South Africa’s history of colonial occupation, dispossession, and racial discrimination is well known. Two and a half centuries of conquest and settlement by European colonists deprived Africans of most of their original territory. Economic and legal instruments excluded African farmers from increasingly lucrative urban markets. Over many decades, the authorities made it impossible for Africans to use land outside the reserves—13 percent of the nation’s area—that were set aside for them in the more remote areas. These reserves were consolidated into “homelands,” and it was only with the ending of apartheid rule in 1994 that a process of land reform was put in place to address the racially skewed distribution of land.

South Africa’s current land reform program involves restitution, redistribution, and tenure reform:

- **Land restitution** aims to restore land or provide alternative compensation to those dispossessed as a result of racially discriminatory laws and practices since 1914.
• *Land redistribution* aims to broaden access to land among the country’s black majority, mainly for agricultural purposes.

• *Land tenure reform* aims to secure the rights of people living under insecure arrangements on land owned by others, either the state (that is, communal areas) or private owners.

The origins of many of South Africa’s conservation policies can be traced to Western values and ethics as imported by colonists. For example, the Kruger National Park was established in 1926 when the Singwitsi reserve was combined with the Sabi game reserve, which was proclaimed in 1898. The Kruger National Park was managed according to exclusionist principles: the area was fenced off, residents were forcibly removed, and the area was restricted to white visitors. The first game warden earned the nickname Skukuza (which derives from Shangaan to mean the Sweeper) for the way he forced the indigenous inhabitants out of the park in the early 1900s. This was common to conservation throughout South Africa and resulted in a relationship of hatred and suspicion between black communities and white conservation authorities (Reid 2001).

**The Makuleke Land Claim and Settlement Agreement**

The Makuleke people were forcibly removed from their ancestral lands in the Pafuri reserve in 1969, when the Kruger National Park was extended northward. They were forced by soldiers at gunpoint to set fire to their huts and livestock kraals. The majority Tsonga-speaking portion of the community was relocated to Ntlhaveni in the former Gazankulu homeland, and Venda-speaking members went to the former Venda homeland (Bosch 1999).

In December 1995, the community lodged a land claim to the northernmost section of Kruger National Park. The claim was gazetted in August 1996 by the Land Claims Commission in terms of the Restitution of Land Rights Act. The claimed Pafuri area of the Kruger National Park is an environmental hotspot from a biodiversity viewpoint. During the initial stages of the claim, opposition was forthcoming from conservation circles. Some said, “If the Makuleke claim is upheld in respect of the land within the park, all conservation areas will be under threat” (Makuleke and Steenkamp 1998). These fears have since proved to be unfounded.

After two years of intensive and complex negotiations involving a total of 13 parties and facilitated by land mediators, a settlement agreement was reached in 1999 (see table 5.1). The Land Claims Court
ordered restoration of the Makuleke community’s ancestral land to the Makuleke Communal Property Association (CPA), representing the 15,000-household community. The restoration of the land was made subject to various conditions aimed at ensuring the protection of both the land’s conservation status and the community’s rights. The following are key features of the settlement agreement between the state and the Makuleke community:

- The Makuleke community took legal ownership of the 22,734 hectares of pristine conservation land through a CPA, representing the community. This section of the Kruger National Park was removed from Schedule 1 of the National Parks Act, because the act does not allow a contractual park on private land in a national park. It was reproclaimed under another section of the act.

- The land is to be used and maintained solely for the purpose of conservation and associated commercial activities in perpetuity, with title deed conditions registered in favor of the state, meaning that the state has the legal power to enforce this condition. The Makuleke have group freehold title and thus have the right to sell, alienate, or encumber the land, subject to it being used for conservation purposes.

- The land was reproclaimed part of the Kruger National Park as a contractual park between the community and South African National Parks (SANParks) for a period of 50 years. After 50 years the parties will decide how to proceed, but the land will have to remain in conservation use.

- A joint management board, consisting of members of SANParks and the community, is responsible for managing the land. SANParks is contracted as an agent by the joint management board to conduct operational conservation management for the first five years. When the five years passed, it was agreed that SANParks would continue for the time being. The joint management board has a management plan that provides the framework for management and development of the area.

