
Protecting Traditional Knowledge in Mozambique:

Current legal and institutional frameworks



Table of Contents

Contents

Table of Contents.....	1
Acknowledgments.....	3
1. Introduction	4
2. Natural resource management.....	5
2.1 Political context	5
International Instruments	5
Regional Instruments.....	7
National policies	8
2.2 Legal context.....	10
The Constitution	10
Access and sharing of benefits	10
Biodiversity	13
Forestry and Wildlife.....	14
Marine resources.....	17
Land ownership	18
Local authorities and community participation	19
Other related legislation.....	20
2.3 Institutional arrangements	21
2.4 Risks and opportunities, Case studies.....	24
3. Cultural heritage and intellectual property	28
3.1 Laws and regulations	28
Cultural Heritage Protection Act.....	28
Copyright (Copyright Law)	29
Industrial Property Code	29
3.2 Institutional arrangements	31
National Institute of Creative and Cultural Industries	31
Industrial Property Institute (IPI)	32
3.3 Risks and opportunities, Case studies.....	32
4. Traditional Medicine and Ethnobotany	33
4.1 Political context	33
4.2 Laws and regulations	34
4.3 Institutional arrangements	34

4.4 Risks and opportunities, Case studies.....	35
5. Academic research	36
5.1. Political context	36
5.2. Laws and regulations	36
5.3. Institutional context	37
5.4. Case studies	39
5.5. Risks and opportunities	40
6. Conclusion	41

Acknowledgments

This report was developed by Ana Alecia Lyman for Natural Justice. This report forms part of a series of guidelines and tools to support local communities in Mozambique to explore, document and preserve their traditional knowledge and traditional cultural expressions. Local communities have rights with respect to their traditional knowledge, biological resources and climate adaptation measures, mostly grounded in customary laws, that need legal protection.

By assisting communities in deepening their understanding of the legal protections afforded to them, Natural Justice hopes that communities will benefit and defend their traditional knowledge against misappropriation or other threats.

This report was funded under the African Activists for Climate Justice programme.

Please view the other reports in this series:

1. **Protecting Traditional Knowledge in Mozambique: Current legal and institutional frameworks**
2. **Protecting Our Heritage: A Community Guide to Safeguarding Traditional Knowledge in Mozambique**
3. **Traditional Knowledge Database for Mozambique**

Developed by: Ana Alecia Lyman

Published: 20 November 2024

Creative Commons License: *This work is licensed under the Creative Commons Attribution on-Commercial-Share Alike 4.0 International License. Recipients are encouraged to use it freely for not-for-profit purposes only. Please credit the authors. To view a copy of this license, visit <https://creativecommons.org/licenses/by-nc-sa/4.0/>*

1. Introduction

Traditional knowledge, steeped in generations of experience and observation, serves as a cornerstone of cultural heritage, particularly within the rich tapestry of global biodiversity. Defined as the accumulated body of knowledge, practices and representations transmitted orally or through practical demonstration, traditional knowledge not only embodies cultural identity but also offers invaluable insights into sustainable resource management and biodiversity conservation.

As Mozambique navigates the complexities of balancing economic development with environmental preservation, the protection and enhancement of traditional knowledge emerges as a key objective. Internationally recognized frameworks, such as the Nagoya Protocol and the recent World Intellectual Property Organization (WIPO) Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, highlight the inherent value of traditional knowledge, advocating for its protection and equitable sharing of benefits derived from its use. Mozambique's active participation in such agreements underscores its commitment to addressing the urgent need for preservation of traditional knowledge within the context of biodiversity utilization.

Despite its importance, Mozambique currently lacks functional regulatory frameworks specifically geared towards protecting traditional knowledge associated with biological resources. However, a favorable political climate is now provoking important advances. The ongoing review of Decree 19/2007, "Regulation on access to and benefit-sharing related to the utilization of genetic resources and associated traditional knowledge", presents a crucial moment to address the existing gaps, offering an opportunity to strengthen legal frameworks and establish robust protections for traditional knowledge.

In parallel to this regulatory revision process, the Ministry of Science and Technology, through the Center for Ethnobotanical Research and Development, is currently seeking avenues to develop an inaugural traditional knowledge database with the potential to further support both protection and valorization of traditional knowledge through intentional structures. The new WIPO Treaty (May 2024) has yet to enter into force, but also represents an important advance in aligning worldwide patenting processes with traditional knowledge protections. These complementary initiatives promise to support an improved enabling environment in the near future.

In this context, this report seeks to outline the existing legal and legislative instruments with potential implications for the protection of traditional knowledge within Mozambique's biodiversity landscape, while highlighting the importance of leveraging the current review process and upcoming initiatives to introduce new safeguards and promote a more inclusive and sustainable approach to biodiversity management.

2. Natural resource management

2.1 Political context

Mozambique's policy framework for community engagement and sustainable use of natural resources is underpinned by a wide range of policies and strategies. These policies cover sustainable land use and management, forestry, wildlife, agriculture, tourism, biodiversity conservation and environmental protection. Each instrument has been tailored to the Mozambican context to promote inclusive economic development, ensure ecosystem conservation and ensure that benefits from natural resources are equitably distributed among local communities.

The preservation of and respect for traditional knowledge (TK) is a central component of natural resource management and use policies in Mozambique. This knowledge, transmitted over generations, is fundamental to sustainable biodiversity management, cultivation, and ecosystem conservation practices. In the Mozambican context, where local and traditional communities have specific knowledge about the use of plants, animals, and soils, the protection of TK both strengthens cultural identity and also contributes to food security and climate resilience. Thus, Mozambique's accession to international treaties reflects a commitment to integrating TK into the conservation and equitable use of natural resources, aiming to ensure that the benefits derived from these resources reach the communities that preserve and cultivate them.

International Instruments

As the first major international agreement of its kind, the Convention on Biological Diversity was ratified by Mozambique in 1994 through Resolution 2/94 of 24 August. In addition to committing to significant reductions in national rates of loss of biological diversity, Mozambique pledged to develop national legislation supporting the integration of the Convention's priority areas: conservation, sustainable use and equitable sharing of benefits related to the utilization of natural resources. For Mozambique, where a large proportion of the population depends directly on natural resources for their livelihoods, implementation of this agreement promotes conservation while recognizing and supporting traditional ways of life and community participation in environmental management.

Subsequent to the Convention on Biological Diversity, in 2015 Mozambique ratified the Nagoya Protocol - a seminal international agreement focusing on the fair and equitable sharing of benefits arising from the utilization of genetic resources and traditional knowledge associated with biodiversity. The Nagoya Protocol outlines frameworks for access to genetic resources and equitable benefit sharing, aiming to promote biodiversity conservation and sustainable use, while respecting sovereign rights of provider countries and the rights of indigenous and local communities. This is particularly relevant for developing countries like Mozambique, where native biodiversity and associated traditional knowledge run the risk of inappropriate exploitation without key safeguards in place.

Also aligned with the Convention on Biological Diversity, the International Treaty on Plant Genetic Resources for Food and Agriculture (ratified by Mozambique with Resolution 33/2010) established a multilateral system for access and benefit-sharing related to the use of genetic resources of a limited list of crops and feeds that are critical for food security in most countries of the world. Relatedly, the International Code of Conduct for the Collection and Transfer of Plant Germplasm included as an objective the development of mechanisms “to avoid situations where the benefits currently derived from plant genetic resources by these local communities and farmers are jeopardized by the transfer or use of the resources by others.”¹

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates the import, export, re-export and introduction of species. Implementation of CITES requirements requires sustainable use legislation, including regulation of access and use. Recent developments have attempted to “recognize that implementation of CITES is best achieved with the involvement of rural communities, especially those that are traditionally dependent on CITES-listed species for their livelihoods... and that implementation of CITES listings can improve livelihoods by providing long-term conservation of species and reducing unsustainable and illegal trade” ². However, practical challenges remain in ensuring the meaningful participation of traditional communities, the full protection of their rights and the meaningful integration of traditional knowledge.³

The International Treaty on Plant Genetic Resources for Food and Agriculture, commonly known as the “Seed Treaty”, was established under the leadership of FAO and aims to promote the conservation and sustainable use of plant genetic resources essential for food security. This treaty is fundamental as it provides a framework for access to and fair and equitable sharing of benefits related to plant genetic resources, with the aim of ensuring global food sovereignty and preserving agricultural biodiversity.⁴ This treaty entered into force in Mozambique in 2020. However, a national regulation for its implementation has not yet been developed. According to the national ITPGRFA focal point, preliminary public consultations are currently foreseen as part of the regulatory development process.

The objectives of the ITPGRFA include the conservation and sustainable use of plant genetic resources for food and agriculture. In alignment with these objectives, some interventions are underway, led by the Mozambican Institute for Agrarian Research (IIAM). These include expansion and improvements to the germplasm bank and the genetic sequencing of key species.

Article 9 of the ITPGRFA focuses on protecting and promoting farmers’ rights, including the protection of traditional knowledge relevant to key agricultural species and the right to share in benefits arising from utilization of those resources. Implementation strategies for these objectives are not yet adequately addressed in current regulations or initiatives, but are expected to be garner focus in the development of future national regulations.

