

A Guideline to Legislation Influencing Co-Management

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The purpose of this guideline is to provide an overview of the key laws and policies that influence co-management in South Africa, for communities who have claimed land in protected areas.

Target audience

This communication or awareness pamphlet is targeted at communities that have claimed land in protected areas within South Africa, and are in the process of or have already negotiated partnerships with the government management agencies for joint management of protected areas. It is also useful for the facilitating organisation and the government agencies and departments involved in the process in their engagement with communities.



Figure 1: Forced removal picture

Introduction

The South African Land Reform Programme was initiated to address racially discriminatory laws and practices which were in place as a result of the historic colonial dispossession and Apartheid policy. It is based on the history of South Africa in which the majority of South Africans were prevented from accessing and enjoying the associated benefits of protected areas. They also had to bear the costs of forced removals from parks. To address these inequalities, there were changes incorporated in the national Constitution, and in other legislation associated with the land, environment and participation. These have formed the basis for co management as an innovative way of ensuring that the goals of biodiversity conservation, social and economic redress are met.

Co management involves the joint administration or cooperative/collaborative management (co management) between state management agencies and local resource users. There are levels of co management from mere awareness, information sharing, consultation, and degrees of power sharing between government and local resource users.



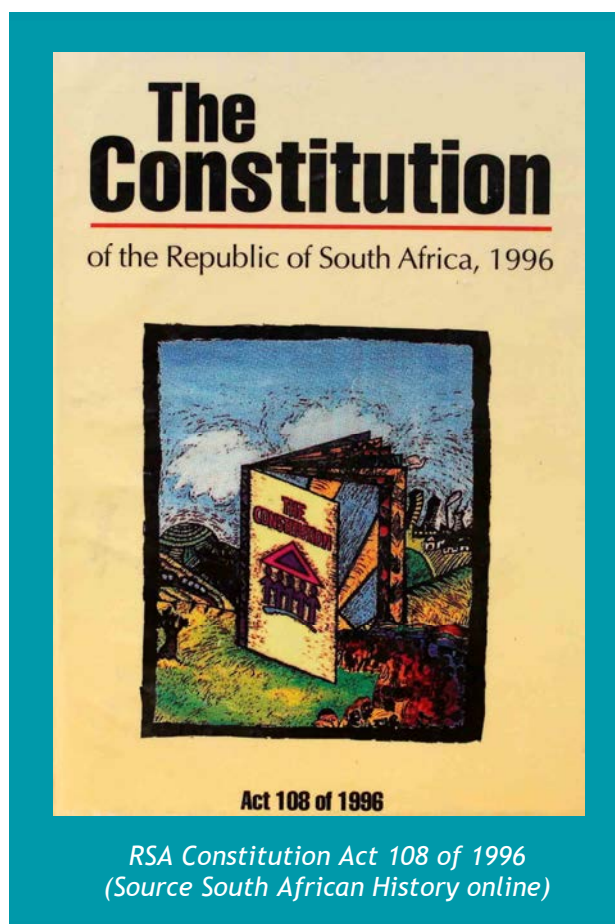
Co-management, as a collaborative management strategy between different stakeholders, has been identified by the South African government as an important approach in overcoming the highly contentious issue of land claims on protected areas. In this regard, although the protected areas remain under conservation, beneficiaries, who have successfully won claim to their land, have their land ownership rights returned, are given the opportunity to jointly manage their land with the conservation agency and get benefits including job creation and resource use rights. This way, the three national priorities of land reform, environmental conservation and socio-economic development can be achieved.

In the context of South Africa, co management is based on the land restitution as defined in the Constitution and on provisions made within the National Environmental Management Protected Areas Act to address the changing dispensation.

Key provisions for co-management

1 National Constitution

Section 25(7) of the Constitution provides for, *“a person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or a practice is entitled to the extent provided by an Act of Parliament either to restitution of that property or equitable redress”*.



Section 25 (6) of the Constitution states that; *“a person or community whose tenure of land is legally insecure as a result of past racial discriminatory laws or practices is entitled to the extent provided by an Act of Parliament either to tenure which is legally secured or to comparable redress”*.

Section 24 of the Constitution, under the Bill of Rights provides for the protection of the environment as a human right. Section 24b provides for environmental protection for future generations through reasonable legislative and other means. It also provides for the securing of ecological sustainable development and uses of natural resources which promote justifiable economic and social development. This is relevant for co management which aims at conservation while ensuring communities get benefits.



2 The Restitution of Land Rights [Act No. 22 of 1994]

This Act fulfils the Constitutional obligation of Section 25(7). It informs the Land Restitution Programme and provides for the formation of a Commission for the Restitution of Land Rights (CRLR) as well as a Land Claims Court (LCC) to settle claims.

