

**TRENDS IN FOREST OWNERSHIP,
FOREST RESOURCES TENURE AND
INSTITUTIONAL ARRANGEMENTS:
ARE THEY CONTRIBUTING TO
BETTER FOREST MANAGEMENT AND
POVERTY REDUCTION?**

A CASE STUDY FROM SOUTH AFRICA

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Contents

ACKNOWLEDGEMENTS	III
SUMMARY	IV
ACRONYMS	VII
INTRODUCTION	1
THE TENURE SYSTEM	2
Historic context	
Public ownership	2
Private ownership	3
Community-/group-managed forests	4
CHANGES, TRENDS AND IMPACTS	6
Overview	6
Land transfer	7
Tenure and governance reform	9
Devolution of forest resources	10
Privatization of State forest plantations	11
Broad-Based Black Economic Empowerment	13
CONCLUSIONS	15
PROPOSALS FOR THE WAY FORWARD	17
REFERENCES	18
Annex. Glossary	19

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Summary

This South African case study forms part of an Africa-wide comparative review of the relationship between forest tenure and forests' contribution to local livelihoods and poverty alleviation. The aim of the review is to derive lessons about how best to ensure sustainable use and management of forest resources in ways that support the livelihoods of poor people.

In 1994, the first democratic government of South Africa inherited a State deeply divided by the effects of 300 years of colonialism and apartheid. The black majority, forming 80 percent of the population, was effectively excluded from landownership, governance and full participation in the economy. This marginalization had serious consequences on access to and control of forest resources, and posed a threat to the sustainability of forests.

Existing forest ownership and management categories strongly reflect and reinforce patterns of power, wealth and access established during the colonial and apartheid eras. Forest ownership can be grouped into three broad categories: (1) public – State forests and nature reserves/parks; (2) private – forests on land owned by individuals and companies; and (3) communal – forests on trust land, which is owned by the State and held in trust for tribes and other groups. The rural poor were effectively excluded from access to and control over forest resources in any of these categories. Legislation prohibited access to public and privately owned forests, and allowed only limited use of forest produce for subsistence purposes. Access to forest resources on communal lands was reduced by overcrowding and the breakdown of institutions for resource management, and by occupants' limited rights to land and resources in these areas.

The new government embarked on an ambitious programme to redress the wrongs of the past, draw black people into the mainstream economy, and build a functioning democracy. This review focuses on five key national programmes, all with the potential to bring about far-reaching changes to the prevailing patterns of tenure, management and access to land and forest resources.

Land transfer

Two primary mechanisms have been put in place for land transfer: the *restitution* of land lost through race-based laws and practices; and the *redistribution* of privately owned and public land. The government has pledged to transfer a total of 30 percent of white-owned land to black owners by 2015. An estimated 40 percent of privately owned plantations and 70 percent of State-owned plantations are subject to land claims.

Land transfers have the potential to change patterns of forest resource ownership and management significantly, as well as delivering much-needed income-earning opportunities to the poor. Of particular interest are strategic partnership arrangements that give claimants opportunities to become shareholders in forestry enterprises, while ensuring that forests are retained on the land post-transfer. The land restitution and redistribution programmes both face considerable implementation difficulties, however; the transfer of land is considerably behind target, and land that has been transferred has largely failed to provide adequate livelihoods for beneficiaries.

Tenure and governance reform in communal lands

The tenure reform programme aims to provide security of tenure to those occupying communal lands that are currently owned by the State and administered by State-appointed traditional authorities. The programme to establish structures and systems for democratic local governance is allied to tenure reform. Traditional leadership structures have vigorously campaigned against the government's reform policies, however, resulting in much confusion, failure to implement and back-tracking on the part of government. To date, both programmes have become controversial, and problems of tenure insecurity and undemocratic governance remain.

Devolution of public forest resources

Commitment to the devolution of State and other publicly owned forests in South Africa is limited to the transfer of management responsibilities, which can be revoked if management standards are not upheld. The targets of these transfers are public agencies and commercial forestry, and not communities – devolution of forest ownership to local communities is not envisaged in policy or provided for in law.

Privatization of State forests

In line with recent trends worldwide, South Africa has embarked on a programme to privatize State-owned plantation assets. Four of the five high-potential commercial forestry packages have already been transferred to private sector bidders, under terms that favour equity stakes for local communities and investment in the development of local, black-owned forestry enterprises. Although the process is very new, there are indications that privatization delivers greater benefits to local communities and results in better forest management than occurred under State ownership and management. The State has a very important role in brokering these deals.

Broad-Based Black Economic Empowerment

The national Broad-Based Black Economic Empowerment (BB-BEE) Programme is an innovative and groundbreaking approach to addressing the economic marginalization of previously discriminated against groups. The Forest Sector Transformation Charter, produced to accompany the BB-BEE Act, commits the industry to attaining 30 percent black ownership and to increasing substantially the number of black people, including women, exercising management control by 2015. Targets have been set for business entities' contributions to skills development, preferential procurement, enterprise development and socio-economic development. If met, these targets will have a significant impact on current patterns of forest and forest resource ownership, management and access. The programme is about to be launched, so it will be a while before its effects can be felt and measured.

Recommendations

A number of recommendations arise from this case study:

- Securing individual and group rights to land and resources, and ensuring effective and democratic local governance remain top priorities for communal land.
- The government needs to increase its commitment to devolving the ownership and management of publicly owned forests in communal lands to local communities, within the framework of a national policy review and taking into account the experiences of other countries in Africa and Asia.
- The transfer of forest land to communities through restitution and redistribution needs to be expedited.
- Providing post-settlement support, including for viable forest-based livelihood strategies and the development of resource management institutions, is of critical importance.
- There is need to develop further and promote models for strategic partnership arrangements that give beneficiaries access to profits from the commercial use of forests on their land. Benefit flows from commercial enterprises can contribute to livelihood security and provide incentives for retaining forests on land that might otherwise be cleared for other land uses.
- The privatization of State plantations should be comprehensively evaluated, and recommendations made on how to address key problems and enhance benefit flows to local communities.

