



LAND TENURE, REFORM AND CONSERVATION TOOLS IN SOUTH AFRICA AND THEIR POTENTIAL APPLICATION IN KENYA

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Executive Summary

The African Wildlife Foundation (AWF) has been working in the transboundary Limpopo landscape in Southern Africa since 2000. AWF is currently assessing potential land conservation opportunities in this landscape. This paper aims to assess relative aspects of the land tenure system in South Africa and policies, including those laws passed during the Apartheid era, that provide tools for land conservation, as well as their potential transfer and application in Eastern Africa, Kenya in particular. The current structure of land tenure in South Africa was strongly influenced by apartheid legislation, which for almost a century limited the rights of black South Africans. In 1994 the South Africa Government introduced a comprehensive land reform program that focuses on land restitution and redistribution. The current South African legislation provides for a variety of tools for private landowners to conserve their land, ranging from conservation area declaration to designation of land as a nature reserve under its biodiversity stewardship program. The lodging of land claims on strategic protected areas and other important lands has been inhibitive to conservation as the process is extremely slow, making tenure uncertain; thus, prohibiting long-term conservation outcomes. The conservation tools provided for in South Africa offer potentially useful methods for Kenya to adopt to protect and manage strategic areas outside of protected areas. The concept of co-management is a versatile tool that has been recently introduced and piloted in South Africa that could be applied in Kenya.

Introduction

The African Wildlife Foundation (AWF) has been working in the transboundary Limpopo landscape (known within AWF as a 'Heartland') since 2000. The Limpopo Heartland covers 9,093,835 hectares and encompasses Kruger National Park in South Africa, Limpopo and Banhine and Zinave National Parks in Mozambique and Gonarezhou National Park in Zimbabwe, along with the surrounding community and private lands. AWF is considering expanding its land program in the Limpopo Heartland, as well as sharing relevant lessons in land management and conservation in South Africa to its East Africa program.

This paper aims to outline some of the key pieces of legislation in South Africa that impact land and the potential for conservation; review the land restitution process in South Africa; assess how AWF could work with private landowners and communities to conserve strategic land in the Limpopo Heartland and assess Southern African methodologies that can be applied in East Africa. South Africa's political history is vital to understand as it impacts the current land tenure system and land policies, as well as management decisions; therefore, a background is provided. This paper also outlines some case studies relevant to AWF and its conservation programs, and explores some conservation models that might be applied to Kenya and East Africa.

While Kenya has made significant progress in conservation, the threat to wildlife conservation continues to escalate, largely because of an increase in habitat fragmentation, land use change, climate change and human population pressure. To maintain viable populations of native wildlife, lands outside protected areas must be conserved through innovative measures. Adopting and adapting conservation tools and techniques from

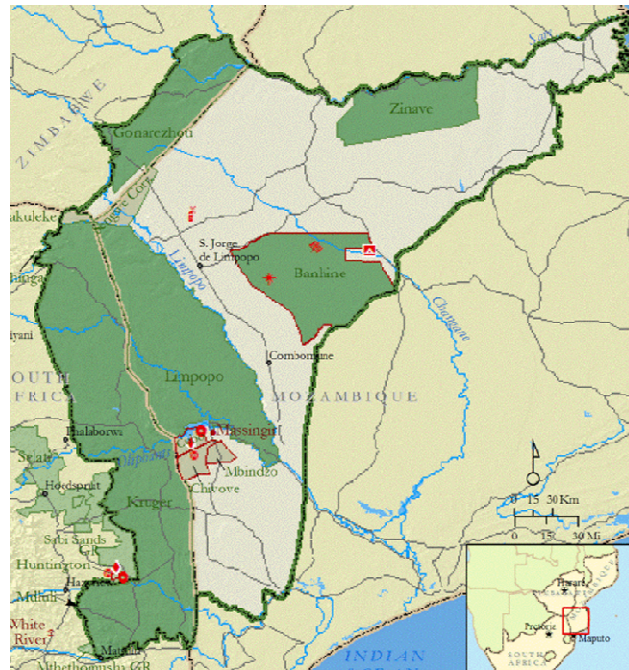


Figure 1. AWF Limpopo Heartland, a trans-boundary landscape in South Africa, Mozambique and Zimbabwe.

other countries such as South Africa that have similar land tenure systems will help AWF advance its conservation objectives in Kenya.

Political Background

The San people were the first settlers in South Africa, followed by the Khoikhoi and Bantu speaking tribes. The first European settlers landed in 1652 with the Dutch East India Company on the Cape of Good Hope. They initiated a colony that by the end of the 18th century numbered approximately 15,000 people. These settlers were known as the Boers or Afrikaners. They spoke a Dutch dialect known as Afrikaans and as early as 1795, they tried to establish an independent Republic. (Gascoigne, B, 2010)

The British arrived in South Africa towards the end of the eighteenth century and took permanent possession of the Cape Colony in 1815. What followed was almost a century of conflict between the Boers and the British. Anglicization of government drove about 12,000 Afrikaners to make the “Great Trek of the Boers” north in 1835 for the next 10 years, where they established the Republic of Natal in 1853 and the Orange Free State in 1854. (Gascoigne, B, 2010) Britain later took Natal from the Boers in 1843. The Transvaal was recognized as an independent state by the British in 1852. (Cahoon, 2000)

Throughout this period, the struggle for land and independence resulted in numerous wars and conflicts. The Zulu War was fought between the Zulu and the British in 1879, and the British victory resulted in the demise of the independent Zulu Nation. Two Anglo-Boer wars (1880–1881 and 1899–1902) followed, resulting in the loss of approximately 75,000 lives. In 1910, the country was unified under British dominion and Louis Botha, a Boer, became the first Prime Minister of South Africa. Shortly thereafter, organized political activity among Africans led to the establishment of the African National Congress (ANC) in 1912. (Gascoigne, B, 2010)

In 1931, the Union was effectively granted independence from the United Kingdom. In 1948, the National Party (NP) won the all-white elections and began passing legislation codifying and enforcing an even stricter policy of white domination and racial separation known as "apartheid." (CIRCA, 2010)

In 1958 Dr. Hendrik Verwoerd, the Prime Minister, introduced the renowned Grand Apartheid Policy. South Africa became a Republic in 1961. (CIRCA, 2010) Despite opposition both within and outside the country, the Government legislated for a continuation of apartheid, which severely limited any freedoms and abilities of black South Africans, including evictions from ancestral land, change of ownership, rights and access to land for settlement and farming. After years of internal protests, activism and insurgency by black South Africans and their allies, as well as significant international pressure, in 1990 the South African government began negotiations that led to the dismantling of Apartheid Policy and discriminatory laws and democratic elections in 1994. Nelson Mandela, who had served 27 years in prison for his anti-apartheid activity, was elected President. (Gascoigne, B, 2010)

Mandela served until 1999, upholding his pledge to only serve one term. He was succeeded by Thabo Mbeki. Mbeki resigned in 2008 after being recalled by ANC’s Executive Committee and was followed for the remainder of his second term briefly by Kgalema Motlanthe. Jacob Zuma, ANC, was elected in May 2009 and he continues to serve as President today. (Russell, 2009)

Land Policy History

The Apartheid Policy introduced in 1958 had a cataclysmic impact on the rights of black South Africans. Apartheid impacted every aspect of their lives—where they could live, what they could own, where and how they could travel, access to education, access to investment, and voting rights. Black South Africans were restricted to live in certain areas. These discriminatory policies were legalized through dozens of Acts, far beyond Apartheid Policy. The focus of this paper is on land and how apartheid impacted land ownership and land tenure today. (Fourie, 2000)

On 19 June 1913, The Natives Land Act was passed. This legislation remained in effect until the 1990s when it was replaced by the current policy of Land Restitution, described later in this paper. The Natives Land Act created reserves for black South Africans and prohibited the sale of territory owned by whites to blacks. Over 80% of South Africa was allocated to white people, who made up less than 20% of the population. The Act stipulated that black people could live outside the reserves, without ownership, only if they could prove that they were employed by white people. (Bobby-Evans, 2010)

