

# Analysis of the Conservation Law – practical aspects for its application

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## ABBREVIATIONS AND ACRONYMS

ANAC – *Administração Nacional das Áreas de Conservação* (National Administration of Conservation Areas);

AQUA – *Agência Nacional para o Controlo da Qualidade do Ambiente* (National Agency for the Control of the Environmental Quality);

BIOFUND – Foundation for the Conservation of Biodiversity;

CAZIT – *Comissão de Avaliação das Zonas de Interesse Turístico* (Evaluation Committee of Areas of Tourism Value);

CDS – *Centro de Desenvolvimento Sustentável* (Center for Sustainable Development);

CEPAM – *Centro de Pesquisas do Ambiente Marinho e Costeiro* (Center for the Investigation of the Marine and Coastal Environment);

CGAC – *Conselhos de Gestão das Áreas de Conservação* (Management Boards of Conservation Areas);

CITES – Convention on International Trade in Endangered Species of Wild Fauna and Flora;

CONDES – *Conselho Nacional de Desenvolvimento Sustentável* (National Council for Sustainable Development);

CRM – *Constituição da República de Moçambique* (Constitution of the Republic of Mozambique);

DUAT – *Direito de Uso e Aproveitamento da Terra* (Land Use and Benefit Rights);

ECDS-Recursos Naturais – *Estatuto Orgânico do Centro de Desenvolvimento Sustentável para os Recursos Naturais* (Organic Statute of the Center for Sustainable Development of Natural Resources);

ECDS-Zonas Costeiras – *Estatuto Orgânico do CDS-Zonas Costeiras* (Organic Statute of the Center for Sustainable Development of Coastal Areas);

ECDS-Zonas Urbanas – *Estatuto Orgânico do Centro de Desenvolvimento Sustentável para as Zonas Urbanas* (Organic Statute of the Center for Sustainable Development of Urban Areas);

GAZEDA – *Gabinete das Zonas Económicas de Desenvolvimento Acelerado* (Office for Areas of Accelerated Economic Growth);

INATUR – *Instituto Nacional do Turismo* (National Tourism Institute);

LFFB – *Lei de Florestas e Fauna Bravia* (Forestry and Wildlife Law);

LT – *Lei de Terras* (Land Law);

MICOA – *Ministério para a Coordenação da Acção Ambiental* (Ministry for the Coordination of Environmental Affairs);

MINAG – *Ministério da Agricultura* (Ministry of Agriculture);

MITUR – *Ministério do Turismo* (Ministry of Tourism);

MP – *Ministério das Pescas* (Ministry of Fisheries);



ONGs – *Organizações Não-Governamentais* (Non Governmental Organizations);  
REPMAR – *Regulamento Geral da Pesca Marítima* (General Regulations on Sea Fishing);  
RLFFB – *Regulamento da Lei de Florestas e Fauna Bravia* (Forestry and Wildlife Regulations);  
SADC – Southern African Development Community;  
SPEED – Support Program for Economic and Enterprise Development;  
TRP – *Termos de Referência do Projecto* (Project Terms of Reference);  
USAID – United States Agency for International Development;  
ZIT – *Zonas de Interesse Turístico* (Areas of Tourism Value).



## **INTRODUCTION**

### *Context of the Consultancy*

This legal consultancy was undertaken within the context of the activities of the SPEED - Support Program for Economic and Enterprise Development - project, which aims at supporting environmental preservation activities and at encouraging investment in the tourism sector. It comprises two parts, the first being the analysis of relevant legislation and application of the Conservation Law approved by Law Nr. 16/2014 of 20 June, in order to highlight aspects related to the practical application of the Law, and the second being the preparation of a manual to disseminate the Law, which will be submitted later.

The need to increase concrete actions aimed at a thorough reform of the preservation of biodiversity in Mozambique, culminated in the preparation of the Conservation Policy approved by Resolution Nr. 63/2009 of 2 November, which shows in detail the strengths and weaknesses in this area and puts forward proposals for a strategy focused on the reforms to be carried out.

As stated in the Conservation Policy, in the wake of economic development new opportunities and new threats to the country's biodiversity have emerged. The unbridled exploitation of biodiversity outside conservation areas, the expansion of large scale projects and infrastructure impacting on some protected areas, the dispersion of legislation and bodies related to these areas, the mismatch between current classification and funding mechanisms of these areas, the dearth of scientific knowledge and coordination with the various existing structures including local communities, among various other factors, are highlighted in the Conservation Policy as issues to be reformed in order to achieve the desired results from conservation and preservation of the country's biodiversity.

At this point, the Conservation Law having been approved, it is necessary to evaluate the extent to which it will respond to the concerns that have already been identified and to determine what still needs to be done for the effective implementation of the Conservation Law.

As stated in the Terms of Reference of the Project on the Conservation Law (the "Terms of Reference" or "TRP"), SPEED works with the Government and with the private sector to strengthen private sector participation in the political process, to identify strategic priorities for reform, to build consensus for these reforms and subsequently to move forward towards the adoption of the reforms and to ensure effective implementation across the country.

BIOFUND is an independent entity created to support the conservation of biodiversity in Mozambique and facilitate its sustainability. SPEED, along with BIOFUND, intends to analyze the Conservation Law and other related legislation in force in Mozambique and develop a manual that defines the application of the Mozambican legislation relevant to supporting conservation and the sustainable development of natural resources in Mozambique.



In the current scenario, the legal framework for conservation is divided and distributed across several sectors including fishing, land, tourism, environment and agriculture. In order to improve the legal framework for the conservation and protection of the country's natural resources following the approval of the Conservation Policy and the Strategy for its implementation in 2009, the Conservation Law has been approved and entered into force in June 2014.

Against this background and in the context of the attempt to support the conservation of biodiversity in Mozambique, SPEED requested legal assistance from SAL & Caldeira Advogados, Lda. for the preparation of this Analysis and the Manual on the Conservation Law, as indicated above. This document is the Analysis of the law in question, while the Manual on the Conservation Law will be submitted as a separate document, and will include this Analysis as an annex.

### *Methodology used*

The production of this Analysis relied upon:

- i.* An analysis of the Conservation Policy and Conservation Law and the identification of possible issues that may hinder their effective application, as well as actions still to be undertaken for their implementation;
- ii.* Research and analysis of Mozambican environmental legislation and other legislation relevant to the subject at hand; and
- iii.* Research and analysis of some relevant manuals and articles for a better understanding of the subject.

### *Organization of this document*

This Analysis is organized in 4 sections, structured as follows:

1. Executive Summary
2. Brief reference to the legislation on conservation and management of natural resources in Mozambique;
3. Additional regulations, clarifications and other practical aspects to be considered for the implementation of the Conservation Law; and
4. Concluding remarks and recommendations.

### *Constraints*

The main difficulty encountered in the preparation of this report was the wide dispersion of legislation on the environment and conservation. Furthermore, taking into account that the Conservation Law seeks to introduce some new aspects that as yet have no parallel in current practice, its harmonization with other relevant legislation becomes more difficult.



## **1. EXECUTIVE SUMMARY**

1. There are a number of laws governing matters with respect to conservation and environmental areas and other aspects that have a bearing on these matters.
2. There are different public entities with specific competencies in these areas, whose actions are not always coordinated and aligned towards a common strategy and policy.
3. There is a clear interest in reforming and revitalizing the country's protected areas in order to adapt them to the needs of preservation and conservation that guided their creation, as well as to ensure alignment with the national and international principles and guidelines concerning this matter.
4. There is a clear problem in terms of management and sustainability of conservation areas in the country, varying from legal provisions that are not harmonized to practices that do not always have a legal basis, in addition to practices that are not appropriate to the purposes of these areas.
5. In 2009 a Conservation Policy was approved, which made a survey of the main barriers for the management of conservation areas in the country, and in addition put forward proposals for reform and change in this area and a strategy for their implementation.
6. In 2011 the Conservation Policy was followed by the creation of the National Administration of Conservation Areas – ANAC, an entity that is to assume the role of liaison and coordination between the various interests converging in this area, as well as to define priorities and other actions necessary to implement Conservation the Policy and Law. ANAC's Organic Statute was approved only in 2014.
7. Also approved in 2014 was the Conservation Law, which formalizes some of the proposals put forward in the Conservation Policy. Among these are the reclassification of conservation areas, the definition of integrated management and the incentive to create mechanisms for the self-sustainability of conservation areas. The private sector is called upon to participate more actively in this management while the law seeks to create ways to also introduce local communities into management.
8. For the effective implementation of the Conservation Policy and Law, a series of complementary regulations and concrete actions is still to be defined. Urgent among these is the elaboration of a plan of priority actions for the short, medium and long term, as well as attracting human resources and raising the financial resources necessary to implement the plan in question.



