

# UNDERSTANDING THE ECOLOGICAL, ECONOMIC AND SOCIAL CONTEXT OF CONSERVANCIES IN ZIMBABWE

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## AFRICA BIODIVERSITY COLLABORATIVE GROUP



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## Cover Photo Montage: African Wildlife Foundation



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# Executive Summary

Over the past one year with support from USAID through the Africa Biodiversity Collaborative Group (ABCG) the African Wildlife Foundation (AWF) has conducted extensive research on the wildlife sector in Zimbabwe; the role of conservancies in Zimbabwe and Africa; and potential business and structural models that may be applied to conservancies in Zimbabwe to achieve long-term conservation and economic sustainability. This work has been completed at the request of the Zimbabwe Parks and Wildlife Management Authority (ZPWMA).

Wildlife in Zimbabwe's Protected Areas, CAMPFIRE areas, and conservancies are declining and at great risk. Habitat throughout Zimbabwe's conservation areas has been severely degraded over the past decade and sources of revenue to support conservation are limited due to the economic and political situation in Zimbabwe and the corresponding decline in photographic and hunting tourism.

Conservancies throughout Africa play vital ecological, social and economic roles. While the precise shape, structure and composition of conservancies vary across the continent, one of the key ingredients for success and sustainability of conservancies is the meaningful integration of surrounding communities. Over the past twelve years many of Zimbabwe's conservancies have been settled and fragmented. Combined with a massive decline in tourism and instability and indecision around user-rights, several of Zimbabwe's conservancies have collapsed further marginalizing Zimbabwe's wildlife and conservation estate.

In 2007, Zimbabwe adopted the Indigenisation and Economic Empowerment Act (IEEA) with a goal to support the economic empowerment of indigenous Zimbabweans. Private conservancies in Zimbabwe should integrate the surrounding communities to meet the requirements of the IEEA where feasible. This is the model that has succeeded throughout Africa. User rights must be clarified in a legal framework and responsibilities institutionalised.

AWF conducted field research, a desktop analysis, a legal analysis, community assessments, and consulted with a diversity of stakeholders for this research. While AWF developed a proposed model for conservancies, this model is still under discussion with relevant parties; therefore, is not presented herein.

Zimbabwe was a global leader in conservation and has an opportunity to reclaim this standing by showcasing a viable conservancy and community model at the United Nations World Tourism Organization General Assembly scheduled to take place in Victoria Falls in 2013. Zimbabwe has an opportunity to demonstrate true community empowerment and sustainable conservation solutions.

# About AWF

The African Wildlife Foundation (AWF) is a 51-year old, international conservation organization focused solely on Africa, with its headquarters in Kenya. AWF's mission is to work together with the people of Africa to ensure that Africa's wildlife and wildlands endure forever. AWF firmly believes Africa's conservation must be led and implemented by Africans; as such, 85% of AWF's staff is comprised of African nationals.

AWF works in large landscapes called Heartlands, and is currently working in nine Heartlands covering 14 countries in east, central, southern and west Africa. In each Heartland AWF implements five main programs: applied conservation science; land and habitat conservation; conservation enterprise; capacity and leadership development; and climate change. AWF has been successful in Africa facilitating sustainable conservation outcomes by brokering agreements between communities, government, private landowners and private sector. AWF strives to reach solutions that are ecologically, socially and economically sustainable.

AWF empowers communities across Africa using a diversity of approaches and tools, not because of policy requirements but because it makes economic, social and ecological sense.

Three of AWF's Heartlands include Zimbabwe: Limpopo, which stretches into the Lowveld area of Zimbabwe; Kazungula, which includes Hwange National Park region; and Zambezi, which includes Mana Pools National Park (Figure 1). Over the past 10 years, AWF tapered its involvement in Zimbabwe due to the political instability and lack of donor funding.



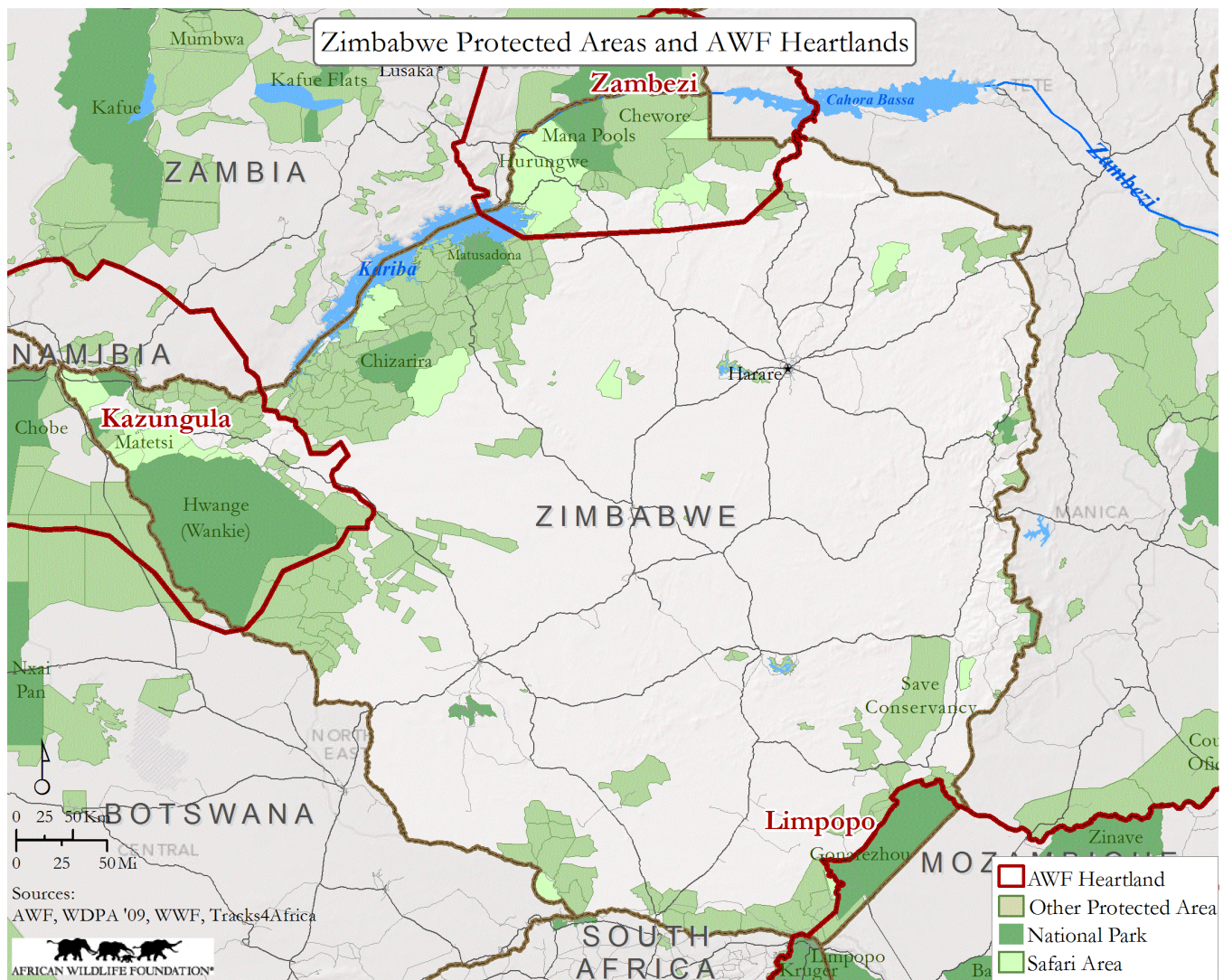


Figure 1. Location of AWF prior work in Zimbabwe.

## ZPWMA's Request to AWF

Because of AWF's work in Zimbabwe, prior success brokering conservation and business outcomes, and AWF's role in establishing, maintaining and improving conservancies in Africa, Zimbabwe Parks and Wildlife Management Authority (ZPWMA) solicited AWF's help. The fact that AWF is a neutral party with no vested interest in Zimbabwe was seen as a positive factor.

ZPWMA requested AWF to: assess the CAMPFIRE program, conservancies and Zimbabwe protected areas, and advise how to improve the conservation estates; and help develop a model for conservancies that achieves Indigenisation, as per the Indigenisation and Economic Empowerment Act and ecological, social and economic sustainability. AWF completed an assessment of the conservation status of protected areas, CAMPFIRE areas, and conservancies, which it presented to ZPWMA in 2011. AWF found that throughout all three land categories wildlife was declining and at risk; habitat integrity was

severely threatened if not already converted; and sources of revenue to support conservation minimal. For conservancies, AWF concluded that there was an opportunity to protect and restore conservancies; however, this must be done through the inclusion of communities in and around conservancies, not through the assignment of partners. Following this report, at the request of ZPWMA, AWF embarked on developing a proposed business model and structure for private conservancies. This model has been presented to relevant authorities and is not presented herein as it is under discussion.

## The Role of Conservancies in Africa

Conservancies may be based on community-owned land, privately-owned land, or a collection of private and community owned land, and in some cases a combination of these with government land. While conservancies vary in ownership, size and structure, they play a vital ecological, social and economic role in many African countries.

Despite the diversity, the benefits of conservancies throughout Africa are universal:

1. *Conservancies complement state owned and managed protected areas* by providing additional habitat and refuge for wildlife. Most African protected area authorities have financial limitations and are challenged to manage and sustain protected areas through revenue they generate and central government support.
2. *Conservancies diversify the tourism economy* by offering a different type of tourism product. In Kenya, Namibia and South Africa, many visitors combine visits to protected areas and conservancies as this provides a diversified experience. For example, walking safaris, hunting and cultural interaction are often more prevalent in conservancies.
3. *Conservancies diversify land management*, providing a range of habitat types to support a broader diversity of wildlife and ecosystems.
4. *Conservancies enable the direct engagement and empowerment of communities and private landowners* to take part in and benefit from conservation. As a consequence, human wildlife conflict and animosity towards wildlife decreases, and the number of people benefiting from wildlife increases, encouraging further protection of wildlife.

