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## **TOURISM CONCESSIONS IN PROTECTED AREAS IN MOZAMBIQUE:**

### **Analysis of tourism concessions models in protected areas in Mozambique**

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# **TOURISM CONCESSIONS IN PROTECTED AREAS IN MOZAMBIQUE:**

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## ACRONYMS

AFD	Agence Française de Développement	Agence Française de Développement
ANAC	National Administration of Conservation Areas	<i>Administração Nacional das Áreas de Conservação</i>
AWF	African Wildlife Foundation	<i>African Wildlife Foundation</i>
AZC	Ahi Zameni Chemucane Association	<i>Associação Ahi Zameni Chemucane</i>
BIOFUND	Foundation for the Conservation of Biodiversity	<i>Fundação para a Conservação da Biodiversidade</i>
BOT	Build Operate Transfer	<i>Construção, Operação e Devolução</i>
CBD	Convention on Biological Diversity	<i>Convenção sobre Diversidade Biológica</i>
CGAC	PA Management Council	<i>Conselho de Gestão de Área de Conservação</i>
CM	Council of Ministers	<i>Conselho de Ministros</i>
CITES	Convention on the International Trade in Endangered Species	<i>Convenção sobre o Comércio Internacional de Espécies Protegidas</i>
CM /CoM	Council of Ministers	<i>Conselho de Ministros</i>
CONDES	National Council for Sustainable Development	<i>Conselho Nacional para o Desenvolvimento Sustentável</i>
CPI	Investment Promotion Centre	<i>Centro de Promoção de Investimentos</i>
DNAIA	National Directorate for the Assessment of Environmental Impacts	<i>Direcção Nacional de Avaliação do Impacto Ambiental</i>
DNGA	National Directorate for Environmental Management	<i>Direcção Nacional de Gestão Ambiental</i>
DINATUR	National Directorate for Tourism	<i>Direcção Nacional de Turismo</i>
DNAC	National Directorate for Conservation Areas	<i>Direcção Nacional das Áreas de Conservação</i>
DUAT	Land Use and Development Title	<i>Direito de Uso e Aproveitamento da Terra</i>
EIA	Environmental Impact Assessment	<i>Estudo de Impacto Ambiental</i>
Eol	Expression of Interest	<i>Manifestação de Interesse</i>

GEF	Global Environmental Facility	<i>Global Environmental Facility</i>
GoM	Government of Mozambique	<i>Governo da República de Moçambique</i>
IACM	Mozambique Civil Aviation Institute	<i>Instituto de Aviação Civil de Moçambique</i>
IGF	La Fondation Internationale pour la Gestion de la Faune	
INAMAR	National Maritime Institute	<i>Instituto Nacional da Marinha</i>
INATUR	National Tourism Institute	<i>Instituto Nacional de Turismo</i>
INSS	National Institute for Social Security	<i>Instituto Nacional de Segurança Social</i>
IUCN	International Union for Conservation of Nature	<i>União Mundial para a Natureza</i>
LTA	Long Term Agreement	<i>Acordo de Longa Duração</i>
Mdl	Mozaico do Indigo SA	<i>Mozaico do Indigo SA</i>
MFinanças	Ministry of Finance	<i>Ministério das Finanças</i>
MIC	Ministry of Industry and Commerce	<i>Ministério de Indústria e Comércio</i>
MICOA	Ministry for Coordination of Environmental Affairs	<i>Ministério para a Coordenação da Acção Ambiental</i>
MITUR	Ministry of Tourism	<i>Ministério do Turismo</i>
MPD	Ministry of Planning and Development	<i>Ministério da Planificação e Desenvolvimento</i>
MPescas	Ministry of Fisheries	<i>Ministério das Pescas</i>
MSR	Maputo Special Reserve	<i>Reserva Especial de Maputo</i>
MTC	Ministry of Transports and Communications	<i>Ministério dos Transportes e Comunicações</i>
MZM	Metical (ais) (Mozambique official currency)	<i>Metical (ais)</i>
NGO	Non-Governmental organization	<i>ONG – Organizações não-governamentais</i>
QNP	Quirimbas National Park	<i>Parque Nacional das Quirimbas</i>
PA	Protected Area (for conservation purposes)	<i>Áreas de Protecção Total</i>
PPF	Peace Parks Foundation	<i>Peace Parks Foundation</i>



PPP	Public Private Partnership	<i>Parceria Publico Privado</i>
PS	Private Sector	<i>Sector Privado</i>
RFP	Request for Proposals or Prospectus	<i>Solicitação de Propostas</i>
QNP	Quirimbas National Park	<i>Parque Nacional das Quirimbas</i>
SADC	Southern Africa Development Community	<i>Comunidade para o Desenvolvimento da África Austral</i>
SANParks	South African National Parks	<i>South African National Parks</i>
SGDRN	Sociedade para Gestão e Desenvolvimento da Reserva do Niassa Lda	<i>Sociedade para Gestão e Desenvolvimento da Reserva do Niassa Lda</i>
SPV	Special Purpose Vehicle (implementing/ joint venture company)	<i>Empresa implementadora</i>
TFCA	Trans-frontier Conservation Areas	<i>ACTF - Áreas de Conservação Transfronteiriça</i>
UNDP	United States Development Programme	<i>PNUD – Programa das Nações Unidas para o Desenvolvimento</i>
USAID	United States Agency for International Development	<i>United States Agency for International Development</i>
VAT	Value added tax	<i>Imposto de Valor Acrescentado (IVA)</i>
WB	World Bank	<i>Banco Mundial</i>
WWF	World Wide Fund for Nature	<i>World Wide Fund for Nature</i>

## EXECUTIVE SUMMARY

Developing sustainable tourism concession models in and around Mozambique's key protected areas, is one way for the Government of Mozambique (GoM) to get the private sector engaged, to enable communities to benefit from tourism development, job creation, and to help Mozambique's tourism industry grow. When designed and implemented correctly, tourism concessions can greatly benefit a wide range of stakeholders, while ensuring the conservation of natural resources and biodiversity.

This study was commissioned under the USAID-SPEED program, and aimed to:

- Examine best practice models of tourism concessions in protected areas, looking at current practices implemented in Mozambique, in the southern Africa (e.g. South Africa, Namibia, Botswana), and other countries where tourism concession models have been highly effective;
- Analyze implementation of concessions within Mozambique, including the experiences to date, lessons learned, best practices, and recommendations for future concession models;
- Analyze processes for procurement, negotiation and award of tourism concessions and leases in protected areas;
- Review the institutional framework for concessions in Mozambique, including government policy and priorities, strategic objectives; decision making within government and the role of key stakeholders;
- Assess the Mozambique government's ability to manage, process, evaluate, negotiate and implement tourism concessions in protected areas
- Understand the role of local communities in tourism concessions in protected areas and assess possible structures for the establishment of partnerships between local communities, private investors and the State; and
- Provide recommendations for appropriate concession models and processes that could be applied to Mozambique's protected areas; implementation for selected concession models; and procurement methods to secure tourism concessions in protected areas.

An overview of the findings of this analysis is as follows:

### **i) Best practice models**

Models for tourism concessions in protected areas vary across southern Africa, and best practice models can be found in Namibia, South Africa and Botswana. There is a tendency for concessionaires to be awarded a contract to use defined areas within protected areas for a specified period of time, in return for the payment of fees. The concessionaire will have a series of obligations to comply with which may include environmental and social requirements. At the

end of the concession period, infrastructure tends to revert in ownership back to the protected area agency. The performance of the concessionaire in relation to its contractual agreement with the agency may influence the likelihood of a concession renewal.

In successful concessions, there may be improved financial benefits for protected area agencies (and lower risk), improved security and profits for the concessionaire, and greater social and economic benefits for communities. There may also be greater benefits for conservation management, through the use of tourism user fees paid by the concessionaire.

Concessions processes need to be supported by policy and legal frameworks, and documentation that outlines the concession process and provides supporting information to investors. Prospectuses for concessions processes need to include not all legal requirements, but also information on how the opportunities are defined, structured, prices and how operators are selected. They should also include information on the qualifications and expertise required from concessionaires, and their legal, financial, environmental and social responsibilities. A clear contract, and guidelines for the management of that contract, also provide a sound underpinning to the concession period.

## **ii) Concession models and procurement processes in Mozambique**

Despite tourism concessions in Mozambique being relatively young, there are a number of different models that have arisen. These include:

- Co-management models (public private partnerships) for entire protected areas;
- Direct concessions to the private sector over specific areas or sites within a protected area;
- Contractual co-ownership of specific areas or sites within a protected area, including to community associations;
- Special licenses, for community associations or the private sector to have a license to operate in part of a protected area; and
- Contractual delegation of hunting concession rights.

In Mozambique, Niassa Reserve has the longest experience in concessions procurement and management (mostly for hunting concessions), and newer modeling experiences have recently arisen in Maputo Special Reserve, Limpopo National Park, Gorongosa National Park and Quirimbas National Park.

Generally, concessions development processes in Mozambique are at an embryonic phase, hence there are still critical modelling and implementing tools to be developed in planning, procurement, negotiation, drafting and award of contracts, implementation and management and monitoring and enforcement. Best practices in Mozambique are illustrated by:

- Availability of adequate planning frameworks and documentation for concessions, including protected area management plans, information on the legal requirements, market assessments, environmental and social studies, existing / previous concessions and risks;
- Clear, well governed and transparent procurement processes, which remove the potential for political (or other) interference in a tender process, and where a tender is awarded at the end of the process;
- Well defined procurement documentation, including Expressions of Interest, Tender guidelines, Tender prospectuses, Requests for Proposals, Scoring systems, and Contracts;
- Good communication, trust and coordination between stakeholders involved in concession procurement, negotiations, and contract management; and
- Integration of environmentally, socially, and economically sustainable tourism practices into the procurement and contracting of tourism concessions, underpinned by adequate monitoring and evaluation.

### **iii) Legal and institutional framework for concessions**

The policy and legal frameworks for tourism concessions in protected areas are changing worldwide, and particularly in Southern Africa as a result of national social needs and environmental and financial international, and regional commitments.

The Government of Mozambique's current policies and legal framework applicable to tourism concessions processes are a clear evidence of the chosen environmental, social, conservation and community development priorities. Protected Areas (PAs) in Mozambique are addressed under a new Conservation Policy, while the Land Law determines that all land and resources belong to the state.

In the current legal context, a tourism concessionaire must have a broad understanding of the law, in relation to the role of different stakeholders, and how it affects contracts and licenses. Sectoral legislation governing tourism concessions activities includes the following areas: land, forestry and wildlife, coastal and marine areas, tourism, PA revenues, hunting, fishing and diving environment, investment, commercial, labour, migration, fiscal, foreign exchange control community legalization and land planning.

Changes anticipated in the short-term include the establishment of the new PA system and legal regime for conservation areas, tourism developments included, will require further regulations to become effective and efficient, the first diploma required being the conservation law and the second one, the National Administration of Conservation Areas (ANAC) statutes. With these new institutions, there will still be challenges directly affecting tourism concessions related with models, criteria, with the approval

and implementation of internal and inter-institutional procedures', coordination mechanisms and with the drafting and approval of legislation itself.

#### **iv) Government's ability to manage concessions**

Many stakeholders populate the scene of tourism concessions in PAs and the ones carrying the public decision-making and implementing responsibilities are the Council of Ministers, the Ministry of Tourism (MITUR), the Ministry of Fisheries (MPescas) and the Ministry of the Environment (MICOA). Mozambique and MITUR have already gathered significant experience in tourism and hunting concessions models, directly involving, or not, local communities.

Experiences that the government has had in tourism concessions, and particularly with regard to Gorongosa's co-management, and concessions processes in Maputo Special Reserve include:

- Government does not have much experience, expertise, or capacity to negotiate with the private sector. They would be in a stronger position if they had greater negotiation skills and were better prepared for partnerships;
- Endorsement of a process from one ministry is not sufficient to guarantee success. Decision makers from different ministries, their departments, and also different levels of government, need to be on board and must understand the process and intentions;
- Government should listen to technical advice provided to them in good faith, particularly when it relates to market needs such as tenure security required by investors; and
- Government should not be tempted to delay or de-rail concessions processes that are in process.

#### **vi) The role of communities**

Communities are involved in tourism concessions in protected areas in a number of ways.

Communities residing in protected areas, or dependant on their natural resources, have customary<sup>1</sup> access, occupation, use and benefit rights<sup>2</sup>. Communities are legally empowered to be involved in several

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<sup>1</sup> Scott, 1985

<sup>2</sup> Also qualified as native (indigenous), historical (precedence) or natural (human)

tourism concession approval stages<sup>3</sup> and to sharing of benefits, mainly through sharing of parks and reserves revenues<sup>4</sup>.

When institutionally interacting with other stakeholders, formal representatives of local communities include official community authorities<sup>5</sup>, management committees<sup>6</sup>, local management councils<sup>7</sup> and community legal entities. In Mozambique these tend to take the form of a civil association which has to be incorporated, registered, licensed and enrolled as a private commercial company since it will develop commercial / business activities in parallel with its social objectives. This can also take the form of farming (e.g livestock cooperatives)<sup>8</sup>.

In some cases, communities organised in legal entities are granted a special license that allows them to seek for a private sector partner to develop a tourism project where the community has already invested. This can be with international support in some cases, and in other instances, they are granted concessionaire's type rights over a larger area and requiring private capital investment (community co-ownership with the State)<sup>9</sup>.

In Mozambique concessions have been leased to community associations, with and sub-grant rights to form commercial partnerships. An example is the association Ahi Zameni Chemucane, which holds the Chemucane concession in MSR.

## **vii) Recommendations**

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<sup>3</sup> Land legislation, and Tourism Licensing legislation – Decree 18/2007 and Time Sharing regime approved by Decree 39/2007

<sup>4</sup> Sharing of PA revenues legislation

<sup>5</sup> In terms of Decree 15/2000, which creates the legal concept of official community authorities.

<sup>6</sup> Forestry and Wildlife legislation.

<sup>7</sup> Sharing of PA revenues legislation - Ministerial Diploma 93/2005, Decree 15/2009 and Ministerial Diploma 66/2010.

<sup>8</sup> Community Legal Entities legislation – Associations - Law 8/91 and Regulation approved by Decree 37/2000, and Cooperatives Law 8/2005 and Regulation approved by Decree Law 2/2006 and model statutes approved by Ministerial Diploma 155/2006

<sup>9</sup> WWF, 2009

A series of recommendations have been formulated to address some of the challenges faced in concessions processes in Mozambique. These are outlined in the table below.

**Table 1: Challenges and recommendations for concessions in Mozambican protected areas**

<b>Challenges with concessions models</b>	<b>Recommendations</b>
<p>Different protected areas have different systems and rules for procuring and contracting investors in tourism concessions</p> <p>There are no standard concession regimes or contracts</p> <p>There are different levels of capacity and understanding of the legal and concessions development processes in different government departments and sometimes even the same Ministry</p> <p>Speaking, communicating and preparing documents in a foreign language will cause delays and misunderstandings</p>	<p>Develop clear guidance for suitable concessions models and frameworks to avoid 're-inventing the wheel'.</p> <p>Establish templates and examples of concession contracts.</p> <p>Training and capacity building for government staff and departments.</p> <p>Dissemination of this report and concessions manual.</p> <p>Availability of documentation in Portuguese and English</p> <p>Personnel who speak both languages.</p>
<b>Challenges with concessions processes</b>	<b>Recommendations</b>
<p>Transaction costs can be high when developing partnerships with local rural communities, as they will probably have very low capacity and understanding of the tourism industry</p> <p>Unclear or not precise scope of the bid and contract</p> <p>Weak coordination between different government ministries and departments, which lead to slow and inconsistent concession processes.</p> <p>Weak governance of rules and processes.</p>	<p>Provide linkages to NGOs and other technical advisory bodies who can support processes with communities</p> <p>Basic education and tourism awareness for all.</p> <p>Clear bidding documents and contracts, which include all necessary information.</p> <p>Steering committees responsible for concessions procurement and management, including representatives of relevant bodies.</p> <p>Training and capacity building for government staff on concessions.</p> <p>Written agreement to adhere to agreed concessions</p>

Sometimes they are adapted or de-railed once launched, and should not be manipulated for political purposes <sup>10</sup> .	processes.
Some sites are offered for tender which are not yet clear, or free of external risks <sup>11</sup>	Only offer sites for tender that are clear.
Insufficient data (e.g. lack of management plans, or market information)	Liaison with provincial government to clear land. Management plans, feasibility studies and site assessments undertaken prior to concessions tender processes.
Product appropriateness	Market assessments of products.
Access to finance	Available information on financial mechanisms and resources.
Slow public sector action	Regulations on timeframes for deliverables and regulations processes, and enforcement.
Business plan incomplete or insufficient	Guidance to investors on requirements for business plans, including template contents and examples.
Insufficient infrastructure in the PA	Budgets and plans for appropriate infrastructure development, and allocation of resources to implement them.
Lack of clarity on EIA requirements	Legal clarity on EIA levels required in protected areas and buffer zones, within tender prospectuses and background information.
Public officials using or disclosing confidential or project related information without PS acceptance.	Always require that submission of any documents is officially confirmed (stamp, signature and date).
Lack of transparency and political interference when granting the contract/choosing the selected bidder	Request written clarifications and confirmations during the process.
<b>Challenges on concessions management</b>	<b>Recommendations</b>

<sup>10</sup> IFC, 2012

<sup>11</sup> IFC, 2012



Language barriers (English-Portuguese)	Documentation available in both languages.
Bureaucratic procedures	Personnel who are bi-lingual Simplification of processes Clarification of processes, requirements and timeframes.
Poorly drafted concession agreements	Use of templates and examples to ensure adequate clauses included. Sound negotiation techniques between signatories. Ensure good understanding of concession agreements by all signatories.
The people involved in negotiating the concession agreement are not the same as those given responsibility for managing it	Ensure continuity of personnel, and/or handover between people. Allow adequate time for new personnel to be up-skilled.
Inadequate resources are assigned to concession agreement management	Appropriate recruitment and allocation of human resources. Training and capacity building of staff.
Poor institutional leadership and/or misunderstanding of the concession agreement	Appropriate recruitment and allocation of human resources. Training and capacity building of staff.
The institution team does not match the private party team in terms of skills or experience (or both)	Appropriate recruitment and allocation of human resources. Training and capacity building of staff.
The wrong people are put in place, leading to personality clashes or ineffective management	Appropriate recruitment and allocation of human resources. Training and capacity building of staff.
The context, complexities and dependencies of the concession agreement are not well understood	Appropriate recruitment and allocation of human resources. Training and capacity building of staff.
There is a failure to assess private party or institutional assumptions adequately	Adequate due-diligence.
Authorities or responsibilities relating to commercial decisions are not clear	Clarification on roles and responsibilities during preparation period.
A lack of independent reviews of the concession agreement management arrangements	Allocation and nomination of independent reviewers (e.g. NGOs).

<p>A focus on current arrangements rather than on what is possible or the potential for improvement</p> <p>Wrong interpretation and enforcement of legal provisions by competent public officials, such as the understanding that activities within the 100m from high tide mark are completely forbidden.</p> <p>A failure to monitor and manage institution risks.</p>	<p>Forward planning and scenario mapping.</p> <p>Disseminate applicable law.</p> <p>Training and capacity building of staff.</p> <p>Integration of adequate monitoring and evaluation frameworks and personnel.</p>
<p><b>Challenges on legal framework and regulations</b></p>	<p><b>Recommendations</b></p>
<p>PS perception of a complicated and incomplete legal framework</p> <p>Lack of technical legal skills (drafting, interpreting, negotiating and enforcing)</p> <p>Compliance with PPP legislation</p> <p>Charging of contractual concession fees</p> <p>One set of PA Tourism fee amounts for all PA</p> <p>Lack of legal regime for issuance of the special license</p> <p>Lack of legal regime for concession models</p> <p>Lack of legal regime for integrated</p>	<p>Concessions Manual formally endorsed by MITUR.</p> <p>Appropriate recruitment and allocation of human resources</p> <p>Training and capacity building of staff.</p> <p>Disseminate applicable legislation.</p> <p>Guidance over tourism concessions development processes / implementation guidance.</p> <p>Written confirmation from Council of Ministers (internal resolution).</p> <p>Regulation of PPP regime in the Conservation Law.</p> <p>Regulation in the Conservation Law.</p> <p>Amend legislation so as to acknowledge and regulate PA differences.</p> <p>Approval of legal regime (including issuance requirements, difference, or not, of regime when co-ownership models apply, EIA requirements)</p> <p>Approval of the Conservation Law</p> <p>Approval of models, and granting of contracts process, by ANAC (or Council of Ministers).</p> <p>Definition and standardization of management plans'</p>

management plans	scope, elaboration and approval processes (including minimum tourism concessions' access conditions/criteria).
Lack of legal regime for licensing of ecotourism projects and for Hunting concessions	Approval of regime (definition of scope and licensing requirements and procedures <sup>12</sup> )
State ownership of the land and immovable and fixed assets with a permanent character makes it impossible to grant these as loan securities (mortgage or pledge)	Carefully assess alternative guarantees.
Political will to drive the appropriate legal framework is required. This includes enforcement of the law (i.e. poaching), addressing the dichotomy of conservation and people living inside protected areas <sup>13</sup> , and also ensuring that processes are not derailed during the process. <sup>14</sup>	Consultation and coordination between government departments. Obtain written agreement to agreed processes. Highlight and lobby areas where law needs enforcement.
Licenses, registrations, authorizations and approvals procedures are cumbersome to be followed	Establish 1-stop shops to guide investors through the process. Ensure staff have adequate understanding and clout to assist in liaising with different departments.
Inspections and penalties	Applicable legislation must be made known by trained officials or PS, and be easily accessed.
Corruption	Liaise with Attorney general's office (recent)

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<sup>12</sup> In a recent past, MITUR prepared drafts separately regulating these 2 activities, and these could be used as a basis to proceed with the required regulation

<sup>13</sup> Rodrigues and Booth, 2012b

<sup>14</sup> IFC, 2012

## INTRODUCTION AND BACKGROUND

Government agencies play an important role in the maintenance and management of protected areas, but often lack the funds and business acumen to run tourism facilities at a profit. The state is also often also restricted in its ability to innovate and respond quickly to changes in consumer demand<sup>15</sup>. As a result, national governments are increasingly favoring private tourism concessions within protected areas, while ensuring that the overarching goal of preservation and conservation remains with the state<sup>16</sup>.

