

## **Slide 1**

### **TRADITIONAL PROPERTY RIGHTS AND PROTECTED AREAS**

#### **REGIONAL WORKSHOP ON THE SHARING OF GOOD PRACTICES**

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## **Slide 2**

### **INTRODUCTION**

#### **Context**

Richness of the biodiversity of Madagascar recognized globally (e.g. the island contains 3% of global species of plants and vertebrates)

AP (Protected Areas) currently cover 4% of the national territory. Since the Durban Congress in 2003, there is a political willingness to extend this area of 60,000 hectares so say 10% of the national territory.

Opening of the UICN six categories of Protected Area to new modes of governance (co-management of Protected Areas in 2004)

Challenge: to increase the area of protected areas (creation and extension) and to ensure their management over the long term

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### **INTRODUCTION CONTINUED: THE IMPORTANCE OF PROTECTED AREAS**

The protection of rivers and world markets for environmental services (for coal and biodiversity)

Maintenance of ecological services for survival

Positive impacts on the local and national economies (profit generated through the conservation of biodiversity in the Protected Areas of Madagascar: US\$3/ha/year – ecotourism; third source of income after fisheries and the production of vanilla)

Maintenance of genetic stocks for the renewal of natural resources used by the population

Secure access to natural resources to satisfy basic needs across the exercise of usage rights for natural resources

Generation of revenues at the local level and/or communal level across the sustainable use of natural resources in the Protected Areas (ecotourism, exploitation of forestry products both woody and non-woody, traditional fishing etc)

Reinforcement of the capacity of the local population with regard to governance

Maintenance of the natural national heritage for education purposes

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### **INTRODUCTION CONTINUED: AWARENESS OF PROTECTED AREAS**

The creation of Protected Areas causes restrictions of access and problems for certain categories of population groups such as traditional owners principally dependant on natural resources. Examples of restrictions and difficulties;

Samples of wood for charcoal and the building of houses

Game hunting

Gathering of wood for fires (heating/cooking)

Gathering of plants for traditional medicine

Grazing for animals

Cultural aspects and rites of worship of the forest

Angling (marine) and fishing

Faced with the challenge of this dichotomy of interests, the adherence to and implications of communities potentially affected are indispensable in order to recognize their territorial rights and ensure the sustainability of the Protected Areas.

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### **PROCEDURE FOR PROTECTING THE SOCIAL AND ENVIRONMENTAL RIGHTS OF LOCAL POPULATIONS AND PROTECTED AREAS.**

5<sup>th</sup> World Parks Congress, Durban, 2003:Policy decision to triple the surface area of protected areas in Madagascar

Development of the procedure for social and environmental conservation in April 2007, to face up to the potential negative impacts resulting from the creation of protected areas on the economic, social and cultural life of the population groups concerned

Framework for the procedure: defines the participation process for communities potentially affected by the creation of protected areas, determines the necessary protection measures and the implementation and follow-up of the corresponding activities

Objectives: to identify, negotiate, and apply – in a participative manner – the measures for the restriction of access to natural resources and those destined to protect the interests of the population groups affected by the creation of the protected areas

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### **DESCRIPTION OF THE SOCIAL AND ENVIRONMENTAL CONSERVATION PROCESS (PSSE)**

Public consultation and participative process

Provide an information campaign on the creation of protected areas

Record the first reactions of the affected communities

Inform riverside communities about the project for the creation of a protected area in the region, the special features of natural resources and the reasons why they are worth being protected and above all of the that the population derive from this.

Involve the existing local consultation structures in the identification of compensatory measures and the mitigation of impacts

Invite individuals or groups of people who have interests in the protected areas to respond to the mapping out of the park (zoning)

Identification and census of the affected communities (classification of the population groups affected by the PAP (Protected Area) Project according to their level of prosperity by means of the Accelerated Method of Participative Research

The main and vulnerable PAP groups: those who draw their principal revenue sources from natural resources (very meager income, small patch of land for farming but with recourse to gathering and hunting in the protected area during the off-season)

Minor PAP groups: those who use the natural resources in the protected area from time to time and for whom the benefits they derive from this do not represent their principal source of income.

