

Human rights impact assessments for sustainable tourism in southern Africa's transfrontier conservation areas (TFCAs)

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Introduction

Transfrontier conservation areas (TFCAs) as their name suggests are principally aimed at conservation of biodiversity and ecosystem management across international borders. During the early stages of the adoption of this conservation mechanism it was anticipated that these areas would also enhance economic development through tourism given the vastness of the wilderness expanses with the joining of protected areas across national boundaries. However, inherent in this mechanism is the inclusion of different land uses which incorporates even communal land. Therefore a number of rural communities live within these areas and in near proximity with the protected areas where much of the tourism occurs. Most of the TFCAs in the region are situated in peripheral areas where the land is not necessarily arable and produces low yields so that the people tend to be marginalised and poverty stricken. However, for tourism, especially wildlife tourism and the “wilderness experience” it is promising. One need only mention the Kruger National Park which falls under the Greater Limpopo TFCA. Participating countries therefore have a drive towards attracting private investors to take advantage of this resource but often without much consideration or involvement of the community. Indeed the establishment of some of these TFCAs has been without participation or consultations at grassroots level. As such this raises concerns around the human rights issues in these areas. This paper therefore seeks to make a case for the adoption of HRIA as an important tool for sustainable tourism development in TFCAs in the SADC region. For illustrative purposes reference is made to the Greater Limpopo TFCA involving South Africa, Mozambique and Zimbabwe as an already existing TFCA with more than 10 years in operation.

TFCAs in Southern Africa

A TFCA in the southern African context is defined as the area or the component of a large ecological region that straddles the boundaries of two or more countries, encompassing one or more protected areas, as well as multiple resource areas. At the inception of the TFCA programme for the region, the focus was to establish conservation areas that go beyond protected areas to include multiple resource areas such as communal lands, private land, forest reserves and wildlife management areas, including, where appropriate, consumptive use of wildlife.¹ The multiple resource areas are used by communities and private landholders. Therefore

¹ Hanks J “Transfrontier Conservation Areas (TFCAs) in southern Africa: their role in conserving biodiversity, socio-economic development and promoting a culture of peace” 2003 *Journal of Sustainable Forestry* 128.

the TFCA is a deliberate effort to include local communities and therefore communal land forms a significant part of a number of TFCAs in the region. Communal areas are typically found within or in areas adjacent to national parks. The most common land uses such as, *inter alia*, subsistence agriculture, grazing, and shifting cultivation. Where communal lands fall within a part of the PA region of the TFCA arrangements are usually made with the community leaders relating to the land use. Such arrangement may include, *inter alia*, lease agreements in terms of which that part of the communal land is under the use and control of the PA authorities for some compensation, agreements in terms of which the communities have their land use rights restricted in accordance with the goals of the PA. The situation is different where the communities are outside the PAs. Here, communities may be able to exercise their land use rights without much limitation so that in some instances it does not conflict with the ultimate goal of the TFCA.

Be that as it may, the key objectives of TFCAs are biodiversity conservation, regional integration, economic development and poverty alleviation. The essence of TFCAs is the sustainable use of natural resources.² First this calls for biodiversity conservation, that is, the joint management of ecosystems. Yet, conservation is not seen as an end in itself given the socio-economic systems involved as reflected by the various land uses – economic development at local, national and regional level is also envisaged to promote regional economic integration and poverty reduction. From the beginning tourism, has been identified as the key driver of these objectives.

Tourism in SADC TFCAs

A number of the establishing agreements of the TFCAs in the region identify tourism, particularly eco-tourism, as the means by which economic development and poverty alleviation are to be achieved. Consequently, the establishment of these TFCAs has led to the development and packaging of historical, cultural and heritage products for tourism consumption. Sustainable development of tourism therefore requires that in the pursuit of quality experiences for visitors, balanced consideration should be made of environmental protection as well as improvement of livelihoods for host communities. Improvement of livelihoods in the TFCA context means, *inter alia*, access to and management of natural resources, land ownership, access to and improvement of basic services, beneficiation, access to information, active and informed participation in decision making, and access to justice.

Sustainable tourism development in TFCAs: HRIA for improvement of livelihoods

However, one of the biggest challenges set against the improvement of livelihoods for local communities in these TFCAs is the non-recognition by domestic legislation of common property. In the GLTFCA for instance the Constitutions of the participating countries recognise socio-economic rights such as those relating to customs, culture, development and to some extent environmental rights, but not rights to common property or self-determination which are essential for accountability

² For a detailed discussion on the notion of sustainable resource use see Mensah AM and Castro LC 2004 *Sustainable Resource Use & Sustainable Development: A Contradiction?* http://www.zef.de/fileadmin/downloads/forum/docprog/Tempapers/2004_3b_Mensah_Castro.pdf [Date of Use 27 Mar 2014].

of governments towards rural and indigenous local communities.³ Even then the scope and application of these rights varies between countries.