¹Article 1: Objectives, *International Code of Conduct for the Collection and Transfer of Plant Germplasm*
<https://www.fao.org/3/x5586E/x5586e0k.htm>

²Resolution 16.6 (Rev. CoP18) CITES and livelihoods

³Julia Nakamura and Eugenio Sartoretto, “CITES and IPLCs: a question of participation and livelihoods”
26/01/2024 <https://www.fao.org/legal-services/resources/detail/en/c/1656398/>

Regional Instruments

Mozambique has contributed to several SADC regional protocols following ratification of the Convention on Biological Diversity. Protection and valorization of traditional knowledge related to biodiversity is a consistent theme in many of these agreements.

The SADC Protocol on Wildlife Conservation and Law Enforcement serves as a basic platform for regional cooperation and integration in wildlife resource management. The Protocol includes an emphasis on incorporating traditional knowledge into information strategies, procedures and capacity-building programmes:

*States Parties shall establish or introduce mechanisms for community-based wildlife management and shall integrate principles and techniques derived from indigenous knowledge systems into national wildlife management and law enforcement policies and procedures.*⁴

The SADC Protocol on Forestry (2002) advocates for the active participation of all stakeholders and assigns responsibilities for its implementation at both national and regional levels. Importantly, the Protocol “enshrines basic principles of sovereign rights over national forests, intergenerational equity, maintenance of ecological function and minimization of undue negative environmental impacts”⁵.

Article 16: “Traditional knowledge related to forests” specifically notes:

States Parties, in consultation with the population and local communities

- (a) may record, preserve and protect traditional knowledge relating to the forest, and provide for the equitable sharing of any benefits arising from the utilization of such knowledge among those who hold it;*
- (b) shall, where appropriate, develop standards, guidelines and other mechanisms in this regard.*

In addition to these protocols, the **2008 SADC Regional Biodiversity Strategy**⁶ was developed to support the implementation of the biodiversity-focused areas of the Regional Indicative Strategic Development Plan. While it did not explicitly mention traditional knowledge, it did aim to conserve biodiversity in a way compatible with regional cultural values. The strategy focused on three areas: a) adding value and commercializing biological resources through sustainable biotrade, b) developing legislation, tools and partnership models that avoid the risk of biodiversity loss, and c) developing and implementing education and capacity-building programmes, research and development initiatives and sustainable financing arrangements.

⁴ International Treaty on Plant Genetic Resources for Food and Agriculture

<https://openknowledge.fao.org/server/api/core/bitstreams/5854dfab-084a-4658-86f7-33e0f21c40e6/content>

⁵ Article 7.8

⁵L. Mubaiwa, “The Southern African Development Community (SADC) Protocol on Forests – can it stop the growing threats to the region’s forests?” *Unasylva* 218, Vol 55, 2004

⁶Southern African Development Community Regional Biodiversity Strategy

In 2010, these themes were further explored in practical form in the **SADC Biodiversity Action Plan: Building Wealth and Livelihoods through Biodiversity Conservation and Management**. The 15-year pathway presented in the Action Plan emphasized the tenants of the CBD, with particular emphasis on the importance of enhancing and managing biodiversity-related knowledge for conservation and sustainable use. The Action Plan also highlights the potential of traditional knowledge to contribute to conservation as well as economic development through bioprospecting opportunities. Within the strategic focus area Governance of Biodiversity Management, the Action Plan explicitly called for “benefit-sharing mechanisms at regional, national and local levels to be developed and demonstrated in all countries” ⁷.

National policies

The development of national biodiversity-related policies over the last 20 years has reflected an increasing focus on the involvement of local communities in the management of forest resources, even when protections for traditional knowledge are not explicitly referenced.

Conservation Policy (Resolution No. 63/2009) promotes environmental stewardship by involving stakeholders, especially communities dependent on natural resources. It emphasizes participatory management, conservation awareness, and national biodiversity management strategies to achieve ecological, social, and economic objectives.

The **National Environmental Policy** (Resolution No. 5/95, 3 August) was developed to guide the country towards sustainable socio-economic development. Key strategic documents outlining the role of local communities in relation to the environment include the Strategic Plan for the Environment Sector 2005-2015 and the Environmental Strategy for Sustainable Development 2007-2017.

Within the environmental sector’s policy framework is the integration of local communities into the development of policies and legislation governing natural resource management, conservation area governance, and enforcement mechanisms to ensure adherence to environmental standards and regulations. The sector advocates for the retention of rights by communities residing in protected areas, enabling them to negotiate equitable returns on the income generated.

The **1997 Forestry and Wildlife Development Policy and Strategy** defined in paragraph 56 “the objective relating to the involvement of local communities in the management and conservation of forest and wildlife resources”, achieved through:

- (i) participation in the conservation and use of forest resources;
- (ii) training for monitoring practices;
- (iii) creation of Natural Resources Management Committees;
- (iv) definition of mechanisms for accessing resources;
- (v) demonstration of the importance of trees in ecological functions;
- (vi) fire control education;

⁷SADC Biodiversity Action Plan 2010, p66

(vii) inventory, demarcation and establishment of management plans.

The **recently revised Forest Policy** (Resolution No. 23/2020 of 27 March) reiterates the importance of an enabling environment for the active participation of all citizens and stakeholders in the sustainable management of forests. It places particular emphasis on local communities, valuing and respecting traditional knowledge and socio-cultural relationships. The policy recognizes the key role of local communities as custodians and beneficiaries of forest resources, aiming to actively involve them in the management of natural resources.

In the short term, the policy emphasizes empowering grassroots community organizations to promote sustainable forest management, monitor forest resources, combat illegal logging, and implement community business projects. It also prioritizes the creation and development of protected areas, reforestation efforts, and sustainable partnerships with stakeholders.

In the medium term, the policy seeks to develop models of public-private, community and community partnerships to promote the generation of benefits from timber and non-timber forest products, and supporting equitable sharing of benefits with communities.

In the long term, communities are seen as key participants in promoting rural development at the local level through effective, participatory and transparent management of environmental goods and services.

In parallel to the above-mentioned policies, the national **Land Use Policy** (Resolution No. 18/2007) advocates inclusive planning, consultation and sustainable land use to promote socio-economic development, while respecting settlement patterns. Likewise, the **National Land Policy** (Resolution No. 10/95, of October 17) emphasizes safeguarding land rights and promoting the sustainable and equitable use of resources.

The **National Tourism Policy and Implementation Strategy** (Resolution No. 14 of 4 April 2003) prioritizes community involvement in decision-making processes that affect livelihoods within conservation areas.

2.2 Legal context

The Constitution

No explicit mention of TK protection is made in the 2004 Constitution, but several articles envision safeguards for the responsible use of natural resources, the right of local populations to access those resources for their needs and seek redress in case of violation.

The fundamental principles relating to natural resources are enshrined in the 2004 Constitution, with particular emphasis on Article 98, which delimits the public domain of the State, affirming the State as the main owner of natural resources within its territorial limits.

Article 102 addresses natural resources, emphasizing the State's obligation to promote knowledge, inventory and valorization of natural resources, while stipulating the conditions for their use in line with national interests.

Furthermore, Article 109 establishes state ownership of all land, recognizing land as a universal means for the creation of wealth and social well-being, ensuring its accessibility to all Mozambican people. Article 111 guarantees the recognition and protection of rights acquired through inheritance or occupation, except in cases of legal reservation or legal concession to another entity.

The Constitution incorporates safeguards against violation of rights, including the principle of redress and the right to lodge complaints with competent authorities for redress in the interest of public welfare.

Access and sharing of benefits

Following ratification of the CBD and related regional protocols, Mozambique's "Regulation on Access to and Benefit-Sharing resulting from Utilization of Genetic Resources and Associated Traditional Knowledge" (Decree 19/2007) remains the main legislation for the protection of traditional knowledge linked to biodiversity. Although it predates the Nagoya Protocol by several years, the decree shares a similar focus on bioprospecting activities and does not extend to the regulation of biotrade.

The main provisions include:

1. **Institutional Arrangements:** The decree establishes the Ministry of the Environment as the National Authority responsible for issues relating to access and benefit sharing, alongside an Inter-institutional Group for Genetic Resources Management, acting as a multisectoral technical-scientific advisory body.
2. **Access:** Guidelines are established for accessing and utilizing Mozambique's genetic resources, including, among other provisions, that any foreign entity must collaborate with a national lead applicant.
3. **Prior informed consent:** Requirements for obtaining prior informed consent from relevant authorities or communities before accessing genetic resources are described, supporting transparency and empowering providers.

4. **Material Transfer Agreements:** The decree defines requirements for material transfer agreements when genetic resources are transferred between institutions, whether national or international.
5. **Benefit Sharing:** Mechanisms are outlined for the fair and equitable sharing of benefits arising from the utilization of genetic resources. Notably, in cases where commercial use is anticipated, the decree mandates formalized contracts for utilization and benefit sharing prior to access activities.
6. **Compliance Mechanisms:** Regulatory responsibilities are defined to monitor and enforce compliance with ABS provisions, ensuring that users comply with agreed terms and fulfill benefit-sharing obligations. In addition, administrative sanctions are outlined for violators, aiming to prevent unauthorized use and commercialization of genetic resources and traditional knowledge.