NB It is especially the major and vulnerable PAP communities that are affected by the conservation measures.

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### **METHODOLOGICAL APPROACH TO THE IDENTIFICATION OF THE PAP GROUPS**

Community meeting: information session on the population's sources of income before the creation of the protected area

Classification by level of prosperity: identification of the affected population groups (vulnerable and major groups)

Identification of issues:

Nature of the activities carried out within the protected area before its delimitation (localization of activities according to dwelling place, protected area zone, pressure points)

Problems that these groups have been faced with since the delineation of the protected area. These problems are linked to the activities carried out in the protected area.

Identification of solutions by the PAP groups

Ask the PAP groups what their needs/solutions are in order to mitigate the restrictions

Community Action meeting (guidance on the activities permitted inside the park)

Identification of activities permitted in the park

Estimate of the effects of the restriction and losses suffered after the delimitation

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### **ANALYSIS OF THE IMPACTS OF RESTRICTIONS TO ACCESS**

#### **Methodology for impact analysis**

Determine for each affected village, the negative impacts and positive potential of the human and environmental elements, based on the available information

Identify the natural resources utilized and their conditions before the delimitation of the protected area (cutting wood for building, canoes, firewood; forest clearing, hunting, fishing...)

Identify the problems caused by the restriction of access (reduction in exploitable resources)

Recommend solutions (training in the establishment of nurseries, conclusion of the transfer of management, training in poultry farming and beekeeping, donation of farming implements...)

Provide indicators of the status and monitoring (number of training sessions provided, and percentage of training participation rates, percentage of land reforestation, improvement of the living standards of the people)

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### **FOLLOW-UP ANALYSIS OF THE IMPACTS OF RESTRICTED ACCESS**

#### **Evaluation of losses of revenue**

Calculation of losses by household per year and by activity (specific calculations for each activity according to the resources utilised, the frequency of their utilization, the periods of utilization, the quantities used before and after the restriction of access)

The losses are estimated by taking the difference between the resources they were able to use before and after the delimitation of the park

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### IMPROVEMENT OF LIVELIHOODS

Methodology used: public participative consultation

Solutions proposed by the community in general

Examples of community measures: (laying of pipes for potable water, irrigation, wells, enhancing security by the detachment of forces of law and order in rural areas...)

Examples of alleviation measures or of individual compensation: (allocation of fishing equipment (net, longline, fibre glass canoe)

Allocation of agricultural equipment (cart, plough, draft animals)

Training in poultry farming, beekeeping, market gardening; establishment of tree nurseries for reforestation; establishment of financial support, micro loans

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### PROGRAMME FOR THE IMPLEMENTATION OF MEASURES

The traditional leaders can establish the mechanism for implementing the measures, in consultation with state agencies and the initiator of the project as a local “Dina” agreement

A Charter of the responsibilities of the different agencies is compiled

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### Agencies

Park promoter

Traditional authorities

Structure of local consultation

NGO

Mayor

Region

### Responsibilities

Unlock the loans for compensation – control of the management of the protected area – respect for territorial rights

Prevention and resolution of conflicts

Follow the progress of the park (protection and management) and prevention and resolution of conflicts

Monitoring and framework for the local structures (measures for the improvement of household revenues)

Support for the awareness and strategic follow-up of the project

Integration of the PSSE activities in the development programme for the region

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### **CUSTOMARY MECHANISM FOR THE PREVENTION AND RESOLUTION OF CONFLICT**

Types of conflicts foreseen: conflicts between the PAP and the Promoter of the Protected Area, between the different PAP groups (crop growers and cattle farmers), conflicts between the PAP groups and the different protagonists (migrants and resident population groups...)

Instruments for conflict resolution; Recourse to the customary extra-judiciary method for the resolution of conflict, the “Dina”

Nature: collective agreement for the organisation of society and the respect for which is imposed on everyone under threat of sanction or “vonodina”

Essential function: civic education of the citizen and establishment of collective discipline

Falling outside the jurisdiction of the Dina: matters affecting the public order, the condition and capacity of people.