The Natives Land Act designated 7.9% of the country as Reserves, also known as Homelands and Bantustans, where black people could own and purchase land. The Native Trust and Land Act of 1936 revised the land allocation provisions to black South Africans to 13.7% of South Africa's land area, largely by incorporating territory that was already effectively populated by black South Africans. (Fourie, 2000)

The 1913 Land Act also abolished "farming-on-the-half," a system whereby black Africans who owned their own plows and oxen cultivated, grazed stock, and lived on a white landowner's property in return for half of the harvest. The abolition of this system uprooted thousands more black South Africans and resulted in the loss of a class of black Africans who no longer had access to land and income, thereby paralyzing productivity and growth within this part of the population. (Fourie, 2000)

Other laws that dictated the segregation of races as well as limited ownership by certain races followed in subsequent years. For example, the 1950 Group Areas Act 41 set out specific rural and urban areas exclusively for ownership and occupation by whites, colored, and Indians. There were no areas designated specifically for black South Africans; and blacks were prohibited from occupying or owning land in areas designated for other groups. (Fourie, 2010)

In 1958, the homeland structure was formalized via the allocation of ten homelands, each designated for a specific black ethnic group. See figure 2.

In the 1950s, the ANC led a process of adopting the Freedom Charter in which the ANC put nationalization forward as the necessary mechanism to redress decades of dispossession and destruction of black property and economic rights. Nationalism was very threatening to whites and those with business interests, and it was dropped by the ANC in 1992. (South African History, 2010)

The Bantu Homelands Citizenship Act of 1970 stripped residents of homelands of their South African citizenship, instead making them legal citizens of their homelands. By allocating these homelands, the South African Government successfully further removed and reduced the rights of many black South Africans, as well as divided the population into smaller, more easily controlled groups. Between the 1960s and 1980s, the South Africa's ruling National Party removed black people still living in "white areas" and forcibly relocated them to Homelands. One of the most well known of these removals is from an area known as District 6, outside of Cape Town, where 55,000 coloured and black South Africans were removed. In 1994, after the historic end of apartheid, the South African government created nine provinces, which included both former provinces and homelands. (Gascoigne, 2010)

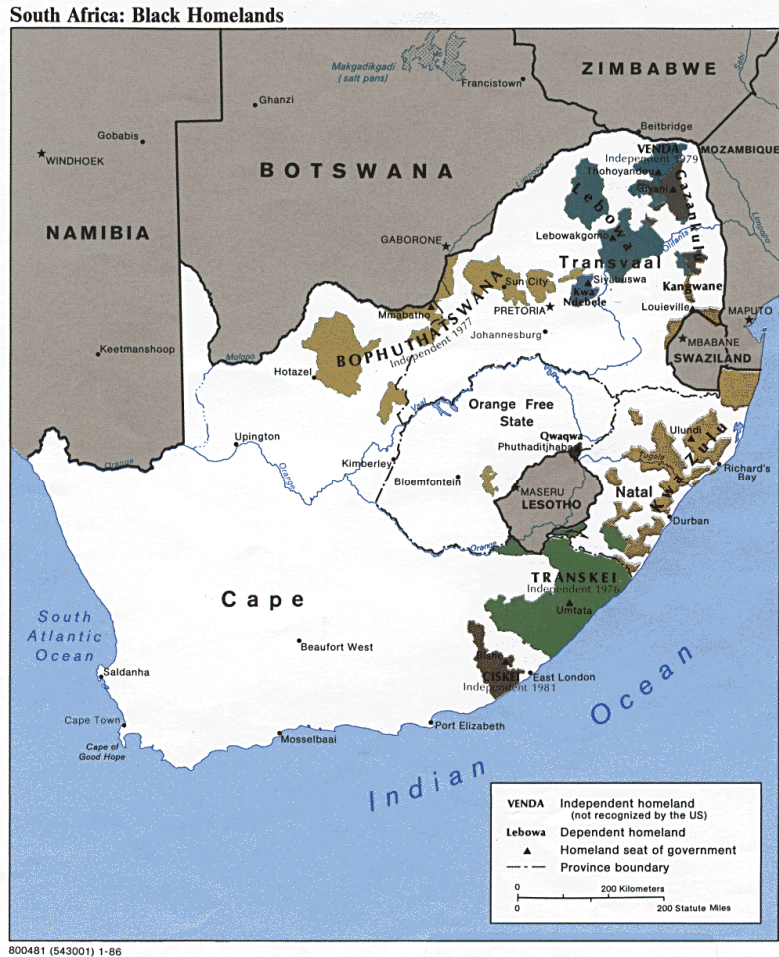


Figure 2. Location of Bantustans in South Africa. (Wikipedia, 2010)

The Land Reform Program

In 1994, when Nelson Mandela was elected President of South Africa, whites owned approximately 71 % of agricultural land (not including state or urban land), while comprising approximately 11 % of the population. This same year a Land Reform Program was launched with an aim of developing equitable and sustainable mechanisms of land re-distribution. The program aimed to rectify the centuries of discrimination against black South Africans, a complex and challenging task. Along with the Land Reform Program, a suite of policies were passed to provide more opportunities for black South Africans to gain access and legal rights to land. In addition, several pieces of legislation restricting black South Africans were dissolved. (Bosch, 2002/2003)

The land reform policy, still in effect today, has three primary aspects:

- *Land restitution/ land claims*
- *Land tenure reform*
- *Redistribution*

(Homeland, 2010)

Land Restitution (Land claims)

Land restitution aims to give persons or communities an opportunity to reclaim land that was taken from them after 1913, as a result of past racial discriminatory laws or practices. In lodging a claim, the claimant must prove that land was lost because of racial discrimination. The main statute dealing with restitution is the Restitution of Land Rights Act 22 of 1994. (Laws of South Africa, 1994) The Act established the Commission on Restitution of Land Rights (CRLR) with a mandate to investigate and mediate land claims, and a Land Claims Court, which hears land claim disputes. The Commission is led by the Chief Land Claims Commissioner and is supported by Regional Land Claim Commissions (RLCCs). As per the statute, all claims had to be lodged by 31 December 1998; therefore, no new claims can be lodged, but the process of settling all the claims submitted continues to date, after several extensions of deadlines set previously by the Government.

According to the Commission on Restitution and Land Rights 2007/2008 Annual Report, 78,681 claims were filed by the deadline. The process of settling the enormous number of land claims is quite complex, time consuming and expensive to the Government of South Africa. The basic steps required are as follows:

1. Lodgment and registration of land claim
2. Validation by the RLCC
3. Gazetting of the land claim, formal notification
4. Negotiation
5. Settlement
6. Post settlement

(Koning et al., 2009)

Each of the above steps is multifaceted, expensive and involves a series of steps and various authorities. One of the weakest areas has proven to be the post-settlement phase. With an emphasis on settling claims, many communities are unable to maximize benefits and land use once land has been transferred because they lack the capacity and any post settlement support. This has improved in cases where as part of the settlement agreements former owners of farms are contracted to continue management and build capacity amongst community members.

Land Tenure Reform

The Government views land reform as a way of contributing to economic development by giving households the opportunity to engage in productive land use. The statutes dealing with tenure include:

- *The Land Reform (Labour Tenants) Act* (Laws of South Africa, 1996), which protects the rights of labour tenants and enables them, under certain circumstances, to apply for the acquisition of land, outlined in chapter 3, section 16.1 of the Act.
- *The Extension of Security of Tenure Act (ESTA)*, No. 62 of 1997(Laws of South Africa, 1997), aims to achieve secure tenure for rural people living on land owned by others through:
 - protection of occupiers against unfair evictions while regulating the circumstances under which they may be evicted;
 - protection of other tenure rights of occupiers; and
 - facilitation of the provision of off-farm settlement of farm workers.