The benefit of conservancies in relation to protected areas is widely accepted. For example, Southern African countries host an important network of protected areas; however, these protected areas face the following severe constraints which can be mitigated by the addition of conservancies:

- *Threatened ecosystems.* Not all ecosystems are represented in the protected areas.
- *Incomplete ecosystems.* Park boundaries are often not in line with modern principles of protected area design, leaving key areas of ecological importance unprotected.
- *Park size.* While many parks are large by world standards they are nevertheless too small to support viable populations of species and encompass whole ecosystems

- *Ecological isolation.* Many protected areas are islands of habitat; isolated and fragmented wildlife populations pose a serious problem for large mammals. (Krug, 2001).

## RECOMMENDATION

Given the strong role that conservancies play throughout Africa and the prior commitment Zimbabwe made to conservancies, AWF recommends that Zimbabwe maintains and develops a strong and sustainable network of private and community conservancies.

# Ingredients for a Sustainable Conservancy

While Africa's conservancies vary between countries, and even within countries; there are a few guiding factors that lead to the long-term success of a conservancies:

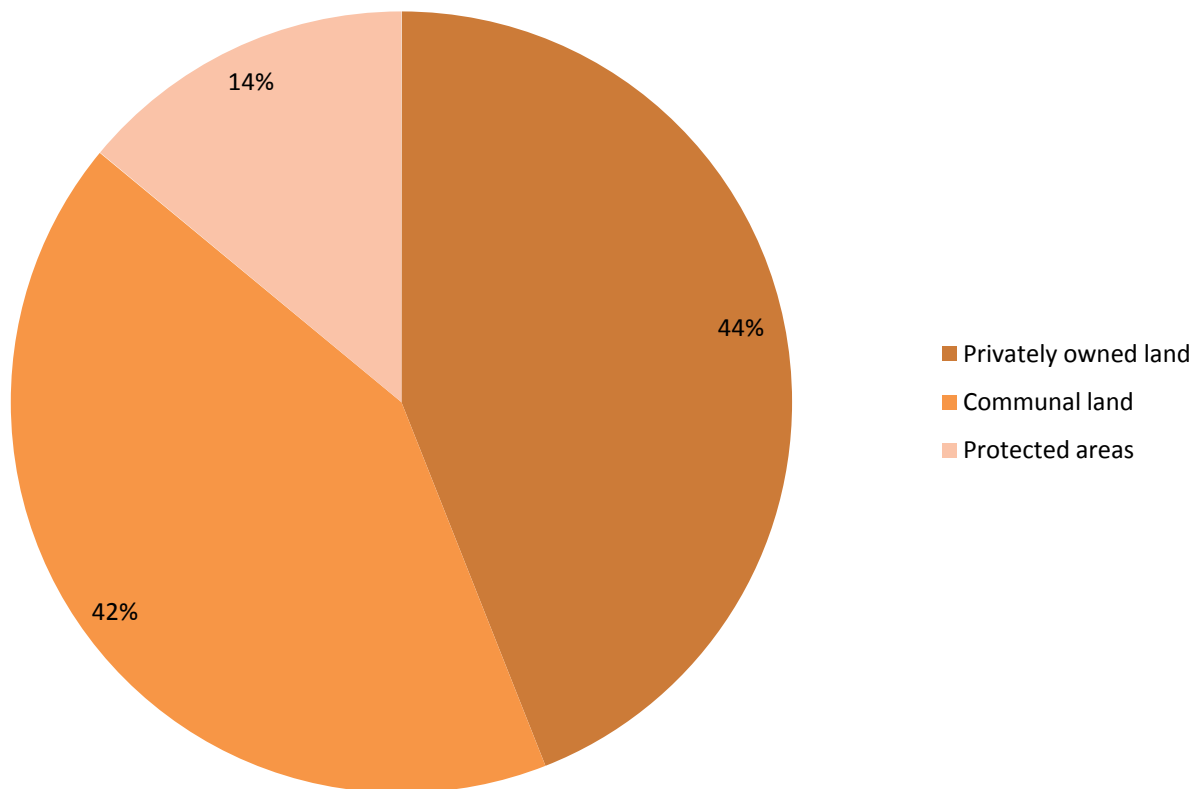
5. Well defined property and/or land user rights.
6. The clear right to utilize wildlife, including the ability to benefit from the trade of live game.
7. Strong demand for wildlife viewing and/or safari hunting; a vibrant tourism economy.
8. Meaningful engagement of landowners especially where communities are the primary owners and adjacent neighbors; not simply through 'donations' but through participation that includes equity in the conservancy.
9. Parties obtaining ownership/equity in conservancies bring resources (money, land, expertise) and assume a level of risk; hand-outs do not work.
10. Strong by-laws and constitutions that ensure good governance, transparency, conservation parameters and guidelines, code of conduct, membership obligations, management objectives, and revenue sharing.
11. Adopted and updated scientifically based management plans for wildlife and habitat conservation and management.
12. Professional management and a formal institutional structure.
13. Separation between the conservancy operational management and owners, particularly in community-owned conservancy contexts.
14. A business model and plan to ensure operations and management costs are covered by entrance fees, conservation fees, and tourism revenue.
15. A diversity of tourism opportunities (zoned as needed—such as high-end and middle-end tourism zones; and different hunting and photographic tourism zones) to attract a wide range of visitors.

# Examples of Successful African Conservancy Models

## NAMIBIA CONSERVANCIES

Namibia is probably the most well recognized African country for its successful conservancy program. In 1996, the Ministry of Environment and Tourism (MET) introduced legislation that gave conditional user rights over wildlife and natural resources to communities in Namibia’s communal areas. This Community Based Natural Resource Management Program (CBNRM) laid the foundation for the development of a management unit called a ‘conservancy’ (NASCO, 2011).

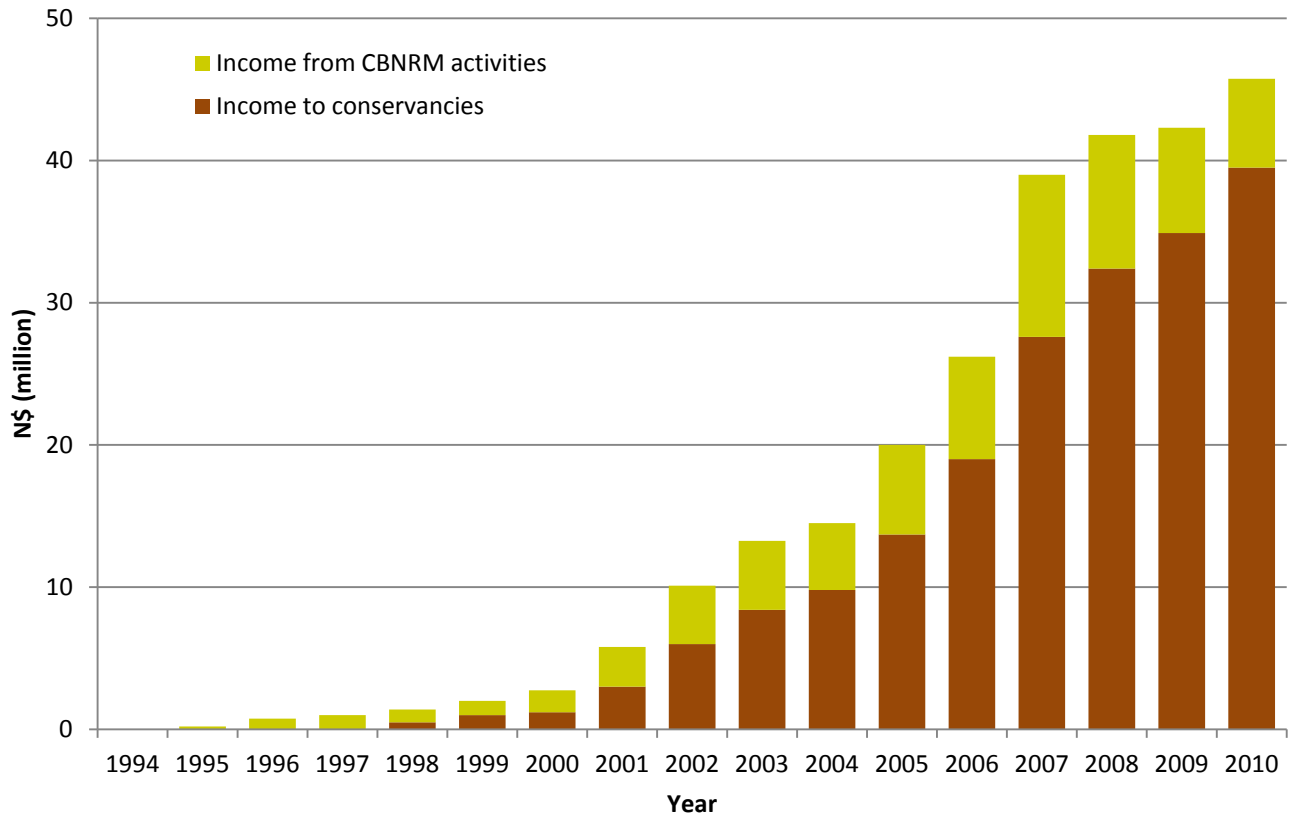
### Namibia Facts:



**Figure 2.** Land ownership in Namibia (Weaver and Skyer, 2003).

Of the 42% communal land in Namibia, approximately 42% is in registered conservancies (2010). Approximately 16% of the total land area of Namibia is comprised of conservancies (2010).