- Government and industry undertakings related to the Forest Sector Transformation Charter apply to a number of the challenges identified in this review. There is need to provide resources for the monitoring and support of the charter's implementation, as well as for analysis and documentation of lessons relevant to other sectors and countries.

Acronyms

ANC	African National Congress
BB-BEE	Broad-Based Black Economic Empowerment
BEE	black economic empowerment
CFA	community forestry agreement
CRLR	Commission on Restitution of Land Rights
DWAF	Department of Water Affairs and Forestry
FSC	Forestry Stewardship Council
KLF	Komatiland forests (package)
MOU	Memorandum of Understanding
NGO	non-governmental organization
NWFP	non-wood forest product
SANDEF	South African National Defence Force

Introduction

This study forms part of an Africa-wide comparative review of the relationship between forest tenure and forests' contribution to local livelihoods and poverty alleviation. Country case studies examine recent trends in democratization and decentralization in relation to poor people's access to and control over forest resources. The aim of the review is to derive lessons about how best to ensure sustainable use and management of forest resources in ways that support the livelihoods of the poor.

The case studies start from a series of matrices developed as part of the same FAO programme in each of the countries. These matrices present a summary of the areas of forests under a range of tenure and management categories. Case study authors were requested to describe the information contained in the matrices, and analyse the extent to which different ownership and management regimes contribute to improved forest management and poverty reduction, drawing out conclusions for policy and practice. The South African matrices subdivided forests into three categories, in accordance with the National Forests Act: natural forests, woodlands, and plantations. All three categories are considered in this case study.

The South African case study begins with a description of forest ownership, access and management in South Africa and links this to the legacy of colonial and apartheid government policies and laws. The tenure and governance context inherited by the 1994 democratic government is described, setting the scene for a description of forest ownership and management categories, and how these tend to follow and reinforce patterns of power, wealth and access established during the colonial and apartheid eras.

The second part of the study examines five national government-led programmes to transform the race-based legacies of colonialism and apartheid, which have an impact on patterns of forest ownership, management and access to benefits. The progress made and the problems and difficulties facing these national programmes are explored.

The paper concludes with an overview of key lessons that have emerged from each of the five programmes reviewed, the challenges that remain, and recommendations for the way forward.

The tenure system

HISTORIC CONTEXT

The situation inherited by the first democratic Government of South Africa in 1994 called for reforms aimed at ensuring more equal access to resources, and establishing democratic systems of local governance. To a large degree, however, pre-democracy patterns still pertain, so this overview provides a fairly accurate description of the current situation.

The tenure and governance framework inherited by the 1994 government is typical of post-colonial States in Africa, described by Mamdani (quoted in Ntsebeza, 2002) as the “bifurcated State”. In South Africa, the bifurcated State divided the population as follows:

- *Citizens* – predominantly whites of European descent – owned private property and voted for representatives. White people comprised 10 percent of the population, and owned 65 percent of the land in South Africa in 1994.
- *Subjects* – predominantly black South Africans – had no formal ownership rights to land, but were allocated land to use, and were under the control of traditional leaders who were not elected. Black people comprised nearly 80 percent of the population and occupied 13 percent of the land in 1994.

Land tenure categories and demography also follow the pattern of the bifurcated State. There are three broad categories of land tenure: private property, State or public property, and communal land, which is held in trust for communities by the State and administered by traditional authorities.

TABLE 1
Tenure and race in South Africa

	% land area	Ownership and occupancy profile
Public property	20%	Protected areas, defence force (SANDF), public works and other land
Private property	65%	Predominantly owned by white farmers and corporations. Home to 3 million black farm workers and tenants with insecure tenure rights
Communal lands	13%	State-owned land officially granted for exclusive use by tribes and other groups. Home to 3.3 million black South Africans

PUBLIC OWNERSHIP

All public land is registered in the name of the South African government, or a proxy of the State. Officially, therefore, all public land is owned by the national State, and not by provinces or local governments. According to national and provincial legislation, protected areas can be set aside as nature reserves/national parks, world heritage sites, marine protected areas, specially protected forest areas and mountain catchment areas. Nature reserves/national parks and specially protected forests are the categories most relevant to this review.

The Protected Areas Act 57 of 2003 governs the setting aside, management and monitoring of nature reserves and national parks, while the National Forests Act 84 of 1998 does the same for specially protected forest areas. These acts make provisions for the protection of forests and the setting aside of protected areas, and give the State jurisdiction over other tenure categories. In this review, public ownership of forests refers to State land that has been set aside for protected areas. Protected area management is assigned by the responsible minister – the Minister of Environmental Affairs and Tourism for nature reserves and national parks, and the Minister of Water Affairs and Forestry for forestry – to “a suitable person, organization or organ of State” (Protected Areas Act). There is therefore a distinction between ownership, which is always at the national level, and management responsibility, which can be at the national, provincial or local government level.

State-managed forests

Natural forests and woodlands within national parks: Access to and use of forest resources in national parks is managed through a zoning system and is strictly controlled through licensing. Use is restricted to access zones within the parks, and allows the harvesting of resources only for household use and crafts to sell to tourists. Policy and legislation make no provision for devolution or co-management of parks. Not all parks are well protected and managed by the authorities concerned, and illegal harvesting takes place to various extents.

State forests under the Department of Water Affairs and Forestry (DWAF): These include areas of natural forest, woodland and plantation. Access to and use of State forests can be authorized through provisions in the National Forests Act 84 of 1998. These include section 24 exemption, which grants local communities access to products for subsistence use without the need for a licence, and other provisions for licences, leases, concessions and community forestry agreements (CFAs). Provision is made for devolving forests through a CFA between the minister and a community, but no CFAs have yet been concluded. Some State forests, especially smaller and geographically dispersed ones, are not effectively managed or protected, and can be subject to high levels of illegal harvesting, or even forms of repossession by local communities.

Forests occur on other forms of State land, including that of the South African National Defence Force (SANDF), which are not set aside as protected areas and are not included in this review.