It provides for restitution of rights in land to persons and communities who were dispossessed of those rights as a result of past racially discriminatory laws and practices. Restitution (as articulated in the government policy on settlement of land claims in national parks, world heritage sites and state forests as per Cabinet Memorandum No.5 of 2002) can be provided through ownership by claimants without physical occupation, but with arrangements for compensatory remuneration and benefits set out in the land claim settlement agreement. Effective conservation can be obtained through partnership between the owner and manager.

3 National Environmental Management Act [Act No. 107 of 1998]

NEMA creates a legal framework for the fulfilment of the environmental rights in Section 24 of the Constitution of South Africa No. 108 of 1996.

There are several provisions within this Act that are relevant to co management.

Section 2(2) states that environmental management must place people and their needs at the forefront of its concerns and serve their interests equitably.

Section 4f provides for the participation of all interested parties and the provision of opportunities for all people to develop the understanding, skills and capacity necessary for achieving equitable and effective participation by vulnerable and disadvantaged people in environmental management.



*Picture of forced removals
(Source South African History online).*

Section 2(4) mentions a number of environmental management principles which support local communities having a greater voice and control in the management and benefitting from their land and natural resources. These are outlined from Section 2(4) d to Section 2(4) q as:

Section 2(4) d: Equitable access to environmental resources, benefits and services should meet basic human needs and ensure

human well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination.



Section 2 (4)f: Participation of all interested parties in environmental governance must be promoted and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation and participation by vulnerable and disadvantaged persons must be ensured.

Section 2 (4)g: Decisions must take into account the interests, needs and values of all interested and affected parties and this includes recognising all forms of knowledge including traditional and ordinary knowledge.

Section 2 (4) h: Community well-being and empowerment must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge and experience and other appropriate means.

Section 2 (4) q: The vital role of women and youths in environmental management and development must be recognised and their full participation therein must be promoted.

These principles facilitate implementation of co management.

4 National Environmental Management: Protected Areas Act [Act No.57 of 2003]

This Act, administered by the Department of Environmental Affairs (previously the Department of Environmental Affairs and Tourism), appoints the State as the trustee of all protected areas in South Africa (section 3(a) of Act) (NEM: PAA, 2003). Through the Act, the Minister of Environmental Affairs is required to charge the management of any

protected area to an appropriate entity (be it an individual, organisation or organ of state) (Section 38 (1)(a)) and this management authority is then compelled to draw up a management plan detailing conservation-related activities to take place in the protected area (Section 39).

While the Act describes various modes of environmental protection (national parks to protected environments) from a more ecological perspective, it also recognises that protected areas can and should contribute positively to the livelihoods of local people. This is emphasised in an objective that states that this law should “promote [the] sustainable utilisation of protected areas for the benefit of people” (Section 2(e), NEM: PAA, 2003). Equally, NEM: PAA (2003) promotes the “participation of local communities in the management of protected areas” (Section 2(f) NEM: PAA, 2003, pp 13). As a result, the establishment of co-management partnerships between local communities (as well as other parties) and reserve authorities in jointly managing protected areas is outlined in Section 42 of the Act.

Section 39 (3) states that when preparing a management plan for the protected area, the management authority concerned must consult other organs of state, local communities and other affected parties which have an interest in the area.

Section 41 (2) e states that the management plan must contain procedures for public participation including participation by the owner (where applicable), local communities and other interested parties.

Section 41 (2) f states that the management plan must, where appropriate, support the implementation of community based natural resource management. According to section 41 (3) b the management plan may contain development of local management capacity and knowledge exchange.



In terms of Section 42 of the Act, the management authority may enter into an agreement with another organ of state, a local community, an individual or other party for the co-management of the area by the parties.

Such co management may provide for:

- The delegation of powers by the management authority to the other party to the agreement;
- The apportionment (sharing) of any income generated from the management of the protected area or any other form of benefit sharing between the parties;
- The use of biological resources in the area;
- Access to the area;
- Occupation of the protected area or portions thereof;
- Development of economic opportunities within and adjacent to the protected area;
- Development of local management capacity and knowledge exchange;
- Financial and other support to ensure effective administration and implementation of the co management

5 National Environmental Management: Biodiversity [Act No.10 of 2004 (NEMBA)]

The Act gives effect to the Convention on Biological Diversity's provisions on access and benefit sharing, in line with the NEMA principle of equitable access. Chapter 6 of this Act regulates bioprospecting of "indigenous biological resources".

