

NATIONAL CO-MANAGEMENT FRAMEWORK

1. PROBLEM STATEMENT

- 1.1 There is a high expectation from communities with claims on Protected Areas that co-management is the same as joint-management, that the eventual outcome of the co-management process is community driven management and that this will be achieved through a long term process of capacity building. There is also widespread perception that ecotourism in protected areas is a profitable business.
- 1.2 Protected areas have been recognised globally as the most effective means of conserving biodiversity and the associated cultural assets. Therefore, the primary objective of setting aside protected areas is conservation of biodiversity. Protected area management authorities are mostly statutory bodies, whose annual income balances annual expenditures and therefore limited or no surplus 'profit' for disbursement to land claimants. Only a limited number have surplus income and this is used to cross-subsidise the management of the other protected areas. This is a critical part of government's strategy to ensure the sustainability of conservation areas in an environment of strict fiscal discipline. South Africa is rated number 3 as one of the mega diverse countries globally. All conservation efforts of the country are geared towards maintaining this status but not at the expense of other developmental goals of government.
- 1.3 Other areas such as wilderness areas, etc have limited potential for development resulting in claimed land within these areas not yielding economic opportunities and tangible benefits for the communities. Moreover, South Africa is a signatory to International Conventions that require protected areas to be managed according to certain prescribed standards to ensure that these areas are conserved in perpetuity. The country is therefore required to ensure compliance and report on its performance as appropriate.
- 1.4 However, there is recognition that these areas are a key factor in the national economy and are essential to poverty eradication and our national goals of shared and accelerated growth. This benefit is mostly delivered as spin-offs and multiplier effects of economic activities outside the boundaries and off the balance sheet of the management authorities. A balance is thus needed to promote conservation of biodiversity whilst ensuring that benefits accrue to the surrounding communities in particular the claimants.
- 1.5 Following the settlement of land claims against iconic areas of high biodiversity significance, the development of beneficiation models as well as the co-management agreements between the management authority of the protected area and the claimants has indicated a number of hurdles and hidden costs impeding the delivery of tangible benefits to the communities.

This framework has been developed in order to ensure more effective redress of land rights in a fair and equitable manner to the claimants.

2. INTRODUCTION

- 2.1 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 practices is entitled restitution or equitable redress.
- 2.2 The Restitution of Land Rights Act, 1994 ("Restitution Act") 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 by ownership by claimants without physical occupation, but with arrangements for compensatory remuneration and benefits set out in the land claim settlement agreement (a co-management agreement). Effective conservation can be obtained through partnership between the owner and manager. Restoration through the transfer of title is feasible with registered notarial deed restrictions.
- 2.3 On 2 May 2007, the Minister of for Agriculture and Land Affairs, and 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.
- 2.4 The MOA sets principles that must be followed when dealing with claims in protected areas, with a number of clauses that have particular relevance to co-management.
- 2.5 This document presents the models of co-management of Protected Areas **that have been restored to persons or communities in terms of the Restitution Act** and expands on the associated benefits/beneficiation. It attempts to draw on the work and experience of a range of different conservation agencies in settling land claims and negotiating co-management agreements. These include the draft co-management framework developed under the auspices of the People and Parks Steering Committee, the co-management agreement from iSimangaliso Wetland Park and discussions in the Land Claims task team set up after the Mpumalanga Workshop on land claims on Protected Areas in 2007.
- 2.6 An agreed government position, as well as a section 42d Settlement agreement and Co-management agreement are required in the settlement of restitution claims in terms of the MOA and the Restitution Act.

3. LEGISLATIVE FRAMEWORK

3.1 The National Environmental Management: Protected Areas Act (Act No.57 of 2003) provides for the co-management of a protected area by between the management authority and the new owners. 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 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; and
- Financial and other support to ensure effective administration and implementation of the co-management agreement.

3.2 According to the MOA, the existing management authority shall continue to manage the Land situated within the Protected Area after restitution until the DEAT Minister reviews it. In this case, the “**existing management authority** ” means the organ of state appointed by the DEAT Minister in terms of the applicable legislation to manage the Protected Area

4. **CO-MANAGEMENT**

Co-Management means 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

4.1 **Co-management models**

4.1.1 Co-management comprises a package of benefits as well as the structures and procedures for co-management. Depending on the type of co-management adopted, the benefit package, the structures for co-management and the procedures to be followed will be different.

4.1.2 here are three categories of co-management; namely:

- 4.2.1.1 **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.
- 4.2.1.2 **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.
- 4.2.1.3 **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.

These categories should be viewed as a continuum, rather than discreet models, with the circumstances of each Protected Area taken into account when defining the co-management model.