## **2. SHORT REFERENCE TO THE LEGISLATION ON CONSERVATION AND MANAGEMENT OF NATURAL RESOURCES IN MOZAMBIQUE**

9. This chapter makes a brief analysis of the relevant legislation in force related to conservation.

### **2.1. GENERAL LEGAL FRAMEWORK**

#### **2.1.1. Constitution of the Republic of Mozambique**

10. The current **Constitution of the Republic of Mozambique** (“CRM”) was approved by the Assembly of the Republic on 16 November 2004. The CRM contains the foundations of the organization of the Mozambican state, and among these one finds references to the mechanisms for the defence and protection of the environment.
11. According to the CRM every citizen has the right to live in a balanced environment, which therefore has to be protected. To this end, the CRM determines that the State and the local authorities, with the collaboration of environmental protection associations are to adopt policies to protect the environment and ensure the sustainable use of natural resources.<sup>1</sup>
12. The CRM also determines that the sea, airspace, archaeological heritage, “natural protected areas”<sup>2</sup>, the potential in terms of water and energy, the roads, railways and mineral deposits are part of the public domain.<sup>3</sup> In the provision in question in the CRM creates an opening in the sense that there may be more areas of the public domain, provided these are determined by law. Various pieces of ordinary law have provisions on the public domain including, the Land Law, the Water Law, the Energy Law and the Regulations on State Property.
13. In addition the CRM establishes that law is to regulate assets in the public domain, including their management and conservation. It differentiates between assets that are part of the public domain of the State, the public domain of local authorities and the public domain of communities and requires respect for the principles of imprescriptibility and immunity from seizure.<sup>4</sup>
14. It is apparent from the analysis of the provisions of the CRM related to the conservation of natural resources that the justification for these is the creation of a sustainable and dignified living environment for society's citizens.
15. In Nr. 1 of Article 117 the CRM also establishes that the State shall promote initiatives to ensure the ecological balance, conservation and preservation of the environment, aimed at improving the quality of life of its citizens.

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<sup>1</sup> CRM, Article 90 (1, 2).

<sup>2</sup> This is the terminology used by the CRM to designate conservation areas. Meanwhile, please note that it only indicates conservation areas in the public domain.

<sup>3</sup> CRM, Article 98(2).

<sup>4</sup> CRM, Article 98 (3).



16. In addition it establishes the right of popular action which includes the right to prevent, or require cessation of damages being inflicted, prosecution of offenses against public health, the preservation of the environment, as well as the right to claim compensation in case of violation of the rights enshrined in the law.
17. Thus, the CRM ensures and promotes the defence, protection, preservation and conservation of the environment, by laying down the conditions and the basic mechanisms for this purpose.

### 2.1.2. Environmental Legislation

18. Law Nr. 20/97 of 1 October, which approves the **Environmental Law** (“Environmental Law”) establishes the general basic principles of environmental policy, among other things, the rational use and management of environmental components so as to promote improvements in the quality of life of the citizens and to value the traditions and knowledge of local communities. With a view to the conservation and preservation of natural resources and to the accountability of those causing environmental damage in wilful acts of environmental degradation, it lays down certain general standards that require complementary regulation.
19. In Article 4, paragraph b) the Environmental Law determines *“the principle of recognition and appreciation of the traditions and knowledge of the local communities, which contribute to the conservation and preservation of natural resources.”* This principle is important to the extent that it assigns importance and merit to local communities in the process of conserving the environment.
20. In paragraph g) of the same Article, the Law also determines the *“principle of accountability on the basis of which those who pollute or in any other way degrade the environment, always are obliged to repair or compensate for the resulting damage”*. This principle is the fundamental basis of Article 11 Nr. 2 of the Conservation Law, which determines that public and private entities exploiting natural resources in conservation areas or buffer zones shall compensate for the resulting impacts so as to ensure there is no net loss of biodiversity.
21. The Environmental Law creates the **National Council for Sustainable Development** (“CONDES”), which is a body involved in making decisions and conceiving principles, policies, strategies and legislation related to the measures for the protection of the environment and the prevention of environmental damage, to the rights and duties of citizens concerning environmental matters, while also acting with regard to conservation issues. In addition it is expected to ensure coordination, balance and harmonization at public level, notably in the design of policies, programs, plans, strategies and national legislation, including interventions at international level. CONDES is an advisory body to the Council of Ministers, and also acts as a sounding board for public opinion.
22. In order to protect biodiversity, the Environmental Law lays down in Article 12 that all activities that threaten the conservation, reproduction, quality and quantity of biological resources, with special attention to resources that are



endangered, are forbidden, while it refers to the Government as being responsible for taking appropriate measures for the protection of biodiversity.

23. In Article 13 the Law refers to “environmentally protected areas<sup>5</sup>”, establishing some basic rules. However, this article was repealed by the Conservation Law.
24. The Environmental Law also offers guidance on the need for environmental licensing and it defines rights and obligations of the citizens. It should also be noted that this law determines that liability for environmental damage is objective, that is, independent of guilt and compliance with the legal requirements by the agent causing the damage in question.<sup>6</sup>
25. Whereas the Environmental Law establishes general principles for the proper management of natural resources, other legal instruments that complement the contents of this law have been approved, in particular:
  - i. Decree Nr. 45/200 of 20 November, which approves the **Regulations for the Prevention of Pollution and Protection of the Marine and Coastal Environment**: its objective is to prevent and limit pollution from illegal discharge from ships, platforms or by land based sources along the Mozambican coast, as well as the establishment of standards for the protection and conservation of areas that constitute the public domain in the sea, rivers or lakes, beaches and fragile ecosystems. This decree is especially relevant for environmental conservation and preservation, given that it seeks to define various limitations and prohibitions in accordance with the area in question, determines the need for approval of complementary standards governing some specific activities (e.g. the catching of ornamental fish, coral reefs to be protected, among other things) and in addition it determines competences related to issuing various licenses and permits as well as the need for the opinion of other entities with competences in this area. The supervision of the application of these regulations is attributed to MICOA, INAMAR and Municipal Councils in the areas under their jurisdiction.
  - ii. Decree Nr. 11/2006 of 15 July, which approves the **Regulations on Environmental Inspection**: regulates the activity of supervision, control and monitoring of compliance with environmental protection standards at national level, and defines the procedural steps to be followed. Environmental inspection, which can be ordinary or extraordinary, is the responsibility of MICOA.
  - iii. Decree 45/2004 of 29 September, as amended by Decree Nr. 42/2008 of 8 November, which approves the **Regulations on the Environmental Impact Assessment Process**: establishes the procedures and conditions for environmental licensing and classifies into categories the activities and impacts that may be caused by them, depending on the objective in question, and thus subsequently determines the need for an environmental impact study, a

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<sup>5</sup> Terminology used in the Environmental Law to refer to conservation areas.

<sup>6</sup> Environmental Law, Article 26.



simplified environmental study or cases of exemption from environmental licensing, all the while observing basic environmental management standards. The relevant competences are attributed to MICOA and its Provincial Directorates. Please note that environmental licensing of mining and petroleum activities has its own specific regulations, in particular:

- Decree Nr. 26/2004 of 20 August, which approves the Environmental Regulations for Mining Activities;
- Decree Nr. 24/2004 of 20 August, which approves the Regulations for Petroleum Operations;
- Ministerial Order Nr. 189/2006 of 14 December, which approves the Basic Environmental Management Standards for Mining Activities.

iv. among other legislation<sup>7</sup>.

### 2.1.3. Legislation concerning Land

26. Law Nr. 19/97 of 1 October, which approves the **Land Law** (“Land Law” or “LT”) follows the public domain principle enshrined in the CRM, and classifies certain areas as “total<sup>8</sup> and “partial” protection areas, while integrating these within the public domain of the State This law also indicates which areas are total and partial protection areas
27. Total Protection Areas include areas reserved for nature conservation and areas important for the national defence. Partial Protection Areas include areas in the vicinity of public infrastructure and water resources.
28. The Land Law states that in total and partial protection areas DUATs cannot be acquired, but special licenses can be acquired for certain activities.
29. The Land Law determines that it is incumbent upon Provincial Governors to authorize special licenses in partial protection areas. The same law establishes that the competence to authorize special licenses for total protection zones rests with the Minister of Agriculture.<sup>9</sup> Note, however, that the preservation and conservation of nature in Total Protection Areas is now the responsibility of the Ministry of Tourism (“MITUR”) since these tasks have been transferred to the jurisdiction of this ministry, although the provision in the Land Law referred to has not been revoked.<sup>10</sup>
30. In addition it should be noted that the **Land Law Regulations**, approved by Decree Nr. 66/98 of December 8, determine that the procedures for issuing

<sup>7</sup> Cfr. Some additional references in the table from section 2.1.8.

<sup>8</sup> Certain total protection areas are considered conservation areas.

<sup>9</sup> Land Law, Article 22(2)(b).

<sup>10</sup> Presidential Decree Nr. 9/2000 of 23 May and Ministerial Order Nr. 17/2001 of 7 February define the mechanisms for the transfer of conservation areas to the Ministry of Tourism.



licenses in Total Protection Areas will be defined in specific regulations.<sup>11</sup> However, this legislation has never been approved.

31. The **Urban Land Regulations**, approved by Decree Nr. 60/2006 of 26 December, refer only to Partial Protection Areas. Note, however, that these Regulations determine that it is the local State and Municipality bodies that issue licenses in these areas, contrary to the provisions of the Land Law, which explicitly confers this authority on the Governor of the Province in question.<sup>12</sup> These regulations are relevant to conservation to the extent that Partial Protection Areas are created with the intention to reduce human presence and protect biological diversity.