In the case of a refusal to enforce the sanctions provided for in the Dina, enforcement by the forces of law and order.

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### **ADDED VALUE**

Value added for the PSSE approach

Commitment of the government not to effect any physical displacement or to carry out the involuntary resettlement of people

Use of a participative process to analyse the effects of restricted access and negotiations for compensatory measures;

Conduct public consultation with sessions of restitution and validation for issues raised and solutions proposed

### **Added value of the instruments:**

#### **1 Accelerated Method for Participative Research**

Establish a communication process which is more vivid and revealing than questionnaires

Permit direct consultation with beneficiaries with respect to their perception of well-being

Find out what the perception of poverty is by the rural population groups and thus distinguish between the different categories of community (target the vulnerable population groups, identifying the major and minor PAP groups and then ask them for alternative solutions for their problems

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### CONTINUED ADDED VALUE OF THE INSTRUMENTS

#### 2 Public consultation

Made obligatory for any creation of a protected area by a policy document on making investments compatible with the environment

The existence of two public consultations on two levels: before the temporary conservation and after the development of the conservation plan (on the local and regional levels respectively)

Enables a process of “social legitimisation” for the activities of the protected areas (the possibility for participants and stakeholders to express their comments and proposals with regard to their rights and the activities relative to the management of the site.

PV existence of consultation and negotiation

Opportunity for the local population groups to build relationships/contacts with the NGO that fund alternative projects to the pressure points (agro-forestry, improved pastures, agro-ecological crops, composting, promotion of agricultural products...)

Opportunity to voice complaints, when the rights of customary property owners have not been respected: simple method of recourse, addressed to local leaders (less cost and little displacement); existence of a mechanism for handling complaints by these local leaders and the promoter of the protected area.

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### CONTINUED ADDED VALUE OF THE INSTRUMENTS

3 Customary mechanism for the prevention and resolution of conflicts “Dina”

Compensation for restricted access to natural resources requires negotiation

Negotiation is a process of communication where each party must find a fair compromise and ensure good relationships

The compromise on the respect for rights and obligations respective to the PAP and Promoter is easier to achieve and can create a long-term climate of trust with the customary instrument which is the “Dina”

The Dina prevents conflicts because:

It is a collective agreement for the organisation of society, recognized by the laws in force and drawn up according to customary rules of conduct

It inspires confidence in traditional property owners and facilitates their support (they can have their property rights recognized within the agreement)

Formalisation of the “Fihavanana” a traditional concept of kinship with a view to unity and conciliation in conflict situations and a permanent balance in confrontations.

According to the legislation in force, it must be duly approved by the general meeting of the local community and becomes enforceable only after approval by the mayor, ratification by the court and publication by posting or “Kabary” (a traditional means of communications)

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### **PRINCIPAL RESULTS OBTAINED**

Establishment of customary land owners and creation of tree nurseries and methods of reforestation, training in agricultural techniques either for crop growing methods or cattle farming.

Training in the management of a micro agricultural project

Basic training in management for the members of the association/co-operative

Allocation of material and equipment adapted for each project

Individual training on the maintenance and repair of material and equipment (in particular for the fishing sector)

Training on monitoring the impacts of activities on the environment

Representatives of the local people present in the management committee of the protected area (AP)

Realisation of community structures (wells, schools, CSB)

Strengthening the capacity of public and private institutions tasked with supervision and support techniques

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### **MONITORING MECHANISM ESTABLISHED**

**1. Administrative and social monitoring:** established by the Promoter (of the Protected Area) based on data with a regular report which includes:

Follow-up of the activities within the protected areas based on the list of all the activities

Monitoring the PAP groups based on a contact list, or index card for those people who have been identified as vulnerable

Follow-up of the compensatory measures adopted (micro projects and training for the PAP groups, timetable for these events, development protocols

Monitoring of organizational aspects, the structuring of local groups and associations, transparency of actions and decisions taken, alternative conflict management systems

