Which law can protect Lake Fundudzi? An interface between water, protected areas, customary and international laws

Nikki Funke, Alistair Rieu-Cla rake, Maronel Steyn, Geoffrey Gooch and Karen Nortje
Location of Lake Fundudzi
Lake Fundudzi – the enchanted lake
Background to Lake Fundudzi

- Unique inland freshwater lake in upper reaches of the Mutale River
- Cultural and spiritual significance for VhaVenda people
- Deserves national and international conservation status
- Under threat from a biophysical perspective
- Could be a valuable ethno and eco-tourist attraction
Legislative framework

- Lake Fundudzi could be protected either under the 2004 National Environmental Management: Protected Areas Act (S 23), the National Heritage Resources Act (S 3), the 2003 Limpopo Environmental Management Act (S 15), 1972 World Heritage Convention or customary law.
- **NEMPAA**: Nature reserves can be declared to protect an area of cultural interest
- **NHRA**: The national estate includes areas to which oral traditions are attached or which are associated with living heritage; landscapes and natural features of cultural significance and which have a strong or special association with a particular community or cultural group for social, cultural or spiritual reasons
- **LEMA**: Protected parks can be declared because of natural landscapes, indigenous fauna and flora and biotic communities, and to sustainably utilise the area for scientific, educational and eco-tourism purposes
The uncertain legal status of Lake Fundudzi

- Lake Fundudzi has not been formally declared as a national heritage site yet (but it is listed on an inventory of Limpopo heritage sites)
- Submission in process
- Customary laws are in place but Lake Fundudzi’s current legal status is in question
Implications

• Lake Fundudzi open to development threats in absence of a legal status
• Fuelled by competing stakeholder interests:
  – Tshiavha people: protection of traditional customs and belief that Lake Fundudzi belongs to them
  – Limpopo Department of Economic Development, Environment and Tourism and at least one of the other chiefs: infrastructure development for tourism and land use practices for others
• For now there is a stalemate between proposed ideas for development and protecting Lake Fundudzi as a sacred site, but for how long?
Phiphidi Falls

• Example of problem of lack of protected area status
• Threatened by tourism developments
• Injunction to halt development for now granted by High Court
Conclusion

How to protect Lake Fundudzi for now:
- Raise Lake Fundudzi’s status by giving it international recognition
- Interim protection until declaration process is complete
- Need for streamlining of national legal framework for conservation areas

Ultimately: how to find a compromise that protects the sacredness of Lake Fundudzi and helps communities benefit from its “living heritage”?