#### **2.1.4. Forestry and Wildlife Legislation**

32. Law Nr. 10/99 of 7 July, which approves the **Forestry and Wildlife Law** (“LFFB” or “Law 10/99”), states in Article 2 that it defines the principles and basic standards governing the protection, conservation and sustainable use of forestry and wildlife resources within the scope of integrated management, with a view to the socioeconomic development of the country. One of the first principles laid down in this law determines that the existing natural forestry and wildlife resources within the national territory are the property of the state.
33. The principle of objective liability for damage caused, as set forth under the Environmental Law, is also referred to in this law. The involvement of the private sector in management, conservation and exploration, as well as the participation of local communities and the recognition of customary practices in line with the objectives advocated by the law, among other things, are also reaffirmed.<sup>13</sup>
34. Forests are classified as “conservation forest” if they are located in “protection areas”<sup>14</sup> or as “productive and multiple use forests”.<sup>15</sup> Wildlife resources, consisting of wildlife existing within the national territory, are classified in accordance with their rarity and economic and socio-cultural value. This law states that lists of wildlife are to be adopted by separate statute.<sup>16</sup>
35. The exploitation of the national forest heritage is to be based on a simple license or forest concession contract, and the exploitation of wildlife resources is to be based on simple hunting licenses, sport hunting licenses and commercial hunting licenses. The above regime has been reaffirmed by the Conservation Law.

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<sup>11</sup> Land Law Regulations, Article 4.

<sup>12</sup> Urban Land Regulations, Article 3.

<sup>13</sup> LFFB, article 3.

<sup>14</sup> Terminology used in the LFFB.

<sup>15</sup> LFFB, Article 5.

<sup>16</sup> LFFB, Article 6.



36. The local community is entitled to a percentage of the fees charged for the exploitation of forestry and wildlife resources.<sup>17</sup>
37. The LFFB defines “conservation” as the sustainable management of forestry and wildlife resources without putting biodiversity at risk. This law classifies the protection areas in national parks (delimited territorial space designed to preserve natural ecosystems generally of great scenic beauty and representing the national heritage); national reserves (territorial space designed to preserve certain species of flora and fauna that are rare, endemic, threatened or endangered or that reportedly are declining, and fragile ecosystems) and areas of historical and cultural value and use (areas designed to protect forests of religious importance and other places of historical and cultural importance, in accordance with customary practices).<sup>18</sup>
38. In addition, the designation “conservation areas for tourism purposes” indicates that Hunting Areas (coutadas)<sup>19</sup> also constitute Total Protection Areas in the public domain, and are established among other reasons for the protection of species.
39. Another relevant concept in the LFFB is that of the Game Farms. These are not in the public domain and are defined as delimited areas where hunting rights are limited either to the holders of the DUAT or to those who are allowed by these holders to be there, while both need a license issued by the competent authority.
40. Another important concept to be considered is that of the “buffer zone”, defined as the land surrounding a protection area, which constitutes a transition belt between the protected area and multiple use areas, aimed at controlling and reducing the impacts of human activity on the protection area.
41. Supervision with a view to monitor, discipline and guide the protection, conservation, use, operation and management of forestry and wildlife resources, without prejudice to specific competences of other bodies, is attributed by this law to the MINAG.<sup>20</sup>
42. Resolution Nr. 68/2009 of 29 December approved the **Strategy for the Management of the Human/Animal Conflict**. This Strategy defines conservation mechanisms and conflict prevention measures, and proposes categories of conservation areas in the public domain and a land use and

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<sup>17</sup> Twenty percent of the fees charged by farms go to local communities in the area where the resources are extracted – Nr. 1 of Article 100 and Article 102 of the Forestry and Wildlife Law Regulations.

<sup>18</sup> LFFB, Articles 10 to 13.

<sup>19</sup> Note that, unlike the coutadas, the Game Farms are not included in the protected areas for tourism purposes. These are legally defined as areas in which hunting rights are limited to the holders of the DUAT or to those who are allowed by these holders to be there, while both need a license issued by the competent authority. Thus, since the area is not in the public domain, DUATs can be acquired for Game Farms.

<sup>20</sup> LFFB Regulations, Article 107(1).



population resettlement plan. This strategy, as well as the Conservation Policy, aim to address the issue of populations living in conservation areas with a view to allowing these to continue living there, and where families are to be resettled in those cases where their transfer cannot be avoided, this is to be done without prejudice to the measures to be taken to allow them to continue living there.

### 2.1.5. Fisheries Legislation

43. Law Nr. 22/2013 of 1 November 1, which approves the **Fisheries Law** (“Fisheries Law”) establishes measures for the protection, conservation and sustainable use of national aquatic biological resources.<sup>21</sup>
44. The law establishes certain general principles, namely: the principle of the conservation and proper use of biological aquatic resources and of their ecosystems; the precautionary principle; the ‘polluter pays’ principle, which involves natural or corporate persons being held accountable for the costs of replacing the quality of the damaged environment and/or for the costs of preventing and eliminating pollution caused by them in the course of fishing and activities complementary to fishing; among other things.<sup>22</sup>
45. It reaffirms what is enshrined in the previous law, namely that fishery resources in Mozambican territorial waters belong to the State, which determines the conditions for their use.<sup>23</sup>
46. Under the heading “conservation areas”<sup>24</sup> the Fisheries Law also states that in maritime and inland waters fishery resource conservation areas can be declared in order to promote their protection and regeneration and it defines the competences for the approval of regulations concerning these matters.<sup>25</sup>
47. Within this context and with a view to the preservation and protection of marine species, Decree Nr. 43/2003 of 10 December with the amendments introduced by Ministerial Decree Nr. 4/2013 of 7 January, which approves the **General Regulations on Marine Fisheries** (“REPMAR”) determines the possibility of creating areas where fishing is restricted and allows for the establishment of Marine Parks, Marine Reserves and Marine Protected Areas. These areas can be created within the maritime boundaries of National Parks.<sup>26</sup>
48. According to the above regulations, marine parks and marine reserves, as well as their regulation, are established by the Council of Ministers upon a proposal of the Minister of Fisheries or of any other national entity, taking account of the opinion of said Minister. Marine protected areas, however, are established by the Minister of Fisheries.<sup>27</sup>

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<sup>21</sup> Fisheries Law, Article 1.

<sup>22</sup> *Idem*, Article 5.

<sup>23</sup> *Ibidem*, Article 10 (1).

<sup>24</sup> Terminology used to refer to the conservation areas.

<sup>25</sup> *Ibidem*, Article 16.

<sup>26</sup> REPMAR, Article 112.

<sup>27</sup> REPMAR, Articles 113(1), 114(1) and 115.



49. Any fishing activities whatsoever, including subsistence fishing, recreational fishing and sport fishing are prohibited in marine parks. With regard to marine reserves, these may be total or partial in nature, depending on the interests being protected, with certain types of fishing possibly being allowed in exceptional cases.
50. Although it is presumed that marine parks and reserves require regulation by the Council of Ministers, these regulations have not yet been created.
51. Decree Nr. 51/99 of 31 August approves the **Regulations on Recreational and Sport Fishing**. Among the rules provided this regulation determines the list of species subject to restrictions and a list of protected species.<sup>28</sup> Supervision in this area is attributed to the MP.
52. The Conservation Law does not explicitly revoke articles of the fisheries legislation, thus giving the erroneous impression that it does not cover marine areas protected under the Fisheries Law and REPMAR, among other legislation related to marine areas.
53. However, the Conservation Law<sup>29</sup> is held to apply to the existing natural resources within the national territory and in **waters under national jurisdiction**.
54. Moreover, a careful analysis of the Conservation Law shows that it applies not only to conservation areas on land, but also to marine conservation areas, although it appears to relate more to land areas.
55. Certain categories of conservation areas also cover marine areas; Nr. 3 of Article 20 of the Conservation Law addressing environmental protection areas, refers to lake, river and marine areas, and Article 15 states that in integrated nature reserves hunting and **fishing**, among other activities, are strictly prohibited.<sup>30</sup>
56. Therefore, although the law does not explicitly repeal the provisions of fisheries legislation, all those that contradict it have been implicitly repealed. However, due to this mechanism of implicit repeal, doubts persist about the legal framework for certain areas, such as marine reserves and parks.
57. Furthermore, Conservation Law Article 12, paragraph 1, states that the national network of conservation areas comprises conservation areas categorized under the Law itself, which indicates that areas categorized differently under previous laws are not part of the national network of conservation areas (however, this is not the case for marine parks and reserves).

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<sup>28</sup> Note that the scope of the Regulations on Recreational and Sport Fishing (Article 3) does not cover commercial and artisanal fisheries. Thus, it is incumbent upon the legislator to establish specific legislation in this regard.

<sup>29</sup> Nr. 1 of Article 3 of the Conservation Law.

<sup>30</sup> From the definition of community conservation areas we conclude that their delimitations only concern land areas, thereby creating a gap in the law.

### 2.1.6. Water Legislation

58. Law Nr. 16/91 3 of August, which approves the **Water Law** (“Water Law”), lays down that inland waters constitute the public domain of the State.<sup>31</sup> Among its provisions the Water Law provides measures for the prevention and control of water pollution, the licensing of activities in protection areas adjacent to water resources and rules for authorizing the discharge of effluent.
59. Law Nr. 4/96 of 4 January, which approves the **Law of the Sea** (“Law of the Sea”) determines the competences of the Mozambican State with regard to the sea, including those relating to the protection and preservation of the marine environment.