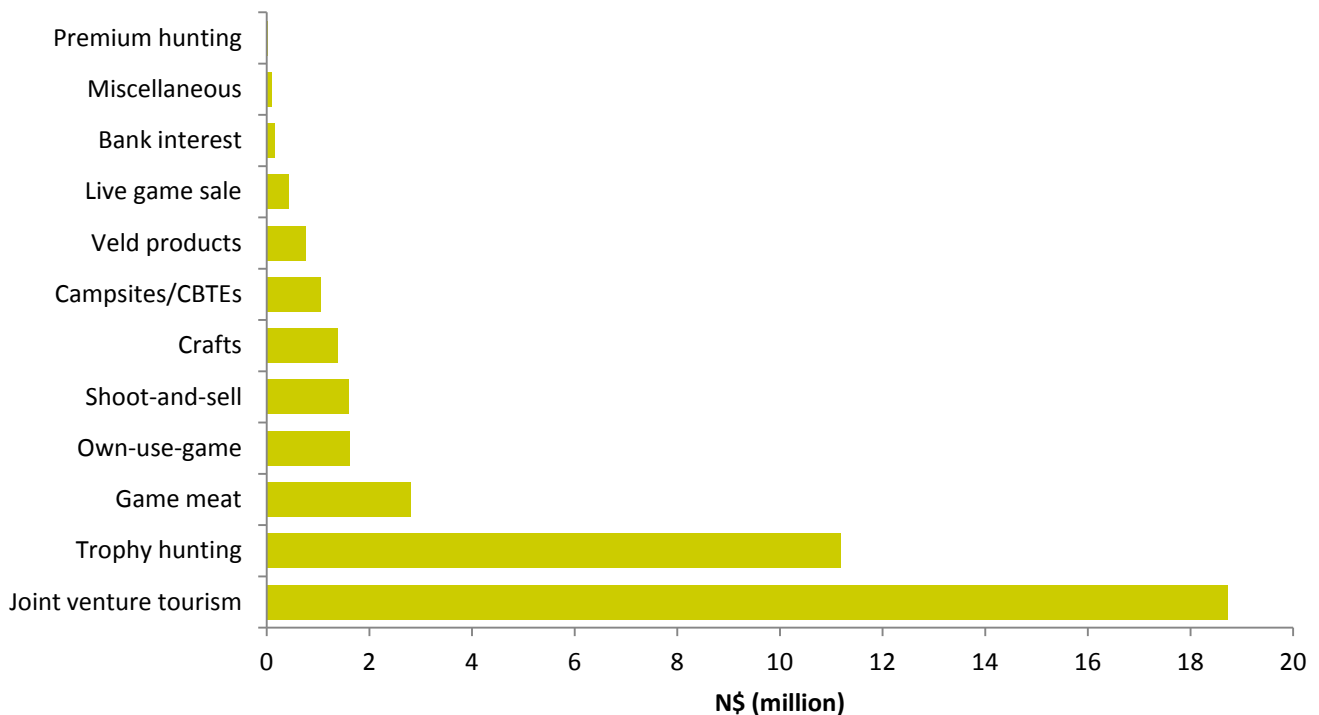
Since registration of the first four conservancies in 1998, the number of registered conservancies has grown to 76 (including 10 registered in 2012) covering a total of 115,205km<sup>2</sup>. The communal conservancies are highly complementary to Namibia's 114,080km<sup>2</sup> protected area network.



**Figure 3.** Income from Namibia Conservancy Program grew from N\$0 in 1994 to over N\$45 million (5.5 million USD) in 2010 (NASCO, 2011).

Income from the Conservancy Programme grew from zero in 1994 to over N\$45 million (5.5 million USD) in 2010, including income to conservancies and from CBNRM activities outside, but linked to conservancies. By 2010, the vast majority of CBNRM benefits generated in the country came from conservancies. The smaller CBNRM revenues generated outside of conservancies, N\$6.3 million (763,267 USD), were generated primarily by small tourism enterprises (campsites, traditional villages and tour guiding), thatching grass and community forests.

*“One of the main lessons from the Namibian CBNRM Programme is that devolving authority over wildlife and tourism to local communities can work. As a result, wildlife numbers have increased and economic benefits to local people have grown.” –NASCO*



**Figure 4.** Source of Income from conservancies in 2010, the top revenue earner being joint venture tourism (47.3%) followed by trophy hunting (28.2%) (NASCO, 2011).

The top revenue earner for conservancies is joint venture tourism. Between 1998 and 2010, incomes from joint venture tourism increased by 46-fold and those from trophy hunting by 24-fold, while incomes from game meat rose by 34-fold. (NASCO, 2011)

In addition to direct and indirect revenue from conservancies, community members benefit from spin-off enterprises and employment. Conservancies covered the majority of the costs of the 619 conservancy management jobs in 2010. An additional 717 full time and 3,044 part time jobs were created in conservancies. (NASCO, 2011)

Conservancies in Namibia emerged because wildlife and other natural resources were declining and because of the country's belief that community livelihoods could be improved simultaneously with the protection of its natural resources. (NASCO, 2011)

In Namibia, conservancies have helped:

- Increase natural resource derived income to the country
- Make Namibia a global tourism destination
- Expand the economic potential of wildlife, land and tourism in communal areas
- Create incentives to manage wildlife and other natural resources sustainably
- Bring new sets of natural resources into production
- Expand and diversified areas managed for wildlife and other natural resources

- Boost the abundance and productivity of natural resources
- Build local empowerment, capacity, leadership and skills

## KENYA CONSERVANCIES

Kenya is well known as a global tourism destination because of its wildebeest migration, views of Mount Kilimanjaro and classic open plains safaris. Tourism<sup>1</sup> is the cornerstone of Kenya's economy, as it is the largest foreign exchange earning sector, followed by flower, tea, and coffee production. Tourism provided approximately 20% of Kenya's GDP in 2010 and over 500,000 direct and in-direct jobs.

In 2010, over one million tourists visited Kenya, generating over 73.68 billion Kshs (87.7 million USD) in revenue (Kenya Ministry of Tourism). While Kenya hosts a world renowned extensive network of protected areas (8% of the country, 51 terrestrial national parks and reserves, and 10 marine parks reserves), over 120 conservancies have emerged over the past two decades because:

- Ecological evidence shows that most of Kenya's wildlife resides outside protected areas.
- Kenya's biodiversity has declined at an alarming rate, in particular in its arid-and semi-arid lands; therefore, a solution was required.
- Conservation would not succeed if communities did not benefit and participate in a meaningful way.
- Private landowners contribute significantly to wildlife and habitat conservation.
- A diversified tourism product helps attract more tourists.
- The protected area authority does not have the capacity to manage and own all conservation units in Kenya.

While Kenya does not have a legal framework for conservancies as in the Namibian example (this is currently being developed in Kenya), there are over 120 conservancies that protect vast landscapes and wildlife, engage communities and generate revenue through tourism and livestock.<sup>2</sup> Kenya's conservancies are extremely diverse and range from land:

- owned privately, by community, by government and a combination thereof;
- managed strictly for wildlife, or combining livestock and wildlife;
- adjacent to protected areas, adjacent to other community conservancies, or stand alone; and
- managed by the Kenya Wildlife Service (KWS); the community; partner NGOs; or professional management entities.

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<sup>1</sup> Tourism refers to non-consumption tourism as Kenya does not permit hunting.

<sup>2</sup> Livestock and wildlife are co-managed and not separated in Kenya.

In northern Kenya, over three million hectares of land has been protected through more than 20 community conservancies. These conservancies host some of the most exclusive tourism destinations in the country. In 2010, ten of these facilities generated approximately 5.5 million USD and attracted substantial donor funding, given their community ownership.

In southern Kenya, near the Maasai Mara National Reserve (MMNR), the location of the famous wildebeest migration, there are approximately eight conservancies in one county alone that comprise 92,248 hectares of core conservation land (this is equivalent to more than half of the area of MMNR which is 150,000 hectares.) These conservancies generate more than 250 million Kshs/year (9.4 million USD). (Said *et. al*, 2012)

Given the enormous success and diversity of conservancies in Kenya, KWS is currently working with landowners, communities and NGOs to develop a coordinated national policy on conservancies.

*“Conservancies play a pivotal role in the overall sustainability of wildlife conservation in Kenya. KWS sees conservancies as a complement to our Protected Areas and as a way to effectively engage communities and landowners, and solving serious unemployment.”*

—Dr. Julius Kipng'etich, former Director of Kenya Wildlife Service, 2012.

## ZIMBABWE CONSERVANCIES

While there is no statutory definition of a conservancy in Zimbabwe, the working definition is:

*“Any number of properties, which are amalgamated into a single complex in order to enable more effective management, utilization and protection of the natural resources”* (Waterhouse, 2004).

This definition is most similar to the conservancies in South Africa (i.e. Timbavati, Klaseri and Sabi Sands conservancies that abut Kruger National Park).

A diversity of factors led to the development of conservancies in Zimbabwe over the past two decades. One of the instigators was the objective of the then Department of National Parks and Wild Life Management (DNPWLM) to develop breeding sites for endangered black rhinos. Conservancies were also viewed as a viable economic alternative given other land use economics, persistent droughts (especially 1991), and emerging wildlife-based production systems. Conservancies were also seen as a way to enable landowners to manage wildlife and natural resources at an appropriate scale and to spread the economic risk of doing so (Murphee and Metcalfe, 1997).

These factors led to landowners negotiating common property arrangements and civil contracts with their neighbours to establish conservancies throughout the country. The content and structure of conservancy agreements varied according to the objectives of the members and the nature of the conservancies. Despite the variations, the main focus of conservancy agreements is cooperative management of the wildlife and natural resources. Most conservancies have constitutions which contain four primary principles:

- Internal fencing is limited so as to not fragment a conservancy and impede wildlife movement.



- In the event that a conservancy property is transferred to a landowner whose land use and wildlife management practices are not consistent with the conservancy, that property will be excised from the conservancy and conservancy assets retrieved.
- Members are jointly responsible for meeting recurrent management costs.
- Management of the wildlife is based on sound scientific principles.

Conservancies were developed in Zimbabwe because:

- Potential for contributing to the conservation of endangered species.
- Potential to contribute to wildlife conservation by providing more habitat, especially for large game species.
- Potential to contribute to soil and water conservation, and thereby assisting in the recovery of degraded ecosystems in the Lowveld.
- Opportunity to plan beyond the boundaries of protected areas, which do not encompass whole ecosystems.
- Single landowners cannot achieve the economies of scale necessary for a wildlife enterprise.
- Conservancies would significantly add to the tourist destinations available in Zimbabwe, especially in the south east and west of the country (Murphee and Metcalfe, 1997).