Two articles specifically address the protection of traditional knowledge:

Chapter IV: Protection of Associated Traditional Knowledge

ARTICLE 14 - Traditional knowledge

1. It is prohibited to use or exploit illegally, and carry out other actions that are harmful or not authorized by the national authority, the traditional knowledge of local communities associated with genetic resources.
2. The State recognizes the right of local communities to decide on the use of their traditional knowledge associated with the country's genetic resources under this Regulation.
3. Traditional knowledge associated with genetic resources referred to in this Regulation forms part of Mozambique's historical and cultural heritage and may be subject to registration.
4. The protection provided by this Regulation shall not be construed as impeding the preservation, use and development of the traditional knowledge of the local community.
5. The protection established herein shall not affect, prejudice or limit rights relating to intellectual property.

ARTICLE 15 - Rights of Local Communities

1. For the purposes of this Regulation, any traditional knowledge associated with genetic resources may be the property of the community, even if only an individual member of that community possesses that knowledge.
2. Local communities that create, develop, hold or preserve traditional knowledge associated with genetic resources have the right to:
 - a. Have the origin of access to traditional knowledge indicated in all publications, uses, explorations and disclosures;
 - b. Prevent unauthorized third parties from using, conducting testing, research or utilization related to associated traditional knowledge, or disclosing, transmitting or retransmitting data or information that includes or constitutes associated traditional knowledge;

- c. Receive benefits from the economic exploitation by third parties, directly or indirectly, of associated traditional knowledge, the rights to which are held by them under Article 23(2)(e) of this Regulation.

It is notable that the implementation of Decree 19/2007 has encountered challenges. The regulation introduced new and complex institutional arrangements, presenting difficulties in terms of the necessary human and financial resources. Furthermore, a perceived lower importance of bioprospecting within Mozambique's economic development scenario may have contributed to a lack of political impetus to prioritize the development of a regulatory framework to support the implementation of the Decree in the years following its adoption.

Furthermore, as Decree 19/2007 predates the Nagoya Protocol, it outlines key national structures and priorities but fails to encompass the comprehensive frameworks required by the international agreement.

From 2021 through the current moment (November 2024), the National Directorate for the Environment (DINAB) has led a review process to address identified gaps and develop practical regulatory tools crucial for the effective implementation of ABS and alignment with international standards. The roadmap for this process includes several key steps:

- Institutional mapping and preliminary review of policies and licensing processes related to natural resources (completed).
- Creation of a multi-sector technical team with relevant government stakeholders (completed).
- Research on global best practices, including two bilateral visits (March 2024) and virtual seminars with international experts (ongoing in November 2024).
- Preparation of an updated draft regulation and a toolkit with essential supporting documents, such as model contracts (completed).
- Piloting a Digital Bioprospecting Portal (ongoing in November 2024).
- Consultations with selected stakeholders, including academia and private sector, identification of relevant national case studies, together with field testing of the toolkit and Portal (June - September 2024).
- Review of case studies and updating of draft documents (September 2024).
- National stakeholder engagement to support review and the finalization of the regulation and toolkit, for subsequent parliamentary approval (ongoing as of November 2024).

The regulatory review process has been designed to be participatory, with multiple national consultations across many sectors. These engagement opportunities address the requirement for a flexible system that supports alignment on national priorities related to biodiversity utilization, sustainability objectives and protection of traditional knowledge.

Biodiversity

In general, the protection of traditional knowledge related to biodiversity in Mozambique is *indirectly addressed* through various laws and regulations related to biodiversity, land tenure, human rights, cultural issues and intellectual property. Relevant legislation includes:

Law 5/2017 on the Protection, Conservation and Sustainable Use of Biological Diversity, expanded the scope of Law 16/2014 (which had amended the Law 10/99 on Forestry and Wildlife Law and Law 20/97 on Environmental Law). By including biodiversity both within and outside Conservation Areas (CAs), this legislation provides for the legal establishment of Conservation Area Management Councils (CGAC), advisory bodies covering one or more CAs composed of representatives of local communities, the private sector, associations and local government entities for the protection, conservation and promotion of sustainable development and use of biological diversity. It legalizes public-private partnerships for management contracts and concessions for CAs.

The law also introduces categories for the classification of protected areas into (a) total conservation areas and (b) sustainable use conservation areas. CA management plans must coexist with spatial planning instruments at all levels, and special land use plans will be required for the ecological zoning of single areas or groups of CAs and their buffer zones, ecological corridors and other areas critical for the preservation of ecological balance and elements of spatial continuity. The interests and involvement of communities legally located within CAs and their buffer zones in income-generating activities that promote biodiversity conservation are meant to be considered in new CA Strategic Development Plans. The law also provides for the possibility for the State to resettle people outside of a CA, if their presence is incompatible with the legal status of the conservation zone or hinders its proper management.

Article 22 of the Conservation Law states that a **Community Conservation Area (CCA)** “is a conservation area of sustainable use in the public domain of the community, delimited and managed by one or more local communities that have the right to use and benefit from the land [via a “DUAT” land use permit], for the conservation of fauna and flora and for the sustainable use of natural resources.” The article also states that a CCA must aim to achieve the following objectives:

- to protect and conserve the natural resources existing in the area traditionally used by the community, including the conservation of natural resources, sacred forests and other sites of historical, religious, spiritual and cultural importance used by the local community;
- to ensure the sustainable management of natural resources to achieve sustainable local development;
- to ensure access to and sustainability of medicinal plants and biodiversity in general.

The article clarifies that licensing of natural resource use to third parties can only be done with the prior consent of local communities after consultation, and through a process that culminates in a partnership agreement. In a CCA, the community can enter into agreements and contracts with the private sector for the commercial use of natural resources and charge user fees that directly benefit the community. This provides communities with the opportunity

to earn more income than the 20% of government licensing fees that go to communities in non-CCA areas.

In addition, the legislation allows the community to be the manager of the CCA. This can increase incentives at the community level for sustainable use of natural resources and for better local management. It can provide the resources needed for communities to reinvest income in conservation management, rather than being passive recipients of government revenue.

The **Law of the Environmental No. 20/1997** defines responsibilities for the establishment of Environmental Protection Areas to safeguard socioeconomic interests, biodiversity and ecosystems. It mandates significant participation of local communities, NGOs and the private sector in the management of these areas, which are subject to government monitoring and inspection. The law prohibits activities that threaten the conservation, reproduction, quality and quantity of biological resources.

Forestry and Wildlife

The **recently revised Forestry and Wildlife Law** (Law No. 17/2023 of 29 December) establishes principles, objectives and standards on the creation, conservation, access, use and monitoring of national forest resources. Focusing on the ecological, social, cultural and economic benefit of current and future generations, the law emphasizes forest conservation and valorization, limits logging activities to areas under concession, consolidates community rights and strengthens inspection mechanisms. The law also provides new guidance on when community-level livelihood activities assume a commercial nature.

Key points:

1. **Community Participation:** The state promotes the organization of local communities for the participatory management of forest resources, ensuring their free, prior and informed consent. Mechanisms to recognize and enable the functionality of community committees and local councils for the management of natural resources are defined by the state. (Art. 25, n.2).
2. **Community Supervision Officers:** Community Supervision Officers are recognized for their role in policing illegal harvesting activities, contributing to effective enforcement. (Art. 76)
3. **Community Contracts:** Communities are eligible to hold forest concession contracts (Art. 40, for areas above 5,000 hectares) and forest exploitation contracts (Art. 56, for areas below 5,000 hectares). Applying for these contracts requires extensive documentation, including approved management plans. Communities benefit from reduced licensing fees as contract applicants.
4. **Community Consultations:** Timber-focused concession agreements require community consultations, and signed minutes of these consultations must accompany the application documents. Concession agreements guarantee continued community access to livelihood resources unless explicitly revoked, in which case

compensation is due to the affected communities. (Art. 42) Concession holders are also required to contribute to the socioeconomic development of the concession area. (Art. 45)

5. **Protection of Traditional Practices:** “Personal consumption” is defined as traditional consumption practices essential to the needs of local community members and is exempt from taxation. (Art. 51) Communities are exclusively permitted to use legally protected species for traditional purposes, such as food, medicine and cultural practices, provided that harvesting practices do not harm the specimens.
6. **Revenue Sharing:** A fixed percentage of revenue from contract fees is allocated to resident local communities for their involvement in the management, conservation, supervision and enhancement of biodiversity. (Art. 70) Transparency in the use of these revenues is ensured through the involvement of local councils or committees as legitimate representatives of the communities in the concession area. The government is mandated to support the participation of concessionaires and civil society organizations in the establishment and organization of these local bodies to enhance effective participatory management and use of funds.

The **Forestry and Wildlife Regulations** (Decree No. 12/2002) upholds the right of communities to benefit from conservation activities that utilize land and resources under their access and use rights. Key provisions include:

1. **Concessionaire Obligations (Article 32):** Concessionaires are obliged to grant communities access to natural resources for their own consumption, respecting customary norms, and to prioritize local communities in the recruitment of labor.
2. **Demarcation of concession areas (Article 33):** The demarcation of concession areas must involve community participation, following the Technical Annex of the Land Law Regulation.
3. **Consultation procedures (Article 35):** Consultation with local communities must involve specific entities, and negotiations on the terms and conditions of exploitation of the concession must take place if the communities have land use and exploitation rights.
4. **Consultation Meeting (Article 36):** The local government body must convene and chair a consultation meeting with the community. Decisions are made by consensus, and at least ten members must sign the resolutions.
5. **Benefits for Local Communities (Article 102):** Local communities are entitled to 20% of the value of the forestry or wildlife exploitation fee, with the mechanisms for channeling and using this amount defined by the Ministerial Diploma approved by the Ministry of Agriculture and Ministry of Finances.
6. **Community Participation in Monitoring and Control (Article 108):** Community agents participate in monitoring and control activities related to the management of natural resources.

