TRANSFRONTIER CONSERVATION AREAS OF SOUTHERN AFRICA AND THE ROLE OF LOCAL COMMUNITIES IN THE CONTEXT OF INTERNATIONAL LAW

In areas where it is hard to separate land, wildlife, and communities, it may seem that substantial participation from local communities in environmental decision-making processes is a foregone conclusion. Nevertheless, many pieces of *international law*¹ that recognize the community as a stakeholder and mandate community involvement in carrying out the law do not clearly define the role of the community in the implementation of the agreement. Even if the role of the community is clearly defined, nation-states might not involve the community in the implementation of the agreement. When such an instance occurs, community rights may be marginalized or communities may be disempowered. One case where such possibilities might exist is in transfrontier conservation area agreements throughout southern Africa. *Transfrontier conservation areas* (TFCAs) are ecological protection that straddle the boundaries of two or more countries, encompassing one or more protected areas, as well as multiple resource areas (South African Govt. Dept. of Environmental Affairs and Tourism 2002). Transfrontier conservation areas can also be known as International Peace Parks (Carroll 1979), transfrontier conservation and development areas (PPF 2002), transfrontier parks (PPF 2002), Transfrontier Nature Reserves (Thorsell & Harrison 1990), and Transboundary Parks (Kenney 1990), and Cross-Border Parks

¹ *International law* is the body of rules that nation states consider to be binding in their mutual relations.
(McNeely 1993), all of which depend on the popular terminology of the time and the TFCA’s intended purpose. For example, the Great Limpopo Transfrontier Park is composed of Kruger National Park of South Africa, Gonarezhou National Park of Zimbabwe, and the Limpopo National Park of Mozambique (see Fig. 1).

Upon their establishment, TFCAs are managed as a single ecological province. Transfrontier conservation areas have and are being established for several reasons including wildlife conservation, increased biodiversity, restoration of wildlife migration routes, economic benefit through ecotourism, creation of buffer zones between countries (particularly those

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2 A transfrontier park is a TFCA where the primary purpose is wildlife conservation (South African Govt. Dept. of Environmental Affairs and Tourism 2002).
with disputed borders), and as a symbolic gesture of peace. They are, however, no panacea to natural resource management. As a relatively young approach to international protected area management, TFCAs have experienced difficulties, particularly in the interface between them and local communities. For example, concerns have been raised regarding the legal basis for community involvement, the scale of community involvement, and how power is devolved to communities (Metcalfe 1999).

The purpose of this research is to investigate these concerns, in the context of international law, at two TFCAs in southern Africa at very different stages of establishment: The Kgalagadi Transfrontier Park, a de facto TFCA since 1948, and The Maloti-Drakensberg Transfrontier Conservation and Development Area, established in 2001.

Communities Defined

To clearly understand the dynamics of the relationship between TFCAs and the community, it is first necessary to attempt to precisely define what “the community” is. For the purposes of this study, a community is defined as a group of people residing in the same locality and under the same government. Communities are complex and heterogeneous systems composed of individuals differentiated by many qualities such as status, political and economic power, religion, social prestige, and intentions. As such, communities will have individuals with differing opinions on environmental principles and, in turn, how TFCAs should be managed. These differences complicate the process of community involvement in TFCA management. Nevertheless, the role of the community in ensuring conservation and sound TFCA management has been championed (Danby 1997; Linde et al. 2001; Metcalfe 1999). It is in this spirit that international law has recognized the important role
communities can play in implementing international environmental agreements such as TFCA initiatives.