The combination of conservancies, CAMPFIRE areas and protected areas managed by the Zimbabwe protected area authority made Zimbabwe a leader in wildlife conservation. By 2000 approximately 27,000km<sup>2</sup> of private land was being managed for wildlife in Zimbabwe. Parks and private conservation land combined with the CAMPFIRE program made Zimbabwe a leader in conservation. In fact, between 1993 and 1998 Zimbabwe was the second most visited country in Africa by tourists next to South Africa. Between 1990 and 1992 Kenya was the second highest next to South Africa, but in 1993, Zimbabwe's visitor numbers surpassed Kenya. Surveys showed that in Kenya and Zimbabwe 80% of the visitors came for wildlife tourism; whereas in South Africa there is a diversity of tourism activities, other than wildlife, that draw visitors. (Krug, 2001)

As of 2003, conservancies comprised 1.9% of the total land base in Zimbabwe. (National Environmental Policy, 2003). Over the past twelve years however many of Zimbabwe's conservancies have been settled and fragmented. Combined with a massive decline in tourism, several of Zimbabwe's conservancies have collapsed, further marginalizing Zimbabwe's wildlife and conservation estate, and economic return from photographic and hunting tourism.

For example, records at ZPWMA indicate that up to 95% of the land in the Gwayi Conservancy and 85% in the Matetsi Conservancy were allocated to new settlers. The land-use being practiced is mixed farming (i.e. wildlife, cattle ranching and crops) in the A1 areas, while in the A2 areas the land-use is mainly wildlife and cattle ranching. Bubiana Conservancy is no longer fully functional as a Conservancy although approximately three ranches in this area are still involved in wildlife production, but no longer in a coordinated way and with reduced land area. Chiredzi River Conservancy is barely functional because of the extent of settler encroachment and land invasion. The

only major conservancies that are still some-what operational include Malilangwe, Midlands (Sebakwe), Bubi/Bubiyani, and Save Valley Conservancy (SVC). (AWF, 2011)

While Zimbabwe's conservancies comprise less than 2% of the country's land area, they are ecologically and economically significant. Zimbabwe's conservancies serve as refuge for endangered wildlife; provide additional habitat to the state's protected area network; diversify tourism experiences; and have the potential to provide an opportunity for true community engagement, empowerment and ownership. Chiredzi River, Bubiani, Bubi, Malilangwe and Save Valley Conservancy are all located in the Lowveld and serve as vital ecological and economic anchors in this landscape (Figure 5).

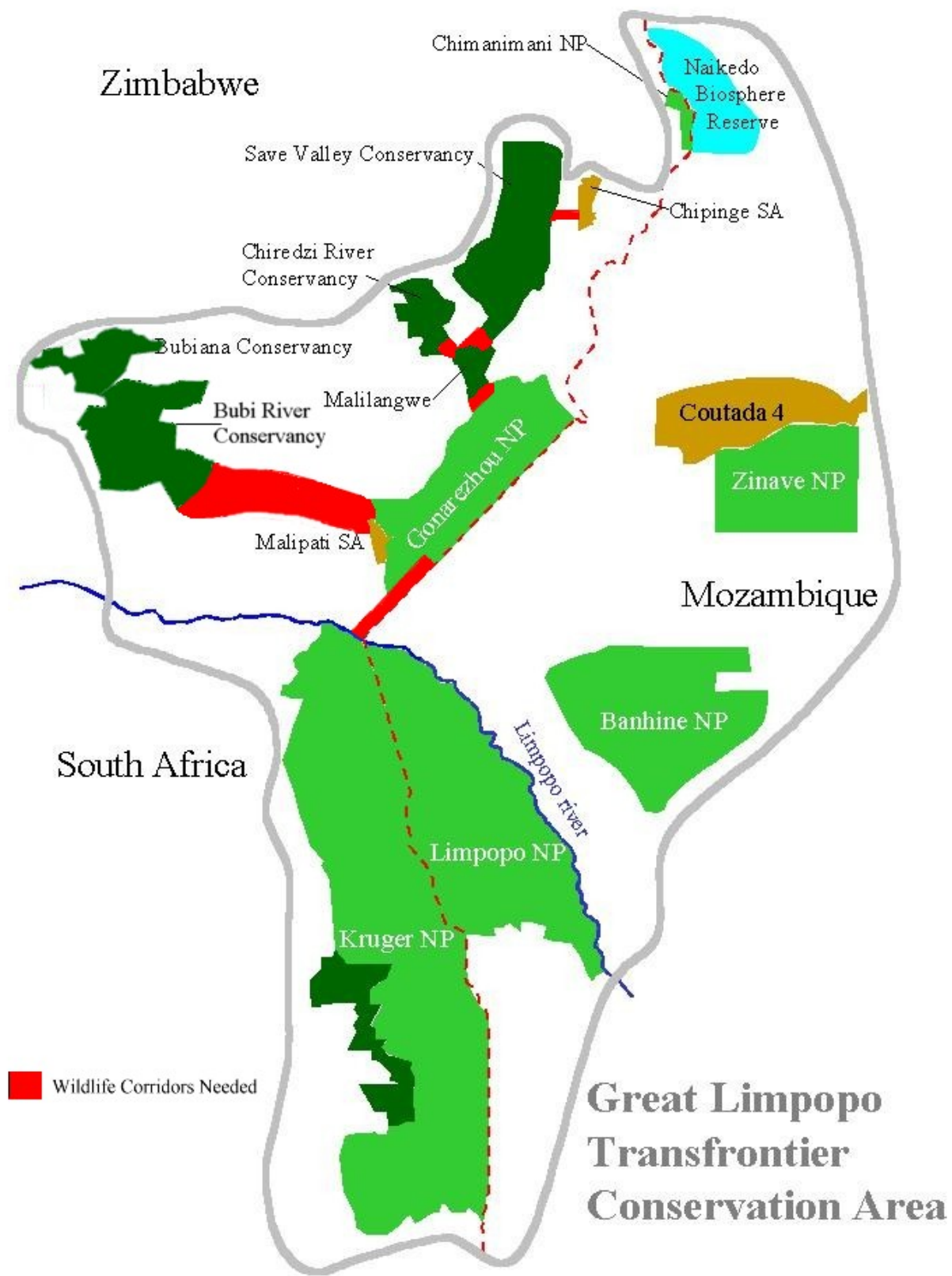


Figure 5. Conservancies in the Lowveld, part of the Limpopo Transfrontier Conservation Area (Lindsey et al., 2009).

# Settlement in Conservancies

The growth and improvement of wildlife and tourism in Zimbabwe hit a major challenge in 2000 during Zimbabwe's Fast Track Land Reform Program. Many conservancies were settled without proper planning and land was converted into uses that are not compatible to conservation, such as farming. This unplanned settlement has enormous ecological impacts:

- It has fragmented and degraded the ecological integrity of conservancies, putting their ecological and economic viability at risk.
- Land has been cleared for agricultural development and settlement; and trees harvested for firewood for local consumption and sale in local markets further compromising wildlife habitat and natural resources of the conservancies.
- Human settlers have introduced livestock, which puts wildlife at risk of transmitting livestock-borne diseases.
- There has been an increase in bush fires.
- Poaching has increased because of increased human presence and lack of viable alternatives.
- Wildlife populations have declined (Chibisa *et al.*, 2010).

The impacts are not just ecological. For example, the people living in and around Save Valley Conservancy suffer from acute food insecurity because of their location in an arid region and their inability to grow food, together with having to deal with significant human-wildlife conflict (HWC).

The economic impact has also been severe. The degradation of habitat, increase in human and livestock presence, negative media coverage, and decline in wildlife makes conservancies throughout Zimbabwe difficult to market from a tourism perspective in an already challenged tourism market environment.

Despite these challenges, some conservancies still host wildlife, which could serve as a source population should the situation in conservancies be stabilized and threats to wildlife alleviated. If the situation however is not resolved in the short-term, wildlife numbers will continue to decrease, not only making conservancies unviable in the future, but having an impact on protected areas and other conservation areas and an overall impact on tourism in and the economy of Zimbabwe.

## Indigenisation

The Indigenisation and Economic Empowerment Act (IEEA) (Chapter 14:33) was passed in 2007, followed by several Statutory Instruments.

One of the fundamental goals of the act is the “economic empowerment of indigenous Zimbabweans” (IEEA, Paragraph 1). The means by which the Act sets out to achieve this objective is:

“To ensure that at least fifty-one *per centum* of the shares of every public company and any other business shall be owned by indigenous Zimbabweans.”

The Act also provides a temporary waiver of this general objective.

The waiver (of the 51% requirement) is that “The Minister may prescribe that a lesser share than fifty-one *per centum* or a lesser interest than a controlling interest may be acquired by indigenous Zimbabweans in any business referred to in subsections 1(b)(iii), 1(c)(1), 1(d) and (e) in order to achieve compliance with those provisions, but in so doing he or she shall prescribe the general maximum time frame within which the fifty-one *per centum* share or the controlling interest shall be attained.”

In addition, other sectors such as manufacturing have adopted a phased approach to reaching the 51% requirement. (General Notice, 2011.) There are guidelines currently being drafted specifically for the tourism sector.

Key terms defined in the IEEA include:

“Indigenisation” means a deliberate involvement of indigenous Zimbabweans in the economic activities of the country, to which hitherto they had no access, so as to ensure the equitable ownership of the nation’s resources.

“Indigenous Zimbabwean” means any person who, before 18<sup>th</sup> April 1980, was disadvantaged by unfair discrimination on the grounds of his or her race and any descendant of such person, and includes any company, association, syndicate or partnership of which indigenous Zimbabweans form the majority of members or hold the controlling interest.