Concessions are one of a number of market-based mechanisms known collectively as Tourism User Fees that can be used to collect revenues from tourism-based activities which can be directed toward supporting protected areas and conservation<sup>17</sup>. Concessions agreements include fees that companies (“concessionaires”) pay to provide services within protected areas, which may include ecotourism lodges, guided tours, restaurants, or souvenir shops<sup>18</sup>.

The main purpose of this analysis was to review and understand the characteristics of the tourism concession models that are currently applied in southern Africa and Mozambique. These were to be used to develop a manual to guide the private sector through concessions processes and procedures in Mozambique. This report contains the review of experience and recommendations for improvement that were gathered during the analysis. The concessions manual and a report from the international workshop on ‘Concessioning tourism opportunities in conservation areas and maximising rural development’ are supplementary documents.

The full terms of reference for the project can be found in the Annex.

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<sup>15</sup> Eagles et al, 2002

<sup>16</sup> Wyman et al, 2011

<sup>17</sup> CFA, 2004

<sup>18</sup> Wyman et al, 2011

## METHODOLOGY

The analysis approach followed the following steps:

- **Desk review of literature**, to examine best practice models of tourism concessions in protected areas, looking at current practices implemented in Mozambique, in the region (e.g. South Africa, Namibia, Botswana), and other countries where tourism concession models have been highly effective. Literature was reviewed relating to existing concessions processes and agreements in Mozambique.
- **Stakeholder consultation**, through interviews and focus groups, to gather information on concessions processes within Mozambique, the experiences to date, lessons learned, identify best practices, and solicit opinion recommendations for future concession models and processes. Interviews were conducted either face-to-face or via telephone between 12 January and 22 February 2012. A focus group discussion was held with the Conservation Forum group on 24 January 2012. The list of stakeholders consulted is enclosed in the Annex.
- **Drafting of concessions report and concessions manual**
- **A 4-day international training workshop**, to gather further information for the review and to gather materials for a concessions manual for Mozambique (see separate report). The workshop was held between 19 and 21 March 2012, and was attended by 69 people from Mozambique, Madagascar, and South Africa. The agenda and details of participants can be found in the Annex, in addition to the workshop report.
- **Review of draft concessions manual and report**, including a briefing of tourism stakeholders, including the Ministry of Tourism, Mozaico do Indigo, tourism industry and donors on findings and recommendations for implementation of concessions in and around Mozambique's protected areas. The reviews took place through materials presented during the workshop between 19 and 21 March, and also a working group meeting which took place on 22 March 2012.
- **Finalisation of concessions manual and report**, incorporating comments received.

# CONCESSIONS MODELS IN SOUTHERN AFRICA AND OTHER INTERNATIONAL EXPERIENCES

## CONCESSIONS MODELS

Tourism concessions are used in protected areas (PAs) globally. As the table below shows, a recent review of international experience on tourism concessions identified 22 countries on five continents applying them. There are many differences between countries regarding the models used, concessionaire requirements, and also the levels of legal, financial, environmental and social responsibility.

**Table 2: Summary of tourism concession documents in 22 countries**

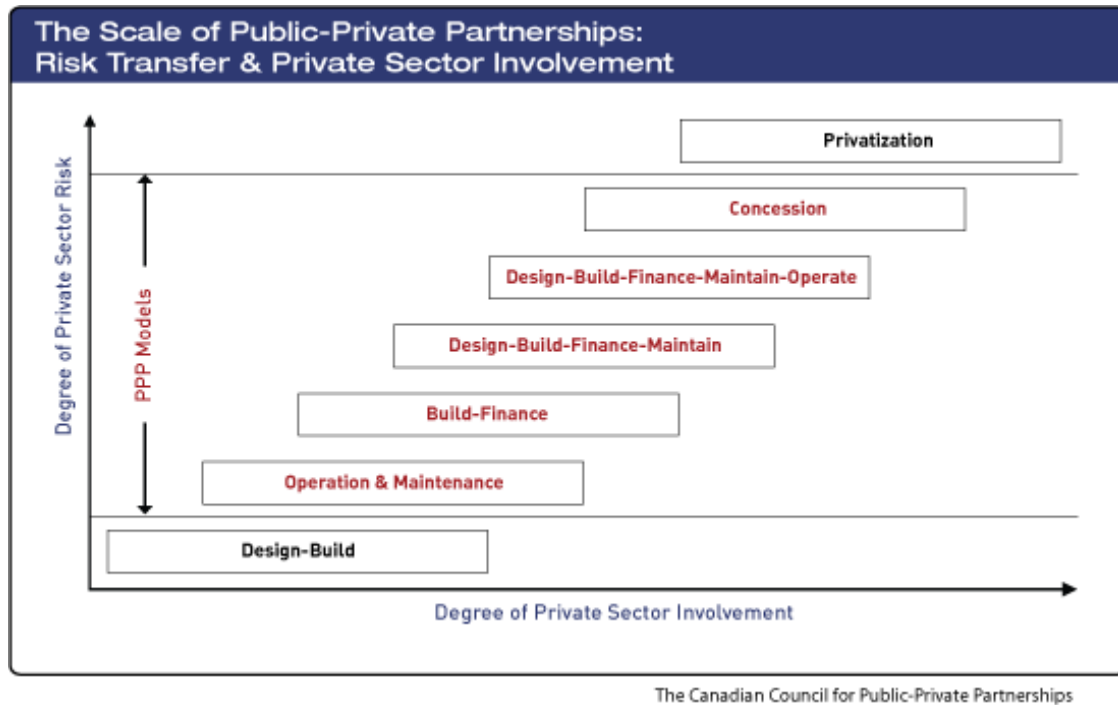
Concession qualifications				Legal Responsibility				Financial Responsibility				Environmental Responsibility				Social Responsibility							
Financial capacity	Tourism experience	Education level	Language abilities	Contract length (ave.)	Late non-payment fee	Facility ownership	Environ/Com. damage	Fines	Contract non-fulfilment	Performance bonds	Concession user fee	Income requirements	Maintenance/repair res.	Infrastructure devlpmt	Monitoring plan	Alternative Energy	Waste Management	Risk Analysis	Capacity Building	Local employment	Community Assessment	Community rev. share	Local business involve
<b>NORTH AMERICA</b>																							
				10	x					x		x											
Canada	x	x	x	x	15					x									x	x			x
<b>LATIN AMERICA</b>																							
Peru	x			20	x		x	x	x	x				x		x	x	x	x	x	x		
Argentina				10	x	x	x	x	x					x		x			x	x	x		x
Chile				15	x			x	x	x				x					x	x	x		x
Costa Rica			x	x	3				x					x	x		x	x	x	x	x		
Guatemala									x						x		x		x	x	x		
Belize										x		x		x		x						x	
Ecuador																				x		x	
Mexico																x							
Columbia	x			10	x			x	x	x	x	x		x	x	x	x	x	x	x	x		x
<b>AFRICA</b>																							
Zambia																				x	x		x
Botswana	x	x	x	15						x	x	x		x	x	x	x	x	x	x	x	x	x
Namibia														x			x			x	x	x	
Seychelles																					x		x
S. Africa	x	x		20		x				x	x			x	x		x	x	x	x	x	x	x
<b>AUSTRALIA</b>																							
Australia																x	x						
N. Zealand	x	x	x	x	30					x	x			x				x					
<b>ASIA</b>																							
China															x	x		x				x	
Japan																				x	x		
Thailand																	x						
India																	x						

Source: Wyman et al, 2011

Despite the differences, tourism concessions are usually organized by protected area agencies, and then undertaken by the private sector. However, they can also involve community organizations, non-governmental organizations (NGOs), and other non-for-profit enterprises. In general, these relationships will take place on a continuum, from government ownership and operation at one extreme, and private

ownership and operation at the other<sup>19</sup> (see figure below). For example, the scale below shows the scale of private involvement in public-private partnerships including concessions and their level of risk.

**Figure 1: Public private partnership continuum**



Some of the concession models that are used in southern Africa are described below:

- **South Africa:** A concession contract enables a private sector concessionaire to use a defined area of land and buildings within a protected area over 20 years, in return for payments of concession fees. Typically the concessionaires may construct new infrastructure, or take over and upgrade existing facilities. There are a series of obligations on concessionaires, which include financial terms, environmental management, and social objectives<sup>20</sup>. At the end of the concession period, ownership of all infrastructure reverts to the protected area agency (i.e. Build-Operate-Transfer: BOT).
- **Botswana:** Leases are awarded to the private sector or communities for periods of 15 years. The lease agreements allow for the development of tourism infrastructure (within defined limits) and use in

<sup>19</sup> Eagles et al, 2002

<sup>20</sup> Varghese, 2008



return for concession fees<sup>21</sup>. The type of protected area (i.e. the level of protection) determines the type of tourism activities that are permitted (e.g. in Moremi Game Reserve night drives and walks are not permitted, but game drives are).

- **Namibia:** Ministry of Environment and Tourism awards concessions to communities (mostly conservancies), who can then sub-contract areas to the private sector, often through competitive tender processes<sup>22</sup>.
- **Madagascar:** Concession areas are transferred to the private sector, for a period of no longer than 30 years (renewable). All infrastructure constructed during this period becomes property of the state subsequently. Fees payable may include bed night fees and a proportion of revenue, and there may also be a 'royalty fee' paid to local communities, the protected area and the Ministry of Environment<sup>23</sup>.

An example from Namibia demonstrates how tourism concessions can create benefits for the state, the private sector and for communities (see table below). This shows that the concession resulted in improved tenure for the private sector, more capital investment, greater local employment, more revenue to the state and to the communities.

**Table 3: Impacts of the concessioning program in Etendeka, Palmwag conservancy<sup>24</sup>**

Before	After
<ul style="list-style-type: none"> <li>• existing tented camp operating for 12 years</li> </ul>	<ul style="list-style-type: none"> <li>• 20 year concession issued</li> </ul>
<ul style="list-style-type: none"> <li>• concession held by private tourism operator</li> </ul>	<ul style="list-style-type: none"> <li>• partnership between conservancy &amp; new investor to run the facilities</li> </ul>
<ul style="list-style-type: none"> <li>• 2007 year concession awarded to local conservancies (Omatendeka and Anabeb)</li> </ul>	<ul style="list-style-type: none"> <li>• capital raised for community ownership of:               <ul style="list-style-type: none"> <li>➤ A redeveloped tented camp</li> </ul> </li> <li>• A fixed lodge</li> </ul>
<ul style="list-style-type: none"> <li>• six staff employed</li> </ul>	<ul style="list-style-type: none"> <li>• 35 local staff employed</li> </ul>
<ul style="list-style-type: none"> <li>• N\$40,000 income for the State</li> </ul>	<ul style="list-style-type: none"> <li>• N\$300k in income for the State</li> </ul>
<ul style="list-style-type: none"> <li>• no direct income for communities</li> </ul>	<ul style="list-style-type: none"> <li>• N\$600k for conservancies + ownership</li> <li>• 8% income from the land and 10% income for use of infrastructure</li> </ul>

## CONCESSIONS PROCESSES

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<sup>21</sup> Myers et al, 2004;

<sup>22</sup> Pawliczek, 2012

<sup>23</sup> Pawliczek, 2012

<sup>24</sup> Thompson, 2008

In the preparation for tourism concessions, it is useful for park management plans and commercial services plans to identify and outline the commercial opportunities that exist, and to describe how they would be implemented<sup>25</sup>. The PA agencies may also undertake pre-feasibility studies to establish the viability of concessions, and any areas that need more detailed analysis<sup>26</sup>.

Subsequently, the process of tourism concessions development involves three main constructs<sup>27</sup>:

- (1) **policy and legal framework** for concession contracting outlines best practices for how concession programs are defined and regulated;
- (2) **prospectus development process** outlines how concession opportunities are defined, structured, priced and brought to the market and how suitable operators are selected; and
- (3) **contract management** and oversight outlines best practices for how concession contracts are managed once an operator is in place.

These three constructs are discussed in more detail below.

## **POLICY AND LEGAL FRAMEWORK**

The **policy framework** generally refers to public administration guidelines and implementation strategies that satisfy both public interest and respond to collective needs over a specific matter, in this report, tourism concessions development processes in PAs: poverty reduction, land ownership, extent of PS involvement; sustainability components, biodiversity and environmental management, local communities' rights, and others.

The **legal framework** refers to the hierarchical set of valid and effective rules and regulations governing specific subjects: the more comprehensive in scope the legal diploma is, less cross-references to other diplomas will be required to complement the applicable regime, and the more objective regulations are, less discretion will be used when interpreting and implementing them.

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<sup>25</sup> Thompson, 2009

<sup>26</sup> Varghese, 2012

<sup>27</sup> Eagles et al, 2002

If in the past all concessions development processes policy and legal framework were mainly based on internal/national practices, the present is quite different: with the ratification of **international conventions**, many countries have been making theirs (ie, internally adopt implementing rules and procedures), overarching policies and objectives adopted at the international level, such as those endorsed by Conventions as on Biological Diversity (CBD), on the International Trade in Endangered Species (CITES), on the Conservation of Migratory Species of Wild Animals and on Wetlands (or Ramsar Convention), specifically relevant for tourism concessions development processes.

In **Southern Africa** countries, the framework for the concessions development processes has substantially changed in the last 20 years, in response to both general and specific concerns with social justice, sustainable use of natural resource and PA's financial management requirements. Similarly, in **South America**, the recognition of indigenous people rights and land appropriation (most of all compensation and relocation issues<sup>28</sup>) have been the driving forces behind changes in policies supporting more inclusive concessions development processes. In **North America**, preservation of biodiversity and environmental sustainability are core policy and legislative concerns, and in Australasia, the policy and legal frameworks in countries such as Australia and New Zealand<sup>29</sup> reveal similar concerns.

The policies and legislation shaping tourism concessions development processes of four different countries (i.e. Namibia, South Africa, Colombia and the United States of America) are briefly reviewed below.

#### 4.2.1.1 Namibia

Protected areas cover approximately 13.8%<sup>30</sup> of the national territory and according to the Namibian policy framework, can be located in both state and communal lands. Namibia's PA system has developed under the tutelage of the Ministry of Environment and Tourism and management by the Namibia Community Based Tourism Assistance Trust, a non profit organization entrusted, amongst others, with facilitating profitable and sustainable partnerships between local communities and PS.

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<sup>28</sup> Ariane Janér, undated

<sup>29</sup> Gordon Cessford and Andy Thompson, 2002

<sup>30</sup> <http://www.thegef.org/gef/node/1368>. Namibia will soon proclaim Sperrgebiet National Park (26,000 km<sup>2</sup>), increasing Namibia's PA coverage to about 17% of its territory.

As part of post-apartheid political transformation, the government devolved limited ownership over some species of wildlife and land use rights to local communities that form a natural resource management institution called a conservancy<sup>31</sup>.

The fact that Namibia's international law system follows the monism doctrine<sup>32</sup> allied to Namibia's tourism and wildlife concessions 2007 policy, make the system fairly radical when compared with other southern African countries and combines a number of best practices from around the world.

The preferred procurement regime is to tender for build-operate and lease type of contracts and PS applicants are required to submit their proposals to a concessions committee who, after consideration, and careful review of applicable rules and regulations, including management plans, make a recommendation to the Minister of the Environment and Tourism on whether the concession should or not be awarded.

#### **4.2.1.2 South Africa**

South African National Parks (SANParks) was created by an act of parliament in the end of the 1920s, is the parastatal (state owned enterprise) authority in charge of managing national parks. National parks system managed by SANParks cover approximately 3.2% of the national territory and all such land, wildlife and support infrastructure belongs to the state. Since 2000, SANParks' mandate is focused on nature conservation, constituency building and tourism development. Its powers includes those of granting contracts, for both Build Operate and Transfer (BOT) type and operational concessions according to park management plans and strategic plans for commercialization which are an integral part thereof, both awarded at the provincial level and under Public-Private-Partnership (PPP) regulations administered by the National Treasury<sup>33</sup>.

With the entering into force of the land restitution legislation and consequential court cases, the concessioning process has been more geared to generating revenues through direct partnerships with the private sector (PS) than to conservation or social sustainability of tourism in PAs. Concession planning was adapted and a special attention is now given to the active participation of local communities, legally empowered to become responsible for the development and management of tourism lodges in PAs. This

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<sup>31</sup> Jones, 1997; Steiner and Rihoy, 1995

<sup>32</sup> Onkemetse Tshosa, undated: i.e. general rules of public international law and international agreements have direct and automatic application in Namibian national, including municipal, law

<sup>33</sup> National Treasury, undated

movement was strengthened with the entering into force of the black economic empowerment overarching policy in 2004.

Worth noting, South Africa's international law approach follows the dualism theory, requiring not only the ratification and publication for effectiveness of such principles and norms, but also an act of approval from Parliament<sup>34</sup>.

There are many new initiatives to give communities a secure stake in tourism enterprises inside PAs, as communities can reclaim land tenure:

- through the land adjudication process, or
- where tenure remains with the park authority, communities can be given an equity share in the venture (tripartite venture in Ndumo Reserve, between KwaZulu Natal Development Corporation, neighbouring communities, and Wilderness Safaris<sup>35</sup>).

Hunting is forbidden in protected areas but there is a lively debate on private hunting on buffer zones<sup>36</sup>.

#### **4.2.1.3 Colombia**

Protected areas cover approximately 12% of the national territory and all land belongs to the state. Colombia's national parks have been managed by the Natural Parks Unit within the Ministry of the Environment, Housing and Territorial Development since 1994.

The decrease in public financing and also in tourism revenues led the country to start pursuing new PA conservation management strategies in 2000<sup>37</sup>. A Concession Contract for Ecotourism Services is awarded through a competitive bidding process, and local communities are involved at the planning stage. The policy and legal framework comprises the National Policy for Ecotourism Development, Community-based Ecotourism Policy Guidelines, and Ecotourism Concessions Policy and concession contracts are regulated under the Law of Government Contracts. For international treaties and principles

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<sup>34</sup> International Law and South African Constitution, John Degard, undated

<sup>35</sup> National Treasury, undated

<sup>36</sup> <http://www.krugerpark.co.za/krugerpark-times-e-1-hunting-help-protect-wildlife-south-africa-25045.html>

<sup>37</sup> With WWF and Nature Conservancy support.

to become enforceable in Colombia the system only requires ratification of the convention and publication in the national gazette (full-reception regime).<sup>38</sup>

The private sector, which may or not enter into joint venture arrangements or incorporated Special Purpose Vehicle (SPV), is not responsible any aspect of conservation management, monitoring and legal enforcement. These responsibilities fall exclusively under the responsibility of the Parks Unit<sup>39</sup>.

Hunting is only allowed in private land.

#### 4.2.1.4 United States of America

The concession system in the USA is different at federal, state and local level protected areas.

At **federal level** terrestrial PAs cover approximately 27 % of the national territory<sup>40</sup> and the National Park Service, created in 1916, is the federal agency (part of the United States Department of the Interior) entrusted with conservation and concession management of all national parks.