Forests managed by provincial government

These fall into the following categories:

- *provincial parks* set aside under provincial statutes, in which – as in national parks – there is some access to a limited range of forest products for surrounding communities, but no provision for co-management;
- *protected areas* set aside under national legislation and assigned or delegated to provincial management, such as State forests assigned to provinces;
- *unassigned State forests*, of which a large number are managed by provincial conservation bodies without formal assignment; DWAF is currently engaged in assigning these to appropriate management authorities; as State forests, they fall under the National Forests Act and its provisions regarding access and co-management.

Forests managed by municipalities

These include municipal nature reserves containing woodlands and natural forests, and municipal plantations.

Other public land

Forests, mainly woodlands, also occur on other forms of public land, such as that controlled by SANDF and by public works. No information is available about the extent, status and use of these forests.

PRIVATE OWNERSHIP

Most land in South Africa – 65 percent – is privately held under a well-developed system of freehold tenure. This land was set aside for exclusive ownership by white people during the apartheid and colonial administrations. Since the abolition of discriminatory landholding laws, there has been a gradual shift in the racial profile of landholders, but land remains predominantly in the hands of white individuals/families and large corporations. The current government has pledged to transfer 30 percent of land to black ownership by 2015. Most

private land management is exclusive and excluding in nature. Other than through leasing, access rights to forests are not generally allocated to third parties. Law and practice treat non-owners as trespassers or poachers, and even those who live on the land (such as farm workers and tenants) have very limited – or even no – rights of access to forest resources.

Data on plantation areas are disaggregated according to whether the areas are held by corporations or individual landowners, but those on natural forests and woodlands are not disaggregated in this way. The legal framework conferring rights and responsibilities is the same for both categories.

Plantations

There are 182 830 ha of privately owned plantations outside the corporate sector, and 813 993 ha within it. This includes privatized State-owned plantations.

Woodlands

An estimated 20 million ha of woodland occurs on privately owned land – both individual-/family-owned and that owned by companies/corporations. (This figure includes categories of woodland that are not included in the FAO definition of forests.) Woodlands are categorized according to whether they are on farms, on private nature reserves and conservancies, or on private land managed by the State under agreements.

Natural forests

There is an estimated 115 292 ha of natural forest on privately owned land – both individual-/family-owned and that owned by companies/corporations. Forest categories include those on farms, those on private nature reserves and conservancies, and those on private land managed by the State under agreements.

COMMUNITY-/GROUP-MANAGED FORESTS

The majority of rural black South Africans occupy land under forms of indigenous tenure, based largely on informal landholding rights and customary use practices. Although most of this land is publicly owned, it is officially granted for the exclusive use of tribes and other groups. In KwaZulu Natal province, Zulu people occupy 2.8 million ha, which is owned by the Ingonyama Trust. A board has been set up to administer this land for the material benefit and well-being of individuals in the communities occupying it. Some 13 percent of South Africa's total land area is under a form of trust land, where residents have various rights to occupy and utilize the land and its resources, but not full ownership rights. Such land is referred to as communal land in this case study.

Plantations

In communal lands, extensive areas of plantations have been established by national, provincial and local government agencies and non-governmental organizations (NGOs). In this review, these plantations are considered as publicly owned, even though a proportion of them are on land leased by the State from local chiefs. In some parts of the country, especially KwaZulu Natal and Mpumalanga, individuals and families have established their own plantations with support from extension agencies or under company-supported out-grower schemes. The individual or family concerned owns the plantation, but does not have title to the land.

Contracts oblige out-growers to sell the timber they produce to the company, which deducts any advance it has made to the grower from the purchase price of the timber. However, many out-growers sell to other buyers, to avoid repaying their loans (Clarke and Isaacs, 2005), which suggests that the contracts signed with timber companies do not encumber the growers' ownership of the timber. Many out-growers that honour the terms of their contracts go on to produce second rotation crops, which also suggests that their

ownership is secure, despite the contracts. Recently, group schemes to establish medium- to large-scale commercial plantations have been supported in parts of the country that are not suited to household production. In these cases, the group establishes a formal institution – a company or a trust – that owns and operates the forest enterprise. All group members are shareholders of the trust/company and elect a committee to manage day-to-day activities (Howard *et al.*, 2005).

These examples suggest that commercial timber production enables individuals and groups to secure ownership rights to forests in communal lands, despite the lack of formal land rights.

Natural forests

Excluding forests that have been set aside as protected areas by national or provincial legislation (which are considered to be under public ownership), the natural forests occurring on communal lands generally fall under the control of traditional leaders – local chiefs and headmen. The nature of this control varies from area to area, depending on the underlying cultural traditions and their influences over these traditional institutions.

Although not proclaimed as State forests, the State exerts some control over natural forests through the National Forest Act 84 of 1998, which prohibits the cutting or damage of any tree in a natural forest without a licence. This provision undermines the authority of local leaders and weakens local communities' rights of access, and the State can barely manage its own State forests, let alone enforcing the law within unreserved forests. Although the National Forests Act makes provision for the State to enter into forest management agreements with local communities, no such agreements are yet in place.

Woodlands

There is approximately 1.5 million ha of woodland on community land (only a proportion of which falls under the FAO definition of forests). Much of this is on village common land and is managed under common property systems, which have broken down in many areas.

Summary

Unlike commercial plantation owners, individuals and groups have not secured ownership rights to unreserved natural forests and woodland resources on communal land. Underlying land rights rest with the State (or, in KwaZulu Natal, the Ingonyama Trust). Although management authority rests with traditional leaders, the provisions of the National Forest Act and other statutes governing the use of natural resources dilute this authority.

Changes, trends and impacts

OVERVIEW

The 1994 government inherited a country strongly divided along racial lines, a long history of land alienation and dispossession, and an economy that effectively excluded black people other than as labourers. The new government embarked on an ambitious programme to redress the wrongs of the past, draw black people into the mainstream economy and build a functioning democracy. This review focuses on five key national programmes, all of which have the potential to bring far-reaching change to the prevailing patterns of tenure, management and access to land and forest resources.