7. Distribution of revenue from fines (Article 112): Fifty percent of fine values are allocated to inspectors and community agents involved in inspection and control activities.

It is important to note that the new Forestry and Wildlife Act was passed in December 2023 and entered into force in June 2024. The existing Forestry and Wildlife Regulation (Decree No. 12/2002) remains in force today. A new regulation was developed during Q2 2024, supported by a series of stakeholder workshops. The new regulation was approved by the Council of Ministers in September 2024, and will enter into force in March 2025.

Some significant changes are foreseen by the new regulation:

- A. The concept of Local Councils for Participatory Resource Management (COGEP) (Article 95-98, old regulation) is replaced by **National and Provincial Forest Forums** (FNF and FPF) (Article 14). The new Forums should include representatives of local communities, individuals or entities involved in resource exploitation, associations or non-governmental organizations, and the state, and should ensure recognition and participation of all stakeholders. Unlike COGEP, which was governed by legislation on associations, the new FPF is a “platform for public consultation and multi-stakeholder coordination”. As the statutes and regulations for these entities will be established by ministerial decree (pending), it is unclear whether these new bodies will facilitate effective support of community interests.
- B. **New licensing models for non-timber forest products (NTFPs).** Previous regulations provided only for a fixed transport tax of MZN 200 per tonne of raw material, regardless of the type or species of the product. This low level of regulation (as well as limited forest inventories that exclude NTFPs) has facilitated the depletion of important medicinal plant species.
 - a. Model D License – intended for the exploration and harvesting of non-timber forest products in exploration areas under a forest exploration and concession contract, and in other multiple-use forests;
 - b. Model I License – intended for the acquisition of non-timber forest products through contracts between the interested party and local communities, their members or family members.

While specific NTFP species (beyond potential CITES-listed items) are not expected to be classified and controlled through the classification framework currently reserved for timber species, formal integration of these permit types could at least support the establishment of sustainable use strategies and the development of a database to better capture harvest data for future policy decisions.

C. **New licensing model for research projects:** The Model G License is intended for the exploitation of forest resources for research and training purposes. Complementary to the establishment of the National Institute for Forestry Development (INDF) as the authority responsible for issuing licenses (Art. 24, 2023 Act), the new research licensing can support transparency in research processes that interact with rural communities, particularly for research involving fieldwork. Again, it should be noted that this is a new model, and the exact modalities of implementation by the new INDF are still unknown.

Marine resources

The Fisheries Act (No. 3/1990) supports community involvement in the management of artisanal fisheries. Fisheries resources are the property of the State. Their management requires a participatory approach to the conservation and appropriate use of aquatic biological resources and ecosystems, the precautionary principle and the polluter pays principle. The area of territorial waters up to three nautical miles from the coast is exclusively for artisanal and subsistence fishing, scientific research and recreational and sport fishing.

The Maritime Fisheries Regulation (Decree No. 89/2020) stipulates that the Ministry of the Sea, Inland Waters and Fisheries adopt participatory management of fisheries resources as its preferred model. Participatory management pursues the following objectives (Art. 21):

to ensure partnerships and shared responsibility in fisheries management and conservation of aquatic ecosystems; to ensure coordination between fisheries administration and artisanal fishers, fishing boat owners, traders, transporters, fish processing companies and other stakeholders with an interest in the activity; to enhance and share knowledge among the actors involved; to ensure the coexistence of fishing with other economic activities that occur in the aquatic environment, including their representation in consultative decision-making processes; to create an environment conducive to the coexistence of artisanal fishermen, semi-industrial fishing boat owners, industrial fishermen with other stakeholders in the waters; to guarantee access for fishing communities to fishing, aiming at the protection and promotion of their well-being; promote the participation of fishing communities and fisheries management; promote training activities through fisheries extension; and ensure access to information and participation in consultative decision-making processes on fisheries management.

The community's interface with marine and coastal areas is also regulated by the **Law of the Sea** (Law 20/2019 of November 8), by the **Legal Regime for the Use of the National Maritime Space** (Decree 21/2017 of May 24), by the **Regulation for the Management of the Coastal Zone and Beaches** (Decree 97/2020 of October 4) and by the **Mangrove Management Strategy 2020-2024** (Resolution 33/2020 of May 18).

The national **Regulation for Marine Research and Scientific Investigation** (Decree 30/2019 of April 19 - REICIM) establishes requirements for any marine area research,

including permit processes, partnership with a national research institute in the case of foreign applicants, and the submission of all research results to a responsible national institute. Interestingly, the Intersectorial Scientific Commission responsible for analysis and approval of research projects and foreseen by the regulation has some overlap to the composition to the Multisectorial Technical-Scientific Committee foreseen by the ABS regulation, with the notable inclusion of the Ministries of National Defense, Transport and Communications, and Order and Public Security (Article 22). While the Regulation applies to any research related to “living or not living resources, including hydrocarbon and marine minerals” (Article 3) resources, the Regulation has a more functional focus on typical fishing resources and extractive resources, with no specifics related to other marine genetic resources and no mention of traditional knowledge.

Land ownership

Although not directly linked to the protection of traditional knowledge, land tenure plays a crucial role in discussions about access to and use of biodiversity in Mozambique. Upcoming developments related to protecting TK may create more legal intersections with land tenure in the future.

Mozambican land law designates all land and natural resources as property of the State, which grants land use rights to claimants, while guaranteeing the rights of rural communities:

The **Land Law** (Law No. 17/1997 of 1 October) stipulates that land belongs to the State, with rights of use granted by the State. However, exceptions apply in areas designated as legal reserves or allocated to other entities. The law describes rights based on customary claims and procedures for the acquisition of titles to use and benefits by communities and individuals.

The Land Law provides details on claims-based rights and customary procedures for the acquisition of titles to use and benefits by communities and individuals. In rural areas, local communities participate in natural resource management and conflict resolution, in the process of obtaining titles, and in identifying and defining the boundaries of the land they occupy (Article 24).

The Law defines that land use rights may be acquired through occupation by Mozambican individuals who have used the land in good faith for at least ten years, and by local communities whose right to use and benefit from the land will respect the principles of co-ownership.

The absence of a title does not compromise the right of use by occupation. Titles may be issued to communities or individuals (Article 13). In the case of individuals within a community, individual titles must be preceded by community demarcation. For communities with customary tenure, the law states that they may apply for delimitation of their lands, yielding them a certificate of occupancy that can then be formalized as a land title.

Existing land use rights may be revoked for reasons of public interest with fair compensation. Community certificates of land use rights or titles received after demarcation cannot be used as collateral in contracts with third parties.

Decree 15/2000 outlines the role of local state authorities, community leadership mainly in rural areas through local councils, and legitimizes community leaders – traditional leaders and neighborhood secretaries. The decree grants them powers under Article 24 of the Land Law to participate in conflict resolution, represent community views on land claims and identify and demarcate community lands.

The Land Use Planning Act (Law No. 19/2007 of 18 July) recognises the occupancy rights of the local community, requiring a consultative process for planning. Regional, provincial and district plans undergo a consultative process before approval.

Ministerial Decree No. 158/2011, of June 15, establishes a two-phase community consultation process for approval of the DUAT, focusing on providing information and community opinions on the proposed developments.

A new Land Law, under final review following a revised Land Policy in 2022, highlights the importance of civil society participation in protecting community interests.

A new Land Law, under final review following a revised Land Policy in 2022, has opened up the possibility of large private sector gains, possibly to the detriment of local communities. This dynamic underscores the importance of civil society engagement in protecting community interests in the final stages of the review process.

Local authorities and community participation

The following instruments should be taken into account when considering community-led decision-making related to traditional knowledge and possible negotiating processes between community representatives and third parties.

Decree No. 15/2000 on **Local Authorities** establishes links between local state bodies and community authorities, including traditional chiefs and village secretaries. These authorities disseminate government laws, collaborate in maintaining peace, organize communities for development activities, conduct civic education on resource management, and mobilize tax payments.

Regulated by Ministerial Order 107-A/2000, this decree promotes community participation through advisory councils and community representative forums at the village level. A joint ministerial order of the Ministries of State Administration, Planning and Finance and Agriculture and Rural Development (13 October 2003) approved the "**Guidelines for Community Participation and Consultation in District Planning**". This guide formalizes advisory councils at the lower levels of local government, identifies participatory mechanisms for their operation, and includes recommendations for the operation of community representative forums at the village/community level.

The **Law on Local State Administration** (No. 8/2003, 19 May) provides space for community participation based on a model of “integrated administration” that emphasises the territorial dimension of public management – the law gives authority to the district government and a budget. Decentralised participatory planning is an essential vehicle for public sector reform and the promotion of rural development at the district level.

Other related legislation

The following legal instruments are indirectly related to management of biological resources and protection of associated traditional knowledge.