In 1998 Congress enacted the 1998 Concessions Management Improvement Act with the objective of improving concessions and increasing competition of contracts. Since then, the National Park Service has in place a specific set of management (implementing) policies<sup>41</sup> that guide the agency's operations in relation with, amongst others, concession contracts to the PS. According to the constitution's "supremacy clause", (...) all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the land, which makes this country one of the few following the monism theory, at least in theory, as the "treaty clause" further requires that all international conventions not legally qualified as treaties (approximately 900 of the 16.000 conventions signed by the USA) require a 2/3 majority of positive votes from the Senate.

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<sup>38</sup> Figueiredo, Bruna de Leão and Gassen, Zaki Gebara, *Adoção Internacional*, 2008

<sup>39</sup> Unnamed presentation, 2011

<sup>40</sup> UNEP, 2008

<sup>41</sup> Latest dated 2006

Presently, and as tourist numbers continue to increase<sup>42</sup>, management policies and concession development processes reveal an overarching concern with the impact of operations in the environment, which must “be consistent to the highest practicable degree with the preservation and conservation of resources and values of the park unit ...and demonstrate sound environmental management and stewardship”<sup>43</sup>.

Concessions are awarded, generally by tender, as services operations or BOT type leases and as required by park management and commercial services plans, provided that neighbouring communities outside the park cannot perform such task.

At **state level**, the state has primary responsibility and authority over the hunting of wildlife that resides within state boundaries in the National Hunting Refuges which can be created in both public and private land.

At **local level** the United States Fish and Wildlife Service is responsible for managing many nature reserves including National Wildlife Refuges. State and local governments administer other natural reserves.

## PROSPECTUS DEVELOPMENT

The prospectus development outlines how concession opportunities are defined, structured, priced and brought to the market and how suitable operators are selected. The prospectus acts as a guide for the agency responsible for the concessions process. It outlines aspects of the procurement phase, including stages of requests for proposals, choosing bidders and negotiations with them.

Across Southern Africa there is a tendency to favour competitive bids for tourism concessions, to ensure that an open, fair and transparent system is created. Where unsolicited bids are received, bidders may be asked to compile a business plan or concession proposal in line with a Terms of Reference (ToR) issued by the protected area agency. The duration for the concessioning process varies from destination to destination (see table below).

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<sup>42</sup> Parr, 2000

<sup>43</sup> National Park Service Management Policies, 2006, Chapter 10

**Table 4: Examples of concession process duration**

Protected Area Agency	Small concession	Large concession	Preferred method
Parks and Wildlife Service, Tasmania	3 weeks in parks	6-18 months	Applications (small) Tenders (large)
Great Barrier Reef Marine Park Authority, Australia	8-10 weeks, 4 months for EoI process	Longer (not specified)	Application (first come, first serve). Capped through EoI
Parks Canada	3-6 months	60 days effort	Tender
Ministry of Environment and Tourism, Namibia	3-12 months	12-14 months	Direct to communities, tender, auction (hunting areas), direct with applicants
New South Wales, Australia	4-12 weeks	6-18 months	Tender
US National Parks Service	2 years	2 years	Tender

Source: Thompson, 2009

An example of the steps that may take place within a concessions process, and which are outlined in concessions prospectuses, is found in the figure below.



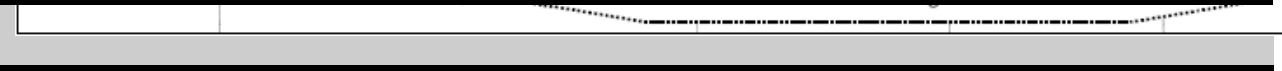
## **Figure 2: SANParks concessions process, South Africa**



Source: SANParks, undated

A summary of the entire concession life cycle used in South Africa, incorporating the process above is outlined in the figure below.

### Figure 3: SANParks concession life cycle



Source: SANParks, undated

Five of the main elements of concession requirements that need to be built into the concession prospectuses are<sup>44</sup>:

- (1) **Concessionaire qualifications.** In order to make sure the PA makes a profit to help fund management operations, private sector entities interested in developing tourism concessions within protected areas should demonstrate their ability to be profitable. Requirements can include financial capital; tourism experience; knowledge of local legislation; education and training level, and language abilities.
- (2) **Legalized responsibilities.** A common authority granted to protected area managers (state- or community-owned) is the authority to terminate a concession contract for the breach or non-fulfillment of that contract.
- (3) **Financial responsibilities.** A concessionaire typically pays a user fee that can involve various forms from a set annual fee, a flat fee in conjunction with a percentage of the gross revenue, to a percentage of all revenue earned.
- (4) **Environmental responsibilities.** In an effort to support environmentally-responsible tourism practices, concessionaire contracts are increasingly involving measures to minimize environmental impacts. Depending upon the concession activity, contracts may require management plans for such areas as waste disposal, infrastructure development, water use and management, and recycling efforts.
- (5) **Empowerment responsibilities.** Local people will greatly influence the future of protected areas. Communities in and around PAs may depend upon natural resources within PAs for their livelihoods (e.g., agriculture and resource extraction). Therefore, a focus of national governments could be in the development of employment and small business opportunities, which also develop positive attitudes towards these areas.

Prospectuses should be made available to relevant personnel within the PA agency, and also to investors and other interested parties.

## CONTRACT MANAGEMENT

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<sup>44</sup> Eagles et al, 2002

Once a concession has been agreed, and a contract signed, there may be a lengthy period of time (e.g. 10-30 years) during which the concessions is managed. The management of the contract not only relates to the technical clauses within the agreement between the parties, but also in the relationship between them.

A concessions manual can be a useful tool to guide the management of the concessions process, by giving clear information to all parties on how each element of the concession contract should be conducted. The US National Parks Service has an 800 page manual for concessionaires<sup>45</sup>, while South African National Parks (SANParks) has a 200 page version<sup>46</sup> (see box below).

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<sup>45</sup> Thompson, 2009

<sup>46</sup> SANParks, undated

### Box 1: Contents of the SANParks concession manual

- **Contract terms (including obligations, rights, term, options for renewal, transfer of rights, risks, conflicts, intellectual property)**
  - **Project life cycle**
  - **Communication channels**
  - **Environmental and conservation requirements (including integrated environmental management; environmental control officers; cultural and natural resources; biosphere manipulation; game control; monitoring and research; patrols; numbers of beds; water; fire management; traversing; problem animals; alien biota; firearms; staff issues; aircraft and vehicles; game drive procedures; off road driving; guided walks; codes of conduct; safety)**
  - **Technical infrastructure management (including construction and design; power; water extraction; communications infrastructure; waste management; roads and tracks)**
  - **Environmental and technical monitoring mechanism (construction and operation)**
  - **Social and empowerment requirements (including shareholding, training and promotion, business opportunities for local communities)**
  - **Financial and contractual requirements (including concession fees, minimum rental, fixed fees, annual fees, monitoring)**
- **Breaches (including financial, empowerment, and environmental breaches, and processes for remedial action – contact, final letter, performance bond, formal notice and termination).**
  - **Fixing fines and penalties**
- **Code of conduct (including working relationships with concessionaires, permanent and temporary residents)**

#### Annexes:

- **Protected area policies and regulations**
  - **Templates for reporting**
  - **Templates for applications**

Source: SANParks, undated

#### 4.2.3.1 Legal responsibilities in contracts

Various legal ramifications exist for contract breach or non-fulfillment. Graduated sanctions, depending upon the severity of the situation, were present in the majority of concession contracts, with most involving a financial penalty and a set duration of suspended activity determined on a case by case basis. Issues can include contract length; late/non payment of fees; facility ownership after contract; damage to environment/community; fines and contract non-compliance<sup>47</sup>. The legal aspects describe here relate to

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<sup>47</sup> Wyman et al, 2011

contract length, ownerships after contracts, fees and fines, environmental and community damage, and non (or late) payments.

Contract length: The contract length for a concession within a PA depends, to some extent, on the grantee (private, NGO, local community) and type of concessionaire (size, activity). The majority of contracts contain options for renewal, and last for 10–20 years on average length. Preference tends to be given to proposals that involve local communities, and longer contract length is given with increasing capital investments by concessionaires. Contract lengths from across the world include:

- 10 years, with additional 5-year renewals<sup>48</sup> (Argentina)
- 20 year contract length, with renewal of 20 years<sup>49</sup> (Peru)
- 20 year contract length with investment, and 10 years without investment<sup>50</sup> (South Africa)
- 42 years for large scale leases<sup>51</sup> (Canada)
- 10 to 25 year contract length (Mozambique)

Facility ownership after contract: Options for ownership of infrastructure after the end of a concession contract include:

- All facilities revert to the park authority at the end of the contract term<sup>52</sup> (South Africa)
- Concessionaires constructing capital improvements using their own funds are compensated for the investment at the end of the contract<sup>53</sup> (USA)
- All immovable and fixed assets with a permanent character in (public land) PAs belong and revert to the state at the end of the contract term (Mozambique)

With regards to the later option, the amount compensated depends on the initial value of the structure, adjusted according to the increase or decrease in the Consumer Price Index and less the amount of depreciation of the structure (*i.e.*, the condition and serviceability in comparison with a new unit of the

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<sup>48</sup> Wyman et al, 2011

<sup>49</sup> Wyman et al, 2011

<sup>50</sup> Wyman et al, 2011

<sup>51</sup> Thompson, 2009

<sup>52</sup> SANParks, 2001

<sup>53</sup> Wyman et al, 2011

same kind). If a new concessionaire must pay a prior concessionaire for prior capital improvements made, this amount is based on the value of the structure at the time of the exchange<sup>54</sup>.

Fees and fines: Various fines and fees apply to concessionaires in the event of a breach or non-fulfillment of the contract. Additionally, graduated fines based on severity are applied. These legal elements are important to protect the visiting public from receiving poor or no services and that the long-term sustainability of the PA is not threatened<sup>55</sup>. Options for fines include<sup>56</sup>:

- A fine is imposed of 20% of the value of the unpaid obligation, and a 2 year suspension of activity takes place (Peru)
- Graduated fines are applied, depending on severity (Argentina)

Environmental / community damage: Poor enforcement of environmental and social practices, as well and poor management of tourism operators can lead to degradation of the natural resources on which tourism within the PA depends. In some concession contracts, third parties are compensated that could have been affected by the concession and various examples exist on the response of the state to environmental or community damage by a concession. Options used include<sup>57</sup>:

- Concessionaire provides full restitution to the state, and compensates 3<sup>rd</sup> parties that could have been affected (Peru)
- Park authority can modify contract conditions, order mitigation actions, suspend the activity or project, or terminate the concession (Argentina)
- State remains liable for past environmental responsibilities (Mozambique)

Non or late-payment: A concessions contract can be viewed as a form of rent; the concessionaire is renting out the use of a PA to conduct its tourism business. As with other rental contracts, non-payment or late payment carry various types of penalties<sup>58</sup>.

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<sup>54</sup> Wyman et al, 2011

<sup>55</sup> Wyman et al, 2011

<sup>56</sup> Wyman et al, 2011

<sup>57</sup> Wyman et al, 2011

<sup>58</sup> Wyman et al, 2011

#### 4.2.3.2 Financial responsibilities within contracts

Aside from fees, other financial responsibilities included a demonstration of revenue earned and performance bonds in place in the event the concessionaire cannot carry through all financial obligations. Concession fee income is also an important financial responsibility to guarantee the PA is making sufficient profit. Concession fee income can be structured in different ways. The major options included an annual fixed/flat fee, fees based on the number of people a concession serves during a given year, fees based on a percentage of the gross or net income of the concessionaire, or a combination of the above<sup>59</sup>.

Performance bonds: Performance bonds are used to cover any costs incurred by the government in carrying out work that the concessionaire has failed to carry out and that was required by the concession document, or to mitigate any adverse effects arising from, but not authorized by, the concession or not reasonably foreseen at the time the concession was granted<sup>60</sup>. Options used include<sup>61</sup>:

- Performance bonds to cover costs of work that concessionaires fail to do (New Zealand)
- Performance bond of around US\$475,000 required (Columbia)
- Performance bond at 10% of the annual pay value of the concession, which must be maintained until 6 months after the concession expires (Chile).
- Performance bonds of US\$2-3,900 upon signature of the management agreement (Botswana)

Concessionaire user fees: A fixed or flat rate for renting a concession service is a commonly used tool and in many ways it may provide an easier way to charge a concessionaire because tracking and calculating profits, income and number of tourists can sometimes be difficult. In other situations a fixed rate is established at the beginning of a contract. The risk with this type of fee, however, is that it must be paid by the concessionaire whether a profit is made or not<sup>62</sup>. On the other hand, the concession may be steadily increasing its business while the annual fee remains the same. It is not unusual for concessionaires to make huge profits while site administrations receive very little in fees. Concessionaires can pay a portion of their net revenues rather than a flat rate to decrease some of the risk involved for both parties<sup>63</sup>. Options include:<sup>64</sup>

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<sup>59</sup> Wyman et al, 2011

<sup>60</sup> Wyman et al, 2011

<sup>61</sup> Wyman et al, 2011

<sup>62</sup> Ise, 1961

<sup>63</sup> Wyman et al, 2011

<sup>64</sup> Wyman et al, 2011

- 20% of revenues earned by NGOs co-managing protected areas (Belize)
- Revenues and taxes earned from tourism activities and visitor user fees (Belize)
- Annual fee based on the percentage of gross revenue bid by the concessionaire during the bidding process (South Africa)
- Concession fees on each boat (i.e. an operation license) entering marine protected areas (Galapagos)

Income requirements: Income requirements make sure the tourism concession is successful, which in turn ensures that money is coming into the PA. Sometimes concessions need to demonstrate their financial success, and in other situations, fees are required up front that are reimbursed to the concessionaire once target incomes are met<sup>65</sup>. Examples include<sup>66</sup>:

- Concessionaires need to demonstrate they have made an additional US\$1000 by the 9<sup>th</sup> year of the contract (Columbia)
- Upfront fees are required, and if the concessionaire does not meet at least 50% of the project annual payment targets in the 4<sup>th</sup> and 5<sup>th</sup> year, the amount is forfeited. If targets are met, the concessionaire is reimbursed (Makuleke, South Africa)

Maintenance and repair services: Many times concession operators find themselves without the necessary funds for repair and maintenance costs. This type of maintenance/repair reserve, also known as a “reserve for replacement”, represents cash paid by the operator into an account that can only be used for the ongoing capital maintenance. Considering the government or community holds title to the property, this ensures a burden of deterred maintenance is not left when the contract ends<sup>67</sup>. Examples include<sup>68</sup>:

- Concessionaires take responsibility for all maintenance and repairs of facilities and land that they lease (USA)
- 10% of visitor entrance fees to the PA help to meet expenses related to infrastructure and security (Belize)

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<sup>65</sup> Wyman et al, 2011

<sup>66</sup> Wyman et al, 2011

<sup>67</sup> Wyman et al, 2011

<sup>68</sup> Wyman et al, 2011



## SUSTAINABILITY AND CONCESSIONS

In a review of concessions in 22 countries, some of the strengths of tourism concession in Columbia, Costa Rica, Botswana, and South Africa included environmental and empowerment/social responsibilities<sup>69</sup>.

### ENVIRONMENTAL

Planning and infrastructure: Planning phases for tourism concessions can have critical implications for the environmental impacts of the construction and operation of a tourism enterprise in a PA.

Concessionaires may be required to:

- Apply sensitive design of infrastructure, master site planning, ecologically and socially conscious site design, and landscaping<sup>70</sup>.
- Collect baseline information will provide the early warnings of impending change that will better enable management to take action<sup>71</sup>.
- Undertake monitoring to assess the fragility of the ecological and socio-cultural components<sup>72</sup> and should be established when a project is initiated.
- Plan for wise energy use (including use of renewable energy) and to conserve water.

Energy: Alternative practices involve design techniques that allow for natural ventilation, heating, lighting, and rain water catchments. Other more advanced technology allows for alternative energy sources such as solar power, wind power, low-scale hydroelectricity, geothermal power, natural gas and biomass<sup>73</sup>. Bidding documents may request that concessionaires describe in their proposals how they will minimize the use of fossil fuels, and maximize the use of renewables.

Waste management: The basic premise of a tourism facility operation is minimizing waste generation, since this is one of the main causes of degradation of the surrounding environment. Biodegradation practices should be used as much as possible, a process where microorganisms break down the products

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<sup>69</sup> Wyman et al, 2011

<sup>70</sup> Ceballos-Lascurain, 1997

<sup>71</sup> Eagles et al, 2002

<sup>72</sup> Ceballos-Lascurain, 1997

<sup>73</sup> Ceballos-Lascurain, 1997

of other living things and incorporate them back into the ecosystem<sup>74</sup>. Concessionaires may be required to:

- Describe and implement environmentally sensitive waste management in all areas of the concession<sup>75</sup> (Costa Rica)
- Describe solid waste management and recycling processes<sup>76</sup> (Columbia)

Risk analysis: A risk analysis not only addresses the natural environment and its biophysical features of the site (e.g. vegetation, wildlife.) but also assesses socio-cultural features (e.g. local communities, archaeological sites.), and business aspects (e.g. how suitable is this location, comparative analysis of the different possible sites, long-term economic sustainability)<sup>77</sup>. Concessionaire requirements for risk analysis can include:

- Cost benefit analyses, environmental impact assessments (EIAs) and tourism management plans<sup>78</sup> (Guatemala)
- Descriptions of potential effects of activities and actions proposed to avoid, remedy or mitigate them<sup>79</sup> (New Zealand)
- Business plans and biodiversity protection plans<sup>80</sup> (China)
- EIAs and environmental plans are required<sup>81</sup> (Botswana, South Africa)

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<sup>74</sup> Ceballos-Lascurain, 2001

<sup>75</sup> Wyman et al, 2011

<sup>76</sup> Wyman et al, 2011

<sup>77</sup> Ceballos-Lascurain, 2001

<sup>78</sup> Wyman et al, 2011

<sup>79</sup> Wyman et al, 2011

<sup>80</sup> Wyman et al, 2011

<sup>81</sup> Wyman et al, 2011

## ECONOMIC

Sustainability from an economic perspective relates to both the viability of the tourism business, and also its benefits to the local economy. In terms of business viability, the concessionaire needs to have compiled a business plan for the enterprise which considers the following<sup>82</sup>:

- *Destination*: regarding wildlife resources, safety and accessibility; distances from airport with reasonable international connections, and access roads
- *Value*: Competitive pricing considering design, facilities, location, wildlife resources, and services compared to similar destinations
- *Interpretation and activities*: unique wildlife species to be observed; interesting activities available; and quality guiding and interpretation
- *Management capacity*: ability to manage marketing, finances, logistics, human resources, etc efficiently
- *Access to capital*: financing structures that allow for longer term return on investment are the most beneficial.

In addition to core commercial issues, the impacts on the local economy can be considered in relation to revenue sharing, local business involvement, and employment.

Community revenue sharing: Management plans and concession agreements can specify any revenue sharing options between local communities and private concessionaires. Options include<sup>83</sup>:

- Providing financial and tax incentives to concessionaires with community-private sector partnerships and/or revenue-sharing ventures<sup>84</sup> (Namibia)
- Part of concession fees go to local communities<sup>85</sup> (Botswana)
- A proportion of profits from the tourism concession go to community partners in the enterprise<sup>86</sup> (Ecuador)
- Joint-venture companies can be developed between the private sector and community partners. The joint-venture company holds the concession (South Africa)<sup>87</sup>

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<sup>82</sup> ElperWood et al, 2003

<sup>83</sup> Wyman et al, 2011

<sup>84</sup> Wyman et al, 2011

<sup>85</sup> Wyman et al, 2011

<sup>86</sup> Wyman et al, 2011

<sup>87</sup> Spenceley, 2010

- A percentage from PA tourism revenues goes back to local community councils (Mozambique)

Local business involvement: Concession processes can provide ‘preferred bidder’ status on local companies. Also, concessionaires can be encouraged to use support local businesses, and strengthen local supply and value chains. For example:

- Encouraging local investors and entrepreneurs to bid for leases and hunting concessions<sup>88</sup> (Zambia)
- Requiring local partners in tourism businesses and licensed-out services<sup>89</sup> (Seychelles)
- Encouraging targets for spending construction and operational expenditure through local enterprises and entrepreneurs<sup>90</sup> (South Africa)

Local community employment: Best practices can require private concessionaires to employ local communities or even hire local communities to run the concessionaire in some instances. Through its policies and concessions processes, governments can encourage local communities to participate in concession management and employment<sup>91</sup>. Options can include:

- State requiring a certain percentage of staff are from local communities<sup>92</sup> (China)
- Giving preferential scores to concession bidders agreeing to employ and promote a high proportion of their staff from local areas<sup>93</sup> (South Africa)

## **SOCIAL AND CULTURAL**

Communities near or within protected areas may incur considerable costs from losing access to resources in those areas<sup>94</sup>. One way to compensate locals is through protected area concessions. Locals often become the best wardens of the protected area’s resources since their livelihood is at risk<sup>95</sup>.

