

MEMORANDUM OF UNDERSTANDING

**TO FACILITATE THE ESTABLISHMENT
OF THE**

**LIMPOPO / SHASHE
TRANSFRONTIER CONSERVATION AREA**

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA,

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE

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INTRODUCTION

The Government of the Republic of Botswana, the Government of the Republic of South Africa and the Government of the Republic of Zimbabwe (hereinafter jointly referred to as the "Governments" and in the singular as a "Government");

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

FURTHER RECOGNISING the legal and other rights of all Stakeholders as major contributors of land and resources to the proposed Limpopo/Shashe Transfrontier Conservation Area;

CONSCIOUS of the benefits to be derived from close co-operation and the maintenance of friendly relations with each other;

ACKNOWLEDGING the necessity to conserve shared natural and cultural resources and the environment for the benefit of all the people of Southern Africa;

RECALLING the provisions of the Southern African Development Community (SADC) Treaty and Declaration of Heads of State and Government (Windhoek, 1992), SADC Protocols on Trade (Lesotho, 1996), Development of Tourism (Mauritius, 1998), Wildlife Conservation and Law Enforcement (Maputo, 1999);

CALLING UPON Member States of SADC to promote regional co-operation;

WISHING to initiate a process with this Memorandum of Understanding that will result in an agreement to establish, develop and manage the proposed Limpopo/Shashe Transfrontier Conservation Area;

RECALLING that the countries promoting the proposed Transfrontier Conservation Area (TFCA) initiative are signatories of or Parties to the African Convention on the Conservation of Nature and Natural Resources (Algiers, 1968), the Convention on Wetlands (Ramsar, 1971), World Heritage Convention (Paris, 1972), the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES, Washington, 1973) and the Convention on Biological Diversity (Rio de Janeiro, 1992); and

DESIRING to promote ecosystem integrity, biodiversity conservation as well as sustainable socio-economic development across international boundaries;

HEREBY DECIDE as follows:

ARTICLE 1

Definitions

In this Memorandum of Understanding (hereinafter referred to as the "MoU"), unless the context otherwise requires -

"conservation" means the protection, management, maintenance, rehabilitation, restoration, enhancement and sustainable use of natural and cultural resources and the environment;

"cultural resources" means any physical and spiritual property associated with past and present human use or occupation of the environment, cultural activities and history;

"National Co-ordinating Agencies" means those bodies identified in Article 7;

"natural resources" means non-domesticated biological resources;

"Stakeholders" means individuals or groups of individuals or representative institutions with a stake, direct interest or a right recognisable under law in the TFCA development and management, such as local or district authorities, local communities (meaning groups of people living in and adjacent to the proposed TFCA, bound together by social and economic relations based on shared interest), private landowners, conservation organisations, etc.;

"sustainable use" means use in a manner and at a rate that does not lead to the long-term decline of natural resources; and

"Transfrontier Conservation Area (TFCA)" means a relatively large area, which straddles frontiers between two or more countries and covers large-scale natural systems encompassing one or more conservation areas, in which the participating countries decide to cooperate in managing shared natural resources.

ARTICLE 2

Establishment of the Transfrontier Conservation Area

(1) The Governments will engage Stakeholders with a view to jointly establish a Transfrontier Conservation Area, which may include -

(a) in the Republic of Botswana, the areas known as:

Northern Tuli Game Reserve Landowners (see Appendix A for the properties that constitute this area);

(b) in the Republic of South Africa, the areas known as:

Mapungubwe National Park and the core area properties (see Appendix A for the properties that constitute this area);

(c) in the Republic of Zimbabwe, the areas known as:

Tuli Circle Safari (See Appendix A for the properties that constitute this area).

(2) In defining the geographic areas intended for inclusion in the proposed TFCA and mentioned in sub-article (1), it is understood that this does not preclude the later inclusion of additional areas into the proposed TFCA, provided that such inclusion will be done by mutual consent of the Governments and in accordance with Article 6 and other relevant Articles in this MoU.

(3) A map of the proposed TFCA is attached to this MoU as Appendix B.