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### **MONITORING MECHANISM ESTABLISHED**

#### **2. Monitoring the socio-economic participation**

Responsible: Park management, supervised by the associations of the local population and the traditional land owners

Objective: To ensure the smooth running of the measures to restore the livelihoods of the PAP groups and their efficacy (improvement of farming and crop yields, adopting new technologies and the satisfaction of the beneficiaries vis-à-vis the recommendations

Targeted aspects: the improvement of household incomes, the improvement of the education of the population, the sustainable management of natural resources, the improvement of the well-being of the population, community health and the rate of access of targeted households to the social infrastructure (CSBI, CSB 11) primary and secondary schools

Instruments: Monitoring plan with performance indicators, of outcomes and impacts

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### **MONITORING MECHANISM ESTABLISHED**

#### **2. Evaluation of the project**

Objectives: to evaluate the impact of the project's socio-economic and environmental programme

Targeted aspects: enhancement of the standard of living of the PAP groups and protection of natural resources

The evaluation is both qualitative and quantitative:

Qualitative; Gathering of information on the improvement of the standard of living of the beneficiaries

Quantitative: Number of beneficiaries who no longer frequent the Park and improvement of crops

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### **PRINCIPAL CONSTRAINTS AND DIFFICULTIES**

Presence of traditional land owners (a few families) who lived within the demarcated area before the creation of the protected area

Date of eligibility of the PAP groups: in principle the date of the temporary protection order but the PAP groups cannot be reached in time or they are absent during the public consultation pertaining to this

Fuzzy legal texts on the traditional land rights at the creation of the protected area. According to the new land law of 2006, traditional land owners may benefit from a certificate of land ownership which entitles them to be lawful owners of their land. Those who live within the protected areas will not be able to avail themselves of this privilege

The spirit of the concept of “prior consent or free and informed consent” as defined in international law is not clearly translated in the national law.

The time required to negotiate the rights of the local population groups and for the promoter’s communication on the boundaries of the protected area is relatively short

Certain villages inside or within the proximity of the protected area consist of people that are extremely vulnerable: no-one is educated and they do not have any civil status. However, to benefit from a community project, it is necessary for the population to be legally organised.

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### **PROPOSED SOLUTIONS**

Existence of residents in the protected area: they have not been subject to relocation but a log of collective responsibilities establishes the rights and obligations of the traditional land owners

Date of eligibility of the PAP groups; foresee an appropriate time for the negotiations (four field visits as opposed to two); choose the traditional days off in order to meet more people

Fuzzy legal texts on traditional land rights; Is there any solution??

Fuzziness in the national law on prior consent or free and informed consent: certain

The spirit of the concept of “prior consent or free and informed consent” as defined in international law is not clearly translated in the national law.

Some constitutional provisions allow local people to take measures which tend to run counter to appropriate activities which are liable to destroy the environment, to dispossess them of their lands and to monopolise the areas traditionally assigned to herds of cattle or ritual heritage

The Dina: the traditional nature of collective agreement can be interpreted as a measure taken by the communities to oppose acts which tend to ignore their rights

Vulnerable uneducated population groups and incapable of legal association: in order to access their rights

Recourse to the Dina and to the traditional “Kabary” method of communication but judicial recognition for the Dina has taken a long time considering the remoteness of the region

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**RECOMMENDATIONS**

An in-depth study of the local landownership practices is necessary at the time of the social and environmental impact study process for a project like this, because often, these are comparatively different from modern landownership rights

When there is land reform as is the case in Madagascar, which generally benefit the well-off, it is better to implement this reforms step by step and to give the people the opportunity to choose their own framework for landownership policy.

An investment or conservation project cannot be imposed on people by the State, but is must be done with the absolute collaboration of the local people and based on mutual respect

The mechanism of the right of veto of traditional landowners must be clearly explained during the public consultation sessions as often, this is passed over in silence

The obligation for the people to organize themselves in order to benefit from the community compensatory measures must be re-investigated to analyse the position of traditional landowners who are not educated and do not have any civil status.

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