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<sup>88</sup> Wyman et al, 2011

<sup>89</sup> Wyman et al, 2011

<sup>90</sup> Spenceley, 2004

<sup>91</sup> Wyman et al, 2011

<sup>92</sup> Wyman et al, 2011

<sup>93</sup> Spenceley, 2004

<sup>94</sup> Shyamsundar and Kramer, 1996

There is a range of ways that local people can become involved in tourism, which have different levels of benefits, risks, and requirements in terms of skills (see table below). Bidders for concession sites may consider one or more of these options, in relation to their interest in engaging with local people and also the capacity level of the local population. Where skills and capacity are low in communities, the bidders may opt for simpler types of interactions, or may engage the services of an NGO to help build their capacity.

**Table 5: Options for participation of local people in tourism concessions**

Type of participation	Level of skill required	Level of empowerment	Security of return (risk)	Direction of benefits	Contribution to local development
Reception of PA use fees	none	none	secure	community as a whole	low
Sale of land to investor	none <sup>1</sup>	low	very secure	individuals or community as a whole <sup>2</sup>	low
Rent of land or delegation of use rights	none <sup>3</sup>	low	secure	individuals or community as a whole <sup>4</sup>	low
Employment by outside investor	low to moderate <sup>5</sup>	low	fairly secure	individuals (potentially including poorest members)	moderate
Supply of goods and services	low to moderate <sup>6</sup>	low to moderate	fairly secure	individuals (favouring more active members)	moderate
Community-private sector joint venture	moderate	moderate to high	fairly secure	active individuals and community as a whole <sup>7</sup>	high
Independent community enterprise	high	high	insecure	active individuals and community as a whole <sup>8</sup>	high
Individual local enterprise	high	high	insecure	active individuals	high

Source: Strasdus, 2001 and Tourism KwaZuluNatal (undated)

<sup>95</sup> McNeely et al, 2002

<sup>1</sup> except for ability to negotiate favourable terms; <sup>2</sup> depending on land tenure; <sup>3</sup> except for ability to negotiate favourable terms; <sup>4</sup> depending on land tenure and use rights; <sup>5</sup> high for qualified positions; <sup>6</sup> high for qualified guides; <sup>7</sup> depending on arrangements with the investor; <sup>8</sup> depending on arrangements between the community and the group operating the enterprise.

Elements included within concessions processes therefore may include capacity building and assessments of the risks and benefits of working with communities:

Capacity building: Capacity building and technical training of local communities can create employment and a vested interest in community-based management of PAs<sup>96</sup>. Capacity building can be used to:

- Improve the viability of communities to run a concession<sup>97</sup>.
- Provide concession opportunities to communities living adjacent to protected areas, and to help them implement them<sup>98</sup>
- Promote training and advancement opportunities for local people throughout a concession period<sup>99</sup> (South Africa)

Community assessment (risks and benefits): Management plans include risks to, and involvement of, local populations<sup>100</sup>. Concessionaires may be required to:

- Describe potential cultural impacts on local people, indicators and mitigation measures<sup>101</sup> (Peru)

## **CHALLENGES FOR TOURISM CONCESSIONS IN PROTECTED AREAS**

In a review of 22 concessions models globally, the greatest weaknesses are of concession qualifications, legal, and financial responsibilities<sup>102</sup>. Other challenges to concessions processes include<sup>103</sup>:

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<sup>96</sup> Font et al, 2004

<sup>97</sup> Spenceley, 2003

<sup>98</sup> Spenceley, 2003

<sup>99</sup> Spenceley, 2004

<sup>100</sup> Wyman et al, 2011

<sup>101</sup> Wyman et al, 2011

- Lack of interest by the private sector (e.g. due to downturns in the economy such as the global financial crisis);
- Corruption or political interference in a tender process;
- Weak expertise and capacity of concession stakeholders, including protected area agency representatives, the private sector, facilitators and communities;
- Unclear roles and responsibilities within the tender process;
- Transaction costs of concessions are high for protected area agencies and the private sector, in terms of time and resources; and
- Ensuring the evaluation of bids concentrates on technical aspects, over financial and social issues.

## MANUALS AND GUIDANCE AVAILABLE

There are several concessions manuals available internationally, which can be used to guide protected area agencies and the private sector. Although each country (and protected area) may differ in their approach, these do provide a useful basis from which to work. Some of these are outlined in the box below.

### Box 2: International concessions manuals and guidance

#### South Africa:

- **National Treasury (2004) Public Private Partnership Manual: National Treasury PPP Practice notes issued in terms of the Public Finance Management Act, National Treasury PPP unit. Accessible from:**  
<http://www.ppp.gov.za>
  - **SANParks (Undated) Concessions operations manual, Revision 1**

#### Namibia:

- **Republic of Namibia / Ministry of Environment and Tourism (Undated) Guidelines for concession applicants, Available at:** <http://www.met.gov.na/Documents/Guidelines%20for%20Concession%20Applicants.pdf>

#### Canada:

- **Eagles, P. F. J., Baycetch, C. M., Chen, X., Dong, L., Halpenny, E., Kwan, P. B., Lenuzzi, J. J., Wang, X., Xiao, H. and Zhang, Y. (2009) Guidelines for planning and management of concessions, licenses and permits for**

<sup>102</sup> Wyman et al, 2011

<sup>103</sup> Varghese, 2012; Pawliczek, 2012;

tourism in protected areas, Tourism planning and management program, University of Waterloo, Ontario, Canada, 23 April 2009. Accessible from: <http://www.areasprotegidas.net/sites/default/files/documentos/Park%20Tourism%20Concession%20Guidelines.pdf>

**Australia:**

- Buckley, R. and Sommer, M. (2001) *Tourism and protected areas: partnerships in principle and practice*, CRC for Sustainable tourism Pty Ltd.

**New Zealand:**

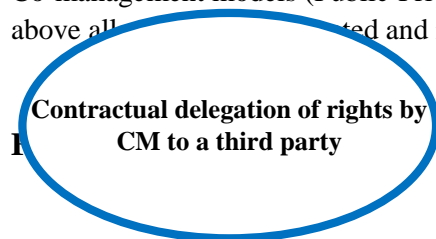
- Information on concessions, how to apply, management of the concession, from New Zealand. Accessible from: <http://www.doc.govt.nz/about-doc/concessions-and-permits/concessions/>

## CONCESSION MODELS IN MOZAMBIQUE

More actively since early 2000, GoM, Ministry of Tourism (MITUR) and park administrations have gathered considerable, not necessarily good, experience in granting tourism concessions (i.e. directly to the private sector or to communities in partnership with the private sector), and co-management of PAs (i.e. with private sector or NGOs). The growing awareness of how a sustainable conservation management impacts on PAs financing and social equilibrium requirements have paved the way for a number of models.

### CO-MANAGEMENT MODELS (PUBLIC-PRIVATE PARTNERSHIPS)

Co-management models (Public-Private Partnerships) where the Council of Ministers (CM) objectives are above all protected and illustrated in the figure below.



Over the whole PA, a Co-management contract with the PS:  
⇒ Involving the creation of a mixed nature special purpose vehicle (SPV)  
⇒ Not involving the creation of a mixed nature SPV



Examples of co-management models in Mozambique include<sup>104</sup>:

- In the Maputo Special Reserve, there is a co-management (i.e. service provision) contractual arrangement with an NGO called the Peace Parks Foundation (PPF);
- In the Niassa National Reserve, there is a co-management contractual arrangement that provides for the incorporation of a mixed nature company<sup>105</sup>, the Sociedade para Gestão e Desenvolvimento da Reserva do Niassa Lda (SGDRN), with a broad mandate to manage the Niassa Reserve;
- In the Banhine National Park, there is a co-management (i.e. service provision) contractual arrangement with African Wildlife Foundation (AWF);
- For the Gilé National Reserve, in June 2007 an Memorandum of Understanding was signed between MITUR and the La Fondation Internationale pour la Gestion de la Faune (IGF) to develop and administer the Reserve;
- In the Gorongosa National Park, a comprehensive co-management contractual arrangement, the Long-Term Agreement (LTA), with the Carr Foundation (later called the Gorongosa Restoration Project) and MITUR<sup>106</sup> to protect and restore the ecosystem of the park and develop its eco-tourism industry. In this agreement:
  - Park administration is also an operational party;
  - The park is governed by an oversight committee;
  - The concession fee is essentially a per person cost based on paying guests, over the annual period when the park is officially open. There is a minimum lower limit set on this occupancy figure. There is also a land rental figure for usage of the concession area.

## **DIRECT CONCESSIONS TO THE PRIVATE SECTOR (PUBLIC-PRIVATE PARTNERSHIPS)**

Direct concessions to the private sector (i.e. Public Private Partnerships), where at least some capital investment is required, have also been implemented.

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<sup>104</sup> For the Quirimbas National Park there is a proposal for joint-management contractual arrangements to be developed between communities, park administration and PS

<sup>105</sup> Partnership between the State (with a 51% share) and *Investimentos Niassa Lda* (with a 49% share)

<sup>106</sup> Approved by internal Resolution 4/2007

## Contractual delegation of rights by CM to a third party

Examples of direct concessions in Mozambique

**Over specific areas/sites, a Concession contract:**

⇒ **Directly with the PS**

⇒ **Involving the creation of a mixed nature special purpose vehicle (SPV)**

⇒ **Not involving the creation of a mixed nature SPV**

☐ ⇒ **Always involving social responsibility**

- In Ponta Dobela and Ponta Milibangalala in the MSR, a public-private partnership<sup>107</sup> was established, according to which:
  - A private company with public shareholders (Mozaico do Indigo [MdI]) was granted a Special License under a Concession contract with GoM entitling it to partner with PS<sup>108</sup> for the sub-lease of the land and performance of sub-concession rights (i.e. BOT);
  - All commercial and financial contracts relevant to the tourism project are treated as associated agreements and subject to MITUR's prior approval;
  - Duration of the concession: 25 years; of the partnership agreement: up to 25 years;
  - PS financial responsibilities include a financial contribution towards the partnership<sup>109</sup> in the form of a fixed amount corresponding to the compulsory legal fees and a variable amount calculated over gross revenue. There is a guaranteed minimum annual amount, 75% of which was destined to conservation management activities.
  
- In Niassa National Park, SGRD tenders out tourism concessions in the form of commercial partnerships, where:
  - The PS is sub-assigned exploitation rights (for either/or, construction / management of infrastructures, tourism accommodations, provision of recreational activities and hunting) over pre-determined management units;
  - Contracts can have a duration of up to 15 years, renewable for 10 more;
  - PS financial responsibilities, include concession and conservation fees, which are negotiated in terms of the tender. Preference is given to bidders that provide for both a guaranteed (or fixed) annual sum combined with a non-guaranteed (or variable) performance based sum appropriate to the nature of the operations being proposed (e.g. percentage of turnover, bed-night fee etc.);
  - PS empowerment/social responsibilities: any company that enters into a contractual agreement must have 25% ownership by Mozambican citizen(s) or by a Mozambican entity

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<sup>107</sup> Approved by Resolutions 52/2009 and 53/2009

<sup>108</sup> Tender was not successful and no partnership agreement has yet been signed

<sup>109</sup> In its substance, a rent

(itself with majority Mozambican citizen ownership)<sup>110</sup>.

- In Gorongosa National Park, the GoM and the Gorongosa Restoration Project tender tourism concessions in the form of commercial partnerships, where:
  - The contracts are tourism operators contracts: lease type contracts and/or directed to the provision of tourism services and products
  - PS is required to provide a development bond;
  - Subject to the payment of legal fees.
  
- **Hunting Concessions/ *Coutadas*** are being awarded through a tender process where private sector proponents are requested to present proposals environmentally and socially sustainable.

## **TWO-TIER CONTRACTUAL CONCESSIONS OR CO-OWNERSHIP (COMMUNITY-PUBLIC-PRIVATE PARTNERSHIPS)**

Models such as two-tier concessions or co-ownership (i.e. Community-Public-Private Partnerships) are where the community may have an equity stake in the SPV.

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<sup>110</sup> Institutionally, and in response to investor's interest in partnering with the local communities, park management is considering going through the process of establishing a community entity in Niassa that will be representative of all communities living within the reserve. Once the establishment of this community entity is complete, winning bidders have the option to join in partnership with this entity to fulfil the statutory nationality requirement

**Figure 6: Co-ownership**

Contractual delegation of rights by  
CM to a third party

Over specific areas/sites, a Concession contract:

- ⇒ Directly with Community Legal Entity requiring PS subsequent involvement:
- ⇒ Involving (or not) the creation of a mixed nature special purpose vehicle (SPV)
- ⇒ Always involving social responsibility

Examples of this form of concession in Mozambique include:

➤ Ponta Chemucane, in the MSR<sup>111</sup>. In this case:

- The community association Ahi Zameni Chemucane (AZC) was granted a special license under a concession contract with GoM entitling it to partner with PS for the sub-lease of the land and performance of sub-concession rights. AZC is also entitled to be a minority shareholder in the SPV, with its capital investment provided by a grant from World Bank;
- All commercial and financial contracts relevant to the tourism project are treated as associated agreements and subject to MITUR's prior approval;
- A partnership agreement has been signed between AZC and a private sector company. An SPV has been created and EIA process has started. The contract will only become effective when specific conditions precedent are met;
- The duration of the concession between the GoM and AZC is 50 years, non renewable. The SPV the partnership agreement is for 25 years, renewable for up another 25 years;
- The PS financial responsibilities, include a financial contribution towards the partnership in the form of a fixed amount corresponding to the compulsory legal fees and a variable amount calculated over the gross revenue, with a guaranteed minimum annual amount;
- PS empowerment/social responsibilities include: a comprehensive community benefit plan based on request for proposals guidelines.

## **TWO-TIER SPECIAL LICENSE CONCESSIONS OR CO-OWNERSHIP (COMMUNITY-PUBLIC-PRIVATE PARTNERSHIPS)**

Another way in which communities can hold concessions in Mozambican protected areas is through a special license.

### **Figure 7: Special license co-ownership**

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<sup>111</sup> Approved by Resolution 51/2009

## Communities holding a Special License enter into commercial arrangements with PS

Examples in Mozambique include:

- Tondo Lodge in the Zinave National Park:
  - The community association (Vuka Zinave) was granted a special license and subsequently assisted in negotiating an operational lease agreement with PS, which has a 5 years duration, renewable for 10 more;
  - PS financial responsibilities, include: the payment of legal park fees and a structured and escalating rent.
  
- The QNP has approved its Tourism Development Plan<sup>112</sup>, according to which the model to be followed entails that:
  - Community legal entities will be granted the Special License entitling them to lease the land and assign exploitation of resources related rights;
  - Legally-binding community-investor agreements will be established on a commercial basis, and the profits that accrue from these contracts are paid into a fund that is managed by the community;
  - Tourism concessions will be offered for periods of no more than 20-30 years in coastal areas and on islands, and 25-35 years in the interior.
  - PS financial responsibilities, include: legal fees, concession fees<sup>113</sup>; transport-related fees, and community development levy
  - PS empowerment/social responsibilities: EIA and preparation of a social bid (and contractual arrangements).

## TOURISM CONCESSIONS AND DUAT

Since PAs are part of the public domain, and any immovable, rights to use and develop the land (DUAT) cannot be granted inside PA, but can be granted in multiple-use (or buffer) zones which are typically established around protected areas.

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<sup>112</sup> WWF, 2009

<sup>113</sup> The legislation under which the PNQ is established permits the park administration to propose additional fees for tourism within the park.

## CONCESSION MODELS IN THE FUTURE

In the future, the implementation of the Conservation Policy will set high performance standards for all key stakeholders insofar as tourism concessions is concerned, if not more, because of the enlargement in scope of possible concessions regime as not all will be in areas qualified as protected.

The establishment of the proposed PA system and legal regime will require further regulations to become effective and efficient, the first diploma required being the conservation law (enacted by Parliament) which will establish the basis for PA classification, creation, changes and extinction of PAs, partnerships, contracts, community involvement, resettlement procedures, management plans, buffer zones and funding mechanisms/concession fees.

It is likely that regulations approved by means of a Decree by the Parliament will further complement this regime and possibly joint Ministerial Diplomas enacted to detail specifics.

The second crucial piece of legislation will be the National Administration of Conservation Areas (ANAC) statutes which will detail the Conservation Areas Authority mandate and operational systems.

The BIOFUND, *Fundação para a Conservação e Biodiversidade* has been legally incorporated as a private foundation under Mozambique's Civil Code, and considering its scope, it will apply for CM's declaration of public utility. The mission of the Foundation is "to support the conservation of aquatic and terrestrial biodiversity and the sustainable use of natural resources, including the consolidation of the national system of conservation areas"<sup>114</sup>. To achieve its mission and with a focus on support to public benefit and sustainable development, BIOFUND may provide financing for the following activities:

- conservation and sustainable management of natural resources and aquatic and terrestrial biodiversity;
- management and development of conservation areas, including investment in infrastructure;
- community development in harmony with conservation objectives;
- research on biodiversity and ecological monitoring;
- training for staff of the national system of conservation areas, as well as other relevant sectors;
- promotion of tourism and other activities for the benefit of conservation; and
- education and raising awareness of conservation and the value of conservation areas.

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<sup>114</sup> Final draft articles of association, undated and unpublished; WWF

The oversight, management and administration of the Foundation are entrusted to the General Assembly, a Board of Directors, and an Oversight Committee. Besides these governing bodies there are two consultative bodies, the International Advisory Council and the Patrons' Council.

## CONCESSION PROCESSES IN MOZAMBIQUE

Mozambique legislation is still at an incipient<sup>115</sup> stage as far as concessions development processes is concerned, and it can be said that, still, there are no formal systems, internal standardized procedures or formal agreement over relevant cross-sectoral issues.

### PLANNING<sup>116</sup>

PAs main planning tool in terms of conservation, management and use of forestry and wildlife resources uses, decentralised for each PA, is the management plan, until now referred sparsely in some legal diplomas such as the Land, and Forestry and Wildlife legislation, which is subject to MITUR's approval<sup>117</sup>. The lack of regulation leaves it unclear if they are compulsory or not and for how long they should remain valid.

When the first district land planning tools are approved, it is expected them to fully integrate PA, and buffer zones, management plans, which will then have an inherent binding nature<sup>118</sup> as far as land use tools and integrated management is concerned.

Good examples of concessions planning done in Mozambique for concessions processes come from Niassa and MSR:

- In **Niassa reserve** for concessions are underpinned by a management plan, which provides the governance framework for the process. This plan includes the overall objectives for the reserve, its management units and their zonation, and management principles and objectives. Relating to concessions, the principles of the management strategy outlined includes having concessions for both hunting and non-consumptive tourism; to reach high-end clientele; to have a combination of

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<sup>115</sup> Notwithstanding the expected regulation of the PPP Law which will most probably clarify the subject

<sup>116</sup> The main responsible Ministries have made little (MITUR) or no (MICOA, MITUR and MPescas) provision for PA planning and management costs in the national and provincial governments medium-term expenditure framework – From UNDP, undated

<sup>117</sup> Forestry and Wildlife Regulation

<sup>118</sup> Land Planning Regulation.



commercial and philanthropic operators; and to share the management costs and responsibilities with them<sup>119</sup>.

- In **MSR**, the tender process supported by an International Finance Corporation (IFC) program for private sector concessionaires was not supported by a management plan for the reserve, as the plan was still in development when the program was launched. However, there were a series preparatory exercises and documents produced. These included environmental and social studies, a legal study to evaluate any barriers to investment, site assessments and market research. Following these studies, they developed an investment strategy for the reserve which related to three concession sites, and a database of target investors. Planning documents also included promotional materials for investors, including brochures, newsletters, banners and posters<sup>120</sup>.