ARTICLE 3

Rights of Stakeholders

- (1) The Governments agree that real rights recognisable under law of Stakeholders will be recognised and respected.
- (2) A Government will in terms of its domestic law enter into contractual arrangements with Stakeholders regarding the protection and regulation of matters affecting such rights.
- (3) Stakeholders will become part of the process to establish the proposed Limpopo/Shashe TFCA on a voluntary basis, identified by means of the consultative structures provided for in Article 7.
- (4) The Governments acknowledge that in order to formalise the establishment of the TFCA, it will be necessary for each Government to take appropriate steps to designate or proclaim the land so included in terms of its relevant legislation and that such designation or proclamation will be preceded by the conclusion of a formal agreement between them acting in their sovereign capacities.
- (5) It is recorded that certain land intended for inclusion in the proposed TFCA is either owned by or is subject to rights in favour of certain Stakeholders and that it will accordingly be necessary for binding agreements to also be reached with such Stakeholders prior to the aforementioned designation or proclamation of the proposed TFCA.

ARTICLE 4

Interim name of the proposed Transfrontier Conservation Area

The interim name of the area as described in Article 2 will be the Limpopo/Shashe Transfrontier Conservation Area.

ARTICLE 5

Co-operation

- (1) The process of establishing the proposed TFCA will be done through joint decision-making processes adopted within the Institutional Framework outlined in Article 8.
- (2) The Governments will ensure that full stakeholder participation is engaged, through consultation and representation within their respective countries, so that broad social and political acceptance is achieved for the proposed TFCA.
- (3) The Governments will follow regional protocols and international treaties in the development of the actual agreement establishing the proposed TFCA.

ARTICLE 6

Objectives of the Proposed TFCA

- (1) The objectives of the proposed TFCA, when established, will be to -
- (a) foster trans-national collaboration and co-operation between Botswana, South Africa and Zimbabwe in implementing ecosystem and cultural resource management through the establishment and development of the proposed TFCA;
 - (b) promote alliances in the management of biological and cultural resources and encourage social, economic and other partnerships among the Governments and the Stakeholders;
 - (c) enhance ecosystem integrity and natural ecological processes by harmonising wildlife management procedures across international boundaries and striving to remove artificial barriers impeding the natural movement of animals;
 - (d) develop frameworks and strategies whereby local communities can participate in, and tangibly benefit from, the management and sustainable use of natural and cultural resources that occur within the proposed TFCA; and
 - (e) promote cross-border tourism as a means of fostering regional socio-economic development.
- (2) The Governments may, after consultation with Stakeholders, agree to other objectives.

ARTICLE 7

National Co-ordinating Agencies

In order to give effect to the intent and objectives as expressed in this MoU, the Governments decide that:

- (a) the Government of the Republic of Botswana will designate, through its Ministry of Environment, Wildlife and Tourism, the Department of Wildlife and National Parks (hereinafter referred to as "DWNP") as its National Co-ordinating Agency, and will delegate such powers and functions to the DWNP as are required to facilitate the establishment of the proposed TFCA. To the extent that it affects the interests of the Stakeholders, it is understood that the DWNP will develop consultative structures to enable representation by these Stakeholders for the co-ordination of activities leading to the establishment of the proposed TFCA;
- (b) the Government of the Republic of South Africa will designate, through its Ministry of Environmental Affairs and Tourism, the South African National Parks (hereinafter referred to as "SANParks") as its National Co-ordinating Agency, and will delegate such powers and functions to SANParks as are required to facilitate the establishment of the proposed TFCA. To the extent that it affects the interests of the Stakeholders as defined, it is understood that SANParks will develop consultative structures to enable representation by

these Stakeholders for the co-ordination of activities leading to the establishment of the proposed TFCA; and

- (c) the Government of the Republic of Zimbabwe will designate, through its Ministry of Environment and Tourism, the Department of National Parks and Wild Life Management (hereinafter referred to as the "DNPWLM") as its National Co-ordinating Agency, and will delegate such powers and functions to the DNPWLM as are required to facilitate the establishment of the proposed TFCA. To the extent that it affects the interests of the Stakeholders as defined, it is understood that DNPWLM will develop consultative structures to enable representation by these Stakeholders for the co-ordination of activities leading to the establishment of the proposed TFCA.