Land transfer

The 1994 government pledged to transfer 30 percent of white-owned land to black owners within five years; this target date has since been shifted to 2015. Two primary mechanisms for the transfer have been put in place: *restitution* of land lost through race-based laws and practices; and *redistribution* of privately owned and public land.

Tenure and governance reform in communal lands

The tenure reform programme aims to provide security of tenure to those occupying communal lands that are currently owned by the State and administered through State-appointed traditional authorities. Tenure reform also aims to secure the rights of those living on other categories of land under different ownership, particularly farm workers on commercial farms and residents of informal settlements in urban and peri-urban areas. Allied to tenure reform is a programme to establish structures and systems for democratic local governance.

Devolution of forest resources

The devolution of forest resources is not a priority on the national agenda, but it is of direct relevance to this review. Some elements of policy and law imply a commitment to the principles of subsidiarity, but there has been little focus on this, other than a programme to transfer natural State forests to other agencies, for management on behalf of the national forest authority.

Privatization of State forests

In line with recent trends worldwide, South Africa has embarked on a programme to privatize its State-owned plantation assets. Four of the five high-potential commercial forestry packages have already been transferred to private sector bidders, under terms that favour equity stakes for local communities and investment in the development of local, black-owned forestry enterprises.

Broad-Based Black Economic Empowerment

The government has put in place a far-reaching programme to redress inequality and boost economic growth through transforming the business ownership profile in the country. The Forest Sector Transformation Charter, produced alongside the Broad-Based Black Economic Empowerment (BB-BEE) Act, is a master plan for transformation of the forest sector, produced during a 24-month consultation process involving all sector stakeholders. The charter provides a framework, targets and undertakings for transforming the forest sector, including a commitment to attaining 30 percent black ownership and to increasing substantially the number of black people – including women – exercising management control by 2015 (DWAF, 2006).

The following sections overview each of these programmes, assess the impacts each has had and may have on patterns of forest resource management and ownership, and summarize the constraints faced. Case studies illustrate lessons learned and key challenges facing the government and society in transforming patterns of forest resource ownership, access and management.

LAND TRANSFER

Restitution

Overview: Restitution was introduced in 1994 with the intention of redressing past injustices created by race-based legislation and practices. It is one of three programmes within the overall land reform programme, which also includes redistribution of land and tenure reform.

According to the Restitution of Land Rights Act 22 of 1994, victims of forced removals were given the opportunity to lodge restitution claims from 2 December 1994. The original cut-off date for lodging claims was 1 May 1998, but Parliament extended this to 31 December 1998. An estimated 79 696 claims were lodged, of which 68 730 have been settled. The target date for settling all claims is March 2008.

Most of the claims settled to date are urban claims, which have been settled with cash compensation rather than the restoration of land. Only 6 percent of settled claims have involved the transfer of rural land. The bulk of outstanding claims are rural claims, in which claimants are more likely to demand the right to return to their dispossessed land. This is likely to be a complex, costly and lengthy process. It is not yet known how much land – and where – is involved, so the changes in land use that may be brought about are also unknown. The Commission on Restitution of Land Rights (CRLR) estimates that 70 percent of Mpumalanga and Limpopo provinces are subject to claims, including large areas of commercial farmland, mainly under export horticulture, and public forest.

Restitution and forest land: An estimated 40 percent of privately owned plantations are subject to land claims, and 70 percent of State-owned plantations are either under claim or have well-established agreements in place that recognize access or ownership rights for local communities. As far as can be ascertained, only one claim to a State forest has been settled.

More progress has been made with settling claims to indigenous forests and woodlands. A number of high-profile restitution cases involving protected areas have been settled, including the Makuleke land claim, which involves a portion of the heavily wooded Kruger National Park, and the Dwesa-Cwebe and Mkambati land claims, which involve large areas of protected coastal indigenous forests.

Strategic partnerships: Joint ventures and strategic partnerships are increasingly being adopted and promoted in land claim settlements. The Makuleke land claim was the first and is the best known example, whereby claimants regained rights over the land on condition that it remains under conservation management (Robins, Steenkamp and van der Waal, 2006). In exchange, they are paid compensation for foregoing their rights of occupancy, and receive a once-off lease fee payment. They can leverage additional financial resources through partnership agreements with private sector tourism operators. For example, the Makuleke community has entered into a joint venture with South African National Parks and a private tourism company to establish and run high-end tourist lodges in the Kruger National Park. This is seen as a “win-win” solution, with the community benefiting financially from its shareholding in the tourism venture, and the park retaining control of the conservation area now owned by the Makulekes.

In Dwesa-Cwebe, two local communities lodged a joint claim to 5 278 ha of an extensive marine and forest nature reserve along the Eastern Cape coast (Palmer *et al.*, 2006). The reserve contains an 80-bed guesthouse, which was included in the claim. The claim was settled on the basis of an agreement with the Provincial Department of Economic Affairs, Environment and Tourism, under which the land will remain a nature reserve in perpetuity, the community trust may not alienate the land, and access to and use of the reserve must be in

keeping with conservation goals. Lessons and issues emerging from these cases are discussed in the subsection on the Impact of land transfer on forest management and livelihoods of the poor.

Redistribution

Overview: Based on the principle of “willing buyer–willing seller”, the redistribution programme does not face the same pressures as the restitution programme regarding the need to acquire specific land areas. It does have its own challenges and difficulties, however, mainly related to the lack of post-settlement support and the need to ensure that new owners have the means and capacity to run farms productively. National surveys to evaluate the progress of redistribution projects make depressing reading. Typically, these projects have involved the acquisition of large commercial farming units, which rather than being subdivided have been transferred to groups that hold them jointly under a legal entity, such as a communal property association or trust. The vast majority of projects have collapsed, leaving beneficiaries worse off than before (Andrew, Ainsley and Shackleton, 2003). The government is now making concerted efforts to put in place structures and systems for post-settlement support, including the strategic partnership models described in the previous section.