In **Niassa Reserve**, the documentation prepared for concessions tender processes itself includes the following<sup>121</sup>:

- Expression of Interest (EoI): An EoI aims to attract genuine investors to a concessions process, and also to establish the profile of potential bidders. EoIs request prospective bidders to provide basic information about the bidding company, its ownership and directors are sought, in addition to information about their current and past experience and operations, and also the concessions site they prefer.
- Tender guidelines and Prospectus: These materials include a background summary of the reserve, with a broad description of the management and development activities that can be undertaken; the duration, rights and conditions of the contract; and the tender submission date and tender fees. The Prospectus provides detailed information about each specific management unit offered on tender, including any hunting quota, infrastructure, communities and a map of the physical features of the area. Tender document guidelines provided cover the following key issues: corporate structure; governance, management and employee structures; commercial operations; marketing; conservation development; security; social development; management related infrastructure development; financials and the fee proposal.
- Scoring system: Before the tender process starts, the scoring system is prepared for tenders. In Niassa the scoring applied is as follows:
  - Fee structure: 100 points
  - Mozambique shareholding: 25 points
  - People: 20 points

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<sup>119</sup> Rodrigues and Booth, 2012b

<sup>120</sup> IFC, 2012

<sup>121</sup> Rodrigues and Booth, 2012a

- Corporate: 15 points
- Tourism product: 24 points
- Infrastructure: 15 points
- Marketing: 15 points
- Finance: 20 points
- Conservation development: 25 points
- Community development: 30 points
- Other: 10 points

Points are awarded for the fee structure by summarise the Fixed Fee, Variable Fee and Capital Investment for each bid under each area. A ranking procedure is developed, whereby bids are ranked according to the highest Fixed Fee, Variable fee and Capex Investment. Finally, points are awarded in relation to a ranking, and on how realistic the fee proposal is. More points are awarded for companies that are wholly owned and registered in Mozambique (25 points), than those that are only partially Mozambican owned (10 points), or completely foreign owned (0 points). Furthermore, points are awarded to bidders that will contribute directly towards community development (10 points).

- Letter of engagement: This document binds both parties to negotiate the final contract within a specified period, based on the tender offer. It also allows time for the bidder to prepare a business plan.

In the **MSR** process, similar tools were developed. In addition to the types of materials developed for **Niassa**, a contract template was produced, which was approved by the CoM before it could be used.

## **PROCUREMENT, NEGOTIATION AND AWARD OF TOURISM CONCESSIONS**

Experiences of procurement for two concession models are described here:

- Direct concessions to the private sector, in Niassa Reserve and MSR; and
- A co-management model (public private partnership), in Gorongosa National Park.

### **DIRECT CONCESSIONS TO THE PRIVATE SECTOR, IN NIASSA RESERVE AND MSR.**

The concessions process used in **Niassa Reserve** to identify private sector concessionaires for specific

sites within the reserve (using the materials outlined in the previous section) as followed the following steps:<sup>122</sup>

- Advertise Expression of Interest (EoI): The tender is advertised in Mozambican papers, in electronic media (e.g. Indaba Newsletter), and emailed to over 350 potential investors on their database
- Vet EoIs.
- Invite short-listed bidders to submit full proposals
- Set up proposal Evaluation Committee
- Appoint independent auditor and evaluators
- Receive and register the tenders
- Evaluate the bids
- Make recommendations to the Board
- Award the tender
- Negotiate and sign the contract

Lessons learned at Niassa on the processes include the following<sup>123</sup>: (a) It is critical to retain transparency in the evaluation process. This includes ensuring that there is an independent auditor and evaluators; that tender documents are secure; and that minutes of meetings are recorded and approved; (b) The tender guideline structure needs to include focused categories and questions, and all tender documents should be standardised; (c) The evaluation committee needs to understand the process, and be independent; (d) Maintain control, and do not accept tender documents that do not follow the guidelines provided. Elements to avoid include<sup>124</sup>: (a) opening tenders without bidders being present, as it raises suspicions (even if the process is not affected); (b) not launching tenders in the high season, when investors are most busy; (c) delays in the process, so manage the political process effectively.

### **NEGOTIATION OF A CO-MANAGEMENT MODEL (PUBLIC PRIVATE PARTNERSHIP), IN GORONGOSA NATIONAL PARK**

The GoM has undertaken several attempts to develop PPPs for **Gorongosa** with different parties, through tenders and direct negotiations with interested parties. The process used to procure and negotiate a partnership to manage and restore the whole of Gorongosa National Park with the Carr Foundation was successfully concluded in 2007<sup>125</sup>.

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<sup>122</sup> Rodrigues and Booth, 2012a

<sup>123</sup> Rodrigues and Booth, 2012a

<sup>124</sup> Rodrigues and Booth, 2012a

<sup>125</sup> Soto, 2012

An analysis of the negotiation with the Carr Foundation progressed through four main stages<sup>126</sup>:

- a) *Exploratory negotiation*: at this stage preferences and bottom lines were exchanged, and consensus reached on areas of conflict.
  - Government and Carr Foundation established an MoU for 6 months to allow joint activities while the parties finalized a long term agreement;
  - Policy or legal statements about partnerships in PAs were scattered and not well understood;
  - The parties agreed to draft principles of the relationship;
  - There was no good information on each other Party conflict on the Institutional arrangement for the partnership;
    - Government wanted to keep the arrangement, maintaining a Government Park warden;
    - Carr wanted to change this, establishing horizontal Departments with more power to one Head of Department appointed by Carr Foundation
  
- b) *Accommodative negotiation*: this stage incorporated bridging of differences and easy agreements are negotiated.
  - The negotiating team from Government made initial attempts to convince Government to accept the institutional arrangement proposed by Carr;
  - Government did not agree and was concerned about ownership and sovereignty issue;
  - Carr offered to not interfere with legislation and establishing a Warden who would deal with ecology and anti-poaching;
  - Carr wanted to keep the planning and management under his representative;
  - It was agreed that equal number of Head of Departments would be appointed by Carr and other by MITUR
  
- c) *Confrontational negotiation*: where hard bargaining was done on the core differences between groups (where moment of crisis often arise and reciprocal blackmail is quite common). At this stage:
  - Carr indicated that key premises to continue to sign any agreement:
    - Needed to be responsible of planning and management;
    - 30 years implementation to give time to ensure sustainability;

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<sup>126</sup> Soto, 2012

- Inclusion of força major;
  - Government commit to pay cost of management of the Park;
  - Revenues from the Pak be retained directly by the Park
- Carr demanded that once negotiations are not completed by 31 December 2007 it would consider it terminated
  - Government indicated key premises such as:
    - Not ready to give up the role in planning and management;
    - Wanted a short period of agreement 5-10years;
    - Wanted the revenues to be channeled to FUTUR according to Mozambican legislation and then to Gorongosa Park.
- d) *Compromise negotiation*: where solutions are found through give and take, contracts obtained and general consensus established. In the case of Gorongosa the following solutions were identified:
- Carr Foundation would keep the key position of planning and government would appoint a warden who is dedicated to the anti-poaching but represents the Park with other agents;
  - Steering committee composed by Greg Carr and a senior officer appointed by the Minister take decisions that are for the Park warden in Mozambique legislation;
  - There are 6 Departments and each Party appointed 3 Heads of the Departments
  - The period of agreement is 20 years and an evaluation would determine a need or not of additional 10 years;
  - Government committed to pay part of the costs of the management of the Park;
  - Revenues from the Park are sent to Ministry of Finance and returned to the Park instead of going through FUTUR.

The negotiation between MITUR and Carr for Gorongosa is particularly interesting because it demonstrates a process that was followed, and that a mutually-beneficial arrangement can be found (albeit following a lengthy 2-year process).

## **IMPLEMENTATION AND MANAGEMENT**

From the PS perspective, implementation will be inevitably linked to protection and return of investment and use of foreign skills/services, and the investment, labour and foreign exchange control legislations grant important rights in such matters<sup>127</sup>.

From the public sector side, the threshold of sustainability will be reached by ensuring adequate investment in each of five key management capacity areas: impact monitoring; basic infrastructure;

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<sup>127</sup> Vd **Table 7: Applicable Legislation** above

security; interpretation and information; and staff salaries and training<sup>128</sup>.

Probably the greatest experience in contract management of tourism concessions in Mozambique comes from **Niassa reserve**, which has been managing concessions since 2000<sup>129</sup>. Their experience has found that conservation objectives should supersede tourism objectives, and concessions need to be managed within an integrated approach. Intensive and consistent monitoring is needed of tourism operators, and feedback needs to be provided to them regularly.

## **SUSTAINABILITY IN CONCESSIONS IN MOZAMBIQUE**

The most consistent way that sustainability is integrated into concession processes in Mozambique is through the request for proposals, and the type of information that bidders are required to submit for evaluation.

In **Niassa reserve**, bidders are awarded additional points if they demonstrate how they will liaise with communities, and how local people will be employed and trained. They need to indicate how they will minimise or eliminate any negative environmental impacts, through construction, water and waste management, and also energy use. They are requested to outline their conservation strategy, and to show an understanding of the core conservation values and threats of the concession area, and the reserve as a whole.<sup>130</sup>

In **Quirimbas National Park**, investors are provided with information regarding the park regulations, which incorporate elements of biodiversity conservation, infrastructure planning, energy use and conservation, water conservation, waste management and preventing pollution, local economic linkages, and community interactions (regarding local culture). Regulations include the following: (i) Prohibition of mangrove cutting and of extraction of non-living resources (including coral mining, stone and sand collection from intertidal and subtidal areas); and (ii) Prohibition of dumping into marine waters of solid waste, litter, untreated wastewater, sewage or chemically polluted water or liquid<sup>131</sup>. The concession

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<sup>128</sup> All foreseen and catered for in the Conservation Policy

<sup>129</sup> Rodrigues and Booth, 2012b

<sup>130</sup> SGDRN, 2010

<sup>131</sup> RoM/MITUR, 2009

arrangements in Quirimbas are all based on community co-ownership models, where communities lease their assets to the private sector who develop and operate tourism for a period of time. A key element of the agreements between investors and communities are that contracts are established based on commercial rates, and funds are paid into a fund managed by the community. The investor pack also stresses that tourism in the park must maximize economic benefits to communities. This can take place through employment and also through the procurement of local products and services used by the concessionaire. Investors are encouraged to support the development of local businesses that they can purchase operational goods and services from. The investor guidelines stress that they will select investors who demonstrate an ability to work well with affected communities, and who have sound social and environmental policies. The bidding process also requires four types of bid: financial, technical (tourism), environmental and socio-economic. Communities are consulted on bids received, and play a role in decision making on selected investors. Once negotiations are concluded, the financial, technical, environmental and socio-economic bids are incorporated into the license conditions<sup>132</sup>.

In **Gorongosa National Park**, concession contracts specify that all developments are subject to an independent EIA, but by contrast to Niassa, the park authorities are responsible for all environmental and conservation operations. Nevertheless, the park provides concessionaires with environmental guidelines. These require concessionaires to prepare environmental management plans for the construction and operation phases. Prior to development, concessionaires are responsible for arranging an evaluation by a qualified archaeologist to identify any undocumented cultural or archaeological resources. Certain rules are applied to avoid manipulation of habitats, including no bush clearing for game viewing or firewood. They are also not allowed to introduce alien vegetation. Concessionaires are given guidance on visual impacts of infrastructure, use of environmentally friendly building materials, lighting, use of energy, water (including artificial water), liquid and solid waste management, fire and road management. Bidders are requested to provide a commitment to community training and involvement in their operation<sup>133</sup>.

The **MSR** concession process, supported by the IFC, required that bidders submit community development and environmental proposals. The RfP specified that the concession must contribute to economic growth, employment creation and the alleviation of poverty, and that a community benefit plan must be submitted with a proposal (which becomes part of the concession agreement, if successful). This plan would incorporate and employment and training plan, a local procurement plan, and any other commitments to social investment (e.g. relating to health, education etc.). Within the development plan, bidders are required to describe how they would integrate the development into the natural surroundings, and also how they would minimise their impact through energy and natural resource use, waste, water use, visual and operating impacts. The evaluation of proposals is, in part, related to how environmentally sustainable the proposal is, and how meaningful the community benefit plan appears to be. In terms of

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<sup>132</sup> RoM/MITUR, 2009

<sup>133</sup> PNG, 2008

scoring, the environmental sustainability criteria is a pass/fail condition, while community benefit obtains a score. Successful bidders are required to conduct EIAs in order to obtain an Environmental license<sup>134</sup>.

## MONITORING AND ENFORCEMENT

Parks administrations and DNAC resources are insufficient to cover the currently required monitoring and enforcement activities, whether of legal (inspection) or contractual (for example, on reporting accuracy) obligations, and must heavily rely on the private sectors' willingness to cooperate.

In **Niassa Reserve**, the reserve administrators collect data to monitor their concessionaires. This includes information on the use of hunting quotas (e.g. the number of safaris and hunting days), the origin of hunters (i.e. which country they are resident in), trophy quality and age, and the distribution of hunting effort. They also undertake systematic bi-annual aerial surveys of all major mammal species, which assist in making management decisions (i.e. setting hunting quotas for concessionaires<sup>135</sup>).

## CHALLENGES IN CONCESSIONS PROCESSES IN MOZAMBIQUE

There are many challenges faced in tourism concessions processes in Mozambique. Some of those identified in relation to concessions frameworks, processes and management are outlined in the table below.

**Table 6: Challenges and risks in tourism concessions in protected areas of Mozambique**

Challenges with concessions frameworks
Different protected areas have different systems and rules for procuring and contracting investors in tourism concessions
Political will to drive the appropriate legal framework is required. This includes enforcement of the law (i.e. poaching), addressing the dichotomy of conservation and people living inside protected areas <sup>136</sup> , and also ensuring that processes are not derailed during the process. <sup>137</sup>

<sup>134</sup> MITUR, undated

<sup>135</sup> Rodrigues and Booth, 2012b

<sup>136</sup> Rodrigues and Booth, 2012b



There are no standard concession regimes or contracts

There are different levels of capacity and understanding of the legal and concessions development processes in different government departments and sometimes even the same Ministry

CPI's assistance is limited and it will not "open doors" in other competent public departments

Licenses, registrations, authorizations and approvals procedures are cumbersome to be followed

Speaking, communicating and preparing documents in a foreign language will cause delays and misunderstandings

### **Challenges with concessions processes**

Transaction costs can be high when developing partnerships with local rural communities, as they will probably have very low capacity and understanding of the tourism industry

Unclear or not precise scope of the bid and contract

Weak coordination between different government ministries and departments, which lead to slow and inconsistent concession processes.

Weak governance of rules and processes. Sometimes they are adapted or de-railed once launched, and should not be manipulated for political purposes<sup>138</sup>.

Some sites are offered for tender which are not yet clear, or free of external risks<sup>139</sup>

Insufficient data (e.g. lack of management plans, or market information)

Product appropriateness

Financial

Public sector slowness and difficult cross sectoral communication

Business plan incomplete or insufficient

Insufficient infrastructure in the PA

Lack of clarity on the level of EIA required

### **Challenges on concessions management**

Language barriers (English-Portuguese)

<sup>137</sup> IFC, 2012

<sup>138</sup> IFC, 2012

<sup>139</sup> IFC, 2012

Culture barrier between private sector and community

Bureaucratic procedures

Poorly drafted concession agreements

The people involved in negotiating the concession agreement are not the same as those given responsibility for managing it

Inadequate resources are assigned to concession agreement management

Poor institutional leadership and/or misunderstanding of the concession agreement

The institution team does not match the private party team in terms of skills or experience (or both)

The wrong people are put in place, leading to personality clashes or ineffective management

The context, complexities and dependencies of the concession agreement are not well understood

There is a failure to assess private party or institutional assumptions adequately

Authorities or responsibilities relating to commercial decisions are not clear

A lack of independent reviews of the concession agreement management arrangements

A focus on current arrangements rather than on what is possible or the potential for improvement

A failure to monitor and manage institution risks.

## **MOZAMBIQUE'S LEGAL AND INSTITUTIONAL FRAMEWORK FOR TOURISM CONCESSIONS IN PROTECTED AREAS**

### **LEGAL BASIS FOR CONCESSIONS AND PRIORITIES OF GOVERNMENT**

The **Constitution of Mozambique**<sup>140</sup> entrenches the notion that the state is the owner of all natural resources occurring within its national territory, land included, and further qualifies some of its assets, such as the total protection zones as part of the public domain. This is the basis for subsequent choices on tourism concessions processes and models. It further qualifies the right to a “balanced environment” as an economical, social and cultural constitutional right, which has paved the way for the introduction of environmental impact assessment and conservation management requirements in all stages of the concessions development processes.

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<sup>140</sup> Revised in 2004

In Mozambique, international principles and norms become enforceable upon ratification and publication. Mozambique has ratified and published, amongst others, the Convention on Biological Diversity (**CBD**) (Resolution 2/94); on **Trade in Endangered Species of Wild Fauna and Flora** (Resolution 30/81) and on **Wetlands** (Resolution 45/2003)<sup>141</sup>, UN **Law of the Sea** (Resolution 21/96) and **Straddling Fish Stocks and Highly Migratory Fish Stocks** Convention (Resolution 19/2008)

Presently, the **key policy issues** governing access to, use and fruition of natural resources/ biodiversity in Mozambique in the PA tourism sector are being regulated as follows:

- **Rights and ownership** – All natural resources, land, infra-structures and other fixed assets belongs to the state represented by the Ministry of Tourism (MITUR) and Ministry of Finances and communities have legal participatory rights in specific moments of all concessions processes and also the right to be granted “delegated rights over the exploitation/development of natural and wildlife resources”<sup>142</sup>;
- **Sharing of benefits with local communities** – In order to secure communities interest in the development of PA land and resources, GoM has approved legislation enabling the sharing of park revenues that actually results in monetary disbursements<sup>143</sup>;
- **Public interest** – National Parks (NP) and National Reserves (NR) are legally qualified as integral part of the national patrimony (public domain);
- **Private sector partnerships** –The increased environmental, social and financial and management legal requirements<sup>144</sup> have been imposing more structured commercial arrangements to be agreed with private investors;
- **Environmental protection and sustainability** – all activities inside PA are qualified as Class A, subject to a fully fledged EIA<sup>145</sup>;
- **Cultural patrimony** – all buildings older than 1920 are classified as cultural patrimony and Ilha de Moçambique qualified as National Monument<sup>146</sup>.

The **Tourism Policy and Strategy** (Resolution 14/2003), qualifies PA as key assets for tourism

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<sup>141</sup> Lake Niassa has been designated to be listed as an International Wetland site (Resolution 67/2011).

<sup>142</sup> As per the Forestry and Wildlife Regulation approved by Decree 12/2002

<sup>143</sup> Sharing of PA revenues legislation - Decrees 27/2003 and 15/2009 and Ministerial Diploma 66/2010

<sup>144</sup> Such as those derived from the Guidelines for community participation in EIA processes approved by Ministerial Diploma 130/2006

<sup>145</sup> EIA legislation - Decree 45/2004, amended

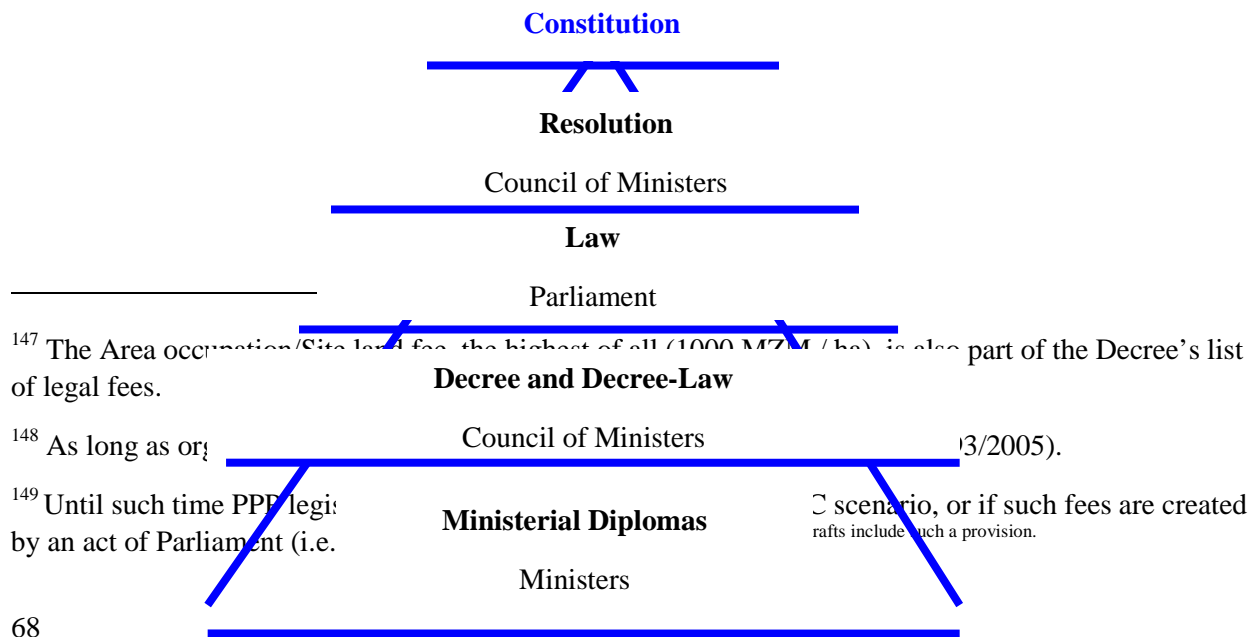
<sup>146</sup> Cultural Patrimony Law 10/88

development. **Tourism Law** 4/2004, and **Marketing Strategy** approved by Resolution 45/2006, respectively, develop regulations applicable to activities allowed in conservation areas and principles such as sustainable tourism development, and establish priority tourism development areas, where PA are included, as well as tourism routes.