Tourism Law No. 4/2004 highlights the importance of social and economic development that respects forests, wildlife and historical heritage, while contributing to economic growth, job creation and poverty alleviation. The active participation of local communities in tourism activities is expected to improve their living standards, with the private sector playing a crucial role in promoting and developing resources.

The **Environmental Impact Assessment Regulation** (Decree No. 54/2015) obliges project proponents to conduct consultations and public participation with affected people, especially those whose use of natural resources is restricted or who face physical displacement due to projects.



The **MICOA Directive for the Public Participation Process** (Ministerial Decree 130/2006) provides detailed guidelines for public participation during environmental impact assessments, permanent or temporary relocation and restrictions on access to natural resources.

2.3 Institutional arrangements

The institutional landscape in Mozambique relating to environmental management, land tenure and natural resource conservation involves several key entities. Representatives from the following entities are also included in the Technical-Scientific Council foreseen by the ABS Regulation:

1. Ministry of Land and Environment (MTA):

- National Directorate for the Environment (DINAB): Responsible for policies, strategies and programs related to sustainable development and environmental preservation, including biodiversity conservation. Leads the implementation of the National Strategy and Action Plan for the Conservation of Biological Diversity and oversees environmental impact assessments and licensing.
- National Directorate of Forests (DINAF): Focuses on the protection, conservation and sustainable use of forest resources and wildlife outside conservation areas, with a focus on controlling deforestation, logging and illegal hunting.
- The Agency for Quality Assurance (AQUA) is the oversight body responsible for assuring compliance with MTA-issued permits and licensing.

2. Ministry of the Sea, Inland Waters and Fisheries (MIMAIP):

Responsible for the conservation and management of fisheries resources, including the establishment and management of marine protected areas. Manages marine resources through regulations, licensing and conservation measures, with roles for entities such as the Mozambique Navy, the Fisheries Research Institute (IIP) and the Artisanal Fisheries Development Institute (IDPPE), the latter two of which now fall under the National Oceanography Institute (INOM).

3. Ministry of State Administration and Civil Service (MAEFP) and Ministry of Economy and Finance (MEF):

Promotes the decentralized implementation of district planning and financing policies, promoting natural resource and biodiversity conservation actions at various administrative levels.

4. Ministry of Health (MISAU):

The National Institute of Health and the Department of Traditional Medicine intersect on research and initiatives related to medicinal plant species.

5. Ministry of Agriculture and Rural Development (MADER):

Oversees the implementation of the ITPGRFA, the Institute for Agrarian Research (includes native forests and the germplasm bank), and various other departments and legal instruments related to seeds and agricultural crops.

6. Ministry of Culture and Tourism (MinCULTUR):

Responsible for preservation and valorization of many areas of cultural production, including those related to biodiversity. Development and maintenance of the Cultural Management Information System of Mozambique (CMIS) and the Copyright Regulation. Has overseen

implementation of donor-funded projects specifically related to identification and promotion of traditional knowledge in forestry and agriculture. (Today, little evidence can be found of project results.) Please see the following section 3.2 for future information.

These additional bodies assume additional responsibilities related to biodiversity:

1. National Council for Sustainable Development (CONDES):

Advisory body to the Council of Ministers on environmental issues, composed of ministers and deputy ministers from related sectors. The Minister of the Environment presides over and oversees the management of environmental policy.

2. Ministry of Public Works, Water Resources and Housing:

Responsible for the construction of public infrastructure, including roads and water supply. Encourages community involvement in decision-making on infrastructure projects to ensure local economic benefit.

3. Local entities provided for by law to support participatory management

At the community level, Natural Resource Management Committees (NRMCS) and Community Fisheries Councils (CCPs) serve as key platforms for local participation in decision-making related to natural resource management. These entities consist of community members directly involved in resource use and conservation.

RNCG:

- Established locally to address land, forest and wildlife management as provided for by the Forest and Wildlife Policy, Act and Regulation.
- Composed of community representatives with knowledge of local environmental conditions and conservation priorities.
- Facilitate community involvement in decision-making processes regarding the use and conservation of resources.
- Act as intermediaries between communities and higher-level authorities.
- Representatives contribute to broader decision-making structures such as COGEP.

CCP:

- Entities legally recognized by MIMAIP with a focus on participatory fisheries management.
- Composed of representatives of fishing communities.
- Responsible for promoting sustainable fishing practices and improving livelihoods.
- Participate in the implementation of management measures.
- Regulate fisheries resources and develop management plans for community-managed fishing areas.

Representation from CGRN and CCP is expected to feed into broader consultation forums such as the **Local Council on Participatory Natural Resource Management (COGEP)** and the **Fisheries Co-Management Committee (CCGP)** at the local/district level, bringing together stakeholders from communities, government, industry and NGOs. These forums promote participatory management, contribute to development strategies and foster dialogue among stakeholders for sustainable resource use and conservation.

However, despite the presence of environmental units or offices within many government institutions, there are challenges with inter-institutional coordination, leading to overlaps and gaps in policy implementation. Strengthening coordination mechanisms could increase the effectiveness of environmental management efforts in Mozambique.

Challenges for decentralization

Since 2006, some community development projects have been funded by the **District Development Fund (DDF)**, which provides resources to finance projects that are defined as priorities locally through a participatory mechanism. Although the eligible expenditure areas were initially intended to be diverse, central guidelines required that approximately half of the funds be allocated to agricultural development or food production (World Bank, 2011⁸) especially where job creation is important.

Unfortunately, since the end of external support to the national program, the high logistical costs of bringing community representatives to the meeting places have forced many of the participatory institutions created at the community level to cease, and loan repayment rates have been so low that in many areas they are no longer lending to individuals, but even associations that receive funds are not repaying them as expected.⁹

⁸ World Bank. 2011. Mozambique: Analysis of Public Expenditure in Agriculture, Volume 1: Core Analysis. Report No. 59918-MZ. World Bank, Washington, DC

⁹Process Framework

2.4 Risks and opportunities, Case studies

Despite the existence of policies emphasizing participation, equity in access to resources and support for benefit sharing dynamics, several challenges impede protection of traditional knowledge and effective resource management at the community level.

Five critical areas can be examined:

1. Poverty
2. The legal weight of community consultation agreements
3. Weak community institutions
4. Lack of knowledge of law and regulations
5. Sharing benefits with communities

Poverty

Poverty remains a significant obstacle, leading communities to rely heavily on resource exploitation for immediate sustenance. This dependence, coupled with a lack of capacity for long-term planning and sustainable practices, perpetuates a cycle of environmental degradation and economic vulnerability.

Challenges for effective and legally binding agreements

Monitoring compliance with community consultation processes and agreements poses another challenge. While provisions for community consultation exist, existing models often lack the legal weight to effectively protect local rights.

A 2010 study conducted by the Centre for Legal and Judicial Training¹⁰ examined weaknesses in the community consultation process and found that “...a model of protecting the rights of local communities that does not include **contracts, memoranda of understanding or agreements drafted in a technically acceptable manner and capable of producing effective legal effects**, even if the communities in question are demarcated and have their respective certificates, proves to be ineffective, failing to protect the rights of local communities or ensure the integration of private investment capital on a basis of justice, equity and sustainable development, as intended by the philosophy and policy of the Mozambican State.”

For example, the law has facilitated the allocation of land and resources for large investment projects, often to the detriment of local communities. Despite well-designed legislation and agreements designed in the interests of communities, poorly executed resettlement projects have increased with the arrival of new megaprojects over the past two decades, particularly in the mining sector. Newly resettled residents have been left without arable land and/or with inadequate housing and no resources.

¹⁰ Sérgio Baleira & Saturnino Samo, “Legal Protection of the Rights of Use and Exploitation of Land of Local Communities”, Legal and Judicial Training Center, Department of Studies and Research, 2010

While the cited study is dated and some changes have supported improved regulatory processes, the enabling environment for community resource management remains weak. Strengthening processes to monitor compliance and ensure community interests are protected is crucial to fostering trust and cooperation among stakeholders.

Community institutions

In 2002, a very comprehensive report was commissioned by the National Directorate of Forests and Wildlife entitled “Rights of Communities: Reality or Rhetoric?” The report analyzed the political, legal and institutional context of the Community National Resource Management strategy adopted by the government to support the implementation of the social objectives of the 1997 Forest and Wildlife Policy.

The analysis included a substantial survey covering 8 provinces and interviews with provincial and district governments, the private sector, NGOs and communities. Although several pieces of legislation have been updated over the 20 years since the study, the key points remain relevant.

The study found that weak community institutions exacerbate challenges in resource management. There may be multiple committees and associations in communities that make decisions about the use of various resources (e.g. water, land) or even local development programs. The proliferation of such institutions results from a lack of integrated focus on implementing sectoral legislation, leading to perceived incompatibility and hindering effective collaboration with government agencies and the private sector.

To address this issue, it is essential to streamline community organizations, clarify their roles and responsibilities, and promote synergies between them to maximize their impact.

On the other hand, recent community land delimitation initiatives have supported the formal registration of hundreds of community management bodies and community land titles across all provinces. Where organized community associations were rare, these efforts reflect major efforts in legal registration and capacity building. Projects run by civil society groups such as ORAM and Terra Firma continue to expand. With the right support, these groups represent a promising opportunity to strengthen strategic natural resource management within their borders.

