A SIMPLISTIC APPROACH OR PERHAPS A LITTLE NAÏVE

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1. Introduction

The story of South Africa, like in any countries is fraught with the struggles over land. The control of land became the backbone of apartheid in South Africa as we saw the promulgations of land legislations of the Union of South Africa. It suffices to note that soon after the Union of South Africa was formed in 1910, the government of South Africa passed far reaching legislation to entrench white privilege. The promulgation of the Natives Land Act which came into operation in June 1913 aimed to effect a geographic separation between Africans and Europeans as it started the process of turning South Africa into a white man's land by taking as much land as possible away from the Africans and allocating it to the Europeans (Tong: 2002).

The social engineering that characterised the apartheid system, the scars of which had remained evident even today had been a direct link to the way in which occupation of land was regulated. It is safe to say that the land has been for many years been a key for empowering and disempowering people, and with the new democracy in South Africa, we thought it would be very simple to scrap the apartheid laws, in particular the 1913 Native Land Act and its sisters Acts such as the Bantu administrative Act of 1927 and the Native Trust Act of 1936 so that a more balance latitude of land ownership is created. This has been viewed more simplistic but perhaps a little naïve. It has been so naïve to believe that the 4:80 ratios would been able to heal the wounds caused by this brutally unjust apartheid government hence the view of the cut of date of submitting the land claims.

When one was thinking that everything would be simple, the complexity of the South African land reform would proof us wrong. When everyone would say, it is now well with this country, the reality on the ground would enforce otherwise.. We thought it would be simple but little did we know perhaps that we were bit naïve. I think the question that one would

like to ask is whether that is real or rhetoric? If restoring land and awarding equitable redress to those who were dispossessed of rights in land as a result of the past racially discriminatory laws and practices contributes towards national reconciliation, I then turn to argue that the cut of date, that of the 31st December 1998 of submitting the land claims in term of the Restitution of Land Right Act was a symbol of being naïve to have been given a very short space of time to submit the land claim as compare to the impact of the June 1913 Land Act, especially one realize that there are many people who missed the 31st December 1998's deadline. We thought it would have been very simple to scrap the apartheid laws, in particular the 1913 Native Land Act and its sisters Act such as the Bantu administrative Act of 1927 and the Native Trust Act of 1936 so that a more balance latitude of land ownership is created but with South Africa remaining one of the unequal land distribution ratios in the world today (Tong: 2002).

2. Towards Transformation

The transition of South Africa into a participatory democracy in 1994 led to a number of new policies and laws for natural resource management. Influenced by the global debates and trends, these policies and laws support the principles of equity, social justice, participation, environmental sustainability, accountability and transparency (Hauck & Sowman 2005, 11). This transition from an apartheid rule to a democratic order required the transformation of all sectors of society, including national parks and other conserved areas hence the call for more innovative means of ensuring that the dual goals of biodiversity conservation and social justice were met. As in the Truth and Reconciliation Commission processes, the Land Reform is regarded by many as a post-apartheid programme that worked in a direct way to heal the divisions of the past and established a society based on democratic

values, social justice and fundamental human rights. However, the complexities surrounding the restoration of these rights to land had been often underestimated and the competing interest involved turns to cause the process to be protracted and emotional (de Villiers, 1999).

3. Can co-management be an ideal solution

Conflicts of interest became particularly great when the land claims are instituted against the national parks or conservation areas. While such national parks or conservation areas are of the national interests and national assets which are also vital for both the national and regional economic development of South Africa, historical wrongs which may have been caused when these parks were established must also be redress. Can we say therefore that the co-management can be an ideal solution of the land claims within the protected area? Can it be a tool to heal 80 years wounds of the forceful removal? Of course, various models aimed at achieving these goals have emerged, ranging from the passive where a proportion of park entrance fees are paid to neighbouring communities, through more active involvement to neighbouring communities, for example on local management boards, to emerging models where communities own and manage conservation areas.

Looking in various countries around the world (including Australia and Canada) for example, contractual parks or co-management model have emerged as a new way of sharing conservation responsibilities and benefits between official agencies and rural landowners. South Africa co-management in particular is often chosen as the preferred settlement option within the land restitution process that are taking within the protected areas. These co-management arrangements initiatives make reference to the involvement of local communities. However the nature of this community involvement needs to be clearly articulated since such involvement could be limited to the extent to which local communities are regarded as merely labor pools to make protected areas' co-management

more productive. Evidence based research suggests co-management needs to be capable of addressing local values, needs and interests; failure to do so undermines the socio-economic potential of such initiatives. Furthermore, differences in capacity, commitment, and national policy are strong constraints to the realization of co-management as power sharing agreements.

The origins of the Makuleke Region, formerly known as Pafuri triangle, for example, can be traced to land dispossession and forced removal in the 1960s so that the land could be incorporated into Kruger National Park (Harries 1997). This area lies in the northernmost corner of the Kruger National Park bordering upon Zimbabwe and Mozambique. Bordered by the Limpopo River in the north, Luvuvhu River in the south and Mutale River in the west, it contains the lion's share of the KNP's biodiversity (Steenkamp et al 2000). The Makuleke community regained the title to the land in 1998 after a restitution of land rights process. The community then decided to retain the land as part of Kruger National Park to be co-managed by the Makuleke community and the South African National Parks through the Joint Management Board (JMB) for the purpose of conservation and related economic development.