Section 76 (1) states that the management authority of a protected area preparing a management plan for the area in terms of the NEMPAA must incorporate an invasive species control and eradication strategy into the management plan.

Section 76 (2) states that all organs of the state in all spheres of government must prepare an invasive species monitoring, control and eradication plan for land under their control as part of their environmental plans in accordance with section 11 of the NEMA.

Section 80 (1) c provides for a fair and equitable sharing by stakeholders in benefits arising from bio prospecting involving indigenous biological resources.

6 National Co-management Framework 2010

This framework was developed in order to ensure more effective redress of land rights in a fair and equitable manner to the claimants. It outlines strategies for co management and the feasible models for co management. It defines co management as, "an agreement for the management of land by the Management Authority, being an organ of state as lead manager, and the new owners as contemplated in Section 42 of the Protected Areas Act and as set out in the Agreed Position".



Three co management categories or models are outlined in the framework as well as the advantages and disadvantages of each. These three models are:

- **Full co-management:**

Where the compensation for no physical occupation takes the form of socio-economic beneficiation and participation in co-management. This should be applied in areas where beneficiation is viable and possible.

- **Lease:**

Where the state leases the land from the land claimants. This should be applied where few (if any) socio-economic opportunities exist and would result in inadequate compensation for loss of beneficial occupation. Treasury approval is required for this category of co-management. A “community levy” could be levied on all visitors and be channeled into a Community Trust Fund to finance future community development projects. This could be used as a basis to determine the lease fee. Further work is needed on the determination of a formula for the lease fee.

- **Part co-management/
Part lease:**

Where a combination of co-management and lease are applied. This would be applied on the basis of the socio-economic opportunities.

Circumstances of each protected area should be taken into consideration when selecting the model to be applied or used in the co management agreement.

Benefits associated with the co management models

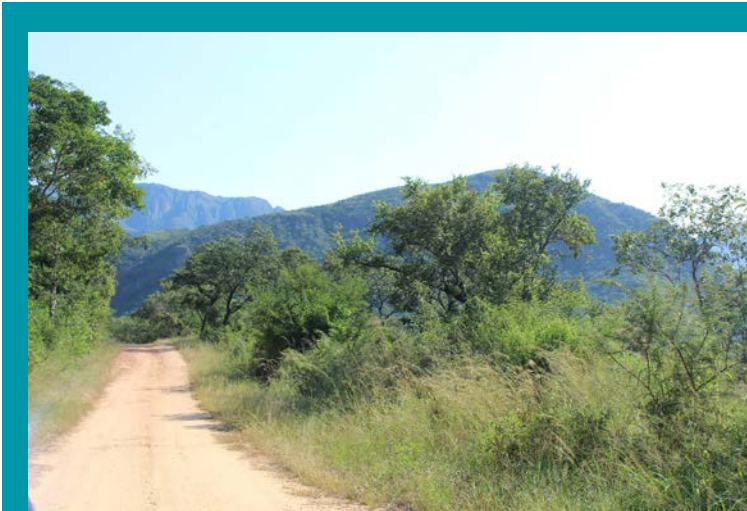
Some of the benefits associated with the co management models through to varying degrees are:

- **Revenue sharing:** percentage of revenue that will be paid out by the Management Agency to the Land Claimants. This can comprise revenue from gates, game sales and concession fees. It is not clear what the economic argument for net revenue is in part co-management/part lease. Agreement of the use of either gross or net income needs to be further explored.
- **Rental income:** Income derived by claimants from the State. This income could comprise a fixed rental or a fixed rental plus an amount based on revenue earned.



Capacity building engagements in LNR

- **Capacity building:** This includes skills development, transfer and empowerment in tourism and conservation related jobs and entrepreneurs, a long term tertiary education programme and fund which builds capacity of land claimants to take up jobs in tourism and conservation, transaction advisors and mentoring for mandatory partners, skills development for LED.