Knowledge of the law and community rights

A significant barrier to effective resource management is the lack of knowledge of forest and wildlife legislation among communities. Interviews conducted during the above study¹¹ clearly showed that communities did not have adequate knowledge of forest and wildlife legislation.

¹¹Nhantumbo, Isilda and Duncan Macqueen, Community Rights: Reality or rhetoric? Summary of the main guidelines and recommendations of the consultations in the north, center and south zones. October 2002.

Four main reasons were highlighted:

1. Government officials often do not have copies of legal instruments and are unable to disseminate the law, even when they know it;
2. The law has not been translated into local languages or simplified to allow understanding by different entities, especially communities;
3. NGOs involved in publicizing the law do not always have a comprehensive understanding of the concepts and spirit of the law; and
4. High levels of illiteracy in communities make direct access to legislation difficult.

Furthermore, companies were often only aware of aspects of the law that directly affected their activities and did not seek to understand the spirit of the law as a whole or aspects related to their relationship with communities. In cases where there is better knowledge of the law, particularly where there has been greater NGO involvement, communities generally have a better understanding of the Land Act than of the Forest and Wildlife Act. The obvious reason is the widespread dissemination of the former through land campaigns.

Improving communication strategies, translating relevant documents into local languages, and simplifying technical terms are essential steps to improving legal awareness and empowering communities to assert their rights, especially in relation to access and utilization traditional knowledge - which is a relatively unknown legal territory.

Benefit sharing mechanisms

All revenues from wildlife and forestry exploitation, tourism concessions and visitors to conservation areas are passed to the national level, with MTA/DINAF/ANAC receiving 80% for redistribution to conservation management and 20% of this portion for the benefit of communities in concessions and conservation areas, respectively. Mechanisms to channel and use 20% of the taxes for the benefit of local communities were created in 2005 through Ministerial Decree No. 93/2005 of 4 May.

Beneficiary community associations may be related to the use of marine or terrestrial resources, such as local Community Fisheries Councils (CCP) and management forums at local, district and provincial levels - Co-management Committees (fisheries legislation) and Natural Resources Management Committees (COGEP or CGRN) (forestry and wildlife legislation).

Communities must be legally organized, represented, and have a bank account to benefit from the funds due to them. Formal legal recognition of a community is a multi-step process in which members must organize themselves into an association or as formal land rights owners and jump through many bureaucratic hoops, which even when completed do not necessarily result in a functioning institution in the long term.

The distribution of these funds has been extremely uneven. The flow of funds has been slow, and accountability is difficult, making it challenging to implement good policy.

Streamlining processes for community recognition and legal organization, along with improving mechanisms for fund distribution and accountability, can facilitate more equitable resource governance and open the door for protection of traditional knowledge. Strengthening

community management structures (capacity building) and information systems is also crucial to increasing transparency and ensuring effective resource management.

Addressing these challenges requires a multi-pronged approach involving government support, partnerships with NGOs, and community empowerment initiatives. Capacity building initiatives, coupled with integrated rural development strategies, are imperative to empower communities and shift towards sustainable resource management practices. Strengthening community consultation processes, clarifying mandates of community institutions, and improving legal awareness among communities are essential steps to promote inclusive and participatory resource governance.

3. Cultural heritage and intellectual property

Recognition and protection of traditional knowledge is essential for cultural preservation and the appreciation of communities in Mozambique, particularly with regard to the rights and benefits associated with the use of this knowledge. Traditional knowledge encompasses cultural practices, knowledge and expressions transmitted over generations, including knowledge about biodiversity, traditional medicine, agriculture and cultural rituals. However, the legal protection of this type of knowledge faces specific challenges, as it does not fit easily into traditional intellectual property models designed for individual inventions and creations.

In view of this, Mozambique is seeking ways to integrate the TK into adapted legal instruments that value it as part of the collective cultural heritage. In this sense, cultural heritage protection laws and copyright play an important role in protecting elements such as folklore and oral traditions.

The Industrial Property Code and international intellectual property regulations address Traditional Knowledge at the intersection with trade and innovation, promoting geographical indications for specific products and attempting to balance community rights with industrial protection requirements.

3.1 Laws and regulations

Cultural Heritage Protection Act

The law on the protection of cultural heritage (Law No. 10/1988, of December 22) seeks to establish legal protection for Mozambique's tangible and intangible cultural heritage. Intangible cultural assets are defined as "elements that constitute essential parts of the collective memory of the people, such as oral history and literature, popular traditions, rituals and folklore, national languages themselves, as well as works of human ingenuity and all forms of artistic and literary creation, regardless of the medium or vehicle through which they are expressed."

The law then defines a special category for "registered cultural heritage" as heritage with exceptional value deserving special state protection. This special category emphasizes national antiquities and historical heritage. The registration of cultural heritage is supervised by the Council of Ministers (Art. 7) and recorded in an official register (Art. 9). Authorization to use listed cultural heritage requires express authorization from the Council of Ministers.

The law provides that the use and trade related to cultural assets *not* registered as cultural heritage must be licensed and regulated by a lower body determined by the Ministry of Culture. Related laws and regulations focus heavily on music, arts and sports, without explicit consideration of traditional knowledge related to biological resources.

Copyright (Copyright Law)

The Copyright Law (Law No. 9/2022, of June 29) aims to protect copyright and related rights in the fields of arts, literature, science and other forms of knowledge and creation. This law explicitly includes “expressions of folklore”, defining *folklore* as “works created in the national territory by anonymous authors or entities, transmitted through successive generations and which constitute one of the fundamental elements of traditional cultural heritage”.

A *work* is an “original intellectual creation in the literary, scientific or artistic field, expressed in any form, which, as such, is protected by law”. These definitions create a gray area for *know-how* related to the use of biodiversity products for medicinal, gastronomic or other purposes. No applications for biodiversity-related traditional knowledge have received copyright protection.

Article 21 provides indicative parameters:

- 1. Ownership of copyright over folkloric works belongs to the community that practices them, through local administrative bodies, without prejudice to the rights of those who collected, transcribed, arranged or translated them, provided that such collections, arrangements or translations are original and respect their authenticity.*
- 2. Copies of folkloric works, as well as their transcriptions, translations, arrangements or other transformations reproduced or made abroad without authorization from the competent authority, may only be imported or distributed in the national territory with authorization from the government body that oversees the cultural area.*
- 3. Access to sources, as well as the collection of folkloric images for the production of works of this genre, is done through credentials issued by local administrative authorities.*

Article 93 allows the rights holder, the duly authorized representative or a collective management organization to exercise powers relating to the management of copyright and related rights, including the collection of royalties.

Industrial Property Code

“[There is a] conflict between the Convention on Biological Diversity and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).... The patenting of genetic resources promoted by TRIPS is at odds with the protection of indigenous knowledge systems, which in most cases are not owned by individuals, as is the case with normal industrial technology. There is a need to develop enabling policy frameworks that are effective in controlling as well as providing opportunities for community benefits.”¹²

As in many countries around the world, there is no simplified legal instrument dedicated to the protection of traditional knowledge in Mozambique, as knowledge transmitted from generation

¹² SADC Biodiversity Action Plan 2010, p.67

to generation is at odds with a property model designed to protect intellectual property in an industrialized economy.

Mozambique is a signatory to the **International Agreements of the World Intellectual Property Organization (WIPO)** (Resolution 21/97), which promote and protect intellectual property throughout the world, through cooperation between States and the administration of various multilateral treaties and agreements related to the legal and administrative aspects of intellectual property.

In the national context, Decree No. 47/2015 approved the **Industrial Property Code**, which establishes the special regime for the protection of industrial property rights and defines the rights and obligations arising from their granting and registration, including monitoring and sanctioning mechanisms, aiming to promote innovation, the transfer and diffusion of technology and consumer protection.

The decree covers all trade, services and industry, including agribusiness, fisheries, forestry, food, construction and extractive industries. Incorporating all natural or manufactured products, the code does not provide unique protection for traditional knowledge, but notes that the material source and traditional knowledge used to bring about a specific technical solution must be declared in the patent registration.

In the context of traditional knowledge, a possibly more useful element of the Industrial Property Code is the attribution of a geographical indication (GI) or designation of origin to a product with unique characteristics associated with a specific region (Chapter V):

*2. Registered geographical indications and designations of origin constitute **the common property of residents or establishments of the locality, region or territory**, and may be used without distinction by those who, in the respective area, exercise any characteristic branch of production, when authorized by the holder of the registration.*

3. The exercise of this right does not depend on the commercial value or nature of the products, nor on membership of any association, so that the geographical indication or designation of origin may apply to any characteristic product, originating from the locality, region or territory, under traditional and usual conditions, or duly regulated.

Generally, a geographical indication is granted to an association, community or administrative post in the region where the product is produced, although individuals are eligible under specific conditions. According to WIPO, a geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin ¹³. This special labeling can have a unique weight in the market.

¹³ Frequently Asked Questions: Geographical Indications
https://www.wipo.int/geo_indications/en/faq_geographicalindications.html

In May 2024, WIPO Member States adopted the first WIPO Treaty to address the interface between intellectual property, genetic resources and traditional knowledge, which is also the first WIPO Treaty to include specific provisions for indigenous peoples and local communities.