As such it becomes important for tourism investors and/or developers to undertake human rights impact assessments in order to minimise the adversity that is already imminent to local communities in these regions a number of which are poverty stricken and marginalised. Moreover, a few of these communities comprise of indigenous communities whose rights should be protected in accordance with international standards. Currently such an approach is lacking in the region and if implemented would in most instances involve ex post evaluations and compliance checks given that there are already many tourism establishments in existing TFCAs.

For sustainable tourism development, human rights accountability mechanisms for private sector activities are crucial. This of course does not preclude the duty of the state to protect citizens from harm done by domestic and transnational corporations, companies have a duty to respect rights and abide by national laws, which may codify international human rights treaty obligations.⁴ HRIAs are an important tool for increasing transparency, accountability and human rights realisation.⁵ The HRIA therefore requires companies to undertake human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights.⁶ This involves “meaningful consultation with potentially affected groups” to assess actual and potential human rights impacts, integrating and acting on findings, and tracking and communicating how impacts are addressed. This of course is largely dependent on the duty of the State to ensure that those affected by human rights abuses have access to effective remedy through binding mechanisms for state and company compliance.⁷ However, it is imperative for business enterprises to take active steps to provide for remediation through legitimate processes, such as dialogues and multi-stakeholder processes.⁸ Mechanisms for external participation and independent monitoring/review are also important for business compliance.

The community led approach, as opposed to methodologies designed to be implemented by companies or on behalf of financial institutions, is more preferable as a tool specifically designed for use by affected communities with the aid of or in partnership with support organisations.⁹ Watson, Tamir and Kemp argue that company led HRIAs start with due diligence concerns with a focus on risk mitigation and therefore business risk whereas the community based HRIAs start with local

³ Bocchino C “A rights-based approach to commons management for the Great Limpopo TFCA” presented at the 14th Global IASC Biennial Conference, Mt Fiji 4-7 June 2013.

⁴ Watson G, Tamir I and Kemp B 2013 Human rights impact assessment in practice: Oxfam’s application of community-based approach *Impact Assessment and Project Appraisal*, 31:2, 118-127.

⁵ Watson, Tamir and Kemp 2013 119.

⁶ See the United Nations 2003 Draft Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights; Ruggie J 2011 Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Project, Respect and Remedy’ Framework.

⁷ Ruggie 2011 22.

⁸ See Ruggie 2011 at 26-27 for effective criteria for non-judicial grievance mechanisms.

⁹ Oxfam America “Community-Based Human Rights Impact Assessment Initiative” available at <http://policy-practice.oxfamamerica.org/work/private-sector-engagement/community-based-human-rights-impact-assessment-initiative/> date of use 13/02/2015.

community perspectives with a focus on their concerns, that is human rights risks, and aspirations for human rights realisation.¹⁰ This therefore involves engagement by and between local communities; and consultation and dialogue with the private investors and the government. If undertaken in this way, the community-based HRIA conducted can be highly effective in identifying, documenting and generating actionable recommendations to address human rights concerns.¹¹ However, it has been suggested that the HRIA undertaken by business cannot be excluded altogether. Instead, a “matched-pair HRIA” approach is likely to yield well-balanced results where the two are done simultaneously.¹²

Conclusion

Given the importance of a human rights based approach to sustainable livelihoods in the TFCAs within the SADC region, the matched-pair HRIA approach may be useful mechanism for sustainable tourism development. This requires its adoption into the SADC TFCA Programme at its three levels: the SADC Secretariat; national level; and TFCAD level. The Secretariat may therefore introduce the HRIA as a fundamental driver of its enhancement of local livelihoods component by its inclusion in the tourism development normative framework as guidelines for sustainable tourism development in the region with an institution in place to monitor compliance at regional level. At national level, this may mean the incorporation into domestic tourism related legislation. For instance in South Africa, the EIA regime which falls under the rubric of laws regulating natural attractions, has an established legal framework with binding mechanisms for monitoring and compliance.¹³ Research into the possibility of incorporating the HRIA approach, which in the context of TFCAs is closely related to the environment, into the EIA regime as an essential component thereof, could assist in facilitating compliance and monitoring by tourism enterprises.¹⁴ At TFCA level, the HRIA should also be a component for the tourism development plans and adapted to suit the specific TFCA as single integrated unit. At this level, considerations of the nature of tourism business for purposes of tailoring the matched pair HRIA become important. Essentially, the business based component of the tool should be able to be suitable for both foreign owned and domestic corporations and their localities within the entire TFCA unit. The community based, on the other hand, should then address the local community dynamics involved.

¹⁰ Watson, Tamir and Kemp 2013 123.

¹¹ Watson, Tamir and Kemp 2013 123.

¹² Watson, Tmir and Kemp 2013 126.

¹³ The effectiveness of these mechanisms is still debatable at this stage. The latest amendments (2013 Amendment) to the principal legislation for EIAs in the country, the National Environmental Management Act 107 of 1998 seems to be encouraging more of voluntary compliance rather than mandatory compliance. In this regard the act has repealed the major criminal sanctions imposed for non-compliance with EIAs.

¹⁴ Further research in this area is necessary.