Redistribution and forests: No information is available regarding the extent of forest land within the total area of land transferred under redistribution – which is approximately 3.4 million ha. The most extensive forests in South Africa are woodlands, which occur naturally across much of the northern and western half of the country, and it can be assumed that a significant proportion of the redistributed area has woodland resources on it. No information is available on the area of plantations transferred to black owners through the redistribution programme.

Impact of land transfer on forest management and livelihoods of the poor

Land transfers through restitution and redistribution have the potential to change patterns of forest resources ownership and management significantly, and to deliver much-needed income-earning opportunities to the poor. Of particular interest are the many strategic partnerships that have come into being, which give claimants opportunities to become shareholders in forestry enterprises. In practice, however, considerable difficulties have been encountered during the implementation of both restitution and redistribution. These difficulties influence the extent to which the programmes can deliver benefits to target households, while ensuring sustainable use of the land and resources. The following paragraphs provide a summary of the principle constraints and concerns raised in the literature.

Significant delays in transfer: Both programmes have lagged behind their targets, especially regarding rural land. Delays relate to implementing agencies’ lack of capacity, poor planning and lack of cohesion among claimants, lack of funds for purchasing land, and the failure of government and current owners to reach agreement on fair property prices (Hall, 2007).

Lack of post-settlement support for beneficiary communities: The lack of adequate and ongoing support for new landowners is one of the main causes of project failure. Beneficiary communities are drawn from the least educated and least economically active sectors of society, and they lack experience and skills in technical aspects of production, as well as in business management. In many cases, there are no institutions governing community/group relations, and these need to be set up. Lack of support for building and maintaining effective local institutions is a major factor affecting the groups’ ability to manage natural resources, including forests, on their newly acquired land (Andrew, Ainsley and Shackleton, 2003).

Unequal balance of power and lack of capacity in strategic partnership arrangements:

Where communities have entered into partnership agreements with government departments and/or the private sector, power imbalances are common. Such imbalances can work against community interests, especially where partners lack the skills and/or commitment necessary to manage complex transactions.

Lack of interdepartmental cooperation and leadership: Restitution agreements on conservation land involve a number of different national and provincial government departments, including the Department of Land Affairs and its Commission on Restitution of Land Rights, the National Department of Agriculture, the nine provincial departments of agriculture, DWAF, and district and local municipalities. Several different regulatory and policy environments sometimes need to be negotiated and interpreted by each department, leading to a situation in which “everyone and no-one is responsible”, so nothing is accomplished, or things happen in a fragmented way. There have been calls to set up interdepartmental task teams to fast-track the settlement of claims on forest and other conservation land. This is a key problem in the Dwesa-Cwebe land claim, which has not yet been transferred to claimants seven years after it was gazetted (Palmer *et al.*, 2006).

Intra-group conflicts and power struggles: Land transfers and strategic partnerships bring access to new resources, both land-based and financial. In group schemes, this becomes the basis for resource contestation, with local elite groups attempting – often with success – to take control of resources at the expense of less powerful groups. In Makuleke, there is an ongoing power struggle between the elected leadership and the local chief, who has resorted to the courts in an attempt to exert his right to control decision-making structures and natural resources (Robins, Steenkamp and van der Waal, 2006).

Differing priorities and needs among claimants: Some restitution claims involve very large groups of people, who have a common heritage but now find themselves in widely differing personal circumstances. Some may be successful business people living in cities, while others are subsistence farmers or have become unemployed and landless. A share in an ecotourism or commercial farming enterprise may suit a city-based business person, whereas the priority for a landless and unemployed person may be to return to the land. At present, the emphasis of government has shifted in favour of strategic partnerships. Although these may be financially attractive (and even this is not always certain), claimants are under substantial pressure from the government, particularly CRLR, to forgo the right to return to the land (Derman, Lahiff and Sjaastad, 2006).

TENURE AND GOVERNANCE REFORM

Progress and problems

Two separate but interlinked programmes aim to reform tenure and governance in the former “homelands”, where land is held in trust for its occupants by the State. The Department of Land Affairs is implementing a *tenure reform* programme alongside its land restitution and redistribution programmes. The aim of the tenure reform programme is to strengthen the rights of black families, groups and communities occupying land under informal systems of land tenure that have no legal status, or whose legal status is unclear/of an inferior nature.

The government is also implementing a programme to establish structures and systems for *democratic local government* throughout the country. Local government is one of the three spheres of government – national, provincial and local – provided for in the constitution, and South Africa has been divided into district municipalities, each of which is run by an elected district council. Below each district municipality are a number of local municipalities, run by elected local councils. The aim is to create structures for democratic governance at the local level, and to decentralize responsibility for administrative functions and service provision. District and local municipalities are mandated to plan and coordinate development through integrated development planning.

The democratization of local government and the securing of tenure rights are fundamental to ensuring that the poor in rural areas have secure access to forest resources and are able to manage them effectively. From the period leading up to the 1994 elections until 1997, African National Congress (ANC – the ruling party) policies for local government and tenure reform did not envisage a major role for traditional leaders. The Municipal Structures Bill proposed that only 10 percent of council seats be reserved for traditional leaders, and the rest for elected representatives. The Land Rights Bill proposed that land rights be allocated to individuals, groups and communities, and that right holders elect a structure to administer land (Ntsebeza, 2002; 2004). These developments provoked a storm of protest from traditional authorities, who saw that reformed local governance and land administration would strip them of most of their powers and privileges. Traditional authorities remain very powerful in South Africa; their traditional status was considerably augmented by the patronage system developed under colonialism and apartheid. They are also well organized, and have direct links to the highest levels of national government. Vigorous lobbying and opposition from traditional authorities over the past eight years has led to substantial changes in government policy on land and local governance reform, as well as much confusion and delayed implementation (Lahiff, 2006).

Local government policy now provides for the formation of traditional councils, made up mostly of traditional leaders, which will play the role of being “closest to the people” in local development. The Communal Land Rights Act of 2004, aimed at reform and greater security of tenure on trust land, gives these traditional councils the authority to administer and allocate land in communal areas (Ntsebeza, 2004).