Of utmost importance for sustainable tourism in PA is the regime established by Decree 27/2003 for the **tourism user fees** (TUF) in National Parks and Reserves: entry, adventure, area occupation/site<sup>147</sup>, camping and other (e.g. photography, filming, towing, search (and rescue), sport fishing, scuba diving, snorkelling, and scientific research). And this is so because in terms of the **Sharing of PA tourism revenues legislation** (Decree 15/2009 and Ministerial Diploma 66/2010), communities<sup>148</sup> are entitled to share PA's legal fees revenues: the income is submitted by park administration to the relevant tax department where a portion is allocated to the state budget (20%), a portion returned to be paid to the local management committees (16%) and the remainder (64%) returned (on application) to the relevant protected area administration. Contractual concession fees can only legally be charged when the conceding authority (a park administration, such as in Niassa National Reserve, or a community legal entity, like in Ponta Chemucane in the MSR), is of a private nature<sup>149</sup>.

The **hierarchical set of legal diplomas** enacted by central public administration (with national jurisdiction) in Mozambique is illustrated in Figure 8 below.

**Figure 8: Mozambique law hierarchy**



<sup>147</sup> The Area occupation/Site fee for the highest of all (1000 MZM/ha) is also part of the Decree's list of legal fees.

<sup>148</sup> As long as original Decree 15/2009 (Decree 15/2009) and Ministerial Diploma 66/2010 (Ministerial Diploma 66/2010).

<sup>149</sup> Until such time PPP legislation is enacted, the concessionaire must be a legal entity. In the absence of such a provision, the concessionaire must be a legal entity (i.e. a company or a community legal entity) or a scenario, or if such fees are created in a concession agreement, the concessionaire must be a legal entity (i.e. a company or a community legal entity) or a scenario, or if such fees are created in a concession agreement, the concessionaire must be a legal entity (i.e. a company or a community legal entity) or a scenario.

With the approval of the **Conservation Policy**<sup>150</sup> in 2009, GoM achieved a milestone in integrating CBD provisions into primary legislation, crucial for the backing up of a sustainable approach to tourism concessions in PAs:

- **Sustainability** - A system of conservation areas<sup>151</sup> under an effective, adaptive and inclusive management and financing regimes was established. Subsequent enabling and implementing legislation must be enacted<sup>152</sup>;
- **Decentralization** - Management of conservation areas should be decentralised and co-management (consultative joint) committees<sup>153</sup> will be created for each PA;
- **Institutional capacity** – Improvement of inter-sectoral coordination and creation of a national conservation areas authority<sup>154</sup>.

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<sup>150</sup> Conservation Policy - Resolution 63/2009

<sup>151</sup> Proposes to realign with IUCN classification of PA

<sup>152</sup> There is a draft Conservation Law being discussed at the level of the Conservation Group in DNAC.

<sup>153</sup> *Conselho de Gestão de Área de Conservação (CGAC)*

<sup>154</sup> *Administração Nacional das Áreas de Conservação (ANAC)*, subsequently created by Decree 11/2011

## LEGAL FRAMEWORK FOR PROTECTED AREAS IN MOZAMBIQUE

As early as 1990, the Constitution qualified (nature) protected areas as part of the **public domain** of the state.

The Land Law<sup>155</sup> was the first legal diploma establishing the concept of total protection zones, and subsequently the Forests and Wildlife legislation clarified that National Parks and National Reserves, and also Zones of Cultural-Historical Value and Use<sup>156</sup>, are **public domain conservation protected areas (PA)**, part of the national natural patrimony, destined to the conservation of biodiversity, fragile ecosystems or animal or plants<sup>157</sup>; hunting concessions are defined solely as part of the public domain, and not constitutionally qualified directly as protected areas<sup>158</sup>. All immovable and fixed assets with a permanent nature erected in a formal protected area are an integral part of the state public domain, hence not subject to private ownership:

- **6 National Parks**, of which two are coastal/marine protected areas namely, Bazaruto (1430 km<sup>2</sup> exclusively marine) and Quirimbas (7500 km<sup>2</sup>, of which ~1500 km<sup>2</sup> is marine) - and 4 of which are inland national parks – Banhine (7000 km<sup>2</sup>), Gorongosa (10000 km<sup>2</sup>), Limpopo (10000 km<sup>2</sup>) and Zinave (3700 km<sup>2</sup>)
- **6 National land Reserves** – Gilé (2100 km<sup>2</sup>), Marromeu,(1500 km<sup>2</sup>) Niassa (42200 km<sup>2</sup>), Maputo Special Reserve (700 km<sup>2</sup>), Chimanimani (6400 km<sup>2</sup>) and Pomene (200 km<sup>2</sup>);
- **1 Lake Partial Reserve** – Niassa;
- **1 marine Biological Reserve** – Inhaca (100 km<sup>2</sup>);
- **1 partial Marine Reserve** – Ponta do Ouro (67,800 ha); and <sup>159</sup>

Official hunting areas or *Coutadas*, are governed by Forestry and Wildlife legislation and by a colonial

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<sup>155</sup> Land legislation - Law 19/97 and its Regulation, approved by Decree 66/98, amended.

<sup>156</sup> Not within the scope of this manual; governed by Law 10/88, Regulation approved by Decree 27/94. Also private conservation areas such as game farms are not included in the scope of this report.

<sup>157</sup> Forestry and Wildlife legislation - Law 10/99 and its Regulation, approved by Decree 12/2002

<sup>158</sup> Which has opened the legal debate for the status and regime of such concessions; not within the scope of this Manual.

<sup>159</sup> Source: adapted from UNDP, undated, [www.niassareserve.org](http://www.niassareserve.org), [www.actf.gov.org](http://www.actf.gov.org)

regulation dated 1965<sup>160</sup> which establish that exploitation of these areas and operation of hunting activities are subject to terms and conditions (including conservation management, infrastructure development and maintenance and social responsibility) agreed under a concession agreement (with DNAC)<sup>161</sup>. There are currently 15<sup>162</sup> *Coutadas* occupying an area of approximately 54056 km<sup>2</sup><sup>163</sup>.

A number of Mozambique's conservation and protected areas have been linked with protected and conservation areas in surrounding countries, as part of regional Trans-frontier Conservation Area (TFCA) initiatives<sup>164</sup>: the Great Limpopo Transfrontier Park (with South Africa and Zimbabwe)<sup>165</sup> and the Lubombo Transfrontier Conservation and Resource Area (South Africa and Swaziland)<sup>166</sup>.

## APPLICABLE LEGISLATION FOR TOURISM CONCESSIONS IN MOZAMBIQUE

Creating a legally enabling environment is conducive to the engagement of investors interested in market-oriented public-private or community-public-private partnerships:

One of the legal diplomas informing tourism concessions development processes is the **Public Procurement Regime** (Decree 15/2010), governing procurement types, proponents and proposals requirements and also administrative contracts such as tourism concession contracts<sup>167</sup>.

With the recent adoption of the **Conservation Policy** the country is seeking to update and reform its enabling conservation legislation and provide for a wider range of financing mechanisms, including the

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<sup>160</sup> A new draft is intended to be discussed still in this year of 2012

<sup>161</sup> Without jeopardy to the need of applying for either, or both, tourism and commercial licenses

<sup>162</sup> Coutada 8 is not included as it will be soon deproclaimed.

<sup>163</sup> DNAC, 2012

<sup>164</sup> Legal grounds: Southern African Development Community Protocol on Wildlife Conservation and Law Enforcement, ratified by Mozambique under Resolution 14/2002

<sup>165</sup> Treaty signed 9 December 2002

<sup>166</sup> Trilateral Protocol signed 22 June 2000

<sup>167</sup> In 2011, the Parliament enacted Law 15/2011, also known as the Public Private Partnership (PPP) law, which has not yet been regulated. It defines PPP as profit intended undertakings and is still to be seen if PPPs in PAs fall under that exception or not

establishment and administration of a national trust fund (i.e. the BIOFUND)<sup>168</sup>.

The table below presents a summary of Mozambique key primary and secondary legislation governing tourism concessions.

**Table 7: Applicable Legislation**

Matter	Regime
<b>Land, Forestry and Wildlife</b>	<ul style="list-style-type: none"> <li>• The Land Law (Law 19/97 and its Regulation, approved by Decree 66/98, amended) was the first legal diploma establishing the concept of total protection zones, and subsequently the Forests and Wildlife legislation (Law 10/99 and its Regulation, approved by Decree 12/2002) clarified that National Parks and National Reserves are conservation protected areas in that National Parks offer total protection to all flora, fauna, landscapes, and geology within their boundaries, where no hunting or livestock rearing, natural resource exploitation, land modification, or alien species are permitted; and National and Biological Reserves provide total protection for specified plant and animal species and/or ecosystems, while other resources may be exploited as described in the management plan;</li> <li>• Forestry and Wildlife legislation also regulate the other categories of conservation areas (e.g. <i>Coutadas</i>, Forest Reserves and Community Reserves), which offer varying levels of protection to fauna and flora within their boundaries;</li> <li>• Land occupation and the implementation of a tourism concession in a PA are subject to the granting of a special license for tourism activities. DNAC is the competent issuing entity;</li> <li>• Multiple-use (or buffer) zones are typically established around protected areas: even though an integral part of the PA from a land use and conservation or tourism concession strategy perspective, the applicable legal regime is such that the private sector can directly acquire rights to use and develop portions of such land (<i>Direito de Uso e Aproveitamento da Terra or DUAT</i>)<sup>169</sup>.</li> </ul>
<b>Coastal, marine areas</b>	<ul style="list-style-type: none"> <li>• The General Regulation of Maritime Fishing (Decree 43/2003) defines the competency of the Ministry of Fisheries to proclaim ‘preservation areas’, within the maritime limits, of National Parks and Reserves. Ponta de Ouro marine reserve has been created (Decree 42/2009) under the auspices of such law;</li> <li>• The Regulation for Preventing Pollution and Protecting Coastal and Marine Environment (Decree 45/2006) provides for the rules and regulations applicable to allowed and forbidden activities in coastal and marine areas, which also applies to PA such as the Quirimbas National Park (QNP), MSR and Lake Niassa.</li> </ul>
<b>Tourism</b>	<ul style="list-style-type: none"> <li>• Tourism legislation is comprised, though not limited to, by the Tourism Law (Law 4/2004), Tourism establishments and activities Licensing Regime (Decree 18/2007)<sup>170</sup>, and time</li> </ul>

<sup>168</sup> UNDP, undated

<sup>169</sup> Where DNAC is legally consulted and management plans simply taken into account, not binding

<sup>170</sup> Drafts of Ecotourism licensing diplomas have been prepared in the past and are in the pipeline to be reviewed and approved



	<p>sharing legislation (Decree 39/2007);</p> <ul style="list-style-type: none"> <li>• The type of activities that may be undertaken in protected areas are legally limited to ecotourism, hunting, photography, filming, and contemplation with recreational or commercial purposes, recreational diving and other as indicated in the respective management plan;</li> <li>• In order to obtain the tourism project authorization in a PA or respective buffer zone, which is the initial output of the tourism licensing procedure, the regime requires the applicant to obtain the positive opinion of the jurisdictionally competent District government and positive opinion of residing local communities;</li> <li>• When the project has complied with all licensing requirements and the establishment is ready to become operational, an inspection will be agreed with DINATUR and the license itself or <i>Alvará</i> will be granted;</li> <li>• All tourism operators must be licensed.</li> </ul>
<b>PA revenues</b>	<ul style="list-style-type: none"> <li>• Decree 27/2003 establishes the legal range of Tourism User Fees in National Parks and Reserves: Entry, Adventure, Area occupation/Site, Camping and Other (Photography, Filming, Towing, Search (and rescue), Sport Fishing, Fisheries trophies, Scuba Diving or Snorkelling, Scientific research);</li> <li>• In terms of Decree 15/2009 and Ministerial Diploma 66/2010, communities organised in local management committees (Ministerial Diploma 93/2005) are entitled to legally share PA's Tourism Users Fees' (TUF) revenues;</li> <li>• Contractually, MITUR's policy as been such as to require concessionaires to present financial proposals towards conservation efforts intended to complement official TUFs income (shared with State Budget);</li> <li>• Establishment of pure concession fees will occur if the PPP legislation becomes applicable, or if such fees are created by an act of Parliament (i.e. a Law<sup>171</sup>).</li> </ul>
<b>Hunting</b>	<ul style="list-style-type: none"> <li>• Official hunting areas or <i>Coutadas</i>, are governed by Forestry and Wildlife legislation and by a colonial regulation dated 1965<sup>172</sup> which establish that exploitation of these areas and operation of hunting activities are subject to terms and conditions (including conservation management, infrastructure development and maintenance and social responsibility) agreed under a concession agreement (with DNAC)<sup>173</sup></li> <li>• The community co-ownership with PS model is replacing the community and PS corporate or commercial partnerships approaches. For specific areas (Niassa), there is already experience in granting hunting concessions directly to the PS, communities benefiting as recipients of social responsibility arrangements;</li> <li>• Forestry and Wildlife and the Tourism Licensing Regime legislation (complemented, in its specifics, by Decree 8/2007) regulate firearms' ownership and use licenses.</li> </ul>
<b>Fishing and Diving</b>	<ul style="list-style-type: none"> <li>• Launching of boats and fishing permits and trophies, regulated by Decree 51/99, are granted by the Ministry of Fisheries and diving permits are granted by the National Maritime Institute (<i>Instituto Nacional da Marinha</i> or INAMAR) according to Decree 44/2006;</li> <li>• Both regulations prescribe the procedure and forms to be used for obtaining the permits and applicable fees.</li> </ul>
<b>Environment</b>	<ul style="list-style-type: none"> <li>• Environmental legislation (Law 20/97 and Environmental Impact Assessment (EIA))</li> </ul>

<sup>171</sup> The current draft Conservation Law include such a provision

<sup>172</sup> A new draft is intended to be discussed still in this year of 2012

<sup>173</sup> Without jeopardy to the need of applying for either, or both, tourism and commercial licenses

	<p>Regulation approved by Decree 45/2004, amended) provide the rules and regulations applicable to the process of obtaining environmental licenses required for all tourism projects in PA (classified as Class A projects), which include the preparation and approval of a fully fledged Environmental Impact Assessment study (EIA) and Management Plan (resettlement included)<sup>174</sup>;</p> <ul style="list-style-type: none"> <li>• The EIA application for tourism concessions in a PA is submitted locally at the District or Provincial governments level and internally will be assessed and reviewed by the National Directorate for the Evaluation of Environmental Impacts (DNAIA), part of the Ministry for Coordination of Environmental Affairs (MICOA).</li> </ul>
<b>Investment</b>	<ul style="list-style-type: none"> <li>• According to the Investment legislation (Law 3/93 and its Regulation approved by Decree 43/2009, amended), tourism concession projects, through the respective special purpose vehicle (SPV) or implementing company, are eligible to receive incentives, and foreign investment is secured (mainly in terms of repatriation of profits, availability of foreign currency to comply with foreign loans and dispute settlement mechanisms);</li> <li>• Fiscal exemptions and benefits are non negotiable and as established by the Code of Fiscal Incentives approved by Law 4/2009: <ul style="list-style-type: none"> <li>○ Exclusively to the tourism industry (concessionaires and accommodation operators) in PA such as Exemption of duties and VAT on construction material, fixtures, movable equipment, electric apparatus and machines, tax credits;</li> <li>○ Exclusive to the creation of basic infrastructure, such as reductions in corporate tax rates for 15 years.</li> </ul> </li> <li>• Labour legislation in Mozambique also makes provision for investment project authorizations allowing the automatic authorizations for the employment of foreigners over and above the maximum legal quotas;</li> <li>• The Centro de Promoção de Investimentos (CPI) is the governmental entity generally in charge of receiving and processing investment project authorizations for tourism concessions. The process is standardized: CPI requires that project applications are submitted in accordance with a specific form<sup>175</sup>, which requires supporting documentation to also be submitted. CPI will inform applicants of the positive dispatch, and a fee must be paid (equivalent to 0.001 of the project value) for the terms and conditions of the Investment Project Authorization to be released (which must be registered with the Central Bank within 120 days from its notification). Specifically for imports, there are procedures to be followed with CPI for assuring that duties exemptions are effected.</li> </ul>
<b>Commercial</b>	<ul style="list-style-type: none"> <li>• All tourism concessions companies, whether under a Special License or a Concession Contract, because they will have to become residing entities for tax/invoicing purposes, are only granted to locally incorporated and registered companies<sup>176</sup>. The most common types of commercial companies are limited liability companies or <i>Limitadas</i> (where shareholders hold quotas or portions of the share capital) and joint stock companies or <i>Sociedades Anónimas</i> (shareholding is titled), the former simpler in terms of corporate governance requirements;</li> </ul>

<sup>174</sup> In buffer zones, tourism projects may be classified as a Class A or B Project, meaning, requiring a fully-fledged EIA or a simplified one (ESIA)

<sup>175</sup> Downloadable at [www.cpi.co.mz](http://www.cpi.co.mz)

<sup>176</sup> In the past, the Mozambican nationality of proponents (controlling interest or more than 51% majority) has been used as eligibility (Dobela in the MSR) or an evaluation

	<ul style="list-style-type: none"> <li>• Companies may be incorporated by a private deed (Contract and Articles of Association) before any Public Notaries. For registration with the Commercial Entities Registrar office, the deed, a name reservation certificate, evidence of the opening of a bank account and a specific details form are required to be submitted. Fees will depend on the share capital amount. At the same time, a copy of the deed, and registration receipt, is submitted to the National Press for publication in the 3<sup>rd</sup> Series of the Official Gazette<sup>177</sup>;</li> <li>• Commercial law does not establish a minimum value for the share capital, which will be dependant on the shareholders own funds and loan commitments. Further, there are no qualified majority rules nor compulsory minority rights, both free and dependant on the shareholders arrangements;</li> <li>• Even though the main activity will not be commercial, tourism concessionaires will start operations by applying for a services license which must allow, in its scope, to also apply for an import license and annual card as may be required in the early stages of development of the project. A services license is probably the quickest and cheapest to obtain, and a license will be required for the company to declare beginning of activities before the tax department and for the bank account signatories to start using the money deposited in the opening account.</li> </ul>
<b>Labour</b>	<ul style="list-style-type: none"> <li>• Mozambican Labour Law (Law 23/2007) establishes the main and imperative rules applicable to labour contracts and employment related rights and duties. The Foreign Workers Employment Regulation (Decree 55/2008) regulates the procedures and fixes the fees for contracting expatriates;</li> <li>• Labour contracts can only be temporary (up to 2 years, renewable once) if the tasks to be performed are also provisional or interim in nature. Notwithstanding, small and medium companies (respectively with up to 10 and 49 employees) are free to contract on a temporary basis for the first 10 years of operations.</li> </ul>
<b>Migration</b>	<ul style="list-style-type: none"> <li>• Law 5/93 and its Regulation approved by Decree 38/2006, amended, establish the legal framework applicable to Visas and Residency permits for foreign employees.</li> </ul>
<b>Taxes</b>	<ul style="list-style-type: none"> <li>• The current tax system, applicable to all residents, has the following main pillars: <ul style="list-style-type: none"> <li>○ Value Added Tax (VAT) is an indirect tax on expenditure and imports – 17% (Law 32/2007 and Decree 7/2008, amended); For goods or services subject to a fixed price regime (including fuel), there are effective rates which are differentiated by applying the general tax rate to fractions of the respective price;</li> <li>○ Excise Tax on Specific Consumption<sup>178</sup> levies the consumption of specific goods detailed in the list (annexed to the respective Code); applied to the producer or the importer; rates currently in force are detailed in Decree 37/2002, dated 11 December. This Decree presents a Table, which also lists the eligible goods. The established rates are 5%, 30%, 40% and 65%, depending on the nature of the goods, and on extra-fiscal objectives (of social or economic nature, or general or special prevention);</li> <li>○ IRPC (<i>Imposto sobre o Rendimento das Pessoas Colectivas</i>) is the Corporate Tax (on profit) – 32% (Law 34/2007 and Decree 9/2008, amended); Unless a double taxation agreement is applicable, withholding tax (20%.) is due with the request for authorization of payment of services (fees and other charges included), intellectual property rights (5%) and on the repayment of interest in loans and shareholders loans;</li> </ul> </li> </ul>

<sup>177</sup> The cost of publication of an average length articles of association will vary from 5 to 7 thousand Meticaís.

