

**GENERAL TRANS-FRONTIER CONSERVATION
AND RESOURCE AREA PROTOCOL**

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE REPUBLIC OF MOZAMBIQUE

AND

THE GOVERNMENT OF THE KINGDOM OF SWAZILAND

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Preamble

The Government of the Republic of Mozambique, the Government of the Republic of South Africa and the Government of the Kingdom of Swaziland (hereinafter jointly referred to as the "Parties" and any one of them as a "Party"),

RECOGNISING the principle of sovereign equality and territorial integrity of their states;

DESIRING the enhancement of the socio-economic conditions of life of the people in the Region through, among other things, fostering economic growth, maximising job creation, broadening ownership patterns, and promoting peaceful activities and harmonious interactions among the peoples of the Region;

RECOGNISING the significant interdependence of economic development and conservation within the Region;

CONSCIOUS of threats posed to the natural environment by its physical destruction or alteration, by over-utilisation of the resource base, by uncoordinated development, by pollution of land, water and air, and by the insufficient integration of environmental considerations into the development process;

RECOGNISING that economic development in the Region can be significantly facilitated and promoted by co-operation among the Parties and harmonisation of approaches and regimes in the areas, among others, of conservation and land and resource management policies and capacity building;

CONSIDERING that an efficient way of promoting sustained economic development opportunities and contributing to expedited economic growth and global competitiveness in the Region is to do so by the creation of an attractive investment environment through the development of stable regulatory frameworks within which the Parties and investors may operate;

RECOGNISING the intrinsic ecological value of the natural environment in the Region, its unique geophysical and topographical formations, its global significance as an IUCN International Centre of Plant Diversity, its wide diversity of fauna including threatened and endangered species, the importance and sensitivity of life support systems in the Region, and the Region's cultural, spiritual and historical value;

ACKNOWLEDGING the various relevant international conventions ratified by the Parties, including the 1992 Convention on Biological Diversity and desiring to promote the objectives thereof and to facilitate the implementation of the understandings therein;

DESIRING to promote sustainable development and utilisation of the natural resource base, the maintenance of a healthy environment, and holistic cross-border eco-system management;

RECORDING that to enhance the conditions of life of the people in the Region, the Parties initiated the Lubombo Spatial Development Initiative and concluded a General Protocol in that regard;

RECORDING FURTHER that among the Objectives of the General Protocol were the creation of a stable and attractive climate for private sector investment through cross-border co-operation in a variety of areas and to ensure that economic development occurs in a balanced manner consistent with international and domestic environmental goals and obligations and which recognises the importance of preserving the Region's unique environmental wealth;

AND FURTHER RECORDING that among the undertakings of the Parties in the General Protocol were the undertakings (1) to consult with each other with respect to harmonisation of policies and/or regulatory regimes with regard to, among other things, appropriate cross-border integration or integrated or co-ordinated management of conservation areas, and (2) as soon as possible, to draft and implement appropriate protocols executed by the Parties on transnational regulatory matters;

HEREBY agree as follows:

ARTICLE 1

Definitions

In this Protocol, unless the context indicates otherwise:

"Domestic Law" means the domestic law and constitutional requirements in force in the country of a Party;

"General Protocol" means the General Protocol on the Lubombo Spatial Development Initiative entered into on 5 July 1999, by the Governments of the Republic of Mozambique, the Republic of South Africa and the Kingdom of Swaziland;

"Lubombo Spatial Development Initiative" has the meaning ascribed to it in the General Protocol;

"Ministerial Committee" means the Trilateral Ministerial Committee on the Lubombo Spatial Development Initiative established pursuant to the General Protocol;

"Objectives" means the objectives as defined in the General Protocol;

"Region" means the geographical area defined in the General Protocol;

"Representative" means a voting representative of a Party on the TFCA Commission;

"Responsible Minister" means the Cabinet Minister(s) responsible for economic and environmental affairs appointed by a Party to the Ministerial Committee or such heads of ministerial departments to which such Cabinet Minister(s) may from time to time delegate responsibilities in terms of this Protocol;

"Secretariat" means the Secretariat referred to in Article 6(2) hereof;

"Task Team" means the Trilateral Task Team established pursuant to the General Protocol;

"TFCA" or "Trans-Frontier Conservation and Resource Area" means a specific geographical area divided by one or more international political borders, which is identified by two or more of the Parties to be the subject of TFCA Management;

"TFCA Commission" means the Trans-Frontier Conservation and Resource Area Commission established pursuant to Article 4 hereof;

"TFCA Management" means the joint arrangements or programmes determined by two or more of the Parties to be applied to or in respect of a TFCA;

"TFCA Objectives" means the objectives set forth in Article 2 hereof;

"TFCA Task Group" means the task groups referred to in Article 3 hereof to be established by two or more of the Parties in respect of a TFCA.