In general terms, where an invention claimed in a patent application is based on genetic resources, each Contracting Party shall require applicants to disclose the country of origin or source of the genetic resources. Where the invention claimed in a patent application is based on traditional knowledge associated with genetic resources, each Contracting Party shall require applicants to disclose the Indigenous Peoples or local community, as applicable, that provided the traditional knowledge.¹⁴

As of September 2024, this treaty was not yet ratified, and is being highly contested by some member states that have strong domestic advocates protective of key economic sectors that are frequent users of biological resources. No new national regulations have been put in place to support Mozambique's participation in the development of this groundbreaking treaty, although a representative from the Institute for Industrial Property noted that a legal review is foreseen in the near future. Regardless, the international momentum of this treaty bodes well for the development of new protection mechanisms.

3.2 Institutional arrangements

National Institute of Creative and Cultural Industries

The National Institute of Creative and Cultural Industries was created through Decree 23/2029, and its internal regulations were approved through Ministerial No. 74/2021. Among its attributions, INICC intends to:

- Stimulate the development of cultural and creative products, goods and services;
- Encourage the technological modernization of key sectors in the Cultural Industries, Creative Industries, Cultural Expressions and Functional Creations;
- Create a database and cultural statistics;
- Promote the study and mapping of artistic and cultural potential;
- Research and explore markets for national cultural products and services abroad.

The above supports a vision for the registration and commercialization of expressions of folklore, aligned with a mandate to support the implementation of copyright law through the registration of cultural products. INICC oversees the registration processes through its Maputo-based office. The clarity and scope of these registration processes have historically been opaque. However, a digital registration system is under development that may soon streamline and clarify the processes.

¹⁴ WIPO Member States Adopt Historic New Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (May 2024)
https://www.wipo.int/pressroom/en/articles/2024/article_0007.html

Industrial Property Institute (IPI)

The Industrial Property Institute oversees all licensing related to the Industrial Property Code. To register a designation of origin or geographical indication, it is necessary to submit a registration application including a dossier of specifications that justifies the relationship between the quality or characteristics of the product and the geographical environment in question.

The IPI has representation at regional level, with delegations in the cities of Maputo (headquarters), Beira (central delegation) and Nampula (northern delegation).

A description of the “Geographic Indicator” registration process and its potential usage for protection of traditional knowledge is more fully described in the “Community Guidebook for Protection of Traditional Knowledge” developed by this consultant for Natural Justice (November 2024).

3.3 Risks and opportunities, Case studies

Current copyright law does not provide sufficient specificity about traditional knowledge related to biodiversity to offer useful mechanisms or case studies for further analysis.

Denomination of Origin

In Mozambique, the first designation of origin award was granted to goat meat from Tete province in 2018.¹⁵ Since then, a limited number of additional products have been proposed (e.g. shrimp from the Sofala coast, pineapple from Nicoadala) to follow suit, in order to capitalize on the competitive market advantage offered by the label.

The unique level of flexibility allowed by this designation may offer potential utility for the protection of some types of specific regional genetic resources with associated traditional knowledge.

However, GI registration to date has been limited and largely driven by the IPI itself, mainly for regional food products. The implication of traditional knowledge is patchy at best. Any producer in the designated region, whether part of the community or not, could potentially benefit from registration.

¹⁵“Tete goat - First Mozambican geographical indication”, 7 June 2018

<https://inventa.com/pt/noticias/artigo/309/cabrito-de-tete-primeira-indicacao-geografica-mocambicana>

4. Traditional Medicine and Ethnobotany

Traditional knowledge plays a crucial role in medicine and ethnobotany in Mozambique, providing accessible and culturally meaningful solutions for the health and well-being of communities. This accumulated knowledge about medicinal plants and therapeutic practices not only meets local needs, but also represents a potential source of innovation and development for the health sector. However, protecting and enhancing this knowledge requires specific policies and regulations to ensure that it is not exploited unfairly, and that the communities that hold the knowledge benefit equitably.

The sections below present the legal and institutional instruments developed to regulate the practice and protection of traditional medicine and ethnobotany in Mozambique. The National Policy on Traditional Medicine and subsequent laws and regulations seek to integrate safe and effective traditional medicine practices into the health system, while protecting the intellectual property rights of communities. Furthermore, the creation of institutions such as the Center for Ethnobotanical Research and Development (CIDE) aims to support research and sustainable development in the field of ethnobotany, promoting both the conservation of medicinal species and the valorization of Traditional Knowledge.

The following sections examine these policy frameworks, institutional initiatives, and challenges that persist in ensuring the sustainable use and protection of traditional knowledge in the country.

4.1 Political context

A National Policy on Traditional Medicine and a strategy for its implementation were approved through Resolution 11/2004 of 14 April. This policy aimed to integrate proven safe and effective traditional health practices and medicines into the National Health System, encouraging and supporting related research and developing mechanisms to ensure the protection and valorisation of traditional knowledge:

“8.6 Property rights related to local knowledge in the field of traditional medicine... Many traditional medicine products are based on local biodiversity.... The government needs to promote ongoing dialogue to ensure the implementation of international instruments to identify essential elements for recording traditional medicine knowledge, with a view to ensuring its protection.

It is also imperative that the government formulate laws to protect the intellectual property rights of traditional medicine knowledge, taking into account the individual knowledge of traditional medicine practitioners or communities to ensure equity in sharing benefits or revenues resulting from the commercialization of traditional medicine-based products.”

4.2 Laws and regulations

Following this 2004 policy, the drafting of a traditional medicine law was initiated, and consultation activities were carried out until 2015, but the process was halted probably due to changing political priorities. A new holistic law for the National Health System is currently being developed that aims to incorporate alternative treatments, which will include traditional medicine. Ministry staff involved in the policy development process report that traditional medicine practitioners will be required to register in a new system. No information is currently available on how the new law will incorporate access and benefit-sharing issues related to the use of traditional knowledge by third parties.

4.3 Institutional arrangements

The Department of Traditional Medicine Studies was created in 1977 within the Ministry of Health.

In 1990, the Association of Traditional Medicine Practitioners of Mozambique (AMETRAMO) was created. Additional associations, such as the National Herbalist Association (AERMO) and others with regional scope have been established since then.

Established in 2015, the Center for Ethnobotanical Research and Development (CIDE) is a public institution under the supervision of the Ministry of Science and Technology, dedicated to scientific research, technological development and product development based on ethnobotany. Its responsibility includes promoting, coordinating and researching in the field of local ethnobotany.

CIDE is responsible for promoting the transfer of scientific knowledge, effective use, conservation, cultivation, technological development, commercialization and industrialization of useful plant species, in collaboration with other sectors. It coordinates research activities to encourage interdisciplinary and intersectoral initiatives, transforming research results into products and services.

CIDE has the mandate to promote the registration of plants and procedures to ensure the protection of intellectual property rights in the field of ethnobotany, including the defense of the rights of holders of traditional knowledge. As of November 2024, there are no documented instances of this registration and protection process. However, new leadership at CIDE is exploring options for the establishment of a new traditional knowledge database focused on ethnobotany. Potential integration with the BioNoMO (Mozambique Biodiversity Network¹⁶) database is being explored.

¹⁶ Biodiversity Network of Mozambique (BioNoMo) <https://bionomo.opensciadata.org/bionomo>

A project brief entitled “Traditional Knowledge Database for Mozambique” has been prepared by this consultant under contract by Natural Justice as a contribution to this development process.

4.4 Risks and opportunities, Case studies

This sector presents unique risks and opportunities at both national and regional levels, as the use of traditional medicines and other natural products has increased in recent years, both in rural and urban settings:

[Market demand] has led to ... unsustainable harvesting techniques of traditional medicinal plants without commensurate efforts to conserve valuable species.... There are also limited economic incentives for traditional healers and herbalists to conserve medicinal plants due to the lack of appropriate property rights to these resources. Pressures on traditional medicinal plants are expected to continue to increase due to the HIV/AIDS pandemic and land conversion due to pressures for agricultural expansion, overuse of forest resources, and loss of indigenous knowledge about the medicinal values of certain plants as a result of lack of documentation and loss of conservation folklore. Currently, economic disincentives and inadequate legal and policy frameworks are unable to ... ensure sustainable use of medicinal plants or prevent the gradual loss of the very diverse indigenous knowledge about medicinal plants.¹⁷ (SADC Biodiversity Action Plan)



¹⁷SADC Biodiversity Action Plan 2010, p80-81

5. Academic research

Academic research in Mozambique plays a fundamental role in documenting, preserving and enhancing traditional knowledge, acting as a bridge between traditional/ indigenous knowledge and scientific innovation. This context is particularly relevant in the areas of ethnobotany and traditional medicine, where educational and research institutions promote the study of local practices and knowledge on biodiversity and the use of medicinal plants. Formalizing and recording this knowledge in scientific publications or patents can generate economic benefits and recognition for the communities that hold it, in addition to contributing to the conservation of biodiversity and to the preservation and protection of traditional knowledge.

5.1. Political context

The political context for academic and research institutions, along with subsequent laws and regulations, is only indirectly related to preservation of traditional knowledge.

The first Higher Education Law No. 1/93, of June 24, allowed the creation of private higher education institutions and opened a new reality for education in the country. Over a period of ten years, a complex set of policies was developed, aimed at supporting higher education as an engine for development. The Ministry of Higher Education, Science and Technology was created in 2000, taking the first steps in implementing the first Strategic Plan for Higher Education (2000–2010) and proposing the first national policy on Science and Technology.