- The Makuleke have full conservation-related commercial rights to develop the land with financial revenue accruing to them, subject to the following conditions: (a) no mining or prospecting may occur, (b) no agricultural activities may occur, and (c) no large-scale settlement may occur. Settlement is limited to what is required for conservation-related commercial activities, such as lodges.
<table>
<thead>
<tr>
<th>Rights</th>
<th>Who owns and controls</th>
<th>Restrictions to right</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landownership</td>
<td>Makuleke CPA</td>
<td>Conservation use and associated commercial activities</td>
</tr>
<tr>
<td>Land use: agriculture, mining, residential</td>
<td></td>
<td>Not allowed, except for residential when consistent with conservation</td>
</tr>
<tr>
<td>Commercial rights</td>
<td>Makuleke CPA</td>
<td>Must be related to conservation</td>
</tr>
<tr>
<td>Use of natural resources</td>
<td>Makuleke CPA may use sand, stone, and so forth for building and other approved activities</td>
<td>Joint management board to set policy</td>
</tr>
<tr>
<td>Subsurface rights</td>
<td>State retains mineral resources, but mining and prospecting are forbidden</td>
<td>If state policy changes, rights must be offered to CPA at a fair and reasonable price</td>
</tr>
<tr>
<td>Land management</td>
<td>Joint management board</td>
<td>Management and development plan; SANParks regulatory provisions governing the park; state environmental regulations</td>
</tr>
</tbody>
</table>

**Revenues and costs**

<table>
<thead>
<tr>
<th>Who receives</th>
<th>Who pays</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gate fees</td>
<td>SANParks, may be reconsidered</td>
</tr>
<tr>
<td>Direct operational conservation management cost for Pafuri area</td>
<td>Visitors</td>
</tr>
<tr>
<td>Infrastructure used jointly for conservation management and commercial development</td>
<td>SANParks for the first five years; thereafter CPA pays up to 50% of costs, not to exceed 50% of net profit</td>
</tr>
<tr>
<td>Commercial revenue, such as from hunting and lodges</td>
<td>SANParks and Makuleke CPA, at a ratio determined by the joint management board</td>
</tr>
<tr>
<td>Commercial development costs (for example, infrastructure solely for commercial activities, lodges)</td>
<td>Private sector concessionaire, as determined in contract with Makuleke CPA, subject to various development plans, building plans, and so forth</td>
</tr>
<tr>
<td>Development costs of Makuleke community where they live (that is, outside the park)</td>
<td>Commercial revenue and funding from state departments, parastatals, and donors for various projects</td>
</tr>
</tbody>
</table>

*Sources: From information in Bosch 1999; Turner 2004.*
• No development may occur on the land until an environmental impact assessment has been undertaken and approval of the competent authority has been obtained.

• The CPA is committed to good governance, including using an open tender process to exploit the commercial opportunities.

Throughout the negotiations process, support was provided to the Makuleke by a group of committed social entrepreneurs who formed the organization Friends of the Makuleke. The Legal Resource Centre, a human rights public interest legal firm in South Africa, provided free, high-quality legal services. There was little direct cost to the state because the land was state land already used for conservation purposes. However, the state was willing to relinquish ownership to the CPA in line with its land reform program.

**Conservation-Friendly Economic Development: Hunting and Lodges**

Since regaining legal ownership of their land, the Makuleke have pursued two main economic activities—hunting tourism and photographic tourism—through which they have generated revenue and benefits for the community since 2000.

The first hunt took place in 2000, with the hunting of two elephants and two buffaloes. An outfitter, who applied to the CPA through an open tender process, organized and managed the hunt. By 2003 the CPA was generating US$231,000 a year from hunting, which was used for school improvements, scholarships for top students, water supply, and food for the poorest families. Once the hunter has taken his trophy, the meat of the animal is distributed in the community.