Plans to pave some of the roads inside the reserve

- **Natural resource use:** Land claimants have access to sustainable biological resources where limits are determined through the Protected Area planning process, such as the Local Area Plan for that area. Assistance could be provided for creation of community “medicinal nurseries” on communal land to allow communities access to such resources.
 - **Tourism LED:** Includes tourism activity concession opportunities, craft.
 - **Conservation LED:** Includes land care, maintenance and infrastructure opportunities for contractors and work seekers.
- **Development rights:** This refers to the identification of a development site on the restituted land in the Protected Area. This identification of the sites takes place within the framework of the Protected Area Managers’ planning processes, including the Integrated Management Plans and Local Area Plans.
 - **Mandatory partner status:** Land claimants are considered to be the beneficiaries of any tourism and conservation related work or economic opportunity on the restituted land, including the establishment of equity partnerships with the private sector in tourism concessions.
 - **Equity partnerships:** This refers to private sector tourism investment in the Park. These partnerships provide the land claimants with equity shareholding in the business, jobs and skills development opportunities, and the procurement of goods and services.
 - **Access rights:** Land claimants have regulated rights of access to the Protected Areas for general purposes, community or individual functions and to sacred/burial sites in line with the Protected Area Management Plans.
- **Consultation primarily through land owners association:** Formed in terms of the MOA to provide a forum for consultation and nominate Board (if applicable) representatives to the Minister. This could include acknowledgement of the history of communities when naming facilities, camps and renaming parks and world heritage sites.
 - **Representation on liaison structures at protected area level:** Each Protected Area will determine how best this representation must occur.
 - **Delegation of function:** The Management Authority may delegate certain functions. This delegation is a contractual delegation which means that the Management Authority never loses its statutory liability and responsibility to manage the Protected Area. Delegations are not permitted in terms of the World Heritage Convention Act.
 - **Post-settlement support by government:** Government may provide support to claimants for institutional and capacity strengthening.



7 Inter-ministerial Memorandum of Agreement [MOA] on land claims in protected areas, 2 May 2007

On 2 May 2007, the Minister for Agriculture and Land Affairs and the Minister for Environmental Affairs and Tourism approved and signed an inter-ministerial Memorandum of Agreement (MOA) on land claims in protected areas, which included a restitution process and an operational protocol to be followed for the settlement of land claims against protected areas.

This agreement gave effect to the cabinet decision that it is feasible to restore land to land that has been proclaimed as protected areas, without physical occupation by restitution beneficiaries.

Some of the specific provisions for co management are:

- Land within a PA can be owned by claimants without physical occupation, but with arrangements for compensatory remuneration and benefits set out in the land claim settlement agreement
 - There has to be a balancing act between constitutional rights to restitution and promotion of conservation
 - There has to be structured regime of economic benefits, which will flow and accrue to the claimants as owners of the land
 - Agreements to recognise conservation in perpetuity
 - All parties to define commercial activities within the agreement
- The structuring of benefits should be in such a way that it gives due weight to the claimants' rights as well as those other stakeholders
 - Where claimants aren't ready to manage the land, provision can be made for joint management and assistance can be granted to claimants to acquire the necessary management skills in order to take over after a specified period.
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 - Where claimants aren't ready to manage the land, provision can be made for joint management and assistance can be granted to claimants to acquire the necessary management skills in order to take over after a specified period.
 - Principles and their implications in terms of co-management agreement that should be written into an agreement would be that of participation, consultation and empowerment.
 - Benefits to be derived that the community will derive from the income/commercial activities needs to be clearly defined.



- Rights and obligation of parties in the agreement should be listed and clearly defined, including roles and responsibilities.
- The agreement should not undermine the financial and sustainability of the affected conservation area
- Tender adjudication requirements for the awarding of commercial opportunities on land owned by restitution beneficiaries should be structured in a way that favours proposals involving claimant community by way of share equity or other partnerships, while still allowing transparent business practice.

8 Communal Property Association

[Act No.28 of 1996]

This Act provides for communities to form legally recognised entity (juristic persons), to be known as communal property associations in order to acquire, hold and manage property on a basis agreed to by members of a community in terms of a written constitution; and to provide for matters connected with the association.

It is important that members of the community (CPAs) and not only the leaders are aware of the enabling laws and policies for co management as it enables them to participate effectively and demand accountability from the management authority and the CPA leadership.



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The Association for Water and Rural Development

AWARD is a non-profit organisation specialising in participatory, research-based project implementation. Their work addresses issues of sustainability, inequity and poverty by building natural-resource management competence and supporting sustainable livelihoods. One of their current projects, supported by USAID, focuses on the Olifants River and the way in which people living in South Africa and Mozambique depend on the Olifants and its contributing waterways. It aims to improve water security and resource management in support of the healthy ecosystems to sustain livelihoods and resilient economic development in the catchment.

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About USAID: RESILIM-O

USAID: RESILIM-O focuses on the Olifants River Basin and the way in which people living in South Africa and Mozambique depend on the Olifants and its contributing waterways. It aims to improve water security and resource management in support of the healthy ecosystems that support livelihoods and resilient economic development in the catchment. The 5-year programme, involving the South African and Mozambican portions of the Olifants catchment, is being implemented by the Association for Water and Rural Development (AWARD) and is funded by USAID Southern Africa.

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