chosen, who gets involved in their selection and the

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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.

<sup>40</sup> See Africa Policy Information Center issue of March 1, 2001, at [www.allafrica.com](http://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.

<sup>41</sup> 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.”

accountability strategies that ensure that they remain committed to defend their constituencies.

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

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