However, hunting has been controversial because hunting for profit is not allowed in any of South Africa’s other national parks. At one stage, SANParks stopped the hunts from proceeding and, driven by animal rights groups both at home and abroad, public sentiment turned against the Makuleke. When the joint management board could not reach agreement on the types and numbers of animals to be included in the 2002 hunt, the dispute resolution mechanisms in the settlement agreement had to be used, and the dispute was resolved only after an expert had been called in to conduct an investigation, which ruled in favor of the Makuleke CPA (Collins 2003). Nevertheless, hunting did stop eventually and was replaced by other nature-based tourism facilities and activities.
The strategy of partnering with private sector operators was continued, and the Makuleke CPA has entered into two concession contracts with different private sector tourism operators who were identified through an open competitive bidding process observed by SANParks. In each case, the requests for proposals were advertised in the national media, the interested bidders were short-listed against criteria that promoted local economic development, and then negotiations were held with the preferred companies. Throughout the process, the Makuleke were supported at no cost by a well-known legal firm, Webber Wentzel Bowens, and by the Friends of the Makuleke.

To date, some R 60 million has been mobilized in terms of private investment by the two companies, the Outpost Safaris and Wilderness Safaris (Koch 2003). These concessions are build-operate-transfer agreements, as the private operator builds, operates, and then transfers ownership of the lodge to the CPA. At this stage, the CPA can decide whether to operate the lodge themselves or to ask the original operator or a new partner to operate it for them.

The first contract was signed with Matswani Safaris, which built and operated the luxury Outpost Safari Lodge, consisting of 12 stand-alone en-suite rooms overlooking the Luvuvbu River. The 24-bed luxury lodge, which cost nearly US$2 million to build, has a unique design that appeals to a niche market (Koch 2003). Matswani Safaris says that it entered the contract fully as a business and not as a charity. It obtained financing from the Industrial Development Corporation to undertake the necessary development, although the charges were high because of the perceived risk of the venture. It found that the involvement with the community was positive and provided a good marketing angle. Among the 30 people trained to work at the lodge, 1 had the necessary ability to become assistant manager and another, head housekeeper.5

The second contract was with Wilderness Safaris, a well-respected lodge operator in many African countries. The planned investment amounted to US$7 million for constructing four lodges with a total of 82 beds. The construction was to proceed in three stages. To date, two lodges and one tented camp for the wilderness trails have been built.

The two concession contracts have the following key features.

The lodge operators (concessionaires) get exclusive rights to build and operate a certain number of lodges of a certain size for a period of 15 years. The concessionaire has sole discretion to extend this, within predetermined limits, for two more periods of 15 years, as long as it is not in breach of a material term of the agreement. Lodges are built in exclusive-use areas, with limited access for specific purposes by others.
In exchange for these use rights, the concessionaire pays the CPA a percentage of gross annual revenue in quarterly installments. In the case of Wilderness Safaris, this is 8 percent, while for Outpost Safaris it is 10 percent. This mechanism was favored above a flat-rate approach because it holds out the potential for more revenue to flow to the community as the business becomes successful and ties the community to the project, thus providing security to the investor. Two safeguards are provided to mitigate the higher risk for the community.

First, the concessionaire immediately paid an up-front guarantee of US$23,077. If the concessionaire does not meet at least 50 percent of the project’s annual payment targets for years four and five, this amount is forfeited. If the targets are met, then the CPA has to repay this amount. Second, if the targets are not met, the concessionaire and the CPA must meet and discuss the issue to find solutions, with the concessionaire having to consider topping up its payment to at least 50 percent of the target.\(^6\) A lesson learned from the first contractual community park in South Africa, the Richtersveld National Park, was that using a fixed lease fee not linked to tourism revenue or management cost, while retaining access for community livestock, did not result in either proper conservation of the land or substantial revenues for the community. Furthermore, tying the CPA’s share to gross revenues rather than net profits avoids the possible pitfalls related to, or at least arguments about, the accounting methods of the concessionaire. This has been a problem in many such concessions, especially hotels, all over Africa and indeed the world.

The concessionaire must employ Makuleke residents or train them if they do not have the necessary skills, unless they can demonstrate to the reasonable satisfaction of the CPA that no community member has the skill required or can be trained within a reasonable period of time. This guarantees a high proportion of permanent and temporary jobs, including the development of necessary skills for the Makuleke.