The co-management agreement between the Makuleke community and the SANparks creates a clear separation between SANparks and the community's vested interests. Otherwise I then turn to argue that the introduction of Community Based Natural Resource Management (CBNRM) interventions at Makuleke might had had the unintended consequence (Ferguson 1994) of weakening the Makuleke community's bargaining power relative to that one of the State or could not be merely an ideological screen for other concealed intentions if the definition can been accepted. My thinking towards the definition of co-management in the Memorandum of Understanding (MoU) between the then Minister of Agriculture and Land Affairs and the then Minister of Environmental

Affairs and Tourism (2007) on how the land claims within the protected area could be resolved, **where co-management is defined as an agreement to co-manage the land by the management authority, being an organ of the state as a lead manager remains questionable.** This definition is heavily advocated also by the National Co-Management Framework and well-articulated by the National Co-management framework and also with section 42 of the National Environmental Management: Protected Areas Act (NEMA: PAA). Otherwise, this brings me to the notion that co-management is not equal. The fact that some of the communities who are involved in this kind of co-management are still waiting for the transfer of their title deed leaves much to be desired.

In accordance with section 42, the management authority of the protected area may enter into a co-management agreement with another organ of state, a local community, an individual or other party. Furthermore, it is upon the discretion of the management authority to delegate certain powers to the other party of the agreement and to come to an agreement of benefit sharing between the parties like the sharing of income, the use of biological resources and access. Unless the two parties are sharp technically, the likelihood is that the state will remain a big brother in this context, which defeats the entire objectives of redress the part injustice.

4. The lesson learned

One of the fundamental lesson learned is the limit and successes of the co-management In most cases, three major factors encourage the establishment of co-management regimes of the protected areas.

Firstly, broad political support and political will are necessary for any kind of interstate cooperative endeavour. The success of efforts to establish

contractual parks in general can be largely due to the support of political figures, including heads of state. Moreover, high-level demand to establish a political symbol of cooperation between the communities and the conservation authorities enhances political will and support towards establishing co-management arrangement of protected areas.

Secondly, sustained funding for the variety of components is necessary for building capacity and sustaining the process of building co-management regimes. Funding forms the core component of any program and, in many instances, directly correlates with the amount of political will and support.

Thirdly**,** involvement of other agencies, such as NGOs and intergovernmental organizations (IGOs), greatly contributes to the success of co-management establishment by providing external sources of funding and support, as well as technical expertise.

The establishment of co-management processes should encourage broad participation of local communities and the conservation authorities. The process should not be seen as a "top down" process, but instead should be inclusive of, and transparent to, all stakeholders. The process should build upon the existing informal relationships between management authorities, community groups, and other groups and individuals. These informal operating systems may lead to more formalized agreements. The process is further assisted where there is already a high level of cooperation between the conservation authorities and the communities, local management authorities, and national government agencies. From the above discussion, it is clear that formations of contractual national parks are greatly impeded when the process lacks political will and sustained funding.

Another factor that slows or impedes co-management arrangement is unequal management capacity among parties. While this factor does not

prevent co-management arrangement, it should be clear to parties to agreements that there may need to be a considerable period of information sharing and capacity-building to enable equitable representation among the parties to the co-management arrangement. This unequal status rises important, and often difficult to resolve, issues related to resource conservation and utilization.

The formation and establishment of the contractual park or co-management arrangement is difficult where the attitudes and perceptions of local communities are not supportive of conservation efforts and the big approach by conservation entities. Many co-management arrangements may never get established because of the need for sustained political will over a number of years. Problems may arise with the differing interests and priorities of subsequent parties. Where language and cultures differ, extensive capacity-building and awareness education need to be carried out for both the official and key members of local communities.

Of course like in any other institution, we have realized in the past ten years or so that, co-management is relatively very unequal. This inequality is sometimes fuelled by a number of reasons to include amongst others (i), knowledge (both theoretical, scientific and experience towards the conservation and management of protected areas), (ii), the big brother approach by parties to the co-management arrangement, especially those who are knowledgeable in the party agreement and the financial resources that parties to these kind of co-management agreement is bringing to the fore, especially between the Government and the communities. Given this historical legacy of land dispossession, there is needed to recognize equal participation by local communities who are part of the co-management cannot be overemphasized. The call by the President to provide adequate post-settlement support to these new

landowners so that land continues to be productive could be an ideal solution to the above challenges.

I turn to agree with De Villiers (1999) when he said, "Land has for many years been the key for empowering and disempowering people and spatial segregation based on race became entrenched in the body politic long before the 1913 Act. Many thought it would be relatively simple to create more balance playing field through a co-management of the protected areas management, and this proved to be somewhat simplistic approach but perhaps a little naïve.

Thank you

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