ARTICLE 2

Trans-Frontier Conservation and Resource Area Objectives

The TFCA Objectives of the Parties with respect to the Region as well as particular TFCA's are to create an enabling framework to facilitate the following:

- (1) economic development through appropriate optimisation of opportunities presented by the Parties' natural assets;
- (2) ecologically and financially sustainable development, the sustainable utilisation of the natural resource base, and the maintenance of ecosystem function through holistic and integrated environmental planning and management;
- (3) the development of joint strategies (including regional funding strategies) for trans-frontier ecological planning and resource management for TFCA's;
- (4) the provision of guidance for the encouragement, formulation and implementation of agreements, programmes and arrangements with regard to such joint strategies;
- (5) the establishment of a mechanism for joint review, supervision and decision-making with respect to such agreements, programmes and arrangements;
- (6) mutual consultation and assistance in the practical implementation of the objectives and undertakings related to TFCA Management and possible improvement in such management, including joint regulation and policing/security issues;
- (7) the exchange of scientific, technical, legal and any other information relevant to TFCA Management;
- (8) the joint development of administrative, technical and scientific capacity at various levels of community and governmental structures;
- (9) the involvement of communities in and adjacent to TFCA's through consultation, representation and participation in TFCA Management;

- (10) the recognition and accommodation of traditional activities and culture of local communities in the TFCA's taking into account the maintenance of ecosystem integrity;
- (11) the identification of opportunities to broaden ownership patterns in the TFCA's through among others, the encouragement of local small business, of community-owned ventures, and of joint ventures with domestic and global investors;
- (12) joint education, marketing and publicity campaigns to further TFCA Objectives;
- (13) the promotion of the objectives and implementation of the Parties' undertakings with respect to relevant international conventions ratified by the Parties; and
- (14) the supporting and strengthening of existing and proposed initiatives underway in respect of these objectives in the Region and the creation of an enabling framework to assist such initiatives and to create synergies between and among them.

ARTICLE 3

Undertakings by the Parties

In furtherance of the Objectives and the TFCA Objectives, the Parties shall:

- (1) delegate or grant to the TFCA Commission (established pursuant to Article 4 hereof) such powers and authorise it to perform such duties, under and subject to Domestic Law, as are necessary for the successful achievement of the TFCA Objectives and as are set forth in Article 5 hereof;
- (2) implement policies, procedures, and, where necessary, legislation and/or regulations, including the harmonisation of such legislation and/or regulations, to ensure a co-ordinated approach by the Parties to the TFCA Objectives, with the advice and guidance of the TFCA Commission;
- (3) consult and co-operate with each other and the TFCA Commission in respect to the facilitation of the work of the TFCA Commission;
- (4) consult and co-operate with each other in the implementation of these undertakings and the TFCA Objectives;
- (5) inform each other timeously of activities within the jurisdiction of any Party of which they are or become aware that may negatively impact on a TFCA;
- (6) consult on how to prevent or minimise such negative impacts and implement such agreed actions as are necessary to prevent or minimise such impacts;
- (7) inform each other on a regular basis as to the measures introduced or to be introduced by any Party in implementation of this Protocol;
- (8) provide, as necessary, seed monies on an agreed basis for the administration costs of the TFCA Commission and provide all reasonable assistance to the TFCA

Commission in identifying local regional, national and international funding sources and in obtaining funds from such sources;

- (9) consider the conclusion of additional Protocols to establish TFCA Task Groups and any other joint management mechanisms for specific TFCA's to effect the TFCA Objectives; and
- (10) review, on an ongoing basis, the performance of and continued need for the TFCA Commission.