The Makuleke agreed to stop hunting in the exclusive-use area allocated to the concessionaires, which is the bulk of the area. It can hunt only in the small adjacent Mabilingwe area for three weeks out of a year at a time agreed to with the concessionaires. This restriction caused concern among some Makuleke, but the hunting concession was very successful in bringing in revenue that was then used for community projects. With the passage of time, however, the nature-based tourism facilities and ventures proved to be a better source of income and employment in the long run. The Makuleke leadership has expressed a desire to diversify business opportunities for their community and is considering other off-park options, such as investing in property or retail franchises.
The lodge development has to be consistent with the management and development plan approved by the joint management board. Environmental impact assessment approval must be obtained. The concessionaires also have to submit the architect’s site development plan (including roads, staff accommodation, and other infrastructure) and an artist’s impression of the lodge to the CPA for approval before construction can begin.

There is provision for the Makulele to have access to the concessionaires’ income and audited financial statements, a performance guarantee in the amount of nearly US$80,000 provided by a commercial bank to mitigate financial loss in the case of breach by the concessionaire, mechanisms for dispute resolution, and various legal arrangements, such as warranties, insurance, and liability.

**Institutional Arrangements, Good Governance, and Benefit Sharing**

Although the Makuleke are now legal owners of the land from which they had been removed, the legacy of the past means that certain realities have to be taken into account. First, the Makuleke are poor, with 78 percent of households earning less than US$200 a month and a large number dependent on low-wage employment in the Kruger National Park and elsewhere (Reid 2001). Second, tensions between discredited and respected traditional forms of governance, a lack of technical skills and experience, and the inherent difficulties of collective forms of governance make engagement as equal partners difficult. In various other cases of restitution on conservation land, internal conflicts among the customary users, lack of group coherence, and inadequate facilitation and other state support have made development impossible. This has not been the case with the Makuleke.

Since the land claims agreement in 1999, the following benefits have flowed to the Makuleke community:

- About 400 people have received work, of which 80 percent is of a short-term nature.
- 80 permanent jobs have been created in the tourism facilities built and run by private operators.
- Two villages that had no electricity have been electrified, and plans to electrify newly established residential areas for the growing population are at an advanced stage.
• All five schools in the community have received US$7,692 each for improvements.
• Scholarships have been given to deserving students.
• Food has been provided to the very poor.
• The acquisition of skills and knowledge has included (a) conservation training of youth resulting in at least six of them acquiring full-time jobs in nature reserves; (b) leadership training in establishing private sector partnerships and commercial tenders, management, and finances; (c) hospitality and field guide training; and (d) training as cyber tracker rangers to address poaching.
• Small business has been stimulated within the villages—for the construction of guest houses, museums, and lodges.

Deciding on what, where, and how the money acquired through commercial activities should be spent is an ongoing challenge. The development forum, which is made up of representatives from all villages, advises the CPA on how benefits should be made available to the community. This form of consensus building with all sectors of the community ensures that the poorest sections of the community benefit from the new flow of funds and the jobs that are being created. For example, it was decided at one of the forum meetings that money from a trophy-hunting program would be used to feed the 10 poorest families in each village (Koch 2003).

The bulk of money is spent on social development that can benefit as many community members as possible—for example, electrification. Jobs that do not require specific skills, such as manual labor, are allocated through public advertising calling for community members to come forward for a job appointment. A lottery system is then used to select who gets the work. If a person has been given a work opportunity for two years, he or she has to stand aside and give others a chance.7

One of the key strengths of the Makuleke case is that a range of strong institutions were formed to perform different functions that have ensured that power is not concentrated in the hands of a few. These institutions have provided leadership, transparency, and accountability and enabled effective decision making. This new system of governance is shown in figure 5.1.

The landholding entity is the Makuleke CPA, which includes elected representatives as well as the chief and has an executive council. It has various subcommittees to address different issues. The joint management board, composed of representatives of the CPA and SANParks, oversees management of the land. There have been tensions between the CPA and
Makuleke residents organized as members of the CPA: 15,000 people

Development Trust
- Includes Executive Committee representatives, Department of Land Affairs, and Maitland Trust
- Finances community projects
- Interest used for executive committee and implementation office costs

CPA executive committee
- nine members
- four village representatives
- four general representatives
- Chief is ex officio chair, elected every two years

Implementation and administration office
- Supports Executive Committee and all projects
- Administrator Implementation officer