Impact of tenure and governance reform on forest management and livelihoods of the poor

The current situation is one of considerable chaos regarding systems for managing and allocating land rights and of conflict between new local government structures and traditional authorities (Lahiff, 2006). New laws and policies are contested by both traditional authorities and progressive land rights movements. The latter have taken the government to court over the constitutional violations inherent in the Communal Land Rights Act of 2004, i.e., its alleged failure to protect citizens’ rights to democratic governance and gender equality. Implementation of the act has been delayed and is now not expected to start before late 2007 or 2008. In the meantime, the problems of overlapping and insecure land rights created under apartheid, and which tenure reform was intended to address, remain. Effective local institutions for land and resource management cannot be established in the present climate of conflict and uncertainty over local government structures.

DEVOLUTION OF FOREST RESOURCES

Devolution of forests is taking place through such mechanisms as land restitution and redistribution, privatization and BB-BEE. This section focuses on the devolution policies and practices of the authorities responsible for managing protected areas, including national and provincial nature reserves and State-owned natural forests.

Government policy and law

State forests: National government retains the authority and responsibility for managing State forests, but can decentralize this authority through the legal instruments of assignment or delegation. DWAF is committed to a programme for transferring the management of State forests to provincial government departments and other “suitable agencies”. Central government will however maintain an oversight and monitoring role, and transfers can be reversed if standards of management are not upheld. A large area of State forests is *de facto* managed by provincial authorities, but has never been legally assigned. A programme is under way to rectify this.

The National Forests Act of 1998 also makes provision for devolving management authority over State forests to user communities, and policy suggests that this option will be

considered. To date, however, no such agreements have been proposed or entered into, and it seems unlikely that the will for this exists at present in South Africa. DWAF has a participatory forest management policy, which – in theory – gives local communities a say in the management of State forests. In practice, however, this programme amounts to little more than the setting up of community forestry fora in some forests, and a few forest-based income-generating projects.

A number of State forests are *de facto* under community control, even though they have not been legally assigned. In these areas, DWAF or the responsible department has little or no presence in the area and/or is unable to exert its control, so the forests have effectively become the property of local communities. Limited anecdotal information suggests that these forests are under threat from unsustainable harvesting and clearing for agricultural purposes, which is not surprising given the lack of formal transference of ownership, and the lack of support for sustainable use and management of the forests. Very little information about the current use and management of these forests is available, however, and some may be being managed effectively by the local communities, especially where local authority structures still exist and have local support.

National and provincial parks and nature reserves: Policy recognizes the need to grant local communities controlled access to parks and their resources. Concepts of co-management or devolution are not explicitly included in policy, other than in the context of agreements reached with land claimants.

Impact of devolution on forest management and livelihoods of the poor

Unlike many other countries in Africa and Asia, in South Africa, there is little commitment in policy and law to the principle of devolving forest ownership to local communities. Consequently, there is no experience of devolution and its impacts.

PRIVATIZATION OF STATE FOREST PLANTATIONS

The 1996 forest policy calls on the government to withdraw from ownership and management of State plantations, in order to free State resources for more important needs and improve the overall productivity and efficiency of operations. The government aims to ensure that privatization benefits the previously disadvantaged black population, through increasing its ownership and control of plantations, providing employment opportunities and securing access to forest goods and services for livelihood security.

The government has transferred a total of nearly 250 000 ha of State-owned plantations to the private sector since 2001. This represents nearly 60 percent of the high-potential State plantation area. The remaining 40 percent comprises the most extensive and valuable of the five packages put on the market – the Komatiland forests (KLF) package. A transaction that would have privatized this package was terminated in early 2006 because of concerns about industry structure. The government is currently reviewing privatization policy and plans in the light of emerging trends and concerns, especially those related to the structure of the industry, which is dominated by a small number of very large players. Assets have been transferred through lease agreements, which cede ownership of the plantations to new owners, while the government retains the underlying land rights. This gives the government stronger control over how these forests are used and managed than would be the case if they were sold outright.

Another critical reason for leasing rather than selling outright is the existence of land claims to these State plantation areas. According to the constitution, the government cannot sell State land on which land claims have been lodged. Although there is no accurate information on the extent of State plantations that are subject to land claims, estimates suggest a figure of about 70 percent of the total. The Department of Public Enterprises and DWAF have got around this issue by entering into agreements with leasing companies. If the claims are successful, the land will be returned to the claimants, who will become the official owners of the underlying land rights. Their rights to occupy the land will, however, be encumbered

by the 70-year leases the government has signed with the companies leasing the forests. The government is paying all the lease money it receives into trust funds, to be paid out to claimants after settlement of claims. Thereafter, lease fees will be paid directly to community trust funds set up for this purpose.

Impacts of privatization on forest management and livelihoods of the poor

The State manages the privatization process in ways that favour companies whose bids include a significant black shareholding, such as stakes for neighbouring black communities and/or workers, and commitments to supporting black-owned contracting businesses through outsourcing and training. According to the lease agreements, the new owners are obliged to respect the existing rights and claims of local communities.

Case study: Singisi Forest Products

The first forestry privatization deal to be concluded in South Africa was for the Eastern cape north package. The bidder selected was Singisi Forest Products, a consortium led by the forestry company, Hans Merensky. The case is interesting because Singisi met and exceeded government targets in terms of black equity stakes, and also invested heavily in social and economic development in the area. The following is a summary of the actual and potential sources of benefits for local communities.

Lease fees

Singisi pays an annual lease fee of R6 million (US\$850) to the government, which holds this money in trust for the communities that have lodged claims to portions of the plantation. When the claims have been settled, accumulated and future rents will be paid to a community trust. The company is supporting claimants' settling of claims, which is a demanding and lengthy process for which communities often lack the necessary resources.