5. PROS AND CONS OF EACH MODEL

5.1 Full co-management -Pros

- Participation in management
 - Empowerment
 - Consultation
 - Access to land
 - Access to and use of biological resources
 - Delegation (other than where WHC applies)
- Beneficiation
 - Developmental rights
 - Revenue sharing (Gross)
 - Economic opportunities
 - Mandatory partner in development
- Consultation on all aspects and broad representation

5.2 Full co-management- Cons

- No immediate benefits for land owners
- Management structures – cost
- Added work load
- Long process to finalise agreement

5.3 Full lease- Pros

- Freedom to manage by management authority
- Immediate income to community
- Guaranteed stable income for period of lease agreement
- Shorter process

5.4 Full lease- Cons

- Land owners do not have:
 - Decision rights with day to day management
 - Guaranteed Equity (in business) rights
 - Inherent Commercialization rights
- Treasury approval needed
- Community financial mechanism

5.5 Part lease and part co-management: Pros

- Participation in management
- Empowerment
- Consultation
- Access to land
- Access to and use of biological resources
- Delegation of limited functions at the discretion of mngt authority (other than where WHC applies)
- Beneficiation
- Developmental rights
- Revenue sharing (Net)
- Rental income
- Mandatory partner in development
- Consultation on all aspects and broad representation

5.6 Part lease and part co-management: Cons

Treasury approval needed

- Limited guaranteed income – limited security
- Long process to conclude agreements
- Increased Management costs
- Land owners financial mechanism
- Legitimate representation (across)

6. LEASE AGREEMENT

6.1 What is a lease?

Contract between a Lessor and Lessee for the use of the property for a fixed amount of time.

Lease amount- this is the presumed value of the asset being leased at the time that the lease is signed. It is the present value of the future payments.

6.2 Aspects to consider

- How much variability can the Management Authority tolerate in the rental income?
- How much record keeping and accountability is the Management Authority willing to provide to fulfil the lease agreement?
- Is the lease equitable to the claimant community and the Management Authority?
- How much is the Management Authority willing to interact with the claimant community?
- How can the Management Authority make sure that its conservation goals are met?

6.3 Types of leases

- Fixed cash lease- most common
- Flexible cash lease- is similar to above except the final rent is adjusted based on the actual income.
- Percentage share lease-The claimant community does not contribute to any costs but receives a percentage of the income.
- Share of income lease- Total income be divided between the claimant community and the Management Authority according to their contributions.

6.4 Methods of calculation

A number of methods are available to use for the calculation of a lease value. The different methods are indicated below:

- Current market approach
- Landlords cost approach
- Income approach- income and expenses for a given situation are estimated and the net income is calculated.
- Contribution approach- each party shares in the income in the proportions as they contributed to the costs.

6.5 Formula

As no standard formula could be found or is being used for the calculation of a lease value between community owners of a protected area and the state party, the following formula is proposed. This is a standard formula that is in use to determine market related rental values:

1. Land Rental Value (Lease value) = Market value * Capitalisation rate

E.g. R 50 000,000.00*9%= R4 500,000.00

(Capitalisation rate =The rate of interest which is considered a reasonable return of an investment).

2. Future value of the land

To take into account the escalation in the value of the land the following formula is proposed:

$FV = PV (1+i)^n$ where:

FV= Future value of the area

PV=Present value of the area

i= interest

n = number of years

7 BENEFICIATION PACKAGE

- 7.1 The table below demonstrates which type of benefit that applies to the three broad categories of co-management. Please note that the purpose, economic circumstances, characteristics and type of Protected Area will affect which activities are ultimately selected for co-management.
- 7.2 Co-management will increase the cost of managing Protected Areas regardless of the co-management option adopted.
- 7.3 In terms of the MOA, beneficiation of the Claimants should be structured in such a way that it is tangible, realistic and optimal though not compromising the financial sustainability of the said Protected Area.

Notes to table:

1. **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.*
2. **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.
3. **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.

4. **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.
 5. **Mandatory partner status:** Land claimants are considered to 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.
 6. **Equity partnerships:** This refers to private sector tourism investment in the Park. These partnerships provides the land claimants with equity shareholding in the business, jobs and skills development opportunities, and the procurement of goods and services.
 7. **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.
 8. **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.
 9. **Tourism LED:** Includes tourism activity concession opportunities, craft.
 10. **Conservation LED:** Includes land care, maintenance and infrastructure opportunities for contractors and work seekers.
 11. **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.
 12. **Representation on liaison structures at protected area level:** Each Protected Area will determine how best this representation must occur.
 13. **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.
12. **Post-settlement support by government.**

	Beneficiation	Full Co-management	Part Co-management / Part Lease	Full Lease
	Asset ownership			

1.	Revenue Sharing	% of Gross (paid by MA)	% of Net	By Agreement
2.	Rental Income	None	Combination (paid by NT & MA)	Rental (paid by NT)
3.	Capacity Building	Applicable (eg 90%)	Applicable (eg 60 %)	Applicable (eg 30%)
4.	Mandatory Partner Status in development	Applicable	Applicable	By Agreement
5.	Development Rights (rights provided through IMP)	Applicable	Applicable	Applicable
6.	Equity Partnership (i.e. in developments)	Applicable	Applicable	By Agreement
7.	Access Rights (to the land)	Applicable	Applicable	Applicable
8.	Natural Resource Use	Applicable	Applicable	Applicable
Secondary Enterprise (Local Economic Development)				
9.	Tourism LED	Applicable	Applicable	By Agreement
10.	Conservation LED	Applicable	Applicable	By Agreement
Governance				
11.	Consultation (land owners association)	Applicable	Applicable	Applicable
12.	Representation (Board / Strategic Management – if applicable)	Applicable	Applicable	By Agreement
13.	Delegation of functions (other than in WHC)	Applicable	Applicable	Not applicable
14.	Post-settlement support by government	Applicable	Applicable	Applicable

Compiled by Task Team:

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