Specialist subcommittees
Each executive committee member has special portfolio
- joint management board
- hunting
- culture and heritage
- external support (partners and donors)
- private sector (bid committee)
- training and skills development

Joint Management Board
- Comprises representatives from Executive Committee and Kruger National Park
- Deals with land and wildlife management in Makuleke Region of the Kruger National Park

Friends of Makuleke
Supporters of Makuleke
Individuals and organizations who provide advice and technical support to executive committee

Development forum
- Includes representatives from tribal councils, municipal council, churches, women, civic organizations
- Advises CPA executive committee which local projects to support with revenues from trust

Source: Koch 2003.
SANParks, which, according to advisers to the community, arose mainly because the change in mind-set on the part of conservation authorities to acknowledge and treat black community landowners with the same respect accorded to other private partners has not gone very deep. Also, views on hunting are very different. But these tensions appear to have eased, as time has passed and experience has been gained on all sides.

A development trust was established to manage the bank account into which the bulk of the money that accrues to the Makuleke is held and from which funds are released for community development. The Trust Act under which this trust exists has long-established safeguards to guard against financial impropriety and to regulate the services of professional trust administrators.

Makuleke community leaders have identified the following key elements in their success:

- Community leadership that has integrity and is committed to the community interest and not motivated by personal gain
- The need for different groups and individuals within the community to work together, which is particularly important when there is success because, if this is not managed properly, fighting over resources can occur
- Transparency and continual consultation with the community
- Understanding of the development process and ability to follow all of the necessary steps
- Recognition that outsiders can play a critical role in facilitating processes where a neutral person or expert advice is needed
- The ability to cooperate despite tensions
- The continual strengthening of leadership through training and skills development
- Acceptance that community expectations of benefits will always be higher than what is delivered and that the leadership has to manage this discrepancy on an ongoing basis.

Conclusions and Lessons Learned

The Makuleke settlement agreement has been hailed as a win-win solution for conservation, land rights, and economic empowerment. The South African government highlighted the Makuleke model at the 2003 World Parks Congress as one of its most successful community conservation and development projects.
Since the settlement, the Makuleke community has undertaken various commercial activities that have generated revenue that has been used to develop and benefit the community. Although it is still early days, the Makuleke have made significant strides toward their conservation and development objectives. Government, nongovernment, and the private sector view this as one of the most successful initiatives of this nature in South Africa. Key factors in this success include a clear legal framework, strong democratic institutions, substantial technical support and skills development, favorable conditions for the chosen commercial activities, and partnership agreements with private sector operators that embody appropriate incentives to produce win-win outcomes.

- The legal framework governing the settlement agreement and the concession contracts is clear, perceived as fair and balanced, and enforceable. The Makuleke CPA has group freehold title to the land and the right to enter into commercial deals, which gives them the legal power to participate on an equal basis with the parks authority and private investors. Land use is restricted to conservation and related tourism use, which provides private investors and parks authorities with the security they need. The legally enforceable concession contracts provide the necessary commercial incentives and community revenues for a private sector–community partnership to work.

- The institutional arrangements include a range of strong institutions, which were formed to perform different functions and where power is balanced. The Makuleke CPA has proven to be cohesive, with committed leadership, avoiding the failure of many other CPAs that have been captured by a small elite group that skews the distribution of benefits. The CPA has managed to balance traditional and democratic institutional forms. The development trust is the key institution that holds and disburses funds. The joint management board brings together the parks authority and the community to deal with conservation management. Although this has been a conflicted relationship at times, it is good to have a joint decision-making body.

- The technical assistance and funding provided by various donors and nongovernmental organizations as well as the development of skills within the community have been essential to the success of the Makuleke development. A range of organizations and individuals, including the Friends of Makuleke, the Legal Resource Centre, and GTZ Transform, have been involved in supporting the Makuleke at no
cost to the community. The work of these experts has been funded by various donor organizations. Over many years, technical expertise has been provided to strengthen community institutions so that they can engage with the state and the private sector on an equal footing and not be hijacked by individual vested interests. Skills development programs in the areas of leadership, conservation management, hospitality and tourism, and commercial skills are bearing fruit.