### 2.1.7. Tourism Legislation

60. Tourism legislation is one of the sources of particular relevance with respect to the legal system governing conservation areas. The **Tourism Law**, approved by Law 4/2004 of 17 June, establishes the legal framework for the promotion and exercise of tourism activities. This law also determines that the development of tourism activities is to respect the environment and aim at sustainable economic growth.
61. Article 9 of the Tourism Law provides that activities related to ecotourism, synergetic tourism, recreational diving and other activities identified in accordance with the management plan and other applicable legal provisions, may be developed in conservation areas. Article 14 of this law adds that investments in new ventures, including improvements, may, on account of their socio-economic importance, enjoy incentives to be defined by the Council of Ministers.
62. Conservation areas are defined in this law as “*areas for the upkeep of ecological processes, ecosystems and natural habitats, and for the upkeep and recovery of viable populations of species in their natural habitats*”.<sup>32</sup>
63. Resolution Nr. 22/2012 of 28 December, which approves the **Organic Statute of the Ministry of Tourism** (“Organic Statute of MITUR”), defines the assignments and competences of MITUR, among which are to:
  - i. define, in coordination with other State bodies, the terms and conditions for the administration of conservation areas, in partnership with the private sector and local communities;
  - ii. license, supervise and monitor the exploitation of conservation areas under its management; and
  - iii. propose regulations and monitor the exploitation of conservation areas under its management.

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<sup>31</sup> Nr. 1 of Article 1 of the Water Law.

<sup>32</sup> Tourism Law, Glossary.



64. The transition mechanisms for conservation areas for tourism purposes have been defined by joint order of the Ministry of Agriculture, MITUR and the Ministry of Finance, **Ministerial Decree Nr. 17/2001 of 7 February**, as mentioned above.
65. Decree Nr. 77/2009 of 15 December approved the **Regulations of Areas of Tourism Value**.<sup>33</sup> The Areas of Tourism Value (“ZIT”) are areas aimed in particular at encouraging tourism activities. These regulations state that any region or area within the national territory, whether free or occupied, may be declared an area of tourism value, provided it has the relevant characteristics, such as natural or historical and cultural resources, that it is able to attract national and foreign tourists, and that its economic dynamics are above all based on the development of tourism as the main activity.<sup>34</sup> Several areas other than those indicated here may also be included, provided these have the potential to generate integrated ecotourism projects or projects already identified as priority areas for tourism development.<sup>35</sup>
66. In the areas thus identified, the issuing of DUATs and of special licenses must be suspended until approval of or adjustments to the territorial planning instruments. In these areas the National Tourism Institute (“INATUR”) shall issue binding opinions with respect to the merits of DUAT and special license applications.<sup>36</sup> When the ZIT is located in a Special Economic Area, the competences of INATUR are transferred to the Office for Accelerated Economic Growth Areas - GAZEDA.

#### 2.1.8. International conventions

67. There follows a brief mention of some international conventions ratified by Mozambique, which are of interest in matters related to conservation, namely:
  - i. **UN Convention on Biodiversity**, approved by Resolution Nr. 2/94 of 24 August (“UNCBD”): This Convention aims at the conservation of biological diversity, the sustainable use of its components and the equitable and fair sharing of benefits generated by the use of genetic resources.<sup>37</sup>
  - ii. **Convention on Wetlands of International Importance**, approved by Resolution Nr. 45/2003 of 5 November: This Convention lays down the principles for the conservation of wetlands such as swamp areas, ponds, and marshes, among other areas, that serve as habitats for water birds, and promotes the conservation of these wetlands and water birds through the establishment of national wetland reserves.

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<sup>33</sup> Although these areas are more dedicated to tourism due to their landscape potential, their protection has a conservation component..

<sup>34</sup> Regulations of Areas of Tourist Value, Article 3(1).

<sup>35</sup> Regulations of Areas of Tourist Value, Article 3(2, 3).

<sup>36</sup> Regulations of Areas of Tourist Value, Article 16(a).

<sup>37</sup> Article 1 of the UNCBD.

- iii.* **Convention on International Trade in Endangered Species of Wild Fauna and Flora**, approved by Resolution Nr. 20/81 of 30 December (CITES). This Convention aims at establishing principles for the protection and trade in endangered species. To this end its Annexes I, II and III indicate the species that are endangered, those that are not endangered yet but would become so if the trade in specimens of these species is not subject to strict regulation that prevents exploitation incompatible with their survival, and those indicated by States in order to restrict and / or impede their exploitation.
- iv.* In addition to the conventions mentioned above, Mozambique has ratified, among others, the following conventions related to conservation:
- Resolution Nr. 14/2002 of 5 March, which ratifies the **Protocol on Wildlife Conservation and Application of the Law in the Southern African Development Community** (SADC - Southern African Development Community);
  - Resolution Nr. 9/2008 of 19 September, which ratifies the **Convention on the Conservation of Wild Migratory Species**;
  - Resolution Nr. 17/96 of 26 November, which ratifies the **Convention on the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region**, signed in Nairobi on 21 June 1985, and its Protocols;
  - Resolution Nr. 17/82 of 13 November, which ratifies the **Convention on the Protection of the World Cultural and Natural Heritage**;
  - Resolution Nr. 18/81 of 30 December, with amendments introduced by Resolution Nr. 8/2008 of 14 November, which approves the **African Convention on the Conservation of Nature and Natural Resources**.

### 2.1.8. Other legal provisions

68. Several other laws contain some references to conservation areas, which should be considered in each particular case. In order provide some concrete examples, we list some of these provisions below:

- Law Nr. 20/2014 of 18 August – Mining Law:
- The Mining Law establishes rules governing mining activity, the rights and obligations of holders of mining titles with respect to the use and exploitation of mineral resources, including mineral water;
  - Establishes standards for the protection and management of reserved mineral areas and total and partial protection areas.



- Exploitation rights are granted by the Minister with oversight of the area of natural resources (MIREM) and issues related to obtaining land access and environmental licensing are coordinated with MINAG and MICOA respectively.
- Law Nr. 21/2014 of 18 August – Petroleum Law:
- The Petroleum Law establishes the rules for the granting of the rights to conduct petroleum activities;
  - Determines the conditions for the development of petroleum activities;
  - Establishes the conditions of use of Total and Partial Protection Areas and areas of maritime jurisdiction.
- Decree Nr. 15/2013 of 26 de Abril – Regulations on the International Trade in Endangered Species of Wild Fauna and Flora:
- Decree 15/2003 defines the rules for export and import, re-export, transit and introduction by sea or by any customs office of specimens of species listed in Annexes I, II and III of CITES, with a view to protecting the environment;
  - It is incumbent upon MICOA to implement CITES, while the Eduardo Mondlane University is the scientific authority for its implementation.
- Law Nr. 19/2007 of 18 July – Land Planning Law:
- The Land Planning Law lays down rules to ensure the organization of the national space and the sustainable use of its natural resources;
  - It establishes certain standards to promote the population's quality of life and the protection and conservation of the environment;
  - It determines the mechanisms for expropriation on the basis of usefulness, necessity and public interest, and compensation mechanisms;
  - The responsible ministry is MICOA, which coordinates with local authorities and other relevant ministries in designing and implementing the instruments in question (MOPH, MINAG, etc.).
- Decree Nr. 26/2011 of 15 June – Organic Statute of the Environmental Fund (FUNAB)
- FUNAB is a legal person under public law, endowed with financial and administrative autonomy, and autonomy in terms of assets, and is under the supervision of MICOA.
  - It aims at the promotion of actions or activities

that ensure sustainable development and the adaptation and mitigation of climate change.

- FUNAB, among other things, promotes awareness campaigns; approves development projects geared towards the conservation and enhancement of natural resources and the environment; raises funds; promotes and supports the management of protected or sensitive areas, as well as the recovery of degraded areas.

Decree Nr. 80/2010 of 31 December – Creates the National Agency for the Control of the Environment's Quality (AQUA)

- AQUA is a legal person under public law endowed with administrative and technical autonomy, under the supervision of MICOA.
- AQUA aims at adopting and implementing measures to improve its ability to monitor the quality of the environment, and at developing specific studies that indicate the levels of environmental contamination and pollution.

Decree Nr. 25/2008 of 1 July – Regulations for the Control of Invasive Exotic Species

- Decree 25/2008 aims at protecting vulnerable and threatened species and ecosystems in order to ensure their survival, at preventing the unauthorized introduction of invasive species in ecosystems and habitats where they do not naturally occur, and at managing and controlling exotic species, among other things;
- Under the order in question MICOA is responsible for the control of invasive exotic species;
- In its actions MICOA is supported by the Interagency Group on Control of Invasive Exotic Species.

Decree Nr. 19/2007 of 9 August – Regulations on the Access and Sharing of Benefits from Genetic Resources and Associated Traditional Knowledge

- Decree 19/2007 provides the rules for access to genetic resources, their protection as well as to traditional knowledge associated with it;
- It lays down that MICOA is competent to issue authorizations for access to samples of genetic resources within the national territory, grant permits for the shipment of samples and associated knowledge to institutions with headquarters abroad, oversee the shipment, disclose lists of species for exchange facilitated in international agreements, produce and publish periodically the list of authorizations,



etc.