Equity stakes for the local community

A local community trust, Singilanga Directorate Trust, has a 10 percent stake in the consortium, which could be increased to 25 percent by adding the 6 percent retained by the State-owned company that previously owned and managed a portion of the plantations, and the 9 percent owned by the National Empowerment Foundation. The money accruing from this stake is paid into a community trust and used for community development initiatives. Stakeholders are the immediate community adjacent to the forests.

Employment

A major concern regarding privatization was that it would result in jobs being lost. Unions played an important role in the four-year negotiations leading to the first transfer, and were key in securing a government undertaking to protect jobs and maintain existing employment conditions. Despite its initial fears, the local union now welcomes the changes brought by privatization. No jobs have been lost, and employment in the local sawmill has become more secure. (Sawmills belong to Hans Merensky, the main shareholder in Singisi Forest Products.) Through employment, benefits are extended to a wider community outside those with a direct stake in the company.

Forestry-based enterprise development

Support for the development of forestry-based enterprises was part of the Singisi bid, and is included in the lease agreement with the government. Singisi has an active programme to support black-owned forestry enterprises, procurement policies that favour black-owned contractors and service providers, and a preferential procurement target of 25 percent.

Access to non-wood forest products (NWFPs) and other forest benefits

The leases include requirements to respect the existing use and access rights of resident and surrounding communities, especially the right to collect for domestic consumption. Singisi has a support programme for small enterprises using NWFPs, such as for mushroom collecting and selling.

Summary

Community benefits: Experience to date suggests that privatization can increase benefit flows to local communities through:

- shareholding by community trusts in the consortia that take over the forests;
- rental income paid into community trusts (although this benefit will not be realized until land claims have been settled and institutions for receiving and managing the funds identified);
- improved opportunities for contracting, as a result of commitments made by the bidders;
- investment in local enterprises and social services.

Improved forest management: Prior to privatization, the management of State-owned DWAF plantations cost the government R350 million a year. The plantations that have been privatized no longer cost the government anything, and have instead become productive assets for the leaseholders. The condition of these forests has improved considerably as a result of intensive rehabilitation and improved management. Many have already been certified by the Forestry Stewardship Council (FSC), and the rest are in the process of being certified. Agreements with the government give leaseholders several years to certify the forests.

These positive conclusions should be accompanied by a word of caution, however. The Singisi case is unique. Other packages went to companies that were far less committed to empowering local communities, as evidenced in their bids or by their subsequent actions. In addition, the information on Singisi presented here is based on a qualitative assessment conducted shortly after the deal was struck. There is need for a more detailed and up-to-date investigation of the actual benefits accruing to communities, and an appraisal of the shortcomings and pitfalls. As found in the Makuleke and Dwesa-Cwebe case studies, implementation brings unforeseen difficulties and obstacles, which have to be addressed if the intended benefits are to be achieved.

Source: Ashley and Ntshona, 2002.

BROAD-BASED BLACK ECONOMIC EMPOWERMENT

Overview

The government's BB-BEE Programme aims to increase black people's participation in the economy. Whereas the earlier definition of BEE focused on ownership and management of businesses by black people, BB-BEE aims to extend economic opportunities to a much wider range of black people, through encouraging changes in:

- *ownership and management:* increasing the number of black people who manage, own and control businesses, and providing opportunities for communities, workers and other collective enterprises to own and manage businesses;
- *skills development:* supporting investment in skills development among employed and unemployed workers;
- *employment equity:* ensuring equitable representation for all categories and all levels of the workforce;
- *preferential procurement:* promoting the purchase of goods and services from companies that have a strong BB-BEE profile;
- *enterprise development:* encouraging investment in black-owned and -managed enterprises;
- *socio-economic development:* social development, and provision of services and amenities to the rural poor.

BEE is implemented through market forces, primarily procurement. Legislation does not force companies to implement BEE, but those that do not do so are likely to lose business. The government spends large amounts on service providers, and will buy from companies with good BEE ratings. Such companies, in turn, must also buy from companies or providers with good BEE ratings. This creates a cascading effect that reaches even those companies that

do not supply government directly. A company's BEE rating is calculated using the BEE scorecard, which allocates points against targets for each of the elements outlined above.

BB-BEE and forests

Section 12 of the BB-BEE Act makes provision for sectors to develop transformation charters. The Forest Sector Transformation Charter is due to be published for public comment in 2007, and is the product of a 24-month multi-stakeholder process focused on setting sector-specific scorecard targets, identifying challenges and obstacles to achieving these, and drawing up a sector-wide agreement for addressing challenges. In the draft charter, the industry commits itself to achieving ambitious targets under each of the BEE scorecard elements, a number of which have a bearing on current patterns of forest and forest resource ownership, management and access. The ownership targets commit the industry to transferring 30 percent of forestry businesses to black people, with a weighting that favours black women, workers and rural communities. A number of worker share-equity programmes are already in place, paying out annual dividends to forest workers. The management element of the scorecard ensures that share ownership implies the power to influence the management of the company, and thereby the forest. Enterprise development and preferential procurement aim to accelerate the growth of black-owned forestry enterprises.

In addition to these targets, the charter commits government, organized labour and the industry to undertakings that address the constraints to meeting sector transformation targets. These undertakings have a bearing on some of the other national programmes reviewed here. For example, industry undertakes to work with the Land Claims Commission in establishing Memoranda of Understanding (MOUs) for the settlement of land claims on private forest land. The MOUs will also provide post-settlement support to restitution beneficiaries. The government has undertaken to conclude similar agreements with the Land Claims Commission regarding the settlement of land claims on State forest land. Government and industry have undertaken to put in place framework agreements to provide finance for the purchase of land and for the capitalization of forestry enterprises on the land.

Conclusions

In 1994, the new government and society at large faced two key challenges: bringing about democratic decentralization; and shifting the racially skewed patterns of ownership of land and capital in South Africa. Unless these issues were resolved, poor black communities – the majority of the population – would continue to be excluded from access to and control of forests and other key resources, as well as from full participation in the economy. The history and persistence of marginalization of the poor in South Africa pose a threat to the sustainability of forests.