- The Makuleke have adopted a private sector partnership approach to generating revenue and have not attempted to fulfill a private sector role by, for example, establishing a development company. The open commercial bidding process was successful in drawing potential private sector partners. The hunting concessions have brought substantial short-term revenues, and the concession contracts hold the promise of long-term benefits.

Despite its success, the Makuleke case presents some imperfections and challenges that also offer important lessons. To begin with, there needs to be the correct mix between activities that generate short-term revenues and activities that generate long-term revenues. The concession contracts forbid hunting (which used to bring in short-term revenue) in the exclusive zone (the bulk of the land). However, until tourism generates similar revenue, the community is not receiving sufficient revenue. The problem is complex because continued hunting is likely to scare away game, and lack of game viewing will lead to low numbers of tourists and low revenue from tourism. In the Makuleke case, the solution may not lie in trying to balance irreconcilable land uses. With hindsight, other options could be considered, such as having the Makuleke exchange some of their land for an appropriately located game farm where hunting could occur. This could be located close to the Kruger, but not where it would chase away game from the areas where the lodges are located. To ensure buy-in, SANParks should have been a co-signatory to the concession contracts. This would have facilitated them undertaking the necessary conservation management, such as restocking of game.

It should be expected that conflict will arise when benefits start to flow. Powerful elites could take advantage to accrue benefits for themselves. It is essential that the right safeguards be put in place. To this end, a tradition of social democracy has to be nurtured continually, and the strengths of traditional and Western systems need to be matched to the functions required. For example, the African traditional system of collective decision making ensures participatory processes, while the Western
system of trusts with outside trustees who exercise financial oversight is critical when distributing benefits. The issue of where revenues are paid and how benefits are fairly distributed should be dealt with in both the settlement agreement and the CPA constitution. It is best to have all moneys flow into the trust and then out for spending on approved development projects. The international experience is that balancing the power of interest groups and individuals within the community and having stringent safeguards in place are essential for good governance. Oversight and support by government and outside agencies should be ongoing to help to ensure that decisions are made in a collective, consultative, transparent, and accountable manner.

The extent of support provided to the Makuleke is unusual in South Africa and has relied on commitment and ad hoc access to donor funding. For the Makuleke model to be used elsewhere, access to resources over the long term to support such expertise is essential. One option would be to establish a facility where similar community initiatives can draw on technical expertise and assistance to facilitate access finance. Such a facility should not involve the staffing of another “development” institution, but rather the creation of an easily accessed source of funds that community groups can use to acquire the expertise they need.

South Africa has strengthened the conditions favorable to tourism development that it inherited and has reaped the reward through increased access to the global tourism market. It has successfully balanced conservation, fairness to and involvement of the communal users of the land, and the economic imperative to make development profitable. It is important to attract private sector partners with an experienced track record and a strong profit motivation—operating under rules and other arrangements that assure attainment of the conservation and fairness goals as well. In the conservation sector there is an element of trophy or philanthropic capital that may be invested for conservation reasons, in the absence of or with disregard for a sound commercial basis. In such cases, tourism uptake could be low, and the ratio of revenue to concession fees could lead to difficulties. Success requires design for the triple-win approach and laws and processes to promote all three objectives. This is not easy, but it can be done.

Notes

1. As some of the claimed land fell outside the Kruger boundaries, some 3,600 hectares were added to this national park.
2. The CPA is a legal entity established by a Land Reform Act passed to create group landholding entities that are able to enter into agreements that will benefit the community without jeopardizing ownership of the land.

3. Most claims for restitution to established conservation land in South Africa are presently resolved on the basis that (a) landownership is given to the claimant community on condition that it remains for conservation use; (b) the land use is determined to be related to conservation and tourism; and (c) some form of management agreement or lease is entered into with the responsible parks authority. The expectation is that benefits will accrue to the community primarily through nature-based tourism.

4. In South Africa an estimated US$77 million a year is earned directly through hunting sales. In 2001 US$5.2 billion was earned from foreign tourism in the category of photographic tourism. See Collins (2003).

5. Personal communication, Matswani Safaris.

6. Personal communication, Webber Wentzel Bowens legal firm.

7. Personal communication, Makuleke community leaders.

8. Personal communication, Makuleke community leaders.

References