ARTICLE 8

Institutional Framework for Collaboration

The institutional framework (see chart in Appendix C of this MoU) for the operation of this MoU will be -

- (a) the Limpopo/Shashe TFCA Trilateral Ministerial Committee;
- (b) the Limpopo/Shashe TFCA Trilateral Technical Committee;
- (c) the Limpopo/Shashe TFCA Advisory Committees;
- (d) the Limpopo/Shashe TFCA Project Coordinator; and
- (e) any other Ad Hoc Committee that may be established by the TFCA Trilateral Technical Committee as and when required.

ARTICLE 9

TFCA Trilateral Ministerial Committee

The Trilateral Ministerial Committee will -

- (a) consist of Ministers responsible for the government departments in Article 7;
- (b) finalise the draft International Treaty to establish the proposed TFCA that will be presented to the respective Governments;
- (c) be responsible for overall policy guidance in the process of establishing the proposed TFCA;
- (d) be chaired on a rotational basis, with the host country providing the chairperson;
- (e) meet once a year, or more frequently depending on the urgency of the issues tabled for discussion;
- (f) monitor progress in the establishment of the proposed TFCA; and

- (g) make decisions by consensus.

ARTICLE 10

TFCA Trilateral Technical Committee

- (1) The Trilateral Technical Committee will be made up of members of the National Co-ordinating Agencies and designated representatives of Stakeholders identified through the consultative structures provided for in Article 7. The TFCA Project Co-ordinator, as defined in Article 13, will be a member of the Trilateral Technical Committee.
- (2) To maintain continuity, designated members of the Trilateral Technical Committee will endeavour to attend all meetings in person and where an alternative person is to attend a meeting, the designated member will ensure that such an alternative person is fully briefed and given the necessary authority and mandate to act as a member of the Trilateral Technical Committee.
- (3) National and international conservation and heritage organisations supporting projects in the proposed TFCA, may be invited to participate in meetings of the Trilateral Technical Committee either as observers or advisors.
- (4) The Trilateral Technical Committee will be responsible for -
 - (a) translating decisions of the Trilateral Ministerial Committee into operational guidelines and policies;
 - (b) identifying the steps required for establishing the proposed TFCA;
 - (c) preparing reports and other documentation for the Trilateral Ministerial Committee;
 - (d) negotiating and drafting the International Treaty for the establishment of the proposed TFCA;
 - (e) developing action plans for the establishment of the proposed TFCA;
 - (f) preparation of a draft management and development plan of the proposed TFCA;
 - (g) harmonising the expectations and aims of the Governments with respect to the establishment, future development and management of the proposed TFCA;
 - (h) monitoring the establishment of the proposed TFCA;
 - (i) overseeing the administration of funds generated for the establishment of the proposed TFCA;
 - (j) ensuring Stakeholder participation in the overall planning and establishment of the proposed TFCA;

- (k) monitoring activities of important role-players or institutions in the planning and development of the proposed TFCA, in particular but not limited to the field of immigration, customs, veterinary services, archaeology, cultural resource management, tourism development initiatives and security; and
 - (l) setting up Ad Hoc Committees for undertaking specific activities of the proposed TFCA development.
- (5) The Trilateral Technical Committee will be chaired on a rotational basis, with the host country providing the chairperson.
 - (6) The Trilateral Technical Committee will adopt its own rules of procedure.
 - (7) The Trilateral Technical Committee will meet at least four times a year, or more frequently depending on the urgency of the issues tabled for discussion.
 - (8) Decisions of the Trilateral Technical Committee will be by consensus.