- This decree also establishes standards for the conservation of samples *ex-sito*.
- Decree Nr. 6/2007 of 10 April – Approves the Organic Statute of the Center for the Investigation of the Marine and Coastal Environment (CEPAM) ➤ In partnership with other sectors CEPAM implements experimental activities and demonstrations of the conservation and sustainable use of marine and coastal ecosystems, disseminates their results and recommends measures to strengthen the protection of the marine and coastal environment.
- Decree Nr. 26/2004 of 20 August – Environmental Regulations for Mining Activities ➤ Decree 26/2004 lays down rules to prevent, control, mitigate, rehabilitate and compensate for the adverse effects that mining may have on the environment;  
➤ It determines the rules of environmental conservation of water, air, noise and vibrations and submits certain matters to other laws, such as the LFFB and its regulations;
- Decree Nr. 24/2004 of 20 August – Environmental Regulations for Petroleum Activities ➤ Decree 24/2004 establishes the rules for granting the right to engage in oil activities in order to ensure that operations are conducted in a systematic manner and under conditions that allow for comprehensive and coordinated supervision.
- Decree Nr. 8/2004 of 2 June – Regulations on Environmental Quality Standards and the Emission of Effluents ➤ Decree 18/2004 defines quality standards and effluent emissions to be met by the private sector in the development of activities that may degrade the environment.  
➤ It authorizes the issuance of special licenses for the emission of extraordinary effluents.
- Decree Nr. 25/2011 of 15 June – Regulations on the Environmental Auditing Process ➤ Decree 25/2011 establishes standards for the management, organization, control and protection of the environment.  
➤ One of the objectives of environmental auditing is to assess the management and conservation of energy resources, raw materials, water and other resources.
- Decree Nr. 5/2003 de 18 February – Approves the Organic Statute of the Center ➤ The CDS-Coastal Areas promotes integrated planning and the implementation of best practices in environmental management, in collaboration with other relevant entities;



- for Sustainable Development (CDS) – Coastal Areas promotes and assists in monitoring the state of the environment and the use and conservation of natural resources and biodiversity in coastal areas.
- Decree Nr. 7/2003 of 18 February – Approves the Organic Statute of the CDS-Natural Resources ➤ The CDS-Natural Resources promotes integrated planning and the implementation of best practices in environmental management, in collaboration with other relevant entities; promotes and assists in monitoring the state of the environment and the use and conservation of natural resources and biodiversity.
- Decree Nr. 6/2003 of 18 February – Approves the Organic Statute of the CDS CDS-Urban Areas ➤ The CDS-Urban Areas assists with monitoring the state of the environment and the use and conservation of natural resources and biodiversity in urban areas.
- Decree Nr. 35/2001 of 13 November – General Regulations on Aquaculture and their Annexes I, II, III, IV, V and VI. ➤ Decree 35/2001 defines the activity of aquaculture in areas in the public domain as being under the regime established by the legislation governing land and water; ➤ It establishes some standards for the conservation of the environment and natural resources.
- Decree Nr. 27/94 of 20 July – Regulations on the Protection of the Archeological Heritage ➤ Decree 27/94 provides some rules on conservation related to liability, restoration, preservation and repair of archaeological features and archaeological protection areas.
- Ministerial Order Nr. 189/2006 of 14 December – Approves the Basic Rules for the Environmental Management of Mining Activities ➤ DM 189/2006 lays down rules aimed at minimizing environmental damage and negative socio-economic impacts resulting from level 1 mining activities; ➤ These rules also aim at preventing the pollution of air, the soil and water so as not to significantly degrade flora and fauna.
- Ministerial Order Nr. 1/2006 of 4 January ➤ DM 1/2006 establishes standards for the application of fines and other sanctions provided for in environmental legislation.
- Resolution Nr. 8/2012 of 13 April – Grants the Foundation for the Conservation of Biodiversity – ➤ BIOFUND is a private entity which is active in the area of aquatic and land biodiversity, including the conservation of the national system of conservation areas and, in these terms, the public importance of its activities and

(BIOFUND) the statute of public utility of its cooperation with public authorities having been recognized, has been awarded the status of public utility by the Council of Ministers, pursuant to legal provisions.

## 2.2. CONSERVATION POLICY, THE NATIONAL ADMINISTRATION OF CONSERVATION AREAS AND THE CONSERVATION LAW

69. The **Conservation Policy and the Strategy for its Implementation**, approved by Resolution Nr. 63/2009 of 2 November, establishes measures aimed at ensuring the survival of species, ecosystems or geological formations that are rare or under threat, by establishing additional, specific measures for the conservation of biodiversity.
70. This Policy includes a proposal for an institutional structure for the management of conservation areas; a new classification of conservation areas and mechanisms for establishing new conservation areas; new actions to be considered, in particular the incentive for creating partnerships and a more active role for the private sector and local communities; the recommendation for a better coordination of assignments and competences; in addition to establishing guidelines for the resettlement of populations in conservation areas and compensation mechanisms; and the definition of the conditions for training and education of staff assigned to conservation in Mozambique. This Policy also includes a set of relevant concepts and definitions concerning the matter to be considered, especially for the purpose of standardization.
71. Decree Nr. 11/2011 of 25 May created the **National Administration of Conservation Areas (ANAC)**, a legal person under public law endowed with administrative and financial autonomy and autonomy with regard to assets, supervised by the Minister with oversight of the sector for conservation areas. In 2013, Decree Nr. 9/2013 of 10 April introduced amendments to 11/2011 that established ANAC.<sup>38</sup> Its creation aimed at, among other things:
- i. the administration of national parks and reserves, hunting areas, game parks and other conservation areas which may be established by law and placed under the administration of ANAC;

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<sup>38</sup> The changes introduced by Decree 9/2013 include: the definition of certain acts as being within the jurisdiction of ANAC, the objectives of ANAC (the decree defines an additional objective which is summarized as the management of national parks and reserves, hunting areas, game parks and other conservation areas established by law and placed under the administration of ANAC), the creation of a Governing Council and a Technical Council and the abolition the Board of Administrators and the Administrator of the conservation area, etc.

- ii.* the conservation of biodiversity and the associated heritage through the national system of conservation areas;
  - iii.* setting priorities for the administration and management of conservation areas;
  - iv.* the establishment of infrastructure in conservation areas, both for the management of biological diversity as well as for economic activities aimed at achieving self-sufficiency in these areas;
  - v.* the establishment of partnerships for the management and development of conservation areas.<sup>39</sup>
72. To pursue its objectives the following functions, among other things, have been attributed to ANAC:
- vi.* implementation the part of the Conservation Policy related to conservation areas;
  - vii.* proposal of the issuance of special licenses to the competent authority;
  - viii.* licensing of hunting and ecotourism activities;
  - ix.* ensuring the management of conservation areas;
  - x.* ensuring coordination with all entities having converging interests, as well as cooperation with international organizations in order to comply with International Law;
  - xi.* creation of Management Boards for Conservation Areas that, among other things, will contribute to the development of partnerships with the private sector and local communities;
  - xii.* entering into contracts and agreements within the context of public, private and community partnerships, and monitoring their implementation;
  - xiii.* subjecting management plans to the approval of the competent Minister and ensuring their implementation, as well as ensuring implementation of the programs and activities for the identification and monitoring of resources;
  - xiv.* proposing the creation or extinction of conservation areas.<sup>40</sup>
73. Also note that it is to be ANAC through its Governing Board, that will decide on contracting loans from public and private entities; authorizing activities subject to conditions in conservation areas, taking into account the respective management plan and other applicable laws; approving the administrative and financial rules and procedures of ANAC; among other things.<sup>41</sup>

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<sup>39</sup> Decree Nr. 9/2013 of 10 April, Article 3.

<sup>40</sup> Decree Nr. 9/2013 of 10 April, Article 4.

<sup>41</sup> Decree Nr. 9/2013 of 10 April, Article 7.

74. The revenues of ANAC include, among other things: a percentage of the entry fee for conservation areas; fees and levies on tourism activities in these areas; fees for special permits issued in these areas; fees charged under concession agreements in these areas; fees related to hunting activities in these areas; fees for services rendered; budgetary allocations; financing; donations; among other legally viable sources.<sup>42</sup>
75. In 2014 Resolution Nr. 8/2014 of June 13 of the Inter-ministerial Public Service Commission approved **ANAC's Organic Statute**.
76. The ANAC bodies are the Governing Council, consisting of the Director-General (appointed by the Prime Minister upon a proposal of the Minister with oversight of conservation areas) and the Service Directors, and the Technical Council, which consists of representatives from MITUR, MICOA, MP, MINAG and the private sector.<sup>43</sup>
77. The structure of ANAC consists of five Services related to the protection of natural resources; research and development; licensing and promotion; administration and finance, and human resources.<sup>44</sup> The Licensing and Promotion services are responsible, among other things, for organizing tenders for concessions; licensing activities in their jurisdiction; the creation of an attractive image for the areas in question in order to generate a stream of visitors and investors; among other things.<sup>45</sup>
78. Also approved in 2014 was the **Law Concerning the Establishment of the Basic Principles and Rules on the Protection, Conservation, Restoration and Sustainable Use of Biological Diversity in Conservation Areas, as well as the Framework of an Integrated Management for the Sustainable Development of the Country** (the "Conservation Law"), approved by Law Nr. 16/2014 of 20 June.
79. The Conservation Law, apart from indicating its subject in the name given to the Law as stated in the preceding paragraph, starts by setting out the principles that guide the rules it contains, which are in line with the principles proposed by the Conservation Policy, namely:<sup>46</sup>
- xv. ecological heritage principle;
  - xvi. sovereignty principle;
  - xvii. equality principle;
  - xviii. principle of citizen participation in management and benefits;
  - xix. environmental responsibility principle;

<sup>42</sup> Decree Nr. 9/2013 of 10 May, Article 9.