The Act gives people who lived on someone else's land on or after 4 February 1997 with permission from the owner, a secure legal right to carry on living on and using that land.

- The *Interim Protection of Informal Land Rights Act (IPILRA)*, No. 31 of 1996, protects the interests of people who have informal rights to land while land reform is being introduced. (Laws of South Africa, 1996)

The proposed Communal Land Rights Act of 2004 would add to the IPILRA, but is not yet in effect as it was found unconstitutional. The proposed Act proposes new land tenure forms for people living in ex-homelands and other communal land and proposed to allow communities currently living on communal land to obtain land title. One of the results is that private investors cannot get a long term lease on land and therefore will not invest, leaving much of the homelands undeveloped. This has held back agriculture, forestry and tourism development in the former homelands.

- The *Communal Property Association (CPA) Act*, No. 28 of 1996, provides a legal mechanism to accommodate the needs of those who wish to hold land collectively, thereby giving communities a mechanism to hold land (Laws of South Africa, 1996). The settlement of the Makuleke land claim, described further in this paper, illustrates the use of a CPA for land ownership (Fourie, 2000). CPAs have mostly been formed to take back ownership of land and not for tenure reform. One of the challenges is that while CPAs are democratic and accountable organizations at community level, there is yet to be clarity on how they link with Traditional forms of authority, such as the Chiefs. (Collins, 2010)

Redistribution

Redistribution aims to provide the disadvantaged and the poor with access to land for residential and productive purposes, in both rural and urban settings. Redistribution of land is achieved mainly by using the *Provision of Certain Land for Settlement Act*. The emphasis is currently on small farmer enterprises involving 1 - 20 small farmers, with a preference for lower numbers. The effect of this is that fewer people have benefited recently from the redistribution programme than before, because much more money is spent per beneficiary (Fourie, 2000).

All the land reform measures and tools fall under Federal jurisdiction. From 1996 to 2009, the Minister of Agriculture and Land Affairs handled matters pertaining to land. In 2009, the Cabinet reorganized and the portfolio's responsibilities were divided and transferred to the Minister of Agriculture, Forestry and Fisheries and the Minister of Rural Development and Land Reform. Within the Ministry of Rural Development and Land Reform is the Department of Rural Development and Land Reform (DRDLR), formerly known as the Department of Land Affairs (DLA), and the Land Claims Commission is within this Department. Post settlement support was moved from the RLCC into the DRDL, which makes sense as development on new land needs to be integrated into rural development.

The Constitution

Under the 1993 Interim Constitution, property could only be expropriated for public purposes, such as hospitals and roads, and not for public interest, including land redistribution. This policy was changed under the final constitution passed on 4 December 1996 and has been in effect since 4 February 1997. Under the new constitution, Section 25, land can be expropriated for redistribution purposes. This option has not been used in any significant way to date. Overall, the Government has agreed to pay fair market value for property for redistribution, which has proven extremely costly and inhibited progress. (Fourie, 2000)

Land Grants

Within DRDLR's land reform program there are a number of land grant programs that provide financial grants for historically disadvantaged South Africans who are landless to apply for a cash grant to purchase and develop farmland and settle. For example, the Settlement and Production Land Acquisition Grant

(SPLAG) program provides grants for settlement and agricultural production land needs of people living and/or working on rural land, including farm land. (DRDLR, 2010)

Land Reform Progress

When launching the reform program, the South African Government established specific targets. They wanted to return land to those forced off by no later than 2008, which was not achieved. The Government also aims to redistribute 30% of commercial farmland from whites to blacks by 2014.

According to the Commission on Restitution and Land Rights 2007/2008 Annual Report, the Commission on Restitution of Land Rights (CRLR) has restored land rights to more than 285,000 households. As of 31 March 2008, the Commission has settled 74,747 claims, 95% of all the claims, see Figure 3.

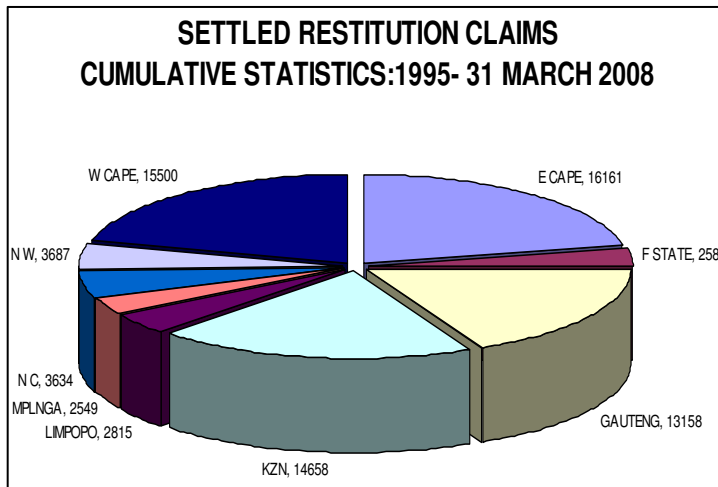


Figure 3: Settled land claims as of March 2008, per province. (CRLR, 2007/2008)

A total of 2,078,385 hectares of land has been reallocated since 1995, with R 3.3 billion spent on restitution awards, financial compensation and the purchase of land. Other sources indicate that in the period from 1998 – 2009 2.5 million hectares were restored at a cost of R 20.35 billion. Outstanding claims cover 17 million hectares and the funding needed to settle these claims is estimated at R 65.3 billion. (Koning, 2010) A majority of the claims filed with the CRLR were in urban and semi-urban areas. (CRLR, 2007/2008)

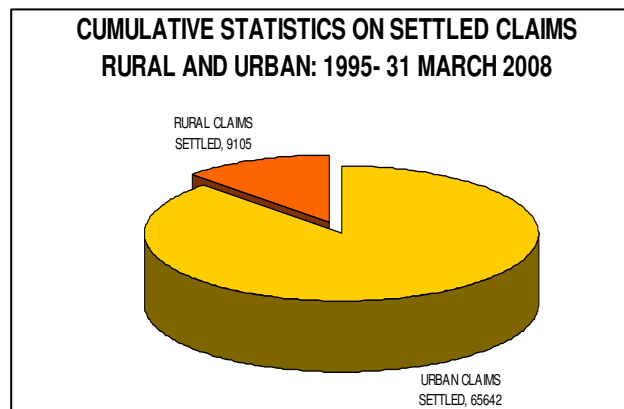


Figure 4: Rural verses urban settled land claims. (CRLR, 2007/2008)

The redistribution program, as of 2006, had turned over approximately 4% percent of commercial land to black South Africans, well short of the 30% target. (IRIN, 2010)

Province	Number of Claims
Kwa-Zulu Natal	1740
Mpumalanga	851
Limpopo	674
Western Cape	599
Eastern Cape	555
Northern Cape	218
North West	215
Free State	97
Gauteng	0
Total	4949

Figure 5: Outstanding land claims in South Africa per province. (CRLR, 2007/2008)

Outstanding claims include some of the most complex cases. These are claims that are still in the court, include disputes involving communities as well as traditional leaders on issues of jurisdiction and conflicting claims, and include claims that pertain to land that is exceedingly expensive, therefore, settlement would be costly.