There is potential to improve the livelihoods of communities by helping them acquire interests in conservancies and tourism businesses, in line with the IEEA, and assuming the businesses rebound from the current economic crisis. Engagement of the broad community, as indicated prior, is a key ingredient for a successful conservancy and important for the long-term sustainability of conservancies. Indigenisation without substantial community participation will leave those communities marginalized and likely to continue poaching and engaging in other forms of resource degradation, thereby making conservancies unsustainable. Consequently, an inclusive model that incorporates a broad community of people that live in proximity to conservancies rather than the current proposed one of partnering with a few individual Zimbabweans is required for true long term success at national and local levels.

## RECOMMENDATION

To achieve long-term sustainability of Zimbabwe conservancies and to meet the requirements of the Indigenisation policy, the adjacent and resident communities should be directly engaged as partial owners.

# Financial Situation of Conservancies

The current economic situation in Zimbabwe has had a direct impact on the country's wildlife and tourism industry. Most conservancies are reliant upon hunting revenues and donations. Should conservancies adopt a model that incorporates surrounding communities, for any new member profits will not be forthcoming in the short-term as tourism in Zimbabwe is low. For some conservancies, because of the lack of income over the past decade, to generate returns in the future, a significant amount of financial investment will be required to restore infrastructure and/or restock wildlife and restore degraded areas.

In addition, the instability around the future of conservancies; the lack of clarity around user rights; the differing messages from government on how conservancies should indigenise; and the lack of a supportive legal framework have made it impossible for conservancy owners to secure loans and encourage new investors. This type of unstable environment is not conducive for investment and long-term conservation or commercial success.

Even if a conservancy is able to restructure, meet the IEEA and raise the funds required for restoration and infrastructure improvement, the continued deterioration of Zimbabwe's tourism market will mean that conservancies will continue to lose money annually and their long-term stability and sustainability will continue to be threatened.

## Wildlife Based Land Reform Policy

Despite the fact that the Wildlife Based Land Reform Policy (WBLRP) has not been codified into law, the objectives outlined in the policy are as follows:

- a. To ensure conservation and sustainable use of wildlife for present and future generations.
- b. To facilitate the indigenisation of the wildlife sector and to ensure more equitable access by the majority of Zimbabweans to land and wildlife resources and to the business opportunities that stem from these resources.
- c. To maintain a proportion of land outside protected areas under wildlife production.
- d. To encourage resettled farmers on wildlife areas to enter into wildlife production as a land use option.

In addition, the WBLRP outlines three options for indigenisation:

- a. Current farmers<sup>3</sup> partner with the Zimbabwe Parks and Wildlife Management Authority and communities.
- b. Current farmers partner with Communities

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<sup>3</sup> This term refers to the original Conservancy members.

- c. Current farmers partner with Communities and Private Indigenous Investors.

The principles promoted by AWF are entirely consistent with the WBLRP.

## Vision for Conservancies

AWF proposes a model for conservancies that would:

- empower and meaningfully incorporate the local surrounding communities, where feasible, in a way that meets Zimbabwe's indigenisation laws<sup>4</sup> and principles;
- increase the area under conservation resulting in expanded and improved conservancies where feasible;
- incorporate strong economic incentives that create a competitive and dynamic tourism product that will help reinstall Zimbabwe and conservancies as prime tourism destinations;
- create well-resourced, representative and professionally managed conservancy management companies with the capacity to become attractive to the donor community and financially self-sustaining over time;
- use global best practices, experience with conservancy models throughout Africa and lessons learned from conservancy successes and failures; and
- ensure a conservation and related enterprise development and management dynamic that capture the values (intellectual capital, best practice, reputation) that drove the original success of conservancies, where they were successful, while also incorporating new and innovative ideas to suit the present day Zimbabwean context.

## Indigenisation

AWF proposes that indigenisation of conservancies is achieved in the following ways:

1. By involving the communities that surround and live in conservancies as the largest collective stakeholder; because:
  - a) It will benefit and empower many Zimbabweans instead of just a few, which is supportive of the intention of the IEEA policy.
  - b) Engagement and empowerment of local communities in conservancies throughout Africa is a proven model for success.

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<sup>4</sup> Indigenisation and Economic Empowerment Act (IEEA).

- c) They are neighbours and in some cases reside inside conservancies; and as such have a vested interest in its success.
  - d) They can contribute land to expand conservancies thereby ensuring a viable size.
2. By providing the opportunity for indigenous Zimbabwean investors to invest in and participate in enterprises associated with conservancies; because:
- a) In order for conservancies to be successful in the long term, they must become an integral part of Zimbabwe's wider economy and in order to do so, it is essential that business people are encouraged to invest in wildlife-based enterprises and consequently the future of conservancies.
  - b) Commercial investment in enterprise will contribute to a robust and sustainably financed Conservancy.

Investment in conservancies will require a sound legal structure and clarity on user rights. Given the state of the tourism economy in Zimbabwe, it is likely that investment will not occur in the short-term as returns are not forthcoming.

## United Nations' World Tourism Organization

Zimbabwe is hosting the United Nations' World Tourism Organization meeting in Victoria Falls in September 2013 and has an opportunity to reinstall itself as a global tourism destination. By showcasing a conservancy model that engages broad community support, demonstrates true Zimbabwean empowerment and offers a dynamic and competitive tourism product, Zimbabwe will be seen as a leader in conservation and innovation around indigenisation and community conservation.

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# Appendixes

## APPENDIX I

### CASE STUDIES: CONSERVANCIES AND ENTERPRISE PARTNERSHIPS

The earlier sections of this report describe the wider contexts of conservancies in Namibia and Kenya. Below are short case studies that provide specific examples.

#### **Kenya: Kijabe Community Conservancy**

In Laikipia, in north-central Kenya, AWF supported the creation of a community-owned conservancy which forms part of a wider landscape of private and community conservancies who collaborate in anti-poaching, conservation and research activities. The revenue for the Kijabe Community Conservancy operating entity comes primarily from a tourism lodge situated on the conservancy land. AWF facilitated the designation of the conservancy land into zones (a core conservation area and buffer zone) and the creation of a conservancy management entity which is owned by the community. The contract between the community-owned conservancy entity and the enterprise operator is structured as follows:

- The enterprise operator was granted a 15 year lease to operate a tourism business, renewable by mutual agreement between the community and the enterprise operator;
- A mixture of donor finance and private investment finance (provided by the operator) was used to construct tourism facilities – in particular a high quality lodge;
- The enterprise operator is obliged to pay an annual lease fee plus a per visitor per day conservancy fee (presently US\$80) to the conservancy operating entity; and
- Payments are made by the enterprise operator on a quarterly basis to the conservancy operating entity and the monies are used to support 1) reinvestment in the conservancy operations; and 2) community development initiatives such as health and education programmes.

This model has been applied in many other community conservancy contexts in Kenya. Operating leases range between 15 to 30 years in length (longer leases are provided where the operator is required to provide all of the facility development finance themselves), annual lease fees vary according to the size of the enterprise zone, and daily conservancy fee levels vary from US\$ 25 to US\$ 90 per person according to the quality of the wildlife experience.

#### **South Africa: KwaZulu Natal**

Several communities in the KwaZulu Natal region of South Africa have entered into partnership arrangements with previously private conservancy structures in order to contribute their land for

wildlife conservation purposes in return for benefits generated through enterprises developed on the conservancy land. Communities in the Mduna area bordering the Thanda Game Reserve have contributed an initial area of 6,000 hectares which was previously used for agriculture and livestock. The land contributed by the community is being rehabilitated and a programme of wildlife introductions (including black rhino) is being supported by several donor organisations. Tourism facilities are also being planned for the community land area. In the meantime, existing private enterprises on the Thada Game Reserve are paying traversing right fees to the neighbouring communities in order to access their land for tourism purposes and to recognise the additional conservation value which the contribution of the community land has created.

Elsewhere in KwaZulu Natal, the Somkhanda Game Reserve was created by the resident Gumbi community who own the land. The community has set aside 16,000 hectares for conservation with their land now forming an important conservation corridor between the Zululand Rhino Reserve and Pongola Game Reserve. This initiative has enabled the community to enter into a partnership with a private enterprise who is developing tourism facilities on a 200-acre section of the land. The terms of the partnership will involve annual fee payments to the community game reserve management entity for the purpose of covering annual conservation operating costs and financing a range of community development initiatives.

## APPENDIX II

### **Legal Analysis of Laws and Policies Related to Land, Wildlife, Indigenisation and Wildlife Conservancies in Zimbabwe<sup>5</sup>**

#### *Understanding the Constitution, Laws, Regulations, General Notices and Policies*

Land tenure, wildlife management; indigenisation and conservancies are regulated by a number of laws and policies. These include the Constitution of Zimbabwe, Indigenisation and Economic Empowerment Act<sup>6</sup>, Land Acquisition Act<sup>7</sup>, Agricultural Land Settlement Act<sup>8</sup>, Parks and Wildlife Act<sup>9</sup>, Rural District Councils Act<sup>10</sup>, Trapping of Animals (Control) Act<sup>11</sup>, Gazetted Land (Consequential Provisions) Act<sup>12</sup> and the Wildlife Based Land Reform Policy. This regulatory framework is important because it is the instruments through which the GOZ confers control over natural resources, which include land and wildlife to the various stakeholders. However, it is important to note that these laws and policies do not accord the same category of rights to the various stakeholders and have different hierarchies within the regulatory framework.

The Constitution is the superior law of the country, supreme over all laws, policies, Statutory Instruments and General Notices. The Constitution defines citizens' basic and fundamental rights

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<sup>5</sup> Research conducted by the Zimbabwe Environmental Law Association (ZELA). Harare. 2012.