<sup>43</sup> ANAC's Organic Statute, Articles 6 to 10.

<sup>44</sup> ANAC's Organic Statute, Article 11.

<sup>45</sup> ANAC's Organic Statute, Article 14.

<sup>46</sup> Conservation Law, Article 4 and Conservation Policy, Chapter III.



- xx. development principle;
  - xxi. public-private partnerships principle;
  - xxii. precautionary and informed decision principle; and
  - xxiii. international cooperation principle.
80. Given that coordination between the various competent entities in this area is one of the points emphasized by the Conservation Policy, the Conservation Law establishes a “*national system of conservation areas*” for the administration of conservation areas. Article 5 of the Conservation Law states that this system consists of the bodies managing the conservation areas, the financing mechanisms for the conservation areas and the national network of conservation areas, and that it has the following objectives:
- i. coordinating public, private or mixed institutions in the administration and funding of conservation areas, and ensuring the ecological, economic, social and institutional sustainability of these areas;
  - ii. contributing to the upkeep of biological diversity and genetic resources within the national territory and the territorial waters;
  - iii. promoting sustainable development.
81. It should be noted, however, that the Law offers guidelines only, so that concrete rules governing the coordination and implementation of policies, including administration with the participation of the private sector and local communities, are to be defined by the Council of Ministers.<sup>47</sup> The Law states that the competent Ministry for its implementation is the one with oversight of the sector of conservation areas. We note that the Conservation Policy refers to MICOA<sup>48</sup>, but given that conservation areas are under the jurisdiction of MITUR, we understand that the Law refers to this ministry.
82. The public and private entities that exploit natural resources in conservation areas shall contribute financially to the protection of biodiversity in their conservation area, compensate the State for their environmental impact and pay fees for the use of these areas.
83. Pursuant to Article 49 in conjunction with Article 11 of the Conservation Law, fees shall be paid for access to, and use of natural resources, for conservation efforts and ecological services in the conservation area.
84. The Law states it is incumbent upon the Council of Ministers to approve the amounts of these fees, and those for the issuance of licenses for the exercise of activities and other authorizations. However, the amounts of these fees have not been defined yet.

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<sup>47</sup> Conservation Law, Article 6.

<sup>48</sup> Conservation Policy, Annex 3.



85. At present, the Conservation Law refers to specific legislation, the regulation of fees for tourism activities, hunting, fishing, forestry, beekeeping and scientific research. The current scenario shows that private sector investors have to pay a series of fees for the use of conservation areas and their resources. As examples we indicate the following fees: i) special license fee (contained in the Land Law); ii) operating license fee (provided by Regulation Nr. 97/2013 of 31 December - Regulations of the Tourism Law<sup>49</sup>); iii) resources exploitation fee (provided by the LFFB and its regulations); iv) restocking surcharge (provided by the LFFB Regulations); v) utilization fee (provided by the LFFB Regulations); vi) environmental license fee (provided by environmental legislation and the Regulations of the Tourism Law), in addition to new fees set forth in the Conservation Law (compensation fee for conservation efforts and ecological services fee for the conservation area).
86. Moreover, the Conservation Law reaffirms the obligation to organize hearings for local communities where it intends to develop activities, as well as the obligation to pay the costs of supervision for the protection of biodiversity in conservation areas for which an investor is responsible.
87. It is suggested that a study is undertaken and that the fees applicable to the private sector are reconsidered, given that this scenario may discourage public-private-partnerships in conservation areas.
88. As far as liabilities are concerned, in addition to objective liability, which comprises the obligation to pay compensation to injured parties by agents who, regardless of guilt and compliance with legal requirements, cause significant damage to the environment or the temporary or permanent shutdown of economic activities as a result of particularly hazardous practices or activities, the Conservation Law lays down that criminal agents include authors, accomplices or accessories as defined in the penal law, and agents/offenders are obliged to restore the degraded area and repopulate affected species in the case of wildlife decline.
89. The Conservation Law also provides ancillary measures, such as the redress of damages to nature, the repopulation of devastated areas, the reversal in favor of the state of instruments that have been used, the embargo on and demolition of constructions, and the banning of new authorizations for a period of one year, among other things.
90. Another point raised by the Conservation Policy is that the classification of conservation areas, which in addition to being inadequate in relation to international developments (quoted in the International Union for the Conservation of Nature – “IUCN”), also did not meet the internal needs of the organization of these areas and of attribution of different statutes that allow for improved coordination with private entities in order to enhance their profitability. In addition there have been practical developments in the country that did not

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<sup>49</sup> Tourism Act Regulations, Article 13 and following.

harmonize with the classification in question. The current Law, although not following the entire classification proposed by the Conservation Policy, offered some changes in this regard.

91. Accordingly, the Law clarifies the concepts of conservation area and protection area that have been used randomly in earlier legislation and classifies protected areas and conservation areas.
92. Thus, “**protection areas**” are considered to be “*delimited territorial areas representing the national natural heritage and aiming at the conservation of biological diversity and fragile ecosystems or of animal or plant species*”.<sup>50</sup> These, in turn, are divided into total conservation areas and sustainable use conservation areas.
93. “**Total conservation areas**” are considered to be “*areas of the public domain, aiming at the preservation of ecosystems and species without intervention by resource extraction, permitting only the indirect use of natural resources with the exceptions provided for in this Law*”.<sup>51</sup> “**Sustainable use conservation areas**” are “*areas of the public and private domain, intended for conservation, subject to integrated management with permission for certain levels of resource extraction provided sustainable limits in accordance with the management plans are respected*”.<sup>52</sup>
94. Each of the above areas is divided into different management categories for conservation areas.<sup>53</sup> Thus, total conservation areas consist of the following categories:
  - i. integral nature reserve;
  - ii. national park; and,
  - iii. cultural and natural monument.
95. Sustainable use conservation areas consists of the following categories:
  - i. special reserve;
  - ii. environmental protection area;
  - iii. hunting area (coutada);
  - iv. community conservation area;
  - v. sanctuary;
  - vi. game farm; and
  - vii. municipal ecological park.

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<sup>50</sup> Conservation Law, Article 13(1).

<sup>51</sup> Conservation Law, Article 13(4).

<sup>52</sup> Conservation Law, Article 13(5).

<sup>53</sup> Note: the concept and characteristics of each one of these categories will be described in the Conservation Law Manual which is under preparation, so we will not go into detail here.

96. In addition to defining each of the categories listed above, the Conservation Law indicates some limitations and competences, while other rules are to be dealt with in complementary regulations, as will be discussed below.
97. The Law further specifies that, while taking into account the objectives of each category of conservation area, the development of activities may be authorized for reasons of necessity, utility or public interest and upon obtaining specific authorizations to that end, which include: concessions for engaging in tourism activities; concessions for hunting, fishing and the exploitation of forest resources; the capture of live animals and the collection of eggs; beekeeping; scientific research and other activities as provided for in the management plan of the conservation area in question.<sup>54</sup>
98. The procedure for obtaining the above concessions is consigned to specific legislation, without prejudice to compliance with the restrictions laid down in the Conservation Law and in the management plans to be approved.<sup>55</sup> It is further noted that the Law requires that uses compatible with the area can be subject to direct approval by the administration of the conservation area in question, as long as these are provided for in the management plan.<sup>56</sup> Where applications for use come from other State bodies, the administration of the area must issue a binding opinion on whether the application is acceptable or not.
99. As noted above, the LFFB and its regulations and the Land Law and its regulations state that the rules to be followed in obtaining concessions and licenses to carry out activities in conservation areas are to be determined by specific regulation. The absence of such legislation to date implies uncertainty and a lack of transparency with respect to the criteria to be met, something which may compromise the objective of encouraging and attracting private partnerships for the management of these areas.
100. It should also be noted that in addition to the conservation areas and their categories listed above, the Conservation Law also refers to the existence of cross-border conservation areas and lays down the way these come into being, namely by means of an agreement or treaty signed and ratified by the competent authorities of the States who are parties to the agreement or treaty.
101. The Law determines the responsibilities of state bodies to create, modify and terminate conservation areas and buffer zones in accordance with the categories, namely: the Council of Ministers, the Minister with oversight of the conservation areas, the Provincial Government and the Municipal Assembly. For the relevant procedures reference is made to the land legislation, which is to be compatible with legislation on land-use planning. Since the land legislation does not determine such procedures, but only the types of protection areas and the responsibilities with respect to their licensing, it is unclear whether the intention of the legislator was to submit the process for creating conservation areas to the procedures that

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<sup>54</sup> Conservation Law, Article 26.

<sup>55</sup> Conservation Law, Article 27.

<sup>56</sup> Conservation Law, Article 41(2).



apply for the acquisition of land use and benefit rights (“DUATs”). If that is the case and given that there are different procedures corresponding to the different requests for DUATs in rural or in urban areas, then it is also unclear whether the conservation areas in urban areas are subject to the Urban Land Regulations while the remainder would be subject to the Land Law Regulation.