The Government is cognizant of the negative ramifications of the “Zimbabwean style” land grabs and the concern this brings to investment in South Africa. Therefore, the Government agreed to pay fair market value for claim settlements. Meaning, if someone registered a claim and the claim was awarded, the owner of the property will be compensated for the property against market rates. The Government allocated inadequate resources to land reform. In addition, the sheer number of claims is enormous to handle. If the Government was to achieve its 30 % objective, it would cost approximately R 52 billion equivalent to over USD 6.0 billion. (Kew, 2009)

Approximately 90% of farms that have been redistributed to black farmers are not functional. As referenced earlier, the post settlement or post redistribution phase is sorely lacking in support and capacity, therefore, many new landowners lack the skills and technology to utilize their land properly. In addition, most landowners have lost any connection to the land; therefore, lack the skill base. An added complication is farming in a group. (Koning, 2010) The Government has a "use it or lose it" policy, which means if the land is idle then it can be taken from the landowner. The Government has noted that this applies to redistributed farms. This will be another significant hurdle for the Government to manage. (Davenport, 2010)

Implications for Kenya

A new constitution for Kenya was adopted and enacted at a national referendum on August 4, 2010. The constitution classifies landownership into three categories: public land; private land, in which individuals and corporate entities hold lease or freehold interests in land; and community land, in which freehold interests are vested in communities including registered groups whose lands are referred to as group ranches; and lands vested in county governments to hold in trust for the communities residing within them.

Section 67 (1) of the Constitution establishes a National Land Commission whose responsibilities include:

to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.

Kenya can learn from the South Africa approach to settling historical land injustices, should they emerge. Kenya can avoid high cost mistakes made by South Africa to adopt a more cost efficient process. One of the key lessons learned in South Africa is the need to provide communities with post settlement support to benefit from their land. By incorporating this into a budgeting process, these needs could be addressed. Setting a firm deadline, clear criteria as well as a specific date after which a land injustice took place is also critical to ensuring a sound process. In addition, as explored below with the Makuleke Community, South Africa has vast experience with settling claims without compromising national ecological treasures like Kruger National Park. Kenya can learn from these experiences.

South Africa National Land Reform Mediation and Arbitration Panel

The issue of land reform is riddled with complexities and contention. To help expedite the process, in 1995 the DLA (now DRDLR) designed and constituted the National Land Reform Mediation and Arbitration Panel (NLRMAP, or "the land panel"). The objective for the NLRMAP was to "establish a national panel of mediators... trained and accredited ... as a resource in preventing and resolving land disputes. ... Interventions should aim to promote consensus, facilitate fair community participation and ensure efficient use of financial and human resources." The Independent Mediation Service of South Africa (IMSSA), a mediation and arbitration body with extensive experience in managing labour and community disputes was appointed to provide support to the NLRMAP. (Bosh, 2002/2003)

In November 2000 the IMSSA closed suddenly as a result of financial problems related primarily to its labor dispute resolution services. That same year, a review was conducted of NLRMAP and it was determined that it had "outlived its usefulness and needs to be replaced by an approach that integrates conflict management and prevention into the core project cycle." The DLA accepted the recommendations and disestablished the NLRMAP in 2001. (Bosch, 2002/2003)

Between 1996 to November 2000 the IMSSA handled 225 interventions. The average cost per intervention was R15 000 (USD \$1,875, exchange rate of US\$1 = R8). Mediation of most disputes cost less than R5 000 (US\$625) per intervention. (Bosch, 2002/2003)

No new integrated or comprehensive service has been established since the NLRMAP closed. In 2002, the DLA indicated that it believed that such a service was still necessary, and started a process of consultation and analysis to determine how such a service should be structured. (Bosh, 2002/2003)

Implications for Kenya

The National Land Commission created by the 2010 Kenya Constitution (Laws of Kenya, 2010) is tasked with encouraging "the application of traditional dispute resolution mechanisms in land conflicts." Land conflicts encompass various issues; however, one of which pertains to historical injustices. South Africa's experience in creating and subsequently dismantling the NLRMAP can serve as a valuable lesson for Kenya so that they can avoid making the same timely and costly mistakes.

Kruger National Park

Throughout South Africa's history, land was set aside for conservation, and most times at the expense of local black South Africans. The current portfolio of conservation lands in South Africa is shown in figure 6, with approximately 12.6% of the country under formal conservation status.

Province	Province area (000 ha)	20-year PA target (%)	Current protected areas	
			000 ha	%
Eastern Cape	16 893	12	687	4.1
Free State	12 983	13	167	1.3
Gauteng	1 655	13	84	5.1
KwaZulu-Natal	9 333	13	731	7.8
Limpopo	12 575	11	1 489	11.8
Mpumalanga	7 649	13	1 168	15.3
North West	10 651	11	199	1.9
Northern Cape	37 289	11	1 582	4.2
Western Cape	12 945	13	1 632	12.6

Figure 6: Protected Lands in each province. (NPEAS, 2010).

Of significant concern to conservationists are claims on protected areas and implications of land reallocated without conservation restriction. The core of AWF's Limpopo Heartland is Kruger National Park (KNP); therefore, the implication of claims in the Park has implications for the larger landscape. KNP, constituted as South Africa's first national park in 1926, is the country's largest park at 2 million hectares, and is the most visited tourist attraction in South Africa, thereby generating significant income for the national park system and the country. (Kruger Park Times, n.d.)

KNP straddles the Mpumalanga and Limpopo provinces. By 1998, approximately 40 land claims had been lodged in KNP. As of 2005, approximately 50% of the Park was implicated in pending land claims. (Groenewald et al., 2007). The Makuleke claim in the Pafuri area and the Mdluli claim in the south of the Park have been settled and are described further in this paper. The Mpumalanga Regional Land Claims Commission (RLCC) realized that of the 26 claims in the Mpumalanga section of the Park, most of the claims were lodged by different members of the same families. As a result, the Mpumalanga claims are now grouped into the Mahashi, Ntimane, Ndluli and Sambo, Ba Phaloborwa and the Nkuna claims. A majority of the Limpopo claims cover land in the northern part of the Park, and overlap to the adjacent villages. The Mpumalanga claims are mostly centered around Skukuza, the southern part of the Park, although there are also claims that affect land next to Pretoriuskop and in the private Sabie Sands Game Reserve as well as other private conservancies adjacent to the Park. (Kruger Park Times, n.d.)

The future of KNP was of great concern to the Government of South Africa, South African National Parks (SANParks), the managing authority for the Park, conservationists and surrounding communities. Acknowledging the importance of Kruger National Park on a national and international level, on 3 December 2008 Cabinet ruled that the State retains full ownership of KNP and approved the use of equitable redress as the only option for the settlement of outstanding land claims in KNP. Equitable redress means awarding alternative land and/or financial compensation in settlement of a valid claim lodged against the State. Thus the ruling by the Cabinet also means that communities cannot reclaim any land in the Park. Equitable redress can be coupled with other benefits for the claimant communities, such as: access to ancestral and traditional graves and sites; formal acknowledgement of the history of the communities in naming rights; job opportunities; and education. (GCIS, 2009)

The decision to not restore the land rights in KNP was aimed at striking a balance between the rights of the claimant communities and the interests of society as a whole. Not surprisingly the reception to this announcement was mixed and many wonder if this decision will hold.