New complexities in the management of higher education led to Law No. 5/2003, which replaced Law 1/93, supporting new regulations around many aspects, including Quality Control, and was subsequently followed by the Higher Education Law No. 27/2009.

5.2. Laws and regulations

The growing expansion of higher education institutions has driven the need to harmonize higher education and establish mechanisms to ensure the quality and relevance of educational services. Established through decree no. 63/2007, the National System for Assessment, Accreditation and Quality Assurance of Higher Education (SINAQES) addresses regional and global quality standards. The system integrates standards, mechanisms and procedures to support the quality objectives of higher education. It applies to all public and private institutions that carry out higher education activities in the country.

Under the Higher Education Law (**No. 27/2009**), institutions may develop joint actions with other public or private entities, adapted to the nature and purposes of the institution, taking into account the general guidelines of national policy for the higher education sector, particularly in the areas of education, science and international cooperation.

5.3. Institutional context

The main national higher education institutions and research centers include:

- Eduardo Mondlane University (UEM) - the largest and oldest university in the country, with a wide range of research programs.
- Pedagogical University (UP) - Previously focused on teacher training, now with extensive faculties in many areas, including ethnobotany
- University of Zambezi (UniZambeze) - based in Beira
- Lúrio University (UniLúrio) - based in Nampula

Public scientific research institutions include:

- Agricultural Research Institute of Mozambique - IIAM
- Institute for Sociocultural Research - ARPAC
- Oceanographic Institute of Mozambique
- National Institute of Health - INS
- National Institute for Educational Development - INDE

Research Centers

- Center for Research and Technology Transfer for Community Development - CITT
- Center for Research and Development in Ethnobotany - CIDE
- National Center for Biotechnology and Biosciences - CNBB
- Center for African Studies - CEA
- Biotechnology Center - CB
- Human Rights Center - CDH
- SADC Centre for Regional Integration Law Studies - CEDIR
- Center for Industrial Studies, Safety and Environment - CEISA
- Center for Studies in Agriculture and Natural Resource Management - CEAGRE
- Forest Experimentation Center
- Marine Water and Fisheries Research Center - CEPAM

Research laboratories include:

- Biotechnology Laboratory
- Chokwe Seed Laboratory
- Veterinary Laboratory

Research units include:

- Historical Archive of Mozambique - AHM
- Natural History Museum - MHN
- National Museum of Geology - MNG
- Fisheries Museum - MIMAIP
- National Agency for Environmental Quality Control - AQUA
- Nhacoongo Agricultural Station
- Angonia Zootechnical Station

- Sussundenga Agricultural Station
- Angonia Zootechnical Station
- Pemba Operational Research Center - NIOP
- Ntengo Umodzi Agricultural Station - Angónia
- Gúrué Agricultural Station

Institutions often collaborate with foreign universities and international organizations to promote research and development. Regional and international research networks help to strengthen research capacity and share knowledge.

The National Research Fund (FNI) is an important entity for financing research projects in various disciplines.

Of the above-mentioned research entities, many have conducted research directly based on or indirectly related to traditional knowledge. No consistent protocols are known to be in place to specifically address how each institution interfaces and protects traditional knowledge.

SOUTHERN AFRICAN DEVELOPMENT COMMUNITY: RESEARCH ETHICS GUIDELINES AND TOOLKIT

This extensive document was prepared by the Northern Regions Community of Practice for Ethics and Integrity in Southern Africa in collaboration with the Southern African Research, Innovation and Management Association (SARIMA) and the Southern African Bioscience Network (SANBio) in 2021.

The Guidelines include a framework and principles for responsible and ethical research and were developed in part in response to sector concerns regarding the Nagoya Protocol and, in particular, South Africa's stringent regulations on access and benefit sharing. The Guidelines are intended to be used by individual researchers, research institutions and governments of Southern African Development Community (SADC) member states as a standard approach to applying moral, ethical and professional codes.

The document includes specific content on collaborative research, indigenous knowledge systems, informed consent, as well as other relevant topics.

This document was not found to be known or utilized by faculty at the Mozambican institutions contacted in the research process associated with this reporting process.

5.4. Case studies

Despite the lack of regulatory guidelines, at least two important case studies from the research community show agreements well aligned with the objectives of the Nagoya Protocol.

IIAM and the Royal Botanic Gardens, Kew

The Mozambique Institute for Agrarian Research (IIAM) and the Royal Botanic Gardens, Kew (RBG Kew) entered into an agreement in 2011 to develop a long-term collaborative project with the “purpose of improving human livelihoods and conserving and restoring biodiversity in Mozambique”, with a particular focus on ex-situ conservation and sustainable use of native forest genetic resources. The agreement was renewed through a Memorandum of Cooperation in 2018 and extends until 2028. Various technical cooperation activities include training activities, field research and the establishment of several seed collections to be stored at the IIAM Germplasm Bank and the IIAM Herbarium, with duplicate material transferred to the UK for accession to the collections at the Kew Herbarium and the Millennium Seed Bank.

The agreement specifically addresses issues of access for scientific research, education, and long-term conservation. The focus of benefit sharing is to “share fairly and equitably the benefits that may arise from the collection, study, and conservation of the Transferred Material and Data and Transferred Images,” such as joint publication of results from collaborative projects and sharing of study results.

Note that this agreement is primarily concerned with the relationship between the two institutions and, minimally, with potential concerns related to traditional knowledge. Best practices are followed for the right to use photographic images in fieldwork.

Pedagogical University, AMETRAMO, University of Porto and University of Spain

The Pedagogical University (UP) offers courses in biology, chemistry, nutrition, and natural product chemistry, some of which involve ethnobotany, traditional knowledge and extensive fieldwork. The University has many cooperation agreements with the private sector, civil society entities, and government entities, such as the Ministry of Culture and the Ministry of Justice and Religious Affairs.

Specific agreements and projects have focused on validating traditional knowledge, such as collaborations with AMETRAMO (the national association of traditional healers), Yetho (an association of traditional healers with advanced degrees), and UPRAMET (a union of traditional medicine practitioners). These entities have partnered with UP to develop projects and support scientific research, including the development of new courses focused on traditional medicine and strategies to support public health.

In 2012, a new project with AMETRAMO included two weeks of fieldwork where significant traditional knowledge was shared with UP researchers. Several plant species were singled out for further study, including the tree species *Tabernaemontana elegans*, a species known for its antitumor properties.

In the following years, active metabolite compounds in *Tabernaemontana* bark were identified at UP. The interesting potential led to follow-up research by a UP student at the Pharmacology Department of the University of Porto, a long-standing partner institution of UP. When additional technological capacity was needed, an agreement was established with the University of Spain. Five studies indicated that the biomarkers were effective against several types of cancer, including breast, ovarian and prostate. The result of these years of research and multi-university collaboration was a prototype treatment tested in mice and shown to be effective.

The treatment was patented, with costs being shared by UP (EUR 15,000) and the University of Porto. A license to use the patent has since been granted to a Portuguese pharmaceutical company for continued development and clinical studies.

It is important to highlight that a benefit sharing agreement was put into place prior to the third party licensing, stipulating that when and if a commercial product is launched on the market, financial gains will be shared with the partner universities, as well as with AMETRAMO.

With an eye to future material needs and sustainable harvesting, UP has launched replication of the species in local nurseries.

This important example is one of Mozambique's few, clear, existing benefit-sharing agreements firmly rooted in the utilization of traditional knowledge.

5.5. Risks and opportunities

In alignment with government focus on key areas such as health, education and infrastructure, promoting research and innovation should be considered crucial for sustainable development and poverty reduction. Utilizing, validating and expanding traditional knowledge offers exciting opportunities.

Challenges presented by the Mozambican context:

- Limited Resources: Many research institutions face limitations in infrastructure, equipment, and financial resources to adequately advance research.
- Bureaucracy: Complex administrative processes can delay research.

Opportunities:

- International partnerships: strengthening international partnerships can bring new resources and knowledge.
- The *Tabernaemontana* access and benefit-sharing agreement provides a strong reference for the development and structuring of future multi-partner agreements based on traditional knowledge.
- Technology and innovation: The increasing adoption of digital technologies could revolutionize the way research is conducted and shared.

6. Conclusion

Beyond the intrinsic difficulties of defining ownership, the protection of traditional knowledge in Mozambique presents unique challenges due to inadequate legal frameworks and institutional capacity.

Currently, the 2007 ABS regulation (Decree 19/2007) offers the best option for protection of traditional knowledge, although few functional case studies exist. The Industrial Property Code and the Copyright Law also offer potentially useful protection mechanisms, possibly for selected cases of traditional knowledge.

A critical opportunity to better integrate protection of traditional knowledge exists within the current review process of Decree 19/2007, where new legal tools and parameters are under development (as of November 2024).

In addition, a future traditional knowledge database can both offer protection and foster valorization. Such a database would potentially be strengthened as a protective tool by the new WIPO Treaty in confirming innovation during patent licensing processes.

Finally, the National Policy on Traditional Medicine is well aligned with the SADC regional action plan and thus invites triple-win opportunities for valorization, protection and commercialization across borders. However, future legal and regulatory developments will shed more light on implementation mechanisms.