102. The management plan is highlighted as an instrument to support the management of conservation areas, to be used to harmonize the objectives of the area in question with the uses and practices that have been authorized, the necessary infrastructure, the limitations that apply, and the involvement of partners, among other aspects listed by the Law. The plan shall also encompass the buffer zone of the conservation area in question. While preparing the management plan, the Law provides as a temporary measure, the use of the “declaration of management intentions” to support the management in question.<sup>57</sup>
103. Another issue highlighted in the Conservation Policy and covered by the Conservation Law is the question of population resettlement. The Law lays down that if the presence of people is incompatible with the legal status of the conservation area or impedes its management, the State has to resettle the population. These cases are subject to payment of fair compensation. The Law does not provide the criteria that will be used for that purpose.<sup>58</sup> Note, however, that the **Law on Land-Use Planning**, Law Nr. 19/2007 of 18 July and its regulations determine rules to follow in cases of expropriation for reasons of necessity, utility or public interest. The Conservation Law also determines the need to reconcile the creation of conservation areas with the legislation on land-use planning, with special plans for land-use planning to be elaborated for these areas.<sup>59</sup>
104. The responsibility to supervise the protection, conservation, preservation, sustainable use, transportation and management of the resources subject to the Conservation Law, is attributed to State inspectors, community workers and sworn inspectors, while the national defence force and the state security services also participate in monitoring these areas.<sup>60</sup>
105. The Conservation Law partially repeals certain provisions of the LFFB and the Environmental Law and lays down that other legal provisions that are inconsistent with its rules are (tacitly) repealed. This implies the need for harmonization and interpretation any time one seeks to apply a legal provision that includes relevant standards for conservation purposes. Experience has shown that this exercise is not always easy, whether for individuals who want to be sure about the rules to be observed, or for the public entities that must apply them.

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<sup>57</sup> Conservation Law, Article 43.

<sup>58</sup> It should be noted that Decree Nr. 31/2012 of 8 August, which approved the Resettlement Regulations only applies to economic activities.

<sup>59</sup> Conservation Law, Article 39.

<sup>60</sup> Conservation Law, Article 50.

### 3. ADDITIONAL REGULATIONS, CLARIFICATIONS AND OTHER PRACTICAL ASPECTS TO BE CONSIDERED FOR THE IMPLEMENTATION OF THE CONSERVATION LAW

106. The analysis of the Conservation Law shows that for it to be effectively implemented the approval of some **complementary legal instruments**, is required including:

|    | Instrument/rule to be approved  | Competent entity     | Legal basis                      | Comment   |
|----|---|----------------------|----------------------------------|---|
| 1. | Definition of policies that guide the administration of conservation areas.   | Council Ministers of | Conservation Law, Article 6 (2)  | Currently, there is a Conservation Policy that establishes guidelines for the administration of conservation areas. However, knowing that conservation is very complex, there may be the need in the long term to create additional policies that guide specific management issues of conservation areas. |
| 2. | The Creation of Management Boards for Conservation Areas (advisory body, chaired by the Administrator of the Conservation Area and consisting of representatives of the communities, the private sector, associations and local State bodies. It will be supervised by the Minister with oversight of the conservation area). | Council Ministers of | Conservation Law, Article 7 (1)  | There are still no regulations for the Management Boards of Conservation Areas, although this is a key factor in the implementation of the Conservation Law.  |
| 3. | The definition of mechanisms compensating conservation efforts, to be applied to public or private entities that are exploiting natural resources in conservation areas and their buffer zones.   | Council Ministers of | Conservation Law, Article 11 (4) | There are still no regulations governing the mechanisms compensating conservation efforts, there are only limiting mechanisms, so it is essential to specifically regulate this.  |
| 4. | Definition of responsibilities and counterparts of state organs, local governments and community authorities in conservation areas  | Council Ministers of | Conservation Law, Article 18 (3) | Matter to be regulated.   |

|    |  |   |                  |                                  |   |
|----|--|---|------------------|----------------------------------|---|
|    | allowing sustainable use.  |   |                  |                                  |   |
| 5. | Definition of the legal requirements for obtaining a special license for the exploitation of existing resources in sanctuaries.  | Council Ministers                       | of               | Conservation Law, Article 23 (3) | Matter to be regulated.   |
| 6. | Approval of specific legislation concerning concessions for the development of activities in conservation areas.   | Council Ministers<br>Minister oversight | of<br>or<br>with | Conservation Law, Article 27     | The LFFB Regulations establish a system of forestry concessions which may be the object of regulation in the long run.  |
| 7. | Definition of restrictions on hunting.   | Council Ministers<br>Minister oversight | of<br>or<br>with | Conservation Law, Article 32     | Note that there are orders concerning restrictions on hunting, such as Ordinance 117/78 of 16 May, the LFFB and its regulations, among other things.  |
| 8. | Determination of general and special closed periods.   | Council Ministers                       | of               | Conservation Law, Article 34     | Note that the general closed period for forestry and wildlife is provided for in the LFFB Regulations. There are as yet no regulations on special closed periods. However, the REPMAR refers to the mechanisms for limiting fishing (including among other things, closure) to be regulated by the Minister of Fisheries. However, such periods for fishing have not been determined yet. Thus, we understand this to be a poorly regulated matter that should be prioritized for the effective implementation of the Conservation Law. |
| 9. | Definition of specific conditions for hunting in reserves surrounding hunting areas and game farms, in other sustainable use conservation areas and in buffer zones, under concession. | Council Ministers<br>Minister oversight | of<br>or<br>with | Conservation Law, Article 35     | There are some conditions imposed on hunting activity in the reserves surrounding hunting areas, buffer zones and game farms, provided for in the LFFB Regulations. However, knowing that the   |

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|     |   |                   |  | Conservation Law puts forward the classification of other sustainable use conservation areas, there is a need in the short term to create specific conditions for carrying out such activities in these areas.   |
| 10. | Definition of the terms for the restoration of degraded areas and the restocking of species, degraded by voluntary acts.  | Council Ministers | of Conservation Law, Article 45                        | Note that the LFFB regulations concern restocking of forestry and wildlife resources and therefore new regulation in this area may not be crucial to law enforcement.  |
| 11. | Approval of the list of protected species and the list of species whose use is permitted, including for hunting.  | Council Ministers | of Conservation Law, Article 46 (1)                    | Note that the LFFB Regulations, the Decree on Recreational and Sport Fisheries, as well as the CITES and the African Convention on the Conservation of Nature and Natural Resources, contain lists of species the hunting and fishing of which are prohibited, without prejudice to their being updated from time to time.   |
| 12. | Establishment of the value of fees to be charged for access to and use of natural resources, for compensation of conservation efforts and for ecological services in the conservation area, and the establishing of the percentage of values derived from access and utilization fees for the benefit of local communities (the latter should not be less than 20%) and the benefit of other stakeholders in the process of supervision and control of resources. | Council Ministers | of Conservation Law, Article 49 (2, 4, 5) e Article 67 | Note that the RLFFB, Ministerial Order Nr. 293/2012 of 7 November, Ministerial Order Nr. 57/2003 of 28 May and Ministerial Decree Nr. 93/2005 of 4 May as well as Decree Nr. 27/2003 of 17 June already determine the value of fees for access to and use of natural resources.<br><br>However, there is no regulation of fees for compensation of conservation and for ecological services. |

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| 13. | Determination of compensation to citizens reporting damage, aimed at encouraging the participation of all in the protection of conservation areas. | Council of Ministers                            | of      | Conservation Law, Article 51 (2) | Matter to be regulated.  |
| 14. | Definition of the use and carrying of firearms and other equipment to be used by inspectors in the performance of their duties.                    | Council of Ministers or Minister with oversight | or with | Conservation Law, Article 52     | Until the approval of new rules the rules of the Inspectors' Statute - Ministerial Order 128/2006 of 12 July will apply. |

107. Note that Article 68 of the Conservation Law determines that regulatory measures to be approved by the Council of Ministers shall take place within a period of 180 days after the publication of the Law, i.e. by December this year.<sup>61</sup>

108. It should further be noted that it is necessary to **clarify certain aspects**, including:

*i.* The creation of conservation areas

- As mentioned above, the Conservation Law states that the process for the creation of conservation areas will be indicated in the land legislation. Article 4 of the Land Law Regulations, in turn, lays down that the regime applicable to conservation areas will be defined in separate regulations and that the Land Law only determines the competences involved in creating and licensing in these areas. The same applies to the LFFB.
- It should be noted that Annex 6 of the Conservation Policy puts forward some guidance on the procedures to be followed in the creation of conservation areas, including the type of information to be provided, the studies to be undertaken, the consultations and advice to be obtained, among other things.
- From the analysis of the Conservation Law we understand that this issue calls for better regulation because the reference to the land legislation proves to be insufficient.

*ii.* Authorization to carry out activities in protection areas

<sup>61</sup>Note that the Conservation Law is already in force and that therefore any provisions contrary to it have therefore ceased to be in force. However, all matters requiring regulation and that have been mentioned in the above table are not in force, which is why existing legislation other than the Conservation Law has to be applied.

- Apart from the creation, modification and termination of conservation areas, the need for standards concerning procedures for authorization of activities in these areas has also been indicated above.
- It should be noted that, working with different levels of responsibility while seeking to maintain a common philosophy and policy will require clear coordination between the various entities involved.
- One way of doing this, following the option already included in the Conservation Law itself (for example Article 41) and the Decree on the Creation and the Organic Statute of ANAC (for example Decree 9/2013 of 10 April, Article 4 (j); Resolution Nr. 8/2014 of 13 June 13, Article 5 (j)), as well as other provisions such as Articles 14 and 16 (a) of the ZIT Regulations, Decree Nr. 77/2009 of 15 December), is by determining which entity has to coordinate with all the other ones and also by ensuring the need to obtain a binding opinion from this entity about decisions that may affect the sector that it manages or coordinates.
- In the case of conservation areas and on the basis of the legal provisions that have been analyzed, we believe that this entity should be ANAC, so that it will be necessary in practice to define the procedures to be observed to ensure this coordination.