The Makuleke Claim Pafuri, Kruger National Park

When Kruger National Park was established in 1926 many communities were forcibly removed and the area was fenced. In 1969, KNP was extended north and as a result the Makuleke community was removed from its lands in the Pafuri area (between the Limpopo, Mutale and Luvuvhu Rivers). In December 1995, the Makuleke community lodged a land claim under the Restitution of Land Rights Act. Due to the ecological value of this area, there were strong concerns from conservationists about the precedent this might set for other areas protected areas. (Steenkamp et al., 2000)

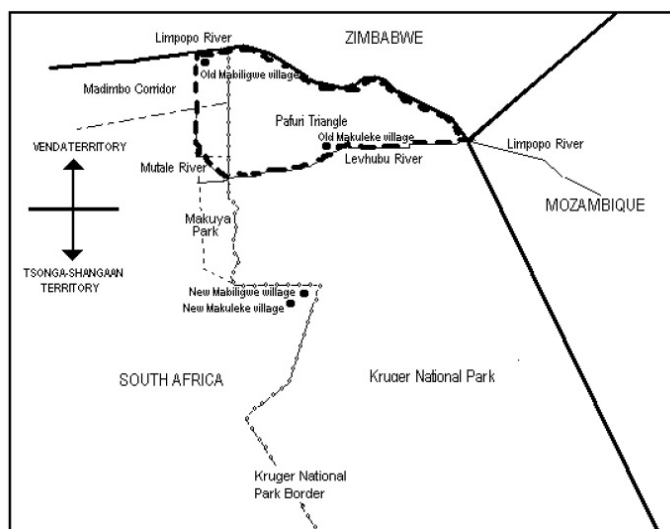


Figure 7: Makuleke Claim Area, referred to as Pafuri Triangle, northern section of Kruger National Park. (Steenkamp et al., 2000)

This claim was made more complicated by the fact that a mining company had a permit from the Department of Minerals and Energy to prospect for alluvial diamonds in this area and an alternative claim was filed by another Chief, Chief Mhinga, on behalf of a different community. After years of challenging negotiations, in 1998 a settlement agreement was reached and the Land Claims Court ordered the restoration of the Makuleke community's ancestral land, 22,734 hectares, subject to various conditions aimed at ensuring that both the land's conservation status and the community's rights are protected. (Steenkamp et al., 2000)

Under the terms of the settlement agreement, a contractual agreement between the community and SANParks was established for 50 years, subject to review after 25 years. The members of the community agreed to remain in Ntlhaveni, outside of the claim area, where they had moved, but aimed to benefit financially from ecotourism conducted in the claim area. (Steenkamp et al., 2000)

A Joint Management Board (JMB), consisting of members of SANParks and the Makuleke community, is responsible for managing the land. The Makuleke JMB relies on SANParks to manage the land on a day-to-day basis. The Makuleke community has the right to develop ecotourism facilities in the subject area and retain the profits. (Steenkamp et al., 2000)

The settlement of the Makuleke Land Claim is seen as an extraordinary success for communities. Media reported "this sets an excellent precedent for land claims in other important conservation areas." (Steenkamp et al., 2000) Now that 12 years has passed since the settlement was reached in review of the financial outputs, many are assessing whether there are better beneficial models for communities (Collins, 2010). As part of the settlement agreement, the community can only use the land for conservation and eco-tourism. No prospecting or mining is allowed on the land, no development, farming, or grazing. Essentially, while owning

the land, the community is unable to do anything on the land except manage it for conservation and benefit from tourism. Therefore, selling the land outright for fair market value to SANParks and investing this money might have been a better financial deal for the community (Collins, 2010). This begs the questions of the primary objective for the community. For some communities, they want their ancestral land returned despite financial implications, for others, it is a matter of generating income to benefit the community. There is also conflict within the community, often times with the elders wanting land back because of their connection to these areas, and the younger generation wanting jobs, as they are less connected to the land. (Koning, 2010)

The fact that a counter claim was filed on the Makuleke land is not unusual. There are numerous examples where different communities filed claims on the same parcel, see San and Mier Claim example that follows.

San and Mier Conflicting Claims Kgalagadi Transfrontier Park

The San people are acknowledged as one of the first peoples of South Africa, having lived in southern Africa for more than 20,000 years. (Gascoigne, B, 2010) In 1995, descendants of various San families, who later decided to call themselves the Khomani San, lodged a land claim in the northwest of Northern Cape Province. This claim was for use rights, as opposed to ownership, to more than 4000 km² of land in the Kgalagadi Transfrontier Park, which straddles Botswana and South Africa and was created in 1931. (Bosch, 2002/2003)

Simultaneously, the Mier community had a claim for the same area. The Mier community came to the Northern Cape in 1865, thereby displacing many of the San. The Mier community claimed areas in the Kgalagadi Transfrontier Park from which they were displaced when it was established. (Bosch, 2002/2003)

This settlement involved the San community, the Mier community, SANParks and the Land Claims Commission. The claim was settled in 2002. The South African Government transferred 28,000 hectares to the San community, called the San Heritage Land, and an additional six farms south of the Park. With respect to the rest of the land they claimed, they received preferential commercial rights to approximately 80,000 hectares and symbolic and cultural rights on all the land claimed, which includes the right to harvest plants, hunt and move about in a traditional way. (African Safari Lodge Foundation, 2010) The Mier Community was awarded 30,000 hectares, called the Mier Heritage Land (Bosch, 2002/2003). As a sign of goodwill to the San for letting them in and not contesting their claim, the Mier agreed to give the San 87,000ha adjacent to the Park, which was to be used for the formation of a community conservation area. The Mier recently gave the San two farms next to the park for this purpose. (Holden, 2010) The Park is a contractual Park with SANParks and the communities are part of the Joint Management Board. (Collins, 2010)

Foreign Ownership in South Africa

In addition to settling inequity within South Africa, there has been great effort to truly understand the level and impact of foreign ownership and whether this is impeding progress towards equitable redress. While speculation of foreign ownership having a negative impact on South Africans is prevalent, the clear level of ownership and impact has not been determined, mainly because of the difficulty in assessing foreign ownership in companies that own land. To date, South Africa does not have a policy limiting foreign land ownership.

In August 2004, the Ministry of Agriculture and Land Affairs convened a committee to assess foreign ownership and implications thereof. The committee was called the Panel of Experts on Foreign Ownership of Land (PEFOL). Their TOR included the following:

1. Determine the extent of foreign ownership in South Africa.
2. Assess the implications of South Africa not having a policy on foreign ownership.
3. Propose whether South Africa should have a policy regulating foreign ownership.
4. Determine the financial implications of foreign ownership.
5. Compare foreign ownership policies of other countries.

PEFOL had a difficult time assessing actual foreign ownership in South Africa, mainly because of their inability to truly determine company ownership. PEFOL's findings were presented in a report that was gazetted by the Government in September 2007: Report and Recommendations by the Panel of Experts on the Development of Policy Regarding Land Ownership by Foreigners in South Africa. (PEFOL, 2007) Following is some of the data on ownership and usage of land in South Africa according to the 2007 PEFOL report.

Division of Land Ownership	Hectares	Hectares	Percent
State Land		24,919,290	20.40%
Department of Public Works	6,845,916		
Department of Land Affairs	13,759,968		
Provincial	4,313,406		
Trust*		4,103,096	3.40%
Ingonyama	2,893,232		
Coloured Rural	277,926		
Traditional	931,938		
Private		92,885,406	76.20%
TOTAL		121,907,792	100%

Figure 8: Land ownership in South Africa. 2007. (PEFOL, 2007)

* Trusts in South Africa are governed under the Trust Properties Control Act and common law. A trust can be established for private benefit or for a charitable purpose.

Land Use	Hectares	Percent
Arable / Agriculture	14,753,249	12.1%
Nature Conservation	14,549,797	11.9%
Forestry	1,790,270	1.5%
Natural Pasture	89,240,143	73.2%
Industrial / Commercial	274,549	0.2%
Urban Residential	1,299,784	1.1%
TOTAL	121,907,792	100%

Figure 9: Land use in South Africa. 2007. (PEFOL, 2007)

OWNER	ERF: Land for Residential Development	Commercial Farm	Agricultural Holdings	SECTIONAL
Defective records	11.15%	16.40%	10.52%	5.28%
South African	71.06%	49.80%	69.95%	74.33%
State-owned	12.19%	5.80%	6.17%	1.11%
Foreign Individuals	0.93%	0.55%	1.79%	3.02%
Corporate	4.67%	27.45%	11.57%	16.26%
TOTAL	100.00%	100.00%	100.00%	100.00%

Figure 10: Number of owners in each land use category. 2007. (PEFOL, 2007)

OWNER	ERF: Land for Residential Development	Commercial Farm	Agricultural Holdings	SECTIONAL
Defective records	17.66%	15.70%	4.10%	11.40%
South African	17.73%	5.69%	43.19%	48.03%
State-owned	0.26%	0.37%	0.14%	0.14%
Foreign individuals	0.74%	0.15%	1.75%	2.46%
Corporate	63.61%	78.09%	50.82%	37.97%
TOTAL	100.00%	100.00%	100.00%	100.00%