ARTICLE 4

Establishment and Constitution of the Trans-Frontier Conservation and Resource Area Commission

- (1) The Parties hereby establish the TFCA Commission.
- (2) The Responsible Minister of each Party, in consultation with that Party's representatives on the Ministerial Committee, shall appoint three Representatives to the TFCA Commission, consisting of appropriate conservation and resource area management experts, tourism and development experts and representatives of relevant government economic, environmental and tourism authorities, or such other number of Representatives as may be agreed upon by the Ministerial Committee from time to time.
- (3) The TFCA Commission may propose to the Ministerial Committee other appropriate persons as non-voting members (or advisers or observers) of the TFCA Commission.
- (4) Within three months of the entry into force of this Protocol, each Responsible Minister shall have appointed the respective Representatives and shall have, within such period, communicated the names of such Representatives to the Ministerial Committee. Each Responsible Minister may at any time, in due consultation with the Ministerial Committee, terminate such appointment and appoint any other appropriate person. Any Representative who does not attend more than two duly called and notified consecutive meetings of the TFCA Commission may be replaced by the Responsible Minister.
- (5) The Responsible Minister may invite such other appropriate persons as advisers to or observers on the TFCA Commission as may be appropriate or necessary for the achievement of the TFCA Objectives and as may be agreed by the Parties.
- (6) The Chair of the TFCA Commission shall be one of the Representatives appointed pursuant to Article 4(2) which shall alternate among the Parties every two years unless otherwise agreed by the Responsible Ministers. The Chair for the first two years shall be appointed by the Responsible Minister of the Government of South Africa.

ARTICLE 5

Duties and Powers of the TFCA Commission

The TFCA Commission shall perform such authorised duties and exercise such powers as are granted to it in order to achieve the TFCA Objectives and, in particular without limitation, the TFCA Commission:

- (1) may establish a fund to meet its administrative costs (the "Fund");
- (2) is authorised to solicit and accept contributions for the Fund and to allocate, apply and disburse the monies in the Fund to meet its administrative costs;
- (3) is authorised to consult with, enter into consultation arrangements with, and gather information from any appropriate person in order to assist the TFCA Commission in achieving the TFCA Objectives;
- (4) is authorised to have access to all relevant government entities?entities? for appropriate information and assistance;
- (5) shall provide the Ministerial Committee and the Task Team on an annual basis with three copies of the complete, independently audited financial statements for the previous financial year as well as a report of the previous financial year's activities and a plan for the subsequent two years;
- (6) shall establish reporting requirements for TFCA Task Groups;
- (7) shall set out fund-raising and disbursement procedures for TFCA Task Groups and ensure co-ordination among them in that regard;
- (8) shall assist, co-ordinate and, where necessary or required by the Ministerial Committee, supervise TFCA Task Groups and any other joint management mechanisms for specific TFCA's and shall monitor the introduction and implementation of other TFCA-related Protocols and shall make recommendations in that regard to the Ministerial Committee;
- (9) shall advise and report to the Ministerial Committee and the Task Team as they may reasonably require and shall identify and recommend the adoption and implementation of such policies and measures as may be necessary to ensure the achievement of the TFCA Objectives; and
- (10) shall take such actions as are necessary to implement the activities referred to in Article 6.

ARTICLE 6

Functioning of the TFCA Commission

- (1) Management meetings of the TFCA Commission shall take place three times a year at a time and venue as may be determined by the TFCA Commission. The frequency, time and venue of all other meetings shall be determined by the TFCA Commission as appropriate.
- (2) Subject to the availability of appropriate funding, the TFCA Commission shall as soon as possible establish a permanent Secretariat to provide organisational and information services to the TFCA Commission, and, subject to Article 6 (5) hereof, to assist in implementation of the duties and policies of the TFCA Commission, and to represent the TFCA Commission to the Ministerial Committee, to other relevant Ministers of the Parties as and when appropriate, and to the Task Team. The Secretariat shall have one representative from each Party appointed by the Responsible Minister and a co-ordinator mutually agreed by the Ministerial Committee.
- (3) The Task Team shall act to the extent possible as such Secretariat for the first twelve (12) months from the entry into force of this Protocol or until the establishment of the permanent Secretariat, whichever is earlier. The TFCA Commission may, if necessary, extend the mandate of the Task Team to act as a Secretariat for a further period of time.
- (4) The hosting member(s) of the TFCA Commission shall be responsible for preparation and timeous distribution of the proposed agenda, the recording and distribution of the minutes and the making available of a suitable venue, unless such duties can be assumed by the Secretariat.
- (5) A quorum for decision-making shall consist of two Representatives of each Party. All decisions of the TFCA Commission shall be taken on the basis of consensus among the Representatives, save that for decisions relating to matters affecting only two Parties, such decisions shall be taken on the basis of consensus among the Representatives of such two Parties. In the event of the TFCA Commission failing to reach consensus, the matter under discussion shall be referred to the Task Team which, if unable to resolve the matter to the satisfaction of the TFCA Commission, shall refer the matter to the Ministerial Committee.
- (6) The TFCA Commission shall establish its own rules of procedure in so far as its internal structure and meetings are concerned.
- (7) The secretarial duties to the TFCA Commission shall be supplied by the TFCA Commission members hosting a particular meeting, unless such duties can be assumed by the Secretariat.