**Transfrontier conservation areas and the basis for community participation**

Transfrontier conservation areas are established by multilateral treaties between nations agreeing to manage the areas for the variety of purposes outlined above. These treaties carry the force of international law, which binds the nations to abide by the stipulations of the agreement or face consequences such as sanctions. One of the stipulations outlined in most of the TFCA agreements is that local communities are to play an active role in the management of TFCAs. The inclusion of this stipulation is largely attributed to the Treaty of the Southern African Development Community (The SADC Treaty), a piece of international law observed by virtually all of southern Africa. The SADC Treaty promulgates that Member States of the SADC (states that have signed the Treaty) are to cooperate in the areas of “natural resources and the environment” and “encourage the people of the Region and their institutions to take initiatives to develop economic, social and cultural ties across the Region and to participate fully in the implementation of the programs and projects of the SADC.” [Emphasis added] (Article 21 § 3(e), Article 5 § 2(b)). According to SADC’s Protocol on Wildlife Conservation and Law Enforcement, transfrontier conservation area initiatives are an example of cooperation among Member States in the area of natural resources and the environment that strive to develop “economic, social, and cultural ties” across a region. Thus, participation of the people of the region (or local communalities) is required in implementation of such initiatives. Presently, all nation-states in southern Africa participating in TFCA initiatives are also Member States of SADC. The Treaty of SADC further declares that Member States “shall take all necessary steps to accord
this Treaty the force of national law” and “take all steps to ensure the uniform application of this treaty.” (Article 6 § 4 and § 5). Thus, it becomes international and national policy of all Member States to encourage full participation of local communities in the implementation of TFCA initiatives. It is this principle that defines the fundamental question of the study -

**How has the mandate of international law (e.g. The Treaty of SADC) to involve local communities in TFCA initiatives been recognized and/or implemented, and if it hasn’t been, what are the necessary conditions and institutions needed to insure that it is recognized and/or implemented?**

### Principle Investigation

This question requires an investigation of both the avenue and method of implementation. The *avenue of implementation* refers to the legal mechanisms by which power (or the absence thereof) is devolved to the community whereas the *method of implementation* refers to the activities of the community that the implementation either allows or prohibits.

Figure 2 displays the avenues of implementation over which this study is concerned. They can be described as follows

- The International Law/Nation-State Policies/Community-Policies/ Community Members implementation (solid line) – This avenue of implementation occurs when international law concerning communities grants authority to the nation-state to draft policies which, in turn, grants local communities authority to draft policy which implements the international law in question.

- The International Law/Nation-State Policies/Community Members implementation (dashed line) – This avenue of implementation occurs when international law
concerning communities grants authority to the nation state to draft policies that implement the international law in question.

- The International Law/Community Members interaction (dotted line) – This avenue of implementation occurs when International Law is self-executing.

![Diagram of Avenues of Policy Implementation Relevant to this Study]

**Fig. 3 – Avenues of Policy Implementation Relevant to this Study**

With respect to the method of implementation, this study proposes to assess the activities, if any, through which the mandate is being exercised. For example, are local communities actively involved in the development of management plans, strategies, and practices as a result of the provisions of the Treaty of SADC? Through the implementation, have local communities gained or lost responsibility and authority regarding the management of TFCAs? Finally, noting that implementation does not necessarily imply effectiveness, do the methods of implementation effectively foster community involvement as directed by SADC?

It is through this two dimensional study of implementation – the avenue of implementation and the method of implementation – that an assessment of how international law concerning TFCAs has empowered local communities to become viable stakeholders in TFCA
management. By assessing the implementation of SADC's mandate in the case of the Kgalagadi and Maloti-Drakensberg Transfrontier Conservation Areas, a clearer understanding of community involvement in TFCA management will be developed. This will serve as guidance for future TFCA initiatives and it will assist in evaluating those currently in place. This study will not only guide future TFCA initiatives, but also future attempts at regionalism (e.g. The African Union) where natural resources and community development are an expressed concern.

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The Transfrontier conservation areas of southern Africa have pioneered a means of large scale conservation across international boundaries. As pioneers, they have the potential to teach about what is and what is not possible. There have been obstacles, in their establishment and development, and some of these obstacles relate to the role of local communities in their establishment and management. Through this study an assessment of the roles of communities in TFCAs can be made. This assessment then might serve as both a descriptive and prescriptive analysis for engagement of communities in TFCAs and thus provide guidance for the roles and behavior of communities toward TFCAs worldwide.