Figure 11: Value of properties in each category. 2007. (PEFOL, 2007)

OWNER	ERF: Land for Residential Development	Commercial Farm	Agricultural Holdings	SECTIONAL
Defective records	8.27%	11.97%	18.48%	1.17%
South African	6.53%	48.60%	49.34%	22.27%
State-owned	81.00%	5.73%	21.97%	0.11%
Foreign individuals	0.07%	0.07%	1.98%	0.52%
Corporate	4.13%	33.63%	8.23%	75.93%
TOTAL	100.00%	100.00%	100.00%	100.00%

Figure 12: Area and size of land in each category. 2007. (PEFOL, 2007)

PEFOL concluded that foreign entities own approximately 3% of South Africa. This however does not include corporate ownership and/or trusts; therefore, this figure could be grossly inaccurate. PEFOL acknowledge that ownership patterns vary significantly throughout the country. For example there is a higher ownership in the vineyard areas of the Cape as well as Cape Town. Between 1999 and 2004, the sale of housing units to foreigners in Cape Town averaged between 6% - 7%. (PEFOL, 2007)

PEFOL considered a wide variety of policy interventions, such as: reporting requirements for certain transactions; government retaining a right of first refusal on agricultural land; a maximum size for foreign ownership; only lease hold for foreign entities; and additional taxation. The implication on investors and the perception that government interventions could impede investment was carefully considered. PEFOL finalized their recommendations in August 2007 in a report to The Minister of Agriculture and Land Affairs. The recommendations included:

1. Clarification of foreign ownership in the country.
2. Consideration of lowering foreign shareholding in corporations.
3. Compulsory detailed disclosure of ownership and penalties for lack of disclosure.
4. Ministerial approval for certain acquisitions and disposal of land.
5. Development of an inter-ministerial oversight committee.
6. Consideration of the use of leasehold rights for foreigners, as opposed to fee ownership.
7. Outright prohibition of foreign ownership in classified/protected areas.
8. Temporary moratorium on the disposal of state land to foreigners.
9. Improvement, harmonization of zoning, land use and planning legislation.

Cabinet formally approved the report and recommendations, followed by 60 days of comments. This issue continues to be hotly debated; however, policy development following the report has not been enacted and there are currently no statutory limitations and/or restriction on foreigners purchasing, acquiring or owning land in South Africa. (Heunis, 2010) The only restriction relates to foreign owned companies registered in South Africa where at least one director (not shareholder) must be a South African citizen. Previously, at least 25% of the share capital in the SA registered company had to be owned by an SA citizen. However, this condition is no longer in force. (Heunis, 2010)

Foreign Owned Land in Kenya

While Kenya has not been as overt as South Africa in its assessment of foreign ownership, it has implemented several policies that limit foreign ownership. For example, in Kenya foreigners are restricted from purchasing agricultural land, as per the Land Control Board Act. Agricultural land is defined by the Act as:

- (a) land that is not within -
- i. a municipality or a township; or
 - ii. an area which was, on or at any time after the 1st July, 1952, a township under the Townships ordinance (now repealed); or
 - iii. an area which was, on or at any time after the 1st July, 1952, a trading centre under the Trading Centres Ordinance (now repealed); or
 - iv. a market.

Much of the arid lands outside protected areas in Kenya that support wildlife are classified as Agricultural Land. Ownership of said lands is limited to Kenyan individuals and/or Kenyan Companies, with full Kenyan ownership by the Land Control Board Act. Any other individuals or entities that wish to deal in agricultural land are required to seek exemption from the provisions of the Land Control Act, and this exemption can only be granted by the President of the Republic of Kenya following an application for exemption.

Kenya's 2010 constitution limits the term of leases for non-citizens of Kenya:

- 65.** (1) A person who is not a citizen may hold land on the basis of leasehold tenure only, and any such lease, however granted, shall not exceed ninety-nine years.

To adequately assess the implications of foreign ownership, Kenya may choose to form a committee like South Africa to accurately determine the level of foreign ownership, rather than making policy decisions without an accurate baseline and clear idea of foreign ownership and implications on Kenya's economy.

Land Protection Options in South Africa and Potential Models for Kenya

South Africa utilizes a variety of tools to implement conservation action on community and private lands. These are highlighted below with potential applications that can be utilized in Kenya.

1. Strategic Planning

Various provinces in South Africa have completed thorough biodiversity assessments. These assessments have identified threatened and high priority areas. For example, Mpumalanga Province produced the Mpumalanga Biodiversity Conservation Plan (MBCP) in 2006.

The MBCP Goals and objectives are as follows:

The MBCP is the first spatial biodiversity plan for Mpumalanga that is based on scientifically determined and quantified biodiversity objectives. The purpose of the MBCP is to contribute to sustainable development in Mpumalanga.

Its specific objectives are:

1. *To guide the Mpumalanga Tourism and Parks Agency (MTPA) in implementing its biodiversity mandate, including working with landowners to improve the provincial protected area network.*
2. *To provide biodiversity information that supports land-use planning and helps to streamline and monitor environmental decision-making.*

More broadly, the MBCP provides a scientifically based planning and monitoring tool for biodiversity conservation for the MTPA. For DALA, it serves to encourage environmental regulators to be pro-active in dealing with the competing pressures for economic development and biodiversity conservation. Finding this delicate balance is the ultimate goal of land use planning and sustainable development.

The MBCP maps the distribution of the Province's known biodiversity into six categories. These are ranked according to ecological and biodiversity importance and their contribution to meeting the quantitative targets set for each biodiversity feature. The categories are:

1. *Protected areas - already protected and managed for conservation;*
2. *Irreplaceable areas - no other options available to meet targets—protection crucial;*
3. *Highly Significant areas - protection needed, very limited choice for meeting targets;*
4. *Important and Necessary areas - protection needed, greater choice in meeting targets;*
5. *Ecological Corridors – mixed natural and transformed areas, identified for long term connectivity and biological movement;*
6. *Areas of Least Concern – natural areas with most choices, including for development;*
7. *Areas with No Natural Habitat Remaining – transformed areas that make no contribution to meeting targets.*

Based on the biological assessments and plans, in 2007 South Africa developed a National Protected Area Expansion strategy that outlines biologically significant expansion areas. The Provinces have taken this to a more detailed level with provincial protected area expansion strategies. This forward thinking and comprehensive planning approach enables the relevant parties to implement conservation in a cost efficient and strategic way.

While Kenya has various plans for protected areas and community lands, it has not done an overall biodiversity plan for Kenya. As a result, conservation is done in a fragmented way, which is costly and limits Kenya's ability to achieve high biodiversity conservation objectives. For example, the Government of Kenya recently said it wants to restore and protect 10% of the country's forests, yet, they have no indicated how and where. Without a comprehensive strategy, this objective will be hard to achieve. In addition, many of Kenya's corridors have been fragmented and developed. Had Kenya developed an overall strategy, these areas would have been identified and secured. Kenya should consider conducting a full biological assessment and/or pull together existing data to plan, and develop protected area expansion strategy.