This case study reviews five government programmes to address these challenges. The programmes are sophisticated in their vision, design and ambitions, but far less developed in practice. Very little qualitative or quantitative information is available on the impacts they have had, and in many cases it is still too early to assess progress, let alone measure impacts. The value of these programmes lies in the documentation of processes and outcomes, which can guide discussion of implementation strategies, pitfalls and how to avoid them. Some general observations regarding trends in forest ownership and the impacts on forest management and benefits for the poor can be made from the evidence already available.

The legacy of overcrowded homelands with insecure tenure rights and undemocratic, corrupt and inefficient institutions has proved hard to shift. Programmes aimed at reforming land and governance rights have so far floundered, and in some cases problems have even been exacerbated. As a consequence, the rural poor remain trapped in poverty and unable to capture the benefits that forests offer. Lack of effective protection and management results in growing shortages of forest resources.

Land redistribution and restitution offer means for transferring ownership of private and public land, and thereby forest resources, to the rural and urban poor. This is significant given the almost total lack of access that these communities had to forest resources on State- and privately owned land in the past, and the extreme overcrowding and lack of access to resources in the former homelands. The land restitution and redistribution programmes have, however, lagged considerably behind their targets for land transfer. In most of the transfers that have taken place, the beneficiaries have been unable to establish viable enterprises or even to support themselves on the land. The lack of post-transfer support has been identified as one of the main reasons for the failure of land reform projects. The need to support the development and building of local institutions is also particularly important for the sustainable use of forest resources on the transferred land.

Strategic partnership models in which land claimants join forces with the private sector and/or government to run a forestry, conservation and tourism or agricultural enterprise on their restored land have potential to deliver significant benefits to local communities. Through such partnerships, claimants are able to leverage much-needed financial and technical support. Experience with these models has been mixed, however, and there are still more problems than successes. The model also brings certain costs to communities, and it is too early to say whether the benefits will outweigh these costs and can be sustained. Notwithstanding implementation problems, the restitution and redistribution of land remain among the most powerful tools for devolving forest resources to the poor, as they result in the transfer of ownership of land and forests.

In South Africa, commitment to the devolution of State and other publicly owned forests is limited to the transfer of management responsibilities, which can be revoked if management standards are not upheld. Public agencies are the target beneficiaries of these transfers, however, and not communities. The devolution of forest ownership to local communities is not envisaged in policy or provided for in law.

Shifts in the ownership of State-owned plantations have taken place through privatization, and although the process is still very new there are indications that privatization increases the benefits to local communities, resulting in improved forest management. The State has an important role in brokering these deals.

The Forest Sector Transformation Charter provides a framework, targets and undertakings for transforming the forest sector, and is a powerful tool for bringing much-needed changes in forest ownership, management control and flow of benefits in favour of black people in general, and the rural poor in particular. A number of the undertakings relate directly to the challenges highlighted in this paper. The charter will not come into effect until it is gazetted in 2007, so it will be a while before its effects can be felt and measured, and the nature and extent of its implementation challenges become apparent.

Proposals for the way forward

Securing individual and group rights to land and resources and ensuring effective and democratic local governance remain top priorities regarding communal land. The government's lack of commitment to devolving ownership and management of State forests and other publicly owned forest land to local communities needs to be examined within the framework of a national policy review, taking into account the experiences of other countries in Africa and Asia. There is need for additional resources to develop participatory forest management models and approaches that work in the South African context.

The transfer of forest land to communities through restitution and redistribution needs to be expedited. Undertakings made by the government and industry under the Forest Sector Charter will contribute to addressing this challenge.

Experience to date has shown that ownership alone is not sufficient to ensure sustainable use and management of forest and other land-based resources. Providing post-settlement support, including for viable forest-based livelihood support strategies and the development of resource management institutions, is of critical importance. Charter undertakings made by the private sector and government to establish financing framework agreements are critical in this regard.

One of the more interesting models emerging from the land reform programme in South Africa is that of strategic partnerships involving beneficiaries, the State and/or the private sector. Although complex to set up and manage, such partnerships offer the potential of significant benefit flows to local communities from the commercial use of resources. The benefit flows from commercial enterprises can also provide incentives for retaining forests on land that might otherwise be cleared for other land uses. There is need to further these models, especially as they relate to land transfers and restitution on forest land. Industry has made undertakings to this effect under the Forest Sector Charter.

Early indications suggested that the privatization of State-owned forests would result in significant flows of benefits to local communities, but the actual outcomes and challenges of privatization have not been sufficiently monitored and documented. This study recommends that a comprehensive, formative evaluation of State plantation privatization be carried out. An important aim of the evaluation would be to recommend how to address key problems and enhance benefit flows to local communities.

The national BB-BEE Programme is an innovative and groundbreaking approach to addressing the economic marginalization of previously discriminated against groups. The Forest Sector Transformation Charter is a comprehensive undertaking by government and the private sector to transform forest ownership and the flow of benefits from forests, including measures to address a number of the challenges highlighted in this paper. Resources should be provided for effective monitoring and support of implementation of the charter, as well as for analysis and documentation of lessons relevant to other sectors and countries.

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Web sites

Department of Land Reform: <http://land.pwv.gov.za>.

Statistics on land reform transfers: www.sagoodnews.co.za/search/agriculture/868105.htm.

ANNEX. GLOSSARY

Communal land: Not an official term in South Africa, but used in this study to refer to various forms of publicly owned land officially granted for the exclusive use of tribes or other groups.

Forest: Includes natural forests, woodlands and plantations. The following definitions are derived from the National Forests Act No. 84 of 1998:

- *natural forest:* a group of indigenous trees whose crowns are large and contiguous;
- *woodland:* a group of indigenous trees that are not a natural forest, but have more than 5 percent canopy cover;
- *plantation:* a group of trees cultivated for the exploitation of their wood, bark, leaves or essential oil. In South Africa, almost all plantations are exotic species, mainly from the genera *Eucalyptus*, *Pinus* and *Acacia*.

Forest Sector Transformation Charter: A comprehensive master plan for the transformation of the forest sector, produced alongside the BB-BEE Act.