ARTICLE 7

Financial Arrangements

- (1) Until such time as the Fund has sufficient monies pursuant to Article 5(2), each Party shall, in respect of all meetings of the TFCA Commission, be responsible for all costs incurred in connection with the attendance and participation of its members, advisers and observers on the TFCA Commission.
- (2) At such time when the Fund has sufficient monies pursuant to Article 5(2), the TFCA Commission members hosting a particular meeting of the TFCA Commission shall be responsible for all costs incurred in making a venue available for the meeting, the preparation and distribution of the proposed agenda, the recording and distribution of the minutes, and the provision of secretarial services, unless any such costs are to be assumed by the Secretariat.

ARTICLE 8

Dispute Settlement

- (1) If any dispute arises among any of the Parties as to the interpretation, application or performance of this Protocol, including its existence, validity or termination, such dispute shall be first referred by any Party(s) to the other Party(s) for negotiation and amicable settlement.
- (2) If such dispute cannot be settled amicably, any Party may submit such dispute to final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes Between Two States, as in effect on the date of signature of this Protocol.
- (3) The appointing authority shall be the Secretary General of the Permanent Court of Arbitration at The Hague.

ARTICLE 9

Respect for National Legislation and Other Agreements

Nothing in this Protocol shall be deemed as derogating from any provision of the Domestic Law of any Party or any obligations assumed by a Party under agreements previously concluded.

ARTICLE 10

Respect for National Initiatives

Nothing in this Protocol shall be deemed as derogating from national initiatives and development procedures and the funding for such initiatives and procedures within any TFCA consistent with TFCA Objectives.

ARTICLE 11

Amendment of the Protocol and Entry into Force of Amendment

- (1) This Protocol may be amended by mutual agreement among the Parties.
- (2) An amendment mutually agreed to by the Parties shall enter into force on the date on which each Party has notified the other Parties through the usual diplomatic channels of its compliance with the constitutional requirements necessary for the implementation of the relevant amendment.

ARTICLE 12

Entry into Force of the Protocol

- (1) This Protocol shall enter into force on the date on which each Party has notified the other Parties in writing through the usual diplomatic channels of its compliance with the constitutional requirements necessary for the implementation of this Protocol.
- (2) This Protocol shall terminate as between the terminating Party and the other Parties on a day three months after the date upon which such Party has given the other Parties notice in writing of the proposed termination.

ARTICLE 13

Adhesion by Other Governments

The Government of any State with a common geographic boundary with one or more of the Parties may, with the prior written consent of the Parties, adhere to this Protocol without need for amendment of this Protocol, in which event that Government shall be included in the definition of Party and the provisions of this Protocol shall apply to such new Party insofar as to trans-frontier conservation and resource issues directly relevant to such new Party. In such event, the new Party shall be entitled to appoint Representatives to the TFCA Commission on the same terms and conditions as the other Parties. Such new Party shall also be entitled to appoint a Responsible Minister to the Ministerial Committee and a representative to the Task Team and the provisions of the General Protocol shall apply to it insofar as to trans-frontier conservation and resource issues directly relevant to such new Party.

Deposit with the United Nations

This Protocol shall be deposited with the United Nations Headquarters in New York.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed and sealed this Agreement.

DONE atDurban'..... on this the22..... day of
.....June..... In this year Two Thousand.

FOR AND ON BEHALF OF
THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA

FOR AND ON BEHALF OF
THE GOVERNMENT OF
THE REPUBLIC OF MOZAMBIQUE

FOR AND ON BEHALF OF
THE GOVERNMENT OF
THE KINGDOM OF SWAZILAND