2. Co-Management Agreements

Co-management of land has been one of the strategies employed with the settlement of land claims. A Protected Area Authority, such as SANParks, enters into an agreement with a community to manage their land in exchange for certain benefits and rights. This model is being used with the Makuleke Community, who has a co-management agreement with SANParks, described earlier as an example of a successful claim. The Makuleke community owns the land, but SANParks manages the land for them as per a 50-year formal agreement. In South Africa, the National Environmental Management Protected Areas Act guides co-management in protected areas. Co-management arrangements vary greatly and range from the Protected Area Authority consulting on an ad-hoc basis with the surrounding communities to a more formal approach where a lease or co-operative co-management agreement is signed between the Protected Area Authority and the community. The more engagement the community has, the more benefits they will most likely generate. However, more engagement also requires more responsibility in the form of skills, capacity, time and money, as well as more risk. With a drive for more substantial community engagement, South Africa is trying to engage more communities in co-management and co-operative management agreements. This requires substantial technical and legal support and capacity development for the community and commensurate financial resources. (Koning, 2009)

Co-management is a methodology that could be used in Kenya. While Kenya uses a variety of management and conservation tools, co-management is not a technique currently used. Informal consultation from the protected area authority, for example the Kenya Wildlife Service (KWS), with the surrounding communities is common. In addition, monetary benefits from Parks are shared with surrounding communities. While Kenya law references the protected area authority will support community conservation, it is vague and does not specify how, how much and when. Therefore, the more formal co-management model could be used to expand protected areas and provide more benefits to communities who retain ownership of the land. For example, Amboseli National Park located in southern Kenya and managed by Kenyan Wildlife Service (KWS) is world renowned for its elephants and magnificent views of Mt. Kilimanjaro. The Park is 392 km² and forms the core of a larger ecosystem while six surrounding units of community land, known as group ranches, surround the Park. Amboseli National Park is far too small to support viable populations of wildlife, and the wildlife is dependent upon the surrounding community land that serves as a dispersal area.

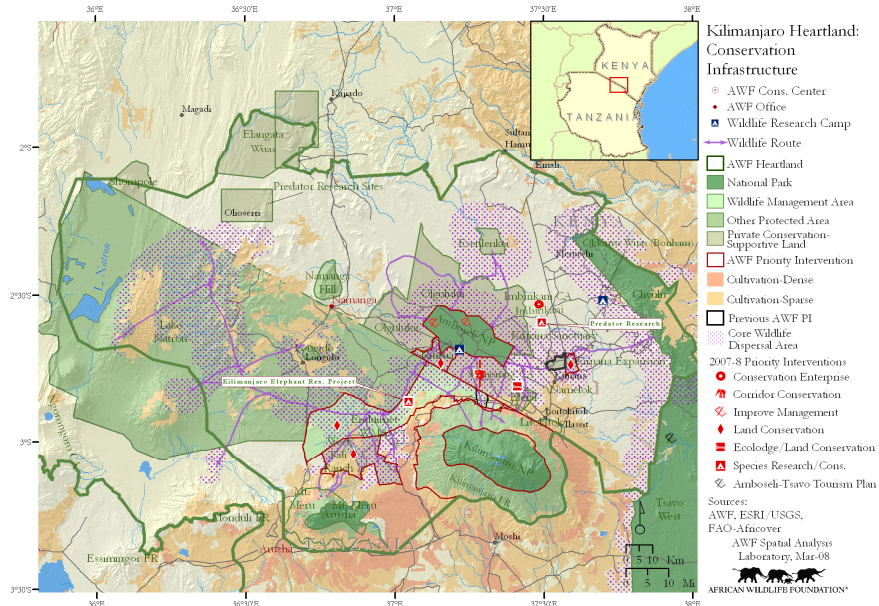


Figure 13: Amboseli National Park and surrounding eco-system.

A number of conservation strategies have been used in this landscape to protect community-owned land, including:

1. Developing tourism facilities to generate income to support surrounding private and community conservancies established on land outside of PAs.
2. Leasing land for conservation.

While both of these options have succeeded in some areas, their use across the landscape is not entirely feasible. Each community conservation area cannot support a tourism facility. Already, the wildlife experience in Amboseli is threatened by too many tourist facilities in a small area and fragile eco-system. In addition, the existing lodges are not operating at a high occupancy rate. While leasing land for conservation protects land through a legal agreement, the long-term sustainability of lease programs is questionable due to the recurrent expense of annual lease payments and for those payments to be competitive with inflationary price increases including as pertains to the potentially increasing value of units of land over time.

Co-management may provide a feasible option for areas such as Amboseli National Park. While there is no statute in Kenya that obligates KWS to provide benefits to communities, there is a level of engagement with communities outside of protected areas. For example, if a community was interested in protecting land adjacent to the Park, the community could enter into a Co-Management Agreement with KWS wherein KWS would manage the land on behalf of the community in exchange for financial benefits. One of the benefit sharing models used in South Africa, in Mabusa Nature Reserve and Manyeleti Game Reserve Mpumalanga Province, is a portion of the income generated from the Protected Area (PA) is given to the community based on the percentage of land surface area owned by the community in relation to the total size of the PA. For example, if the community lands make up approximately 25% of the total size of the PA, then the community would be entitled to 25% of the net profit generated by the PA.

In South Africa, co-management is also referred to as a contractual Park. The Richtersveld National Park, located in the northwest corner of South Africa, is the country's only entirely contractual National Park. The community has a contract with SANParks from whom they receive rental payment, paid to a registered trust, representing and governed by the community. Because the area is remote and does not host charismatic wildlife, tourism development has not reached its potential. In addition, there has been ethnic and political

conflict among community members, thereby complicating the arrangement. Having professional management by SANParks and the ability to market the Park as an official Park helps increase income generation for the community significantly. (Roe et al., 2009) Community members are allowed to graze cattle and goats in the Park; the numbers are limited by the contract.

Despite the challenges referenced in the Richtersveld National Park example, this model of a fully contractual Park is something that could be considered in East Africa. For example, northern Kenya does not have a National Park; it has reserves and community conservancies. Some of these conservation areas lack professional management and marketing expertise to draw in tourists and optimize economic potential. Communities could choose to lease their land to the Kenya Wildlife Service to create and manage a National Park. The land would continue to be owned by the community, but managed via the contract by KWS with income coming back to the community. Many of these lands are areas where the community does not reside, so formalization as a Park would not require relocation.

3. National Environmental Management: Protected Areas Act

South Africa's National Environmental Management: Protected Areas Act (NEMPAA) is the primary national law governing protected areas (Laws of South Africa, 2003). The Provinces also have their own Provincial conservation legislation. NEMPAA provides a tool for private landowners who wish to protect their land as a protected area, with various sub-classifications:

- i. special nature reserves
- ii. nature reserves
- iii. wilderness areas
- iv. protected environments
- v. forest areas, forest nature reserves, forest wilderness areas

While the criterion for declaring each kind of protected area is specified in the Act, Chapter Three (3) of NEMPAA outlines the purposes of the declaration of areas as protected areas to:

- (a) protect ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes in a system of protected areas;
- (b) preserve the ecological integrity of those areas;
- (c) conserve biodiversity in those areas;
- (d) protect areas representative of all ecosystems, habitats and species naturally occurring in South Africa;
- (e) protect South Africa's threatened or rare species;
- (f) protect an area which is vulnerable or ecologically sensitive;
- (g) assist in ensuring the sustained supply of environmental goods and services;
- (h) provide for the sustainable use of natural and biological resources;
- (i) create or augment destinations for nature-based tourism;
- (j) manage the interrelationship between natural environmental biodiversity, human settlement and economic development;
- (k) generally, to contribute to human, social, cultural, spiritual and economic development;
- or
- (l) rehabilitate and restore degraded ecosystems and promote the recovery of endangered and vulnerable species.

Private landowners, should their land meet the above criteria, may protect their land as a special nature reserve, a nature reserve and/or a protected environment. Again, the definitions of each of these protected areas are defined in the Act. The protection of a wilderness area must be done within a nature reserve and can comprise of a portion of a nature reserve. There is a consultative process for protected area declarations that

is outlined in NEMPAA. The Act also provides for notice of a proposed declaration to be advertised, for owners and occupiers to be notified, should they not be the party that petitioned for said declaration, and for interested and affected parties to be notified. If the owner of private land consents to and/or has petitioned for the declaration of a nature reserve or protected environment on his or her land, section 35 (3) states that:

- (a) “The terms of any written agreement entered into between the Minister or MEC and the owner of private land in terms of section 18(3), or 23(3) are binding on the successors in title of such owner.” And (b) “The terms of agreement must be recorded in a notarial deed and registered against the title deeds of the property.”