<sup>6</sup> Chapter 14:33

<sup>7</sup> Chapter 20:10

<sup>8</sup> Chapter 20:01

<sup>9</sup> Chapter 20:14

<sup>10</sup> Chapter 29: 13

<sup>11</sup> Chapter 20:21

<sup>12</sup> Chapter 20:28

including those over natural resources such as land and wildlife. The Constitution provides for substantive rights, which are justiciable or actionable in a court of law.<sup>13</sup>

Law is defined as the rule of conduct or action laid down and enforced by a Government body.<sup>14</sup> The most distinctive feature of law is that its breach attracts punishment by the state. While not superior to the Constitution, it provides justiciable rights, which are claimable and enforceable in a court of law. While there are various categories of laws, the one that is relevant to this research is Statutory Law or Law made by Parliament. In terms of the Constitution of Zimbabwe, legislative powers or the power to make laws, are vested in the Parliament of Zimbabwe and the President. There are two forms of legislation: laws namely Acts of Parliament; and Statutory Law and delegated legislation. Delegated legislation also known as Statutory Instruments is subsidiary legislation, which is passed by bodies to whom Parliament has delegated authority. Although Statutes of Parliament are the primary source of legislation, other types of legislation (delegated/subsidiary legislation) include:

- a. Proclamations by the State President in terms of the Constitution
- b. Ordinances, regulations and Statutory Instruments by Government Ministers in charge of Government Departments like ZPWMA in terms of the relevant empowering statutes
- c. By laws by the various municipalities and Rural District Councils
- d. Rules and Regulations by Statutory Bodies like the ZPWMA

There are a number of reasons given to justify delegated or subsidiary legislation including:

- a. The Parliamentary calendar is very congested and the legislature does not have the time to debate in detail all the matters which require legislation in the country.
- b. Flexibility and adaptability—delegated legislation can easily be adapted to suit changing circumstances.
- c. The parent or enabling Act like the Parks and Wildlife Act, cannot be expected to deal comprehensively and adequately with all the issues related to wildlife management hence the need to delegate to the responsible Ministry and Department.
- d. In case of emergency, there may be insufficient time to resort to the lengthy process of Parliament, statutory instruments and proclamations can be brought into force much more quickly and expeditiously than statutes.

There are a number of criticisms often levelled against Statutory Instruments or delegated legislation. The biggest criticism is that it is undemocratic and may border on being unconstitutional in that important rules and regulations are made without recourse to the properly elected authority, which is the Legislature or Parliament. However, the criticisms against delegated and subsidiary legislation are mitigated by the following factors:

1. Parliament still ultimately retains some control over delegated legislation. Statutory Instruments are vetted by Parliament.

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<sup>13</sup> Courts include Magistrates Court, Administrative Small Claims & Labour Courts, High Court & Supreme Court

<sup>14</sup> Griffin, J; Cumming, D; Metcalfe, S; t'Sas-Rolfes, M; Singh, J; Chounguica, E; Rowen, M and Oglethorpe, J. 1999. Study on the Development of transboundary natural resources management areas in Southern Africa. Main Report. Washington D.C, USA. Biodiversity support Programme .

2. The superior courts namely High Court and Supreme Court have control over delegated legislation and normally the validity of a statutory instrument can be challenged on two grounds, if:
  - a) the Statutory Instrument is ultra vires (outside the scope) of the parent or enabling legislation;  
or
  - b) the correct procedures were not followed in making the statutory instrument.

A policy is a purposeful course of action or decisions that are taken by those with a responsibility for a given policy area for example land, wildlife conservation, and indigenisation, with the aim of addressing particular issues and advance towards specific objectives.<sup>15</sup> A policy is usually in the form of statements and pronouncements or formal positions on an issue. It is these statements or formal positions that determine implementation. In that regard, policy is a set of principles that guides courses or plans of action. The major distinctive feature of a policy is that it does not confer justiciable rights i.e. the rights it confers cannot be vindicated in a court of law. Its implementation or lack of it is mainly dependent on political will. If there is political will, then the policy will be implemented and enforced. However, if there is no political will, then its chances of successes are very limited.

Laws and policies are important regulatory frameworks as they provide procedural rights. It is laws and policies that determine the institutional arrangements for natural resource management like land and conservancies, who has access and control over them, who may benefit from their use, the roles and responsibilities of different institutions and other stakeholders.<sup>16</sup> In comparative terms policies provide a good regulatory framework; laws provide a better regulatory framework while the Constitution provides the best framework. If the rule of law is respected and upheld, then a Constitutional right is a guaranteed right.

A General Notice is on the face of it evidence that the nation has been notified of an action that the Government intends to take in a sector. The context and details of a General Notice depends on the enabling law that requires the notice to be given. For example, under the Land Acquisition Act, section 5 requires the acquiring authority to issue a notice once in the Gazette and once a week for two consecutive weeks, commencing with the day on which the notice in the Gazette is published, in a newspaper circulating in the area in which the land to be acquired is situated. The enabling/parent law provides for the details of what the notice should contain. Some of the notices give affected parties an opportunity to make representations before the action is taken. Its legal status therefore, is that of a procedural tool in policy and legislative making processes.

### ***Land Tenure and Ownership in Zimbabwe***

The Constitution of Zimbabwe, the Land Acquisition Act and the Gazetted Land (Consequential Provision) Act, Communal Land Act, the Rural District Councils Act, are the main legal instruments regulating land tenure in Zimbabwe. When Zimbabwe attained its independence in 1980, the new Government inherited a colonial land distribution pattern whereby the large scale commercial farmers owned most of the agricultural land with secure property titles. The majority of the population made

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<sup>15</sup> Borrini-Feyerabend, G; Pimbert, M; Favar, T; Kothari, A and Renard, Y, 2004. Sharing Power: Learning by doing in co-management of natural resources through the world. IIED / IUCN/ CEEP/CMWG, Cenesta, Teheran.

<sup>16</sup> Jones, T.B 2007. Synthesis of the Community Based Natural Resources Management Policy & Legislation in Botswana, Malawi, Mozambique, Namibia, Zambia and Zimbabwe. Harare, WWF-SARPO Occasional Paper No. 16.

up mainly of black Zimbabweans was in communal lands where they only had user rights over the land and no security of tenure. Land redistribution was high on the list of the new GOZ in 1980, which prompted the government to establish the Intensive Resettlement Programme from 1980-1990. The specific objectives of the Intensive Resettlement Programme were to achieve national stability and progress in a country that had emerged from the turmoil of war. The Zimbabwe Constitution agreed at the Lancaster House Conference included provisions on the acquisition of land by the State. The Constitution restricted land acquisition for purposes of resettlement to land that was under-utilised whereby the acquiring authority was required to pay adequate, prompt compensation for land acquired on a willing buyer and seller basis.

Land Resettlement gained momentum after the expiry of the Lancaster House Agreement Clause in 1990. The Land Acquisition Act was amended<sup>17</sup> to empower the President and other authorities to compulsorily acquire land and other immovable properties and made special provisions for compensation. Section 3 of the Land Acquisition Act makes provisions under which land may be compulsorily acquired. These include:

1. any land, where the acquisition is reasonably necessary in the interests of defense, public safety, public order, public morality, public health, town and country planning or the utilization of that or any other property for a purpose beneficial to the public generally or to any section of the public;
2. any rural land, where the acquisition is reasonably necessary for the acquisition of that or any other land for—
  - a) settlement for agricultural or other purposes; or
  - b) the purposes of land reorganization, forestry, environmental conservation or the utilization of wildlife or other natural resources; or
  - c) the relocation of persons dispossessed in consequence of the utilization of land for a purpose referred to in subparagraph (i) or (ii).

Section 5 of the Land Acquisition Act provides for the procedures for Compulsory Acquisition of Land. A preliminary notice is required to be issued to the owner of the land. This preliminary notice is in terms of section 5(1) required to be published once in the Gazette and once a week for two consecutive weeks, commencing with the day on which the notice in the Gazette is published, in a newspaper circulating in the area in which the land to be acquired and in such other manner as the acquiring authority thinks will best bring the notice to the attention of the owner. In addition, the preliminary notice is required to describe the nature and extent of the land and the purpose for which it is being acquired. The preliminary notice gives an opportunity to the owner of the land and other interested person an opportunity to lodge an objection with the acquiring authority if they so wish. Section 5 also makes provisions for the acquisition of specially gazetted land, which is defined as agricultural land referred to in section 16 B (1) (a)(i)(ii) or (iii) section of the Constitution.

In terms of section 16 of the Land Acquisition Act, the acquiring authority has a duty to pay fair compensation within a 'reasonable time' to the owner of any land which is not specially Gazetted land and to any other person who suffers loss or deprivation of rights as a result of any action taken by the

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<sup>17</sup> Amendment 14 of 2001

acquiring authority in respect of the acquisition of that land. The acquiring authority is also required to pay compensation to the owner of any specially Gazetted land and to any other person whose right or interest in the land has been acquired in terms of this Act. The question to consider here is what constitutes 'fair compensation' and 'reasonable time?' In terms of section 29 C of the Land Acquisition Act, in respect of Gazetted Land, compensation shall only be payable for any improvements on to the land. The compensation is not for the acquired land itself but for the improvements made by the owner on the land. Compensation for the land will only be made if a fund for that purpose has been established in accordance with subsection (1) of section 16 A of the Constitution. If the compensation is not paid within reasonable time, does this negate the acquisition of the land and the transfer of title to the acquiring authority?

### *Fast Track Land Reform Programme*

In 2000, the Constitution of Zimbabwe was amended with the insertion of section 16A, which had far reaching consequences on the land reform programme. It makes it mandatory for the former colonial power to pay compensation for agricultural and compulsorily acquired land for resettlement, through an adequate fund that is established for that purpose.<sup>18</sup> Furthermore, it states that if the former colonial power fails to pay compensation through such a fund, the GOZ has no duty to pay compensation for agricultural land compulsorily acquired for resettlement.<sup>19</sup> In other words, it is the responsibility of the former colonial power to provide funds that will be used to pay the farmers who will lose land as a result of the land resettlement programmes. Section 16A(2) outlines the factors that will be taken into consideration in determining when and how compensation for agricultural land acquired for resettlement will be paid. These include the history of the ownership, use and occupation of the land, the price that was paid for the land when it was acquired, the cost or value of improvements on the land, the current use to which the land is and any improvements on it are being put, any investment which the state and the acquiring authority may have made which improved or enhanced the value of the land and any improvements on it, the resources available to the acquiring authority in implementing the land reform programme, any financial constraints that necessitate the payment of compensation in instalments over a period of time and any other factor relevant factor that maybe specified in an Act of Parliament.