ARTICLE 11

TFCA Advisory Committees

- (1) The TFCA Advisory Committees will be composed of representatives appointed by the Stakeholders in each of the countries, to ensure Stakeholder input in the planning and establishment of the proposed TFCA. The TFCA Advisory Committees will be free to interact and work with conservation, cultural resource management and heritage organisations in the respective countries.
- (2) The TFCA Advisory Committees will be responsible for -
 - (a) representing the interests of different sections of society in each country regarding the planning and development of the proposed TFCA;
 - (b) collecting and passing on information on issues to be discussed in Trilateral Technical Committee meetings, receiving feedback, and transmitting relevant information to different Stakeholders; and
 - (c) facilitating discussions on matters of mutual interest between the different countries.
- (3) The TFCA Advisory Committees will adopt their own rules of procedure.

ARTICLE 12

TFCA Project Co-ordinator

- (1) To promote efficiency, co-ordination and accountability in the TFCA planning and development process, it is decided that a TFCA Project Co-ordinator be appointed by the Trilateral Ministerial Committee on the recommendation of the Trilateral Technical Committee.

(2) If it is not possible to sustain a dedicated person as Project Co-ordinator, the following will apply -

- (a) one of the Governments will be designated as Project Leader and given the mandate to nominate a Project Co-ordinator to lead the TFCA process for a maximum period of two consecutive years;
 - (b) the designation as Project Leader will rotate amongst the Governments and a Government may elect to forfeit its designation as Project Leader depending on circumstances, in which case the function will pass on to the next Government eligible;
 - (c) the appointment of the Project Co-ordinator will be approved by the Governments.
- (3) The functions of the Project Co-ordinator will be to -
- (a) drive and coordinate the activities associated with the planning and development of the proposed TFCA;
 - (b) ensure that an effective TFCA Trilateral Technical Committee and TFCA Advisory Committees are established with full representation, and that a working programme focussed on achieving the objectives of the proposed TFCA is sustained;
 - (c) co-ordinate the drafting of an International Treaty for presentation to the Trilateral Ministerial Committee;
 - (d) co-ordinate the drafting and implementation of an effective Action Plan for achieving the objectives of the proposed TFCA, with full participation of the relevant Stakeholders;
 - (e) ensure that appropriate processes and procedures in planning and developing the proposed TFCA are followed, in accordance with regional protocols and international treaties;
 - (f) prepare reports on key resolutions and directives emanating from the Trilateral Ministerial Committee and the Trilateral Technical Committee;
 - (g) facilitate the convening of meetings of the different TFCA Committees;
 - (h) liaise with the Trilateral Technical Committee in identifying activities that would require funding and identifying sources for funds; and
 - (i) undertake assignments deemed necessary by any of the TFCA committees.

ARTICLE 13

Financing of the process to facilitate establishment of the proposed TFCA

- (1) It is agreed that each Government may, in accordance with its domestic policies, contribute financially towards the planning and development of the proposed TFCA through its normal budgeting procedures or any other sources.
- (2) It is agreed that non-governmental organizations and Stakeholders may raise funds towards the establishment and development of the proposed TFCA. No Stakeholder will be under any obligation in this regard.
- (3) All funding proposals for the proposed TFCA will be developed in consultation with the Trilateral Technical Committee.

ARTICLE 14

Settlement of Disputes

- (1) Any dispute between the Governments arising out of the interpretation or implementation of this MoU will be settled amicably through consultation or negotiation between the Governments concerned.
- (2) Notwithstanding the existence of a dispute, the Governments will for the benefit of each other, use their best endeavours to ensure that the process of establishing the proposed TFCA continues.

ARTICLE 15

Entry into Effect

This MoU will enter into force between the signatories upon signature by any two of the participating Governments.

ARTICLE 16

Amendments

This MoU may be amended in writing by the mutual consent of the Governments.

ARTICLE 17

Withdrawal

- (1) Any Government may withdraw from this MoU at any time by giving written notice to the other Governments.
- (2) This MoU will automatically terminate upon the entry into force of an International Agreement on the establishment of the Limpopo/Shashe Transfrontier Conservation Area.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Memorandum of Understanding in triplicate in the English language, all texts having equal validity.

FOR THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA

SIGNED at SHALIMPO on this 22nd day of June 2006

Julius Molelele

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

SIGNED at Shalimpo on this 22nd day of June 2006

Mawpauwe van Schalkwyk

FOR THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE

SIGNED at SHALIMPO on this 22 day of June 2006

Phema