*iii.* Encouragement of the private sector

- Article 10 of the Conservation Law states that the State encourages and assists the private sector in creating institutions that support biodiversity conservation activities and to this end provides all facilities under the law.<sup>62</sup>
- Given that one aspect emphasized by the Conservation Policy was the need to proceed with participative management that could improve the financial sustainability of conservation areas, we believe that despite the law having upheld this principle it has not sufficiently explored the facilitation mechanisms it could offer individuals in order to attract them to these activities<sup>63</sup>. Therefore, we believe that this is an aspect that requires further clarification and regulation.

109. Keeping in mind that in addition to complementary legislation and clarifications of ambiguous aspects of the Law, some of which have been indicated above, the

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<sup>62</sup> Article 10 of the Conservation Law clearly refers to BIOFUND as a private sector entity that supports the State in the conservation of biological diversity.

<sup>63</sup> Without prejudice to some customs and tax incentives provided for in the Fiscal Benefits Code - Decree Nr. 4/2009 of 12 January and in its respective regulations and, in principle, subject to approval of the proposed investment project by the competent authority under the law, through the Center for Investment Promotion.

effective implementation of the Conservation Law requires the development of **other actions of a more practical nature**, including:

- i.* Research and investigation into the status of biological diversity in the country, so that the information in question can support decision making in the management of species.<sup>64</sup>
- ii.* The cataloguing of current species in each conservation area, in order to be able to determine the special treatment they may require for the recovery of their populations and for the elimination of threat factors.<sup>65</sup>
- iii.* The promotion of the development of infrastructure and signage for conservation areas, to protect biodiversity but also the communities by reducing human-animal conflict, and minimum infrastructure to help attract tourists for the exploitation of these areas.
- iv.* Oversight has been a major inconvenience, be it due to lack of qualified personnel or lack of resources. A concrete evaluation of the current human and material capacity in terms of supervision is necessary in order to define short-, medium- and long-term measures. These actions should also take into account that the Conservation Policy and Law seek to benefit from resources from the communities and other associations and entities linked to the area, in order to ensure acceptable supervision. Training and awareness-raising are essential in this process. The definition of incentives, as stated in the law, may also help.
- v.* Beyond the concrete aspect of supervision, it is necessary to study the uses and practices of the communities living in or near conservation areas in order to identify harmful aspects that may be eradicated or minimized by means of awareness-raising and education, as well as to identify positive aspects that can be supported and encouraged in order to improve the quality of life of communities<sup>66</sup>, thereby creating a true partnership between the administration of conservation areas and the communities.
- vi.* Training of qualified staff in preservation and conservation of biodiversity, who may be directly involved in establishing priorities and implementing policies, among other things (note also the references to the need to obtain detailed scientific knowledge of endangered wild fauna and flora species<sup>67</sup>). In this area, as in other areas listed above, effective exploration of potential partnerships with private entities and organizations with relevant expertise that may participate and at the same time train national staff is likely to be essential.
- vii.* The identification of viable financial sources and the development of actions to raise funds for following up activities that are necessary to achieve the objectives in the protection areas, including the adoption of legal provisions to

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<sup>64</sup> Conservation Law, Article 46(2).

<sup>65</sup> Conservation act, Article 42(2).

<sup>66</sup> Conservation act, Article 42(5).

<sup>67</sup> Conservation act, Article 47(2).



enable the charging of planned fees and the development of partnerships with national and international support institutions in this area.

- viii. Popular action is a right enshrined under the CRM, which seeks to ensure a more dynamic role for individuals, associations and other entities in defending public interests and different other kinds of rights and in protecting the collective heritage. The effective implementation of these actions may be favoured by the approval of the specific civil procedures which could be applied here, and for which a bill was developed several years ago but which is as yet not approved. One of the aspects to be considered is the possibility of pressing the relevant authorities for approval of the legal instrument in question.
- ix. The idea of public consultation for the establishment of conservation areas, as well as for defining the instruments that will govern the existing areas is something that has been suggested within the context of the Conservation Policy. We believe it is important to ensure the creation of effective mechanisms for this consultation to take place, with the participation of local structures in accordance with examples of public consultation processes that took place in the country with respect to land, environment and resettlement legislation.
- x. The concept of Areas of Tourism Value was created within the context of encouraging tourism, and the Council of Ministers created the first ZIT in the country. However, its operation depends on the approval of the respective development plans. The issue of development plans must be considered, be it for these ZITs or for conservation areas, in order to proceed with a planned and reasoned definition that follows the procedures and formalities set out in the relevant legislation for the creation of these areas. This will allow for a better harmonization with the communities occupying the areas in question.
- xi. Just as the Conservation Law determines a series of legal rules that should be adopted for its full implementation, taking into account the entire relevant legal framework, other legislation relevant to this matter also has regulatory aspects awaiting approval, be it regulations to be approved, bodies to be created or rules to be adjusted or updated. With regard to this exercise, whenever it is possible in subsequent legislation to explicitly revoke legal provisions that have become obsolete, it is recommended that such revocation be made explicitly, in order to facilitate the application of the law.
- xii. It should be noted that the Decree that establishes ANAC and its Organic Statute already define a series of actions that are to be undertaken by ANAC. Among these are the definition of priorities, program design, the approval for and training of staff, the presentation of proposals for legislation, the determination of necessary basic infrastructure, the coordination with the various authorities responsible for obtaining authorizations, opinions or other approvals, fundraising, the preparation of management plans, the creation of Management Boards, among various other actions that can and should be initiated already, so that the strategy defined by the Conservation Policy is



achieved and the objectives of the Conservation Law are met in a satisfactory manner.



#### **4. FINAL NOTES AND RECOMMENDATIONS**

110. In reviewing the Conservation Policy, the instrument establishing ANAC and the subsequent Conservation Law, we noted a clear identification of the main constraints that impede the full achievement of national and international objectives in creating conservation areas. These legal instruments also define the actions and plans to be implemented in order to overcome or minimize these constraints and align conservation areas better to the objectives of national and international public interest that they should follow, and at the same time to make them more attractive to the sustainable tourism that will allow them to be self sustaining.
111. We also noted that the country is starting to move towards taking concrete actions that support improved feasibility in the outreach of public utilities, simultaneously with the preservation and conservation of biodiversity, as demonstrated by the approval of the instruments identified above and also by creating an entity that will seek to coordinate and cooperate with all entities having converging interests in these areas for the maintenance of a common policy and philosophy of action.
112. However, we also noted that much remains to be done in order to move forward in the sense of getting positive results, starting, for example, by setting a timeline of priorities and the joining of efforts necessary to achieve these results. As mentioned above, the Conservation Law was approved five years after the approval of the Conservation Policy, notwithstanding the fact that the Conservation Policy has been approved for a duration of 10 years (2009-2019), i.e, half the time allotted for its implementation has passed already!
113. Among the various aspects highlighted above, we note the need for rules that complement the Conservation Law; the need for qualified personnel; the need for studies and knowledge on biodiversity to assess how and what to preserve and conserve; the need for land-use planning; the need for practical definition of the forms of institutional coordination; the need for awareness-raising and clear alliances with local communities; the need for the definition of clear incentives and procedures to ensure greater participation of the private sector in the various conservation areas, whether in management and training, or the creation of basic infrastructure to encourage tourism and facilitate partnerships in these areas; among other things (see Section 3).
114. That said, and bearing in mind that a number of regulatory and practical measures should be adopted and implemented in order to ensure the effective application of the Conservation Law, we understand that at present it is essential to define a list of priorities concerning actions to be undertaken in the short, medium and long term, together with the definition of a timetable for implementation, supported by a common strategy regarding the various entities with responsibility for these matters, and by the clear identification of ANAC as the entity that will coordinate the actions in question in order to ensure implementation, pursuant to the legal provisions already adopted.



115. The need to impose the obligation to report, with clearly defined regularity, on progress made to the supervisory authority in the area, should also be considered.
116. The definition of priorities should also consider the human and financial resources available to comply with the timetable of activities, which should take into account all the means and resources that are available or can be obtained – from the government, the private sector and NGOs, international financing institutions and local communities, among others entities - in order to create an instrument that is able to achieve the objectives. The analysis of the actions to be carried out shows that most of them require appropriate financial resources without which they cannot be followed up. Once again we understand that ANAC should take the lead in defining a strategy for raising the funds that will allow compliance with the timeline of priorities it has to develop.
117. Nevertheless, it is essential for ANAC to have the necessary support, particularly taking into consideration that it is a new institution still selecting its staff and, that many of the tasks it is to coordinate are complex. Close collaboration with other public entities with responsibility in these matters is required in order to ascertain, among other things, what has been done already, what can be put to use, and what has to be done starting from scratch. As mentioned above, the possibility of partnerships with the private sector and experienced and specialist institutions is something that should be considered from this stage onwards, with a view to speeding up and improving efficiency of the actions to be carried out.



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- Lei n.º 22/2013, de 1 de Novembro, que aprova a Lei de Pescas;
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