<sup>178</sup> Alcoholic beverages and processed tobacco are subject to a special import and inspection regime

	<ul style="list-style-type: none"> <li>○ IRPS (<i>Imposto sobre o Rendimento das Pessoas Singulares</i>) is the Personal Income Tax. - minimum of 0.2% and maximum of 29.9%<sup>179</sup> (Law 33/2007 and Decree 8/2008, amended)</li> <li>● The total income, including that obtained outside the national territory, is subject to both Corporate and Personal Income Taxes unless there is a double taxation agreement (currently with Portugal, Mauritius, Italy, United Arab Emirates, Macau, South Africa, Vietnam, India and Botswana);</li> <li>● Tax legislation (Decree 77/1998 and Ministerial Diploma 82/2005) regulates the procedures and mechanisms for tax reimbursements;</li> <li>● Import duties are levied on the value of goods to be imported or exported through the borders of the national territory, and the CIF (Cost, Insurance &amp; Freight) value is normally adopted. Generally, the rates will vary from 2.5% for raw materials, 7.5% for intermediary goods, 5.0% for capital goods and 20.0% for consumer goods. For imported goods that are exempt from duties, and for custom clearance of zero rated products (table of custom duties), a fixed fee is levied (<i>Taxa de Serviços Aduaneiros or TSA</i>).</li> </ul>
<b>Foreign Exchange Control</b>	<ul style="list-style-type: none"> <li>● All imports of foreign currency capital into Mozambique are subject to foreign exchange controls;</li> <li>● According to the recently enacted Foreign Exchange Law and Regulation (Law 11/2009 and Decree 83/2010), the execution of shareholders and third party loans agreements between resident companies and foreign entities is subject to the prior authorization from Central Bank: the contract and parties will be given a reference and each time a transfer is received, such import must also be registered. Repayments will only be authorised if, amongst other formal requirements, import registrations and tax clearance certificates are presented.</li> <li>● Any payments for the provision of services by non resident entities, is subject to a registration procedure with commercial banks (that shall follow up directly with Central Bank); a contract stipulating several payments will have to be subject to the opinion of the tax department (for calculating withholding tax due) over and above the procedure regarding the tax clearance certificate;</li> <li>● Central Bank requires specific forms to be used for each request.</li> </ul>
<b>Community</b> <sup>180</sup>	<ul style="list-style-type: none"> <li>● When institutionally interacting with other stakeholders, local communities represent themselves through the traditional leaders, existing, by official community authorities<sup>181</sup>, management committees<sup>182</sup>, local management councils<sup>183</sup> or community legal entities<sup>184</sup>, which in Mozambique tend to take the form of a civil association which has to be</li> </ul>

<sup>179</sup> IRPS taxes for 2012 were approved by Ministerial Diploma 243/2011

<sup>180</sup> According to UNDP, undated, protected areas in Mozambique are currently home to more than 190,000 people

<sup>181</sup> Decree 15/2000

<sup>182</sup> Forestry and Wildlife legislation

<sup>183</sup> Sharing of PA revenues legislation

<sup>184</sup> Community Legal Entities legislation – Associations - Law 8/91 and Regulation approved by Decree 37/2000, and Cooperatives Law 8/2005 and Regulation approved by Decree Law 2/2006 and model statutes approved by Ministerial Diploma 155/2006

	incorporated, registered, licensed and enrolled as a private commercial company since it will develop commercial / business activities in parallel with its social objectives, but can also take the form of farming – livestock cooperatives.
<b>Land Planning</b>	<ul style="list-style-type: none"> <li>Land Planning legislation (Law 19/2007 and its Regulation approved by Decree 23/2008) regulate the national, provincial and district territorial planning tools scope, procedures and approvals, relevant for tourism concessions in terms of zoning of sites and respective buffer zones.</li> </ul>

Generally speaking, a tourism concession in a PA is a way of **granting tourism development rights** entailing some or all of: provision of conservation management services, recreational services, for the operation of accommodations and for funding construction works.

As discussed above, in Mozambique, tourism concessions can take the form of a **Special License** (an authorization to perform economical activities inside a PA) **or a concession contract** in one of its many types (pure concession, lease, affermage, management<sup>185</sup>). Of note, and in what concerns official hunting areas, the contracts entered with PS are legally qualified<sup>186</sup> as concessions.

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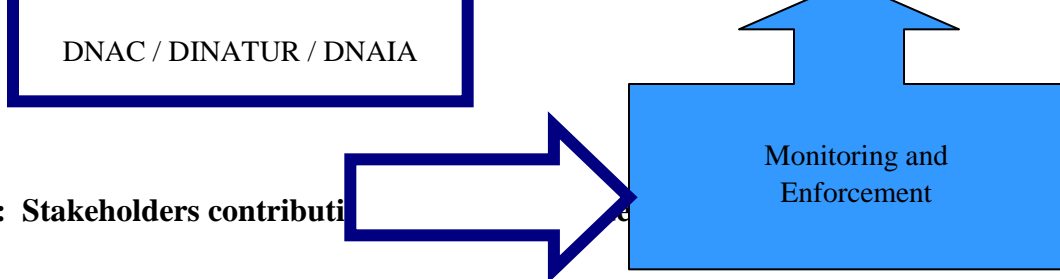
<sup>185</sup> PPP legislation - Law 15/2011, regulation in process of being approved

<sup>186</sup> Forestry and Wildlife Colonial Regulation is dated 1965; while Article 87 of the Regulation of the Law of Forestry and Wildlife provides for the drafting of internal regulations relating to the official *Coutadas*, these have never been prepared

## KEY STAKEHOLDERS IN TOURISM CONCESSIONS IN MOZAMBIQUE

Stakeholders with both legal and statutory rights and obligations in tourism concessions development processes can be grouped into public sector (such as the Council of Ministers, [CM], Ministry of Tourism, [MITUR], and in special its National Directorates for Conservation Areas, [DNAC], and for Tourism, [DINATUR], Ministry of Coordination of Environmental Action [MICOA], and specifically its National Directorate for the Impact Assessment Evaluation, [DNAIA]. and the Ministry of Planning and Development [MPD]), private sector, communities, donors and non-governmental organisations (NGO). CPI is the agency in charge of managing the granting of fiscal benefits and incentives is also important.

Figure 9 below is an illustration of how the key public, private and community stakeholders are particularly involved and contribute, to Mozambique concession development processes. This is followed by an explanation of the role and responsibilities of the different types of stakeholders.



**Figure 9: Stakeholders contributi**

## PUBLIC SECTOR

GoM and Ministries directorates (central level) are generally in charge of creating policies, designing implementing strategies and regulating different aspects of tourism concessions. Together or through Provincial and District services (local level), and autonomous public entities, these agencies apply and enforce the applicable legislation, as summarised in in the table below.

**Table 8: Summary of key public stakeholders’ roles and responsibilities**

Stakeholder	Role and responsibility
<b>National Government</b>	
Council of Ministers (CM) <sup>187</sup>	CM is empowered to establish, modify or deproclaim protected areas for conservation purposes.
National Council for Sustainable Development (CONDES) <sup>188</sup>	CONDES is a consultation body of the CM and has the responsibility to ensure that development activities (from planning to licensing of operators) are implemented in a sustainable way by all sectors.
Private Sector - operations Ministry of Tourism (MITUR) <sup>189</sup> CPI – fiscal incentives Community Broker – mediation National Directorate for Conservation Areas (DNAC) Private Sector - compliance	MITUR is legally responsible for managing PA for conservation purposes, including to represent GoM on granting contractual concessions, and approving management plans.  DNAC is responsible for the technical establishment and management of National Parks, National Reserves and <i>Coutadas</i> , and also to issue special licenses for tourism projects and activities in PA.

MITUR – concession

<sup>187</sup> Land legislation

<sup>188</sup> Environmental Law – Law 10/97 and CONDES statutes approved by Decree 40/2000

<sup>189</sup> Created by Presidential Decree 1/2000, Powers and Attributions (mandate) approved by Presidential Decree 8/2010 and statutes approved by Ministerial Diploma 126/2000

National Directorate for Tourism (DINATUR)	DINATUR is competent for generally licensing tourism projects and activities.
Ministry of Fisheries (MPescas) <sup>190</sup>	MPescas is responsible for the management of fisheries resources and marine protection areas, including the proposal for the establishment of marine reserves and for issuing temporary fisheries licenses.
Ministry of Transport and Communications (MTC) <sup>191</sup>  Mozambique Civil Aviation Institute (IACM) <sup>192</sup>	MTC is responsible, through local maritime administration services part of INAMAR <sup>193</sup> (National Maritime Institute), for issuing scuba diving licenses.  IACM (National Institute for Civil Aviation) is the licensing and regulatory authority responsible for licensing air stripes and aeronautical transport.
Ministry of Transport and Communications (MTC) <sup>194</sup>  National Civil Aviation Institute (INAC) <sup>195</sup>	MTC is responsible, through local maritime administration services part of INAMAR <sup>196</sup> (National Maritime Institute), for issuing scuba diving licenses.  INAC is the licensing and regulatory authority responsible for licensing air stripes and aeronautical transport.

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<sup>190</sup> Created by Presidential Decree 1/2000; Powers and Attributions (mandate) approved by Presidential Decree 55/2000 and statutes approved by Resolution 38/2010; Fisheries legislation Law 3/90 and Regulation approved by Decree 43/2003

<sup>191</sup> Statutes (update) approved by Resolution 44/2010.

<sup>192</sup> Statues (update) approved by Resolution 19/2011.

<sup>193</sup> Statutes approved by Decree 32/2004.

<sup>194</sup> Powers and Attributions (mandate) approved by Presidential Decree .....and statutes approved by Resolution 44/2010

<sup>195</sup> Created and statues approved by Decree 41/2001

<sup>196</sup> Created by Decree 32/2004 and updated EO approved by Resolution 19/2011



Ministry for Coordination of Environmental Affairs (MICOA) <sup>197</sup>	MICOA has the overall responsibility for coordinating all environmentally related issues in Mozambique and reports on the national implementation of the CBD. Once created, it will oversee the National Conservation Areas Agency (ANAC).
National Directorate for Environmental Management (DNGA)	DNGA is responsible for coordinating the conservation planning, management and monitoring of biodiversity throughout the country.
National Directorate for the Evaluation of Environmental Impacts (DNAIA)	DNAIA is responsible for approving EIAs and issuing environmental licenses to tourism projects in PA.
Ministry of Agriculture (MINAG) <sup>198</sup>	MINAG is legally responsible for granting use and development rights (DUAT) outside PA (such as buffer zones), for all purposes, including for tourism or living/resettlement.
Ministry of Planning and Development (MPD) <sup>199</sup>	MPD is responsible for the preparation and monitoring of all development plans of Mozambique, including budgeting.
Centre for Investment Promotion (CPI) <sup>200</sup>	CPI is responsible for managing the application and approval of investment projects' fiscal incentives and benefits, and depending on the project value, it may also have authorization powers.
Ministry of Finance (MF) <sup>201</sup>	MF is responsible for overseeing the financial implementation of public-private-partnerships (PPP).
<b>Provincial and District level</b>	
Licensing Directorates and Services <sup>202</sup>	All licenses and authorizations applications are submitted before the local body jurisdictionally competent which may be <sup>203</sup> a Provincial Directorate, District Services, delegations or local representations of the institutes

<sup>197</sup> Created by Presidential Decree 2/1994; Powers and Attributions (mandate) approved by Presidential Decree 55/95 and statutes approved by Resolution 16/2009

<sup>198</sup> Statutes (update) approved by Resolution 17/2009.

<sup>199</sup> Statutes (update) approved by Resolution 53/2010.

<sup>200</sup> Statutes (update) approved by Resolution 26/2009.

<sup>201</sup> Statutes approved by Resolution 18/2011

<sup>202</sup> Local Bodies legislation – Law 8/2003, amended, and its Regulation approved by Decree 11/2005

<sup>203</sup> It will depend on the structure of the local body itself (existence of an agency)

	(including CPI).  Parks and Reserves have an Administration, a local department of MITUR in charge of conservation management of each PA <sup>204</sup> .  Forestry and wildlife inspection powers are held by (public officials) inspectors, sworn inspectors and community agents <sup>205</sup> .
<b>Autonomous Agency</b>	
National Administration of Conservation Areas (ANAC)	The PA Agency has been created (Decree 11/2011) as the agency in charge of managing all Conservation areas, PA included, and with tourism concessioning powers. It is expected to become functional still in 2012.

Ability of the government to manage concession processes, to evaluate, negotiate and implement them can be illustrated by considering two key processes: the negotiation for Gorongosa's co-management, the interaction with the IFC on concessions in MSR.

In the negotiation for **Gorongosa**, the preparation by the Carr Foundation and MITUR is described by MITUR as follows. The reflections highlight that the government did not have experience in negotiating agreements of this type, and that they may have had a stronger position if they had experienced people on the team, and also if they had drafted an agreement for the partnership<sup>206</sup>.

**Table 9: Negotiation between MITUR and the Carr Foundation for Gorongosa**

	Carr Foundation	MITUR
Objectives	Provide financial & technical support  Take leadership in management of	Receive financial and technical support for management of Gorongosa

<sup>204</sup> Park administrators are an integral part of the Provincial tourism structure; the administration (organization) itself is a service inherited from MINAG

<sup>205</sup> Forestry and Wildlife Regulation

<sup>206</sup> Soto, 2012

	Gorongosa	Take leadership in management of resources.
Priorities	Provide support for rehabilitation of the Park  Ensure that the support will be sustainable	Ensure that the ownership of the process remains with the Mozambique  Ensure that the process is legal
Tactics	Experienced negotiators  Organised the Hotel Avenida as a Venue (independent)  Drafted the text of the agreement	No experienced negotiator  Experienced in protected areas management  Did not have a venue and did not propose one

Source: Soto, 2012

In the case of **MSR**, an MoU and an agreement were made between MITUR and the IFC, whereby the IFC offered to support the government in a tender process for tourism concessions in the reserve. The lengthy four-year process included two main challenges in the relationship and the process: Firstly, a negotiation with an international investor for the Milibangalala concession, and secondly, in relation to whether there would be a concession directly between the government and the concessionaire, or through an intermediary agency. In the case of the international investor, negotiations failed in part due to the inability of government to provide assurances regarding a proposed deep-water port in the reserve (and this was coupled with the escalating global financial crisis). With regards to the concession arrangement, the IFC had recommended direct concessions between government and the private sector. However, the government, apparently fearing that it would lose sovereignty over large tracts of the reserve, instead decided to award one concession to a community association, and two others to a new publicly-owned company, called Mozaico de Indigo (Mdi). The introduction of Mdi was poorly timed, in that it was only conceptualised after the expressions of interest had been submitted, and bidders shortlisted. The introduction of a new, untried and untested partner into the mix in part led to bidders not proceeding with full proposals for the two sites. In fact, no bids were submitted for Milibangalala, and the two submitted for Dobela were not concluded within the IFC process, as they did not meet the evaluation criteria<sup>207</sup>. Since the IFC's program has ended, Mdi has undertaken negotiations with both bidders, and is now has an MoU with one for a development at Dobela.

The Gorongosa and MSR experiences demonstrate that the government requires greater capacity and expertise to understand, negotiate and manage tourism concessions processes. In part they recognise their weaknesses, but action is required to increase their ability to collaborate with partners to speed up concessions processes and ensure that investors gain the confidence they need in prospective partnerships.

<sup>207</sup> IFC, 2012

## PRIVATE SECTOR

According to GoM's policies<sup>208</sup>, private sector investment is considered pivotal for economic growth and poverty alleviation. In conservation, private investors, whether national or foreigner (as long as duly commercially and tax registered in Mozambique), can be tourism concessionaires or tourism operators. The current strategies for tourism concessions in PA (details of current examples were discussed above) aim at attracting investors with capital investment capacity and a sustainable environmental and social approach.

In the recent past, tourism concessions in protected areas (e.g. MSR) have been granted to a private company with public shareholders (e.g. Mdl). This company would then have a sub-agreement with the private sector for a concession period.

One of the key issues that the private sector needs to address in tourism concessions, is that of financing. In Mozambique options for financing may include Mozambican banks (but with high interest rates), or UK banks (which require high guarantees for loans). Other loans can be obtained from the IFC or smaller donor agencies. The IFC has a *Unidade de Implementação do Projecto de Apoio a Competitividade (PACDE)* program, which is designed to Support the growth of smaller businesses in Mozambique. The Centre for Promotion of Investment (CPI) also provides fiscal incentives for eligible projects in the country. These may include tax benefits for the first 5 years of operation, and exemptions on import duties<sup>209</sup>.

Foreign exchange and investment regulations in Mozambique state that<sup>210</sup>:

- Execution of shareholders and third party loans agreements between resident companies and foreign entities is subject to the prior authorization from Central Bank: the contract and parties will be given a reference and each time a transfer is received, such import must also be registered; repayments will only be authorised if, amongst other formal requirements, import registrations and tax clearance certificates are presented.

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<sup>208</sup> GoM Program for 2010-2014 approved by Resolution 2/2004; Tourism and Conservation Policies.

<sup>209</sup> Turner, 2012

<sup>210</sup> Turner, 2012

- Any payments for the provision of services by non resident entities, is subject to a registration procedure with commercial banks (that shall follow up directly with Central Bank); a contract stipulating several payments will have to be subject to the opinion of the tax department (for calculating withholding tax due) over and above the procedure regarding the tax clearance certificate.
- Central Bank requires specific forms to be used for each request.
- The only feature of the foreign recipients of the payments that is relevant in terms of foreign exchange controls is the possible application of a double taxation agreement.

Challenges faced by the private sector include<sup>211</sup>:

- Weak infrastructure, including for roads, airports, communication and electricity;
- Bureaucracy, and a lack of administrative knowledge, with complex laws (e.g. labour law).
- Lack of communication and cooperation between different government agencies and departments.
- Delays in processes, which lead to frustration and many investors walking away.
- Obtaining good advice regarding laws, regulations and red-tape.

## LOCAL COMMUNITIES

As far as local communities are concerned, irrespectively of the date of the creation of a park or reserve, communities residing in PAs, or dependant on their natural resources, have customary<sup>212</sup> access, occupation, use and benefit rights<sup>213</sup>. The fact that neither the special license nor the granting of a concession contract results in compulsory expropriation (the Conservation Policy, Annex 4, establishes the guidelines applicable to resettlement of PA local communities, qualifying it as an extreme measure), over and above their resources management rights<sup>214</sup>, also contribute to this understanding.

Communities are legally empowered to be involved in several tourism concession approval stages<sup>215</sup> and

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<sup>211</sup> Turner, 2012; Law, 2012

<sup>212</sup> Scott, 1985

<sup>213</sup> Also qualified as native (indigenous), historical (precedence) or natural (human)

<sup>214</sup> Forestry and Wildlife legislation and Fisheries legislation approved by Decree 51/99

<sup>215</sup> Land legislation, and Tourism Licensing legislation – Decree 18/2007 and Time Sharing regime approved by Decree 39/2007

to sharing of benefits, mainly through sharing of parks and reserves revenues<sup>216</sup>. In some cases, communities organised in legal entities are granted a special license that allows them to seek for a private sector partner to develop a tourism project where the community has already invested. This can be with international support in some cases, and in other instances, they are granted concessionaire's type rights over a larger area and requiring private capital investment (community co-ownership with the State)<sup>217</sup>.

There is a good range of options for local communities, assisted by community brokers or investors themselves, to legally partner with PS:

- Communities holding a special license must be formalised as legal entities;
- Communities holding concession rights must be formalised as legal entities; and
- Communities contractually agreeing sharing of benefits or conservation related issues<sup>218</sup> do not have to be legally represented by a community legal entity.

Only when organised in community legal entities, local communities can be part of corporate equity arrangements with the PS (i.e., become a shareholder in the implementing company/special purpose vehicle or SPV and be service providers).

In Mozambique concessions have been leased to community associations, with and sub-grant rights to form commercial partnerships. An example is the association Ahi Zameni Chemucane, which holds the Chemucane concession in MSR.

When the private sector is working directly with communities, it is vital for a good relationship to be created. The communities need to perceive a benefit from tourism, but also for the risks and responsibilities to be understood. Communities expectations should be carefully managed, particularly with regards to the lengthy timeframes that can be involved between the inception of a project, and seeing tangible benefits<sup>219</sup>.