While the terms are registered against the deeds of the property and binding to subsequent owners, withdraw of designation of a protected area is permitted and outlined in the Act, Section (24) subject to the following procedures:

A declaration under section 23(1) may only be withdrawn:

- (a) in the case of a declaration by the Minister, by resolution of the National Assembly;
 - (b) in the case of a declaration by an MEC, by resolution of the legislature of the relevant province; or
 - (c) in terms of subsection (2).
- (2) If the Minister or MEC, or the other party to an agreement, withdraws from an agreement referred to in section 23(3), the Minister or MEC must withdraw the notice in terms of which land in question was declared a nature reserve or part of an existing nature reserve.

The declaration of a protected area under NEMPAA imposes certain legal obligations regarding the management of the land. The Act requires a management plan and clearly stipulates the objectives of the plan. NEMPAA also stipulates who should manage and/or co-manage the land (a natural person, an organ of state or company). (Laws of South Africa, 2003)

There may be tax advantages to entering into an agreement with conservation authorities in terms of NEMPAA. Section 37C of the Income Tax Act which deals with “deductions in respect of environmental conservation and maintenance” (Income Tax Act, 1962) provides that expenditure incurred by a tax payer to conserve or maintain land is deemed to be expenditure incurred in the production of income and for the purposes of a trade carried on by that tax payer, if the conservation or maintenance is carried out in terms of a Biodiversity Management Agreement that has a duration of at least five years and the land consists of, includes or is in the immediate proximity of the land that is the subject of the agreement. In addition, if land is declared a nature reserve under NEMPAA and this is recorded on the title deed and has a duration of at least 99 years, an amount representing 10% of the lesser of the cost or market value of the land (adjusted if owner retains a right to use the land) is deemed to be a donation paid to the government in the year of assessment in which the land is declared and each of the succeeding nine years of the assessment. The Municipal Property Rates Act provides that a municipality may not levy a rate on those parts of a nature reserve within the meaning of NEMPAA, which are not developed or use for commercial, business, agricultural or residential purposes. The Act also permits a local municipality to determine a rates policy in terms of which certain categories of properties may be exempted from rates. These categories may include land under conservation (Heunis, 2010).

The ability of a landowner to voluntarily restrict their land via NEMPAA is a useful and versatile tool that Kenya should consider. Kenya is currently drafting its Land Policy and Wildlife Policy. The current Wildlife Policy of Kenya, CAP 376, does not include options for communities and/or landowners to secure their land.

To strengthen conservation in Kenya and achieve biodiversity objectives a suite of options for private landowners should be incorporated into Kenya policies.

3. The National Environmental Management: Biodiversity Act

The National Environmental Management: Biodiversity Act (NEMBA) also provides conservation tools for landowners, with a focus more specifically on biodiversity protection. Section 43 of NEMBA allows any person to submit a Biodiversity Management Plan (BMP) to the National Minister or Member of the Executive Council (MEC) for approval. The purposes for which a BMP may be submitted are to protect an ecosystem that is either formally listed as threatened or in need of protection or that “warrants special conservation attention,” to protect a species that is either formally listed as threatened or in need of protection or warrants special conservation attention or to protect a migratory species in respect of which South Africa has obligations under international law. (Laws of South Africa, 2004)

Section 43 of NEMBA states that:

(2) Before approving a draft biodiversity management plan, the Minister must identify a suitable person, organisation or organ of state which is willing to be responsible for the implementation of the plan.

(3) The Minister must-

- (a) publish by notice in the Gazette a biodiversity management plan approved in terms of subsection (1);
- (b) determine the manner of implementation of the plan; and
- (c) assign responsibility for the implementation of the plan to the organisation or organ of state identified in terms of subsection (2).

There are more specific requirements for threatened and endangered species/ecosystems. Like NEMPAA there is a consultative process that is outlined in NEMBA. (Laws of South Africa, 2004)

NEMBA specifies what the Biodiversity Management Agreement (BMA) must contain and stipulates a review of the plan every five years. The National Minister has recently published Norms and Standards for drafting BMP's for species (Heunis). The South African National Biodiversity Institute is established by this Act to monitor and report on the Republic's biodiversity. (Laws of South Africa, 2004)

South Africa's National Protected Area Expansion Strategy 2008-2012 (NPEAS), referenced prior, has an objective to “*to achieve cost effective protected area expansion for ecological sustainability and increased resilience to climate change.*” (South African National Biodiversity Institute, 2007) NPEAS outlines four main strategies for securing land:

1. Land Acquisition
2. Contracts (ie. co-management)
3. Biodiversity Stewardship
4. Declaration of Public and State Land

The NPEAS notes that land acquisition is costly and that the declaration of public and state land will require the reassignment of land, which is not highly probable because most of the target land is not public. Therefore, the use of contracts as well as stewardship agreements is the most cost-effective mechanism for protected new strategic lands according to the NPEAS.

The use of Biodiversity Stewardship management plans and stewardship is innovative in its approach, but the implementation of this program is limited because most provincial conservation agencies do not have the

capacity and funding for implementation. Some agencies, such as the Mpumalanga Tourism and Parks Agency are reaching out to partners, such as NGOs, to help implement these programs.

While the NPEAS provides overall guidance for protected area expansion, several provinces have also developed expansion strategies that guide biodiversity protection. For example, the Mpumalanga Provincial Government produced the Mpumalanga Biodiversity Conservation Plan Handbook, which is a comprehensive assessment of biodiversity in the province, target species and ecosystems and recommendations for strategic conservation.

NEMBA offers landowners a variety of options for managing biodiversity on their land. For landowners who do not want to declare their land a nature reserve or protected environment, NEMBA provides a diversity of options for biodiversity stewardship and management with support from qualified agencies. Kenya should provide similar options for private landowners. In particular this would help communities who need professional support and expertise to manage biodiversity on their land. The challenge Kenya would face, like that of South Africa, is building the capacity of the appropriate agencies to be able to support private landowners. Another option, is for agencies to partner with non-governmental organizations who have the resources and expertise to provide stewardship and conservation support.

Conclusion

As many countries across Africa in post-independence struggle with land reform, the South Africa land reform program provides many lessons learned regarding process and cost, as well as challenges and successes.

Currently, South African legislation provides a variety of different tools for community and private landowners to protect their land. For AWF to achieve its conservation objectives in South Africa, it should:

1. Work with private landowners/communities to help them protect their land through NEMPAA.
2. Work with private landowners/communities to enhance the management and conservation of their land through stewardship agreements, as per NEMBA.
3. Provide post-settlement support to communities who have been reallocated land, but need capacity for conservation management and development of their land.
4. Provide support to agencies, such as MTPA, who are in charge of management through Biodiversity Management Areas.

Kenya should consider the implementation of a country wide protected area expansion strategy. This would provide a thorough assessment of the country's biodiversity, as well as a comprehensive conservation plan and targets, and shift conservation action from its current fragmented approach.

For Kenya to achieve its biodiversity objectives it needs to provide a variety of conservation tools for communities and private landowners that help incentivise conservation. AWF can work with protected area authorities such as KWS to design and implement a co-management model to help increase the conservation of strategic lands outside of protected areas in Kenya as well as increase income to landowners. In addition, there may be appropriate areas in Kenya where land can be declared a full contractual Park. AWF should aim to pilot these models. South Africa statute governs co-management agreements in protected areas. While Kenya statutes do not do so, there is nothing prohibiting this type of management agreement.

Kenya should consider incorporating similar classifications as those provided in NEMPAA into its land and wildlife policies, which will enable landowners to have their land designated as nature reserves, wilderness areas. In addition, Kenya should provide landowners with stewardship conservation options, such as those found in NEMBA.

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