The implication of this provision is that even if the former colonial power avails funding for the compensation of land compulsorily acquired for resettlement, the amount that those whose land would have been acquired and the timeframe for the compensation will be guided by these considerations. The amendment to the Constitution through the insertion of section 16 A was followed by the adoption of conforming amendments to the Land Acquisition Act which provides in Section 29 C that compensation shall only be payable for improvements on to or to the land and not necessarily the land itself. The Constitutional amendment and the Land Acquisition Amendment resulted in an accelerated Land Reform and Resettlement Plan known as the Fast Track Land Reform Process (FTLRP). This resulted in invasions of white owned commercial farms.

A series of court actions were mounted by the Commercial Farmers' Union to challenge the legality of the laws that resulted in the FLRP.<sup>20</sup> The courts ruled in favour of the former white commercial

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<sup>18</sup> Section 16 A (c)(i) of the Constitution of Zimbabwe

<sup>19</sup> Section 16 A (c)(ii) of the Constitution of Zimbabwe

<sup>20</sup> Commercial Farmers Union v. Minister of Lands, 2000 (2) ZLR



farmers. The Supreme Court ruled that the land invasions were unlawful and that the presence of the farm occupiers must either be legalized or they must be removed. The GOZ responded to this ruling by enacting the Rural Law Occupiers (Protection from Eviction) Act.<sup>21</sup> In terms of this Act, any qualified person occupying rural land on 1 March 2001 could not be evicted by Court Order. Such persons, that is the farm occupiers, were relieved of liability for damages or trespass, and were entitled to continue occupation during the period when sections 5 and 8 notices were in effect and up to a year after any denial by the Administrative Court of an order of confirming section 5 notice or approving a section 8 notice.

In 2005, the Constitution of Zimbabwe was once again amended through amendment Number 17. This Constitutional amendment resulted in the insertion of section 16 B into the Constitution on agricultural land acquired for resettlement and other purposes. Section 16 B is a key provision, which has great implications on land ownership and user rights. Section 16B(2) provides that notwithstanding anything provided in this Chapter—

- a)
  - i. all agricultural land that was identified on or before the 8th of July, 2005, in the Gazette or Gazette Extraordinary under section 5(1) of the Land Acquisition Act (Chapter 20:10), and which is itemized under in Schedule 7, being agricultural land required for resettlement purposes; or
  - ii. that is identified after the 8th July, 2005, but before the appointed day, in the Gazette or Gazette Extraordinary under section 5(1) of the land Acquisition Act (Chapter 20:10 ) being agricultural land required for resettlement purposes; or
  - iii. that is identified in terms of this section by the acquiring authority after the appointed day in the Gazette or Gazette Extraordinary for whatever purpose, including but not limited to settlement for agricultural or other purposes; or the purposes of land reorganization, forestry, environmental conservation or the utilization of wildlife or other natural resources; or the relocation of persons dispossessed in consequence of the utilization of land for purpose referred above, is acquired and vested in the State with full title there in with effect from the appointed day or, in the case of land referred to in subparagraph (iii), with effect from the date it is identified in the manner specified in that paragraph; and
  - iv. no compensation shall be payable for land referred to in paragraph (a) except for any improvements effected on such land before it was acquired.

This provision of amendment Number 17 essentially nationalized all agricultural land in Zimbabwe with effect from 2005. This Constitutional amendment bars any person who has a right or an interest in land that has been compulsorily acquired from approaching a court of law in Zimbabwe to challenge the acquisition of the land by the State and bars any court in Zimbabwe from entertaining any such challenges. These are ouster clauses that oust the courts' jurisdiction from adjudicating on the FTLRP.<sup>22</sup> However, those who have lost land through compulsory acquisition can approach the courts and the courts can entertain their challenges insofar as they relate to the amount of compensation that is

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<sup>21</sup> Chapter 20:26

<sup>22</sup> Section 16 B(3) a of the Constitution of Zimbabwe

payable as compensation for the improvements effected on the land before it was acquired. However, the ouster of the Zimbabwean courts' jurisdiction to adjudicate on the FTLRP and the payment of fair and adequate compensation does not stop those whose land was compulsorily acquired from approaching courts outside Zimbabwe. For example, the now defunct Southern African Development Community Tribunal, which was based in Namibia, adjudicated on the FTLRP. The International Centre for Settlement of Investment Disputes based in Washington D.C adjudicated on the FTLRP in the proceedings between Bernardus Hernricus Funnekotter and Others (Claimants) and the Republic of Zimbabwe (Respondent).<sup>23</sup> In both cases, the claimants were claiming for compensation for both the acquisition of land and improvements of land. Bernardus Hernricus Funnekotter were awarded compensation for both the land value and the improvements thereon.

There was a possibility that vesting of land ownership in the land could be challenged in the Zimbabwean courts from a procedural point of view. The amendment covers this loophole by providing that "as soon as practicable after the appointed day, or after the date when the land is identified in the manner specified in subsection (2)(a)(iii) as the case maybe, the person responsible under any law providing for the registration of title over land shall without further notice, effect the necessary endorsement upon a title deed and entries in any register kept in terms of that law for the purpose of formally cancelling the title deed and registering in the State title over land."<sup>24</sup> This is further buttressed by a provision which states that "Any inconsistency between anything contained in a notice itemized in Schedule 7; or a notice relating to land referred in subsection (2)(a)(ii) or iii and the title deed to which it may it refers or is intended to refer; and any error whatsoever contained in such notice, shall not affect the operation of subsection (2)(a) or invalidate the vesting title in the State in terms of that provision."<sup>25</sup>

It should be noted that we did not look at international law and the implication of foreign treaties (BIPAs) on ownership of land in Zimbabwe pertaining to the Constitution.

### ***Land Tenure under the Current Dispensation***

The objective of the Gazetted Land Act is to make certain provisions that are consequential to the enactment of section 16 B of the Constitution and to amend the Land Acquisition Act and to repeal the Rural Land Occupiers (Protection from Eviction) Act. Under the new dispensation, ownership of land is vested in the State and it administers in the form of leases either in terms of the Rural Land Act<sup>26</sup> or the Agricultural Land Settlement Act.<sup>27</sup>

As it stands, for one to claim title to land, they must either be in possession of an offer letter, a permit or a land settlement lease. An offer letter is defined as a letter issued by the acquiring authority to any person that offers to allocate to that person any Gazetted Land, or a portion of Gazetted land, described in that letter. A permit is defined as a permit issued by the state which entitles any person to occupy and use resettlement land while resettlement land is defined as land identified resettlement land under the Rural District Councils Act.<sup>28</sup> The lease agreements can be in the form of 25- or 99-year lease

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<sup>23</sup> International Centre for Settlement of Investment Disputes Case No. ARB/05/6.

<sup>24</sup> Section 16 B(4)

<sup>25</sup> Section 16 B(5)(a)(b)

<sup>26</sup> Chapter 20:18

<sup>27</sup> Chapter 20:01

<sup>28</sup> Chapter 29: 13

agreements. The 25 year agreements apply mainly to conservancies ranging about 15,000 hectares and the title is normally given to two or more people. Occupiers of A1 model farms, which ranges about 6 hectares occupation permits, which are given by the Chief Executive Officers and District Administrators of the respective District. The A1 farms are based on the village concept with communal residential and grazing areas with separate farming areas.

Offer letters are mainly meant for A2 farms, which carries a 99-year lease agreement. The A2 farms are much larger than the A1 model farms as they are self contained and the owners are expected to engage in commercial agricultural operations. Due to pressure to grant security of tenure on the new farmers, the government has adopted the 99 year leaseholds as the type of land tenure on the acquired A2 model farms. The 99 year leases have to be registered in the Deeds Registry upon the surveying of the land in accordance with cadastral surveying standards and approved by the Department of the Surveyor General. The 99-year lease is an agreement between the State through the Ministry of Lands and the A2 farmers being the lessee. The lease provides that the lessee shall occupy and use the piece of land for an agreed rental for a period of 99 years. In addition the 99 year lease agreement provides 99 years guarantee of land if the farmer continues to meet the terms and conditions of the lease agreement. The land under leasehold still remains the property of the State and cannot be disposed without the consent of the Minister of Lands and as such the lease agreements are not transferable without the consent of the Minister of Lands. Both the A1 and A 2 farmers have no security of tenure and only have title to occupy and user rights on the land.

### ***Occupation of Gazetted Land without Lawful Authority***

According to section 3(1) of the Gazetted Land (Consequential) Act, no person shall be allowed to use, or occupy Gazetted land without lawful authority. Every former owner or occupier of Gazetted land that was identified before, on and after the 8<sup>th</sup> of July shall cease to occupy, hold or use that land for forty-five days after the fixed date unless the owner or occupier is lawfully authorised to occupy, hold or use that land. Former owners of gazetted land that is identified in terms of section 16 B 2(a)(iii) for any other purposes shall cease to occupy, hold or use that land forty five days after the date when the land is identified unless the occupier is lawfully authorised to occupy, hold or use that land.

Lease agreement provides 99 years guarantee of land if the farmer continues to meet the terms and conditions of the lease agreement. The land under leasehold still remains the property of the State and cannot be disposed of or transferred without the consent of the Minister of Lands.