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<sup>216</sup> Sharing of PA revenues legislation

<sup>217</sup> WWF, 2009

<sup>218</sup> A pre-condition for any new tourism development in the QNP.

<sup>219</sup> Law, 2012

## DONORS

As far as the involvement of donor partners<sup>220</sup>, since 2008 Mozambique has been the recipient of an average of over 18 million annual USD<sup>221</sup> towards PA development, and many are those that have supported or continue supporting GoM and MITUR's efforts in different fronts, totalizing approximately of 89% of revenues for PAs: USAID, World Bank, AWF, AFD, GEF, and the Italian Cooperation<sup>222</sup>.

## NON-GOVERNMENTAL ORGANISATIONS

Locally established non-governmental organizations (NGOs) have been supporting tourism concessions at the management plans (or their review) level and also at the implementation level. Most of the times together with park administrations, their role as community brokers is crucial.

Their main tasks involve facilitating communication with implementing donor agencies/contractors providing basic theoretical training in legal issues, organising and legalising community management committees<sup>223</sup> and legal entities, and facilitating meetings, mediating explanations and sometimes negotiating on behalf of communities before the private sector, community capacity building in new technologies, products, services and markets and extension activities<sup>224</sup> and assisting in monitoring compliance of contractual obligations (for instance, Peace Parks Foundation, PPF, presently has a co-management arrangement with MITUR for the MSR).

## RECOMMENDATIONS FOR MOZAMBIQUE

Based on this analysis, recommendations are provided in relation to concessions models, their implementation, procurement methods, management of concessions, and also to the legal framework.

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<sup>220</sup> It is worth noticing that MPD has approved as Circular n2 01/GM/MPD/2011 dated 30.03.2011 the criteria for selection of public projects for external financing

<sup>221</sup> WWF, 2010

<sup>222</sup> <http://www.cbd.int/lifeweb/project.shtml?did=6319>

<sup>223</sup> Recipients of Park generated revenues

<sup>224</sup> Conservation Policy

## APPROPRIATE CONCESSION MODELS

Based on the series of challenges identified for concessions models and frameworks in Mozambique, a series of recommendations are outlined in the table below.

**Table 10: Challenges and recommendations for concessions models**

Challenges with concessions frameworks	Recommendations
<p>Different protected areas have different systems and rules for procuring and contracting investors in tourism concessions</p> <p>Political will to drive the appropriate legal framework is required. This includes enforcement of the law (i.e. poaching), addressing the dichotomy of conservation and people living inside protected areas<sup>225</sup>, and also ensuring that processes are not derailed during the process.<sup>226</sup></p> <p>There are no standard concession regimes or contracts</p> <p>There are different levels of capacity and understanding of the legal and concessions development processes in different government departments and sometimes even the same Ministry</p> <p>Licenses, registrations, authorizations and approvals procedures are cumbersome to be followed</p> <p>Speaking, communicating and preparing documents in a foreign language will cause delays</p>	<p>Develop clear guidance for suitable concessions models and frameworks to avoid 're-inventing the wheel'</p> <p>Consultation and coordination between government departments.</p> <p>Obtain written agreement to agreed processes.</p> <p>Highlight and lobby areas where law needs enforcement.</p> <p>Establish templates and examples of concession contracts.</p> <p>Training and capacity building for government staff and departments.</p> <p>Dissemination of this report and concessions manual</p> <p>Establish 1-stop shops to guide investors through the process.</p> <p>Ensure staff have adequate understanding and clout to assist in liaising with different departments.</p> <p>Availability of documentation in Portuguese and</p>

<sup>225</sup> Rodrigues and Booth, 2012b

<sup>226</sup> IFC, 2012



and misunderstandings	English Personnel who speak both languages.
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Some of these recommendations can be implemented easily through the current project. For example, information on concessions models, and legal frameworks, is contained within the Concessions Manual that has been produced. In addition, some capacity and networks for improved communication between stakeholders has been built through the concessions workshop that was held.

## **PROCUREMENT PROCESSES**

Based on the series of challenges identified for concessions processes in Mozambique, some recommendations are outlined in the table below. The most difficult of these to address are those that relate to weak governance of rules and processes, and slow public sector processes. However, the creation of coordination forums, templates and tools for concessions procurement is not difficult, and some of the templates are already provided in the Concessions Manual created through this project.

**Table 11: Challenges and recommendations for concessions procurement processes**

Challenges with concessions processes	Recommendations
Transaction costs can be high when developing partnerships with local rural communities, as they will probably have very low capacity and understanding of the tourism industry	Provide linkages to NGOs and other technical advisory bodies who can support processes with communities  Basic education and tourism awareness for all
Unclear or not precise scope of the bid and contract	Clear bidding documents and contracts, which include all necessary information.
Weak coordination between different government ministries and departments, which lead to slow and inconsistent concession processes.	Steering committees responsible for concessions procurement and management, including representatives of relevant bodies.  Training and capacity building for government staff on concessions.
Weak governance of rules and processes. Sometimes they are adapted or de-railed once launched, and should not be manipulated for political purposes <sup>227</sup> .	Written agreement to adhere to agreed concessions processes.
Some sites are offered for tender which are not yet clear, or free of external risks <sup>228</sup>	Only offer sites for tender that are clear.  Liaison with provincial government to clear land.
Insufficient data (e.g. lack of management plans, or market information)	Management plans, feasibility studies and site assessments undertaken prior to concessions tender processes.
Product appropriateness	Market assessments of products.
Access to finance	Available information on financial mechanisms and resources.
Slow public sector action	Regulations on timeframes for deliverables and regulations processes, and enforcement.

<sup>227</sup> IFC, 2012

<sup>228</sup> IFC, 2012

Business plan incomplete or insufficient	Guidance to investors on requirements for business plans, including template contents and examples.
Insufficient infrastructure in the PA	Budgets and plans for appropriate infrastructure development, and allocation of resources to implement them.
Lack of clarity on the level of EIA required	Legal clarity on EIA levels required in protected areas and buffer zones, within tender prospectuses and background information

## CONCESSIONS MANAGEMENT

Recommendations to address challenges identified for concessions management in Mozambique are outlined in the table below. Many of the challenges can be resolved simply by recruiting appropriate personnel, and by providing adequate training for them (i.e. relating to understanding, leadership and management). The creation of documentation that supports contract management, and is available in English and Portuguese, are also simple to implement.

**Table 12: Challenges and recommendations for concessions management**

Challenges on concessions management	Recommendations
Language barriers (English-Portuguese)	Documentation available in both languages.
Bureaucratic procedures	Personnel who are bi-lingual Simplification of processes Clarification of processes, requirements and timeframes.
Poorly drafted concession agreements	Use of templates and examples to ensure adequate clauses included. Sound negotiation techniques between signatories. Ensure good understanding of concession agreements by all signatories.
The people involved in negotiating the concession agreement are not the same as those given responsibility for managing it	Ensure continuity of personnel, and/or handover between people. Allow adequate time for new personnel to be up-skilled.

Inadequate resources are assigned to concession agreement management	Appropriate recruitment and allocation of human resources. Training and capacity building of staff.
Poor institutional leadership and/or misunderstanding of the concession agreement	Appropriate recruitment and allocation of human resources. Training and capacity building of staff.
The institution team does not match the private party team in terms of skills or experience (or both)	Appropriate recruitment and allocation of human resources. Training and capacity building of staff.
The wrong people are put in place, leading to personality clashes or ineffective management	Appropriate recruitment and allocation of human resources. Training and capacity building of staff.
The context, complexities and dependencies of the concession agreement are not well understood	Appropriate recruitment and allocation of human resources. Training and capacity building of staff.
There is a failure to assess private party or institutional assumptions adequately	Adequate due-diligence
Authorities or responsibilities relating to commercial decisions are not clear	Clarification on roles and responsibilities during preparation period.
A lack of independent reviews of the concession agreement management arrangements	Allocation and nomination of independent reviewers (e.g. NGOs)
A focus on current arrangements rather than on what is possible or the potential for improvement	Forward planning and scenario mapping
A failure to monitor and manage institution risks.	Integration of adequate monitoring and evaluation frameworks and personnel.

## LEGAL AND REGULATORY ISSUES

From an institutional and legal perspective (and assuming that the Conservation Policy will be further regulated as discussed above) the fact remains that there will still be challenges directly affecting tourism concessions. These challenges relate to models, criteria, with the approval and implementation of internal and inter-institutional procedures', coordination mechanisms and with the drafting and approval of legislation itself.

However, an adequate regulatory framework is of little value if GoM does not have the capacity to manage PAs or tourism development<sup>229</sup>.

**Table 13: Challenges and recommendations for concessions legal frameworks**

Challenges on legal framework and regulations	Recommendations
PS perception of a complicated and incomplete legal framework	Concessions Manual formally endorsed by MITUR.
Lack of technical legal skills (drafting, interpreting, negotiating and enforcing)	Appropriate recruitment and allocation of human resources
	Training and capacity building of staff.
	Disseminate applicable legislation.
	Guidance over tourism concessions development processes / implementation guidance.
Compliance with PPP legislation	Written confirmation from Council of Ministers (internal resolution).
	Regulation of PPP regime in the Conservation Law.
Charging of contractual concession fees	Regulation in the Conservation Law.
One set of PA Tourism fee amounts for all PA	Amend legislation so as to acknowledge and regulate PA differences.
Lack of legal regime for issuance of the special license	Approval of legal regime (including issuance requirements, difference, or not, of regime when co-ownership models apply, EIA requirements)
Lack of legal regime for concession models	Approval of the Conservation Law
	Approval of models, and granting of contracts process, by ANAC (or Council of Ministers).
Lack of legal regime for integrated management plans	Definition and standardization of management plans' scope, elaboration and approval processes (including minimum tourism concessions' access conditions/criteria).
Lack of legal regime for licensing of ecotourism projects and for Hunting	Approval of regime (definition of scope and licensing requirements and procedures <sup>230</sup> )

<sup>229</sup> Eagles et al, 2002

concessions	
State ownership of the land and immovable and fixed assets with a permanent character makes it impossible to grant these as loan securities (mortgage or pledge)	Carefully assess alternative guarantees.
Political will to drive the appropriate legal framework is required. This includes enforcement of the law (i.e. poaching), addressing the dichotomy of conservation and people living inside protected areas <sup>231</sup> , and also ensuring that processes are not derailed during the process. <sup>232</sup>	Consultation and coordination between government departments. Obtain written agreement to agreed processes. Highlight and lobby areas where law needs enforcement.
Licenses, registrations, authorizations and approvals procedures are cumbersome to be followed	Establish 1-stop shops to guide investors through the process. Ensure staff have adequate understanding and clout to assist in liaising with different departments.
Inspections and penalties	Applicable legislation must be made known by trained officials or PS, and be easily accessed.
Corruption	Liaise with Attorney general's office (recent)

## OVERARCHING RECOMMENDATIONS

### TECHNICAL GUIDANCE

One of the outputs of this project is the development of a technical manual to guide the private sector on concessions models, procurement, the legal framework and their management. This manual not only

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<sup>230</sup> In a recent past, MITUR prepared drafts separately regulating these 2 activities, and these could be used as a basis to proceed with the required regulation

<sup>231</sup> Rodrigues and Booth, 2012b

<sup>232</sup> IFC, 2012

needs to be disseminated to the private sector, but it also needs to be supported by the following in order to be effective:

- A complementary and aligned manual for the public sector
- Technical assistance to support investors through the complex and bureaucratic process (e.g. through 1-stop shops).

## **TRAINING**

An adequate regulatory framework is of little value if GoM does not have the capacity to manage PAs or tourism development<sup>233</sup>. Training is required for public sector officials, across ministries, departments, and levels of government in the tourism concessions models, processes, their management and troubleshooting. This should also be supported by an understanding of the concession examples and experiences in Mozambique and regionally.

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<sup>233</sup> Eagles et al, 2002

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## ANNEXES

### ANNEX 1: TERMS OF REFERENCE

## **SPEED PROJECT - TERMS OF REFERENCE** *Concessions in Mozambique's Protected Areas*

### **Background of Project**

The Support Program for Economic and Enterprise Development (SPEED) is a four-year private-sector-led project funded by USAID/Mozambique intended to help Mozambique overcome major obstacles to trade and investment, with a focus on improving the quality, quantity, and process of beneficial business climate reforms. With the contribution of both the Government of Mozambique and the private sector, the project aims to build key policy reforms; strengthen private sector participation in policy dialogue; and create the capacity and systems to ensure that key reforms are implemented effectively.

### **Description of activity**

Mozambique has enormous potential to grow its tourism industry. The key drivers of international travel—scenery, wildlife, and culture—are of outstanding quality and value in Mozambique. Mozambique's tourism assets include spectacular beaches and marine resources along the Indian Ocean coast, large game parks and hunting reserves as well as cultural attractions such as Mozambique Island, a UNESCO World Heritage Site. However, for the tourism sector to grow, Mozambique must translate its opportunities into meaningful products and services.

In the past decade, the Government of Mozambique (GoM) has produced a number of policies, laws and regulations fostering the development of the tourism sector. The Tourism Policy and Strategy (2003) recognizes the value of protected areas and regards the promotion of tourism development in protected areas a priority area for intervention. The existing policy and legal framework also recommends the elaboration of clear guidelines to assist in the development of sustainable tourism operations, and concessions, in protected areas. With approval of the Conservation Policy in 2009, GOM further shows the importance and value of sustainable conservation management in protected areas.

Developing sustainable tourism concession models in and around Mozambique’s key protected areas (over 11 percent of Mozambique’s land area is comprised of National Parks and Reserves), is one way for the GoM to get the private sector engaged, to enable communities to benefit from tourism development, to increase job creation, and to help the Mozambique’s tourism industry grow. When designed and implemented correctly, tourism concessions can greatly benefit a wide range of stakeholders, while ensuring the environmental protection of critical assets.

In Mozambique, tourism development is already taking place in many protected areas, mainly through the application of different concession models. In Gorongosa National Park, for example, the entire park is a concession (for private management and rehabilitation) and they have one operator with two years’ experience running safari operations, another just signed up to manage the main camp (Visabeira, a Portuguese conglomerate), and there are five additional concessionaires poised to sign contracts in the next six months. Gorongosa has a tremendous body of knowledge and recent experience to build upon, including Carr’s agreement with the GOM (which could be replicated in other parks and with other private sector partners).

The table shows the National Parks and Reserves that currently have tourism concessions.

<b>National Parks</b>	<b>Existence of Tourism Concessions</b>
Quirimbas National Park	Yes
Gorongosa National Park	Yes
Zinave National Park	Yes
Bazaruto Archipelago National Park	Yes
Limpopo National Park	Yes
Banhine National Park	No
<b>National Reserves</b>	
Niassa National Reserve	Yes
Gilé National Reserve	No
Marromeu Special Reserve	No
Chimanimani National Reserve	No
Pomene National Reserve	No
Maputo Special Reserve	Yes

The main purpose of this study is to analyze and understand the characteristics of the tourism concession models that are currently applied in Mozambique protected areas. This assessment will be done in the light of the relevant country’s policy and legal framework and drawing on regional experiences and best practices.

A conference on Innovative Concessions Partnerships for Tourism in Protected Areas is planned in Mozambique by the IUCN World Commission on Protected Areas. Output from this assignment will be a key input to the IUCN conference.

Tasks in the scope of work include:

- Examining best practice models of tourism concessions in protected areas, looking at current practices implemented in Mozambique, in the region (e.g. South Africa, Namibia, Botswana), and other countries where tourism concession models have been highly effective;
- Analyzing what has been implemented in terms of concessions within Mozambique, the experiences to date, lessons learned, best practices, and recommendations for future concession models; and
- Briefing tourism stakeholders, including the Ministry of Tourism, Mozaico do Indigo, tourism industry and donors on findings and recommendations for implementation of concessions in and around Mozambique's protected areas.
- Assisting in organizing and writing up the IUCN conference.

The consultant will:

1. Analyze the different tourism concession models:
  - Identify the different models implemented in Mozambique protected areas.
  - Review important documentation including the Protected Areas Management Plans as well as tourism concession models contracts, licenses and other relevant instruments.
  - Describe the characteristics of concession models, including management, ownership, tax/fee structures, public/private roles, role of local communities, utilization of revenues and implications for conservation.
  - Summarize implementation experience with concession models.
  - Describe the pros and cons of the various concession models and conditions under which alternative models are most appropriate.
2. Analyze existing procedures for procurement, negotiation and award of tourism concessions and leases in protected areas.

3. Review the institutional framework, including:
  - Understanding the government’s policy and priorities, strategic objectives and how tourism concessions could address these.
  - Understanding lines of decision-making within government and the role of key stakeholders (MITUR, DNAC, DINATUR, TFCA, Protected Area Administration, etc) in the conservation management and tourism development of protected areas.
  - Assessing government’s ability to manage, process, evaluate, negotiate and implement tourism concessions in protected areas.
  
4. Meet with a range of local stakeholders to learn more about applicability of concession models to Mozambique. including:
  - Government agencies - the Ministry of Tourism (MITUR), specially the National Directorate for Conservation Areas and the Transfrontier Protected Areas (TFCA) Unit, the Ministry of Agriculture (MINAG), the Ministry for the Coordination of Environmental Affairs (MICOA) , the National Administration for Conservation Areas (ANAC) and Provincial Directorates,
  - Tourism concessionaires in protected areas - Mozaico do Indigo S.A., private sector tourism operators and community associations (i.e A Hi Zameni Chemucane).
  - Others – tourism associations, hotel operators, donors and NGOs.
  
5. Understand the role of local communities in tourism concessions in protected areas and assess possible structures for the establishment of CPPPs (partnerships between local communities, private investors and the State).
  
6. Provide recommendations:
  - Based on research and analysis, make recommendations for appropriate concession models and processes that could be applied to Mozambique’s protected areas.
  - Provide implementation guidance for selected concession models.
  - Provide advice on procurement methods to secure tourism concessions in protected areas.
  
7. Organize, facilitate and write up outputs for the IUCN conference on Innovative Concessions Partnerships for Tourism in Protected Areas, in collaboration with the workshop facilitator. The cost of conference venue, lunches and coffees, stationary, internet connections and field trip transport will be covered by the SPEED project.
  
8. Comment and assist with on inputs by the Regulatory specialist as follows:
  - Review the legal and regulatory framework that promotes private sector investment and participation in protected areas.

- Based on current laws and regulations, prepare a manual for concessions in protected areas including guidelines for investors and sample concession documents.
- Provide recommendations for possible regulatory reforms that could improve the investment climate and facilitate tourism investment in protected areas.
- Preparing a manual for concessions in protected areas

### **Deliverables**

The consultant will work under the supervision of Scott Simons, SPEED Chief of Party and be responsible for the following deliverables:

- Draft report, with executive summary.
- Power Point slides describing main findings, key recommendations and their implications.
- Presentation of slides at a meeting of key stakeholders as well as at a public workshop/seminar.
- Final report, with executive summary, within 2 weeks of receiving comments on the draft report.
- Comments on draft manual for concessions in protected areas.
- Short policy note to be used for wider dissemination in Mozambique, as needed.
- IUCN conference and related outputs (publication on best practices in public private partnerships for tourism in protected areas)



## ANNEX 2: LIST OF STAKEHOLDERS CONSULTED

<b>Government</b>	
TFCA unit	Dr Bartolemeu Soto
MITUR (Ministry of Tourism)	Dr Mohammed Harun
Ministry of Finance	Roberto de Souza
Mozaico de Indico	Armando Jeque
<b>Protected areas</b>	
Gorongosa National Park	James Glasgow
Limpopo National Park	Antony Alexander
Niassa National Reserve	Madyo Couto, Anabela Rodrigues
Maputo Special Reserve	Peter Scott
<b>Donors</b>	
IFC	Irene Visser / Michelle Souto
USAID	Robert Layng
World Bank	Mazen Bouri, Albino Mahumane, Sergio Macamo, Karen Jensen, Albino Mahumane
<b>Embassies</b>	
Netherlands	Celia Jordao
<b>Private sector</b>	
Barra resorts	Dave Law
Manda Wilderness	Malcolm Turner
Marlin Lodge, Bazaruto	Peter De Klerk
Technoserve	João Viseu, Paulo Mussanhane
TFPD	Glyn O'Leary
Bell Foundation	Geoff Whitelaw
<b>NGOs</b>	

MICAIA	Andrew Kingman
Lupa	Geraldo Palalane
PPF	Arrie van Wyk, Peter Scott
AWF	Simon Munthali
WWF	Sean Nazerli
IUCN	Regina Cruz
ASL	Steve Collins

### **ANNEX 3: WORKSHOP REPORT**

See enclosed file

### **ANNEX 4: CONCESSIONS MANUAL**

See enclosed file