### ***Compensation***

Section 29 C (2) of the Land Acquisition Act states that in assessing or estimating the amount of compensation payable to any person for improvements on or to the land, the Compensation Committee and every designated valuation officer shall be bound by the principles prescribed in Part 1 of the Schedule. The Act also provides that compensation shall be payable for the land acquired where an adequate fund for that purpose is established in accordance with section 16 A (1) of the Constitution. Section 16A (1) of the Constitution provides that the former colonial power has the obligation to pay compensation for agricultural land compulsorily acquired for resettlement, through an adequate fund established for that purpose. If the former colonial power refuses to pay compensation through a fund, the GOZ shall not be obligated to pay for the compensation of the land acquired. In assessing compensation generally on improvements on specially gazetted land the Principles regarding

assessment of Compensation for Improvements on to Specially Gazetted land, which will be taken, into account include:

- The age, nature and condition of the improvements on to the land.
- Any contribution made by the State towards the improvements concerned.
- In valuing buildings, the quality of their construction shall be assessed according to standards set by the Ministry responsible for housing standards for the types of buildings concerned. The age and condition of the buildings shall be taken into account.
- In relation to grazing veld compensation shall be payable for dams, dips, spray races, fencing and any other improvements enhancing its value for grazing purposes.
- In relation to irrigated land, compensation shall be payable for dams, boreholes, canals, irrigation equipment embedded in the ground and other improvements enhancing its value for irrigation purposes.
- In valuing fencing, lower values shall be placed on fences that are not erected to standards prescribed in the Fencing Act (Chapter 20: 06) or with pressure treated poles. Boundary fences shall be paid only half of the value.
- With electrical installations, the costs of installing any main electricity supply and connection.
- Any other additional improvements on the land which enhances its value for agricultural purposes with the agreement of the owner for movables used in connection with that land for agricultural purposes including irrigation equipment not embedded in the ground, tractors, ploughs, disc harrows, trailers, combine harvesters, pumps not permanently attached to the land, sprinklers, riser and movable storages.

The Minister of Special Affairs in the President's office for Lands, Land Reform and Resettlement or any Minister assigned by the President to administer the Land Acquisition Act with the approval of the Minister of Finance may fix the form and manner in which and period within which the compensation on the improvements of the land will be paid provided that:

- at least one quarter of the compensation shall be payable at the time the land concerned is acquired or within a reasonable time thereafter;
- a further one quarter of the compensation payable shall be paid within 2 years after the land concerned was acquired; and
- the balance of the compensation shall be paid within 5 years after the land concerned was acquired.

The Minister may also direct that the whole or any part of the compensation to be paid either in a lump sum or in installments or in cash bonds or other securities issued by the government. In as much as these provisions relating to the payment of compensation on improvements made to the agricultural land acquired for resettlement and other purposes are provided in the Land Acquisition Act, there are limitations, which can inhibit the payment of this compensation. Section 16 A (2) of the Constitution states that where agricultural land is acquired compulsorily for the resettlement of people in

accordance with the land reform, some of the factors which shall be taken into account in the assessment of the compensation that can be payable include any financial constraints that necessitate the payment of compensation in installments over a period of time by the acquiring authority.

### *IEEA and its Application and Implication on Tourism and Conservancies*

The Indigenisation and Economic Empowerment Act<sup>29</sup> (IEEA) and the regulations passed thereafter is another legislation that has implications on wildlife conservancies. The objectives of the IEEA are to provide for support measures for the further indigenization of the economy and to provide support measures for the economic empowerment of Zimbabweans. The objectives of the Act are very broad and cover all sectors of the economy including the tourism sector. Under the objectives and measures in pursuance of indigenisation and economic empowerment, there is a provision, which relates to the tourism sector:

‘No projected or proposed investment in a prescribed sector of the economy available for investment by domestic or foreign investors for which an investment license is required in terms of the Zimbabwe Investment Authority Act (Chapter 14:30) shall be approved unless a controlling interest in the investment or (such lesser share thereof as maybe temporarily prescribed for the purpose of subsection (5) is reserved for indigenous Zimbabweans.’<sup>30</sup>

Further, General Notice 280 in the Government Gazette on 29 June 2012 (the General Notice is made under the IEEA) prescribes the appropriate minimum net asset value above which a business is required to comply with the principal regulations, lesser share than the minimum indigenisation and empowerment quota that indigenous Zimbabweans may hold and the maximum period business may continue to operate before it attains the minimum indigenisation and empowerment quota. Tourism is among the sectors targeted by the General Notice. The IEEA is aimed at ensuring that at least 51% the shares of every public company and any other business shall be owned by indigenous Zimbabweans.<sup>31</sup>

Indigenisation is defined in the IEEA as “a deliberate involvement of indigenous Zimbabweans in the economic activities of the country, to which hitherto they had no access, so as to ensure the equitable ownership of the nation’s resources.” The Act defines an indigenous Zimbabwean as “any person who, before the 18<sup>th</sup> April, 1980, was disadvantaged by unfair discrimination on the grounds of his or her race, and any descendant of such person, and includes any company, association, syndicate or partnership of which indigenous Zimbabweans form the majority of the members or hold the controlling interest.”<sup>32</sup> On its own, the definition of indigenous Zimbabwean seems to be open ended in that it refers to any person and may include white Zimbabweans in its ambit. It is in its implementation that the term indigenous Zimbabwe has become a “euphemism” for black Zimbabweans leading some analysts to conclude that the IEEA maybe a misleading title and that the proper title should have been Black Economic Empowerment Act similar to the South African law.<sup>33</sup>

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<sup>29</sup> Chapter 14:33

<sup>30</sup> section 3 (1) of the Indigenisation and Economic Empowerment Act

<sup>31</sup> Section 3 (1) (a)

<sup>32</sup> Section 2 of the Indigenisation and Economic Empowerment Act

<sup>33</sup> Derek Matyszak. Everything You Ever Wanted to Know (and then some) about Zimbabwe ‘s Indigenisation and Economic Empowerment Legislation but (Quiet Rightly) were too Afraid to Ask, 2nd Edition, May, 2011.

Indigenisation in the conservation field is further expounded upon by the Wildlife Based Land Reform Policy, which remains a draft policy, not yet codified in law. The objective of the WBLRP is to ensure profitable, equitable and sustainable use of wildlife resources, particularly in areas where agricultural potential is limited.

### *Authority over Wildlife*

The Land and Agriculture Development and Cabinet Action Committee provide the framework for the operationalisation of the WBLRP. It specifically states that all animals will remain *res nullius*. The WBLRP is predicated on the premise that all land and wildlife belongs to the state and this explains why land owners and operators have to be issued with hunting permits and quotas by the ZPWMA under the Ministry of Environment and Natural Resources. The Trapping of Animals Control Act<sup>34</sup> indirectly points the regulatory authority that has the power to give a permit from the trapping of animals in Zimbabwe. In terms of the Act, any person who wishes to obtain a permit to make, possess, or use a class II trap for the purpose of trapping any animal may make an application therefore in writing to the Minister.<sup>35</sup> The Minister may without assigning any reason thereof refuse to grant a permit in terms of this section and at any time cancel any permit granted in terms of this section or amend any existing condition or impose any new condition thereon.<sup>36</sup>

### *Community Share Ownership Trust/Schemes*

Conservancies will have to find ways of working with communities living around conservancies. This is a requirement both under the Operationalisation of the WBLRP<sup>37</sup> and the IEEA (General) (Amendment) Regulations<sup>38</sup>, which makes provisions for community interests through a Trust. Trusts are already operational in the mining sector and to date, give community share ownership schemes in which communities through a 10% equity hold shares in mining companies. These include the Mhondoro-Ngezi Community, Gwanda, the Zvishavane-Shurugwi, Tongogara, and Zimunya-Marange Community Share Ownership Schemes among others.

Community Share Ownership Schemes are part of ensuring accelerated rural development. Trusts can use proceeds gained under the community share ownership trust for the operation and maintenance of schools, hospitals and healthcare services and other developmental projects like the building of dams, roads and bridges, it is up to the Trust Board to decide.

The WBLRP provides as follows:

*“The economic interests of local communities surrounding each conservancy or ranch shall be managed through a Trust linked to that conservancy. The Trust will operate under the auspices of the relevant RDCs. However, the beneficiaries for each Trust must be defined based on who shares the costs (not just benefits) in the relationship.”*

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<sup>34</sup> Chapter 20:21

<sup>35</sup> Section 7 (1)

<sup>36</sup> *ibid* Section 7 (3) (a)(b)

<sup>37</sup> Section 2

<sup>38</sup> Statutory Instrument 116 of 2010

Section 14 B of the IEEA Regulations, makes provisions for three types of community share ownership schemes/Trusts, formed by:

1. residents of the RDC established in terms of the Rural District Councils Act <sup>39</sup> whose natural resources are being exploited by a qualifying business.
2. residents of one or more wards of a RDC specified in a community share ownership scheme whose natural resources are being exploited by a qualifying business.
3. a distinct community of persons as defined in a community share ownership scheme, who are affected by the exploitation of the natural resources in or adjacent to their place of residence. A community share ownership scheme or trust shall be constituted by a Deed of Trust registered with the Deeds Office. <sup>40</sup>

While the three forms of establishing the Community Share Ownership Schemes or Trusts may look similar, they have different implications on communities and their ability to benefit effectively from the exploitation of natural resources from their place of residence. For example, under the first option, the RDC shall have the right to appoint the trustee or trustees who will hold the shares in the qualifying business on behalf of the community. This option replicates the Communal Areas Management Programme for Indigenous Resources (CAMPFIRE) model where communities have complained about not getting meaningful benefits as the money comes through the RDC, which uses it to meet its budgetary needs before distributing what is left to the communities, which generally turns out to be very little. This has created conflicts between communities and RDCs.

Under the second option, the manner of appointing trustees who will hold shares or interests in the qualifying business on behalf of the community shall be as agreed between the RDC concerned and the qualifying business. This option may be problematic as it may result in a similar dynamic as option 1 between the RDC and the community.

The third option allows communities to decide on their own without the interference of the qualifying business and RDC to appoint their own trustees who will hold shares and interest in the qualifying business on behalf of the community. Representatives should include the traditional leadership, women and youth. The Community Share Ownership Schemes or Trusts provides an opportunity for communities to be involved in the policy and decision-making processes of the conservancies and the business entities should come up with innovative and creative ways of involving communities.

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<sup>39</sup> Chapter 29:13

<sup>40</sup> Section 14 B (3)