

**RETHINKING PROTECTED AREA CO-MANAGEMENT IN THE MAKULEKE  
REGION, SOUTH AFRICA**

**By**

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## DECLARATION

I declare that this thesis is my own unaided work. It is submitted in partial fulfilment of the requirements of the degree of Doctor of Philosophy in the Department of Sociology and Social Anthropology, Stellenbosch University, Stellenbosch. It has not been submitted before for any degree or examination in any other university.

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## ABSTRACT

The conservation of biodiversity over past centuries been characterized by exclusion and to some degree the forced removal of people for the creation of the protected areas. In the post-apartheid period, South African conservation practices went through a process of transformation whereby the conservation policies were reviewed. On this basis the Makuleke community adopted a principle of co-management by which they resolved to retain the conservation status of the northern portion of the Kruger National Park (KNP) formerly known as the 'Pafuri Triangle' when they had regained their land after a successful land claim process and concluding a co-management agreement with South African National Parks (SANP). Given the fact that the co-management agreement is for a period of 50 years but is subject to review after 25 years, an assessment as to whether this co-management agreement is functional or not should become a priority so that some remedial measures may be put in place just before a mandatory review gets started to ensure that both the integrity of the Makuleke community and those of the SANP are not undermined.

In attempting to rethink this protected area co-management arrangement, this study had to establish whether the existing co-management agreement in the Makuleke Region (the name by which the Pafuri Triangle is now known) is real or rhetoric, and whether it is meeting its intended objectives or is merely a paper model. Since co-management does not necessarily imply equality, particularly in the context of the knowledge and the financial capacities of the parties to the agreement, this study investigated the balance of power between the Makuleke community and SANP. This study consequently argues that community goals should be pursued by strategies that emphasize the role of local communities in the decision-making process in relation to their natural resources. This study presents the need to change the governance structure and develop a business model in a way that will promote equal contribution from both sides to the conservation of biodiversity and socio-economic development in the Makuleke Region.

## OPSOMMING

Die bewaring van biodiversiteit oor die afgelope eeue is deur uitsluiting en ook soms deur gedwonge verskuiwing van mense vir die skep van bewaringsgebiede gekarakteriseer. In die post-apartheid periode het Suid-Afrikaanse bewaringspraktyke deur 'n transformasieproses beweeg waarin bewaringsbeleid hersien is. Op hierdie basis het die Makuleke-gemeenskap 'n beginsel van samewerkende bestuur aangeneem om die bewaringstatus van die noordelike deel van die Nasionale Kruger Wildtuin, voorheen bekend as die 'Pafuri-driehoek', te behou nadat hulle hulle grond na 'n suksesvolle grondeiseproses herwin het en 'n ooreenkoms vir samewerkende bestuur met die Suid-Afrikaanse Nasionale Parke (SANP) gesluit het. Gegewe die feit dat die samewerkende bestuursooreenkoms vir 'n periode van 50 jaar geld, maar onderhewig is aan hersiening na 25 jaar, behoort 'n assessering oor die funksionaliteit van die ooreenkoms 'n prioriteit te word sodat remediërende maatreëls in werking gestel kan word voordat 'n verpligte hersiening begin word, om te verseker dat die integriteit van beide die Makuleke-gemeenskap en die SANP nie ondermyn word nie.

In 'n poging om hierdie samewerkende bestuursreëling ten opsigte van 'n beskermde gebied te herbedink, moes hierdie studie vasstel of die bestaande samewerkende bestuursooreenkoms in die Makuleke Streek (die huidige naam van die Pafuri Driehoek) 'n werklikheid of bloot retories is en of dit sy beoogde doelstellings bereik of slegs 'n papiermodel is. Aangesien samewerkende bestuur nie noodwendig gelykheid impliseer nie, veral nie in die konteks van kennis en finansiële kapasiteit van die partye in die ooreenkoms nie, het hierdie studie die magsbalans tussen die Makuleke-gemeenskap en die SANP ondersoek. Hieruit volg dat die studie argumenteer dat gemeenskapsdoelwitte deur strategieë nagestreef moet word wat die rol van plaaslike gemeenskappe in die besluitnemingsproses ten opsigte van hulle natuurlike hulpbronne beklemtoon. Die studie toon aandat daar 'n behoefte is om die bestuurstruktuur te verander en om 'n sakemodel te ontwikkel op 'n wyse wat die gelyke bydrae van beide partye tot die bewaring van biodiversiteit en sosio-ekonomiese ontwikkeling in die Makuleke Streek sal bevorder.

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**LIST OF ACRONYMS**

ADMADE	Administrative Design
ART	Africa Resources Trust
CBD	Convention of Biological Diversity
CBNRM	Community Based Natural Resource Management
CBO	Community Based Organization
CEO	Chief Executive Officer
CITES	Convention on International Trade in Endangered Species of Wildlife Fauna and Flora
CRLR	Commission on Restitution of Land Rights
CM	Collaborative Management
CFM	Community Forest Management
CWM	Community Wildlife Management
CPA	Communal Property Association
DANCED	Danish Co-operation for Environment and Development
DEA	Department of Environmental Affairs
DEAT	Department of Environmental Affairs and Tourism
DLA	Department of Land Affairs
EWT	Endangered Wildlife Trust
GLTFCA	Great Limpopo Trans-Frontier Conservation Area
GLTP	Great Limpopo Trans-Frontier Park
GMO	Genetically Modified Organization
GNP	Gonarezhou National Park
GtZ	Deutsche Gesellschaft für Internationale Technische Zusammenarbeit
ICDP	Integrated Conservation and Development Programme
IIED	International Institute for Environment and Development
IUCN	International Union for the Conservation of Nature
ITQs	Individual Transferable Quotas
JMB	Joint Management Board
JMC	Joint Management Committee
KNP	Kruger National Park
LNP	Limpopo National Park

LRC	Legal Resources Centre
MoA	Memorandum of Agreement
NEMPAA	National Environmental Management of Protected Areas Act
NGO	Non-Government Organization
NRM	Natural Resource Management
PAA	Protected Areas Act
PFM	Participatory Forest Management
PPF	Peace Parks Foundation
RDP	Reconstruction and Development Programme
RNP	Richtersveld National Park
SA	South Africa
SCI	Safari Club International
SADC	Southern Africa Development Community
SANP	South African National Parks
SASUSG	Southern Africa Sustainable Use Specialist Group
SE	Social Ecology
SF	Social Forestry
TRANSFORM	Training and Support for Resource Management Programme
UN	United Nations
NPB	National Parks Board
UNDP	United Nations Development Program Development
WESSA	Wildlife and Environmental Society of South Africa
WPC	World Park Congress. 2003. Recommendation (R 1-32)

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## **CHAPTER ONE**

### **INTRODUCTION AND BACKGROUND**

#### **1.1. Introduction**

This chapter provides a detailed background of the Makuleke Region. The study covered the whole region, formerly known as 'Pafuri' (see maps) between the Limpopo and Luvuvhu Rivers just west of their confluence. It focuses specifically on the experiences of the Makuleke community and the South African National Parks (SANP), as both are parties to the co-management of the Makuleke Region as a contractual park. However, in parts of this thesis, references are made to other case studies such as in south-eastern Zimbabwe and the Limpopo National Park (LNP) in Mozambique (Wolmer 2007) with which comparisons are of course made in a limited way.

Also provided is the personal background of the researcher – who will in subsequent chapters be mentioned in the first person singular – which, together with the uniqueness of the region and its history, contributes the main reason for the undertaking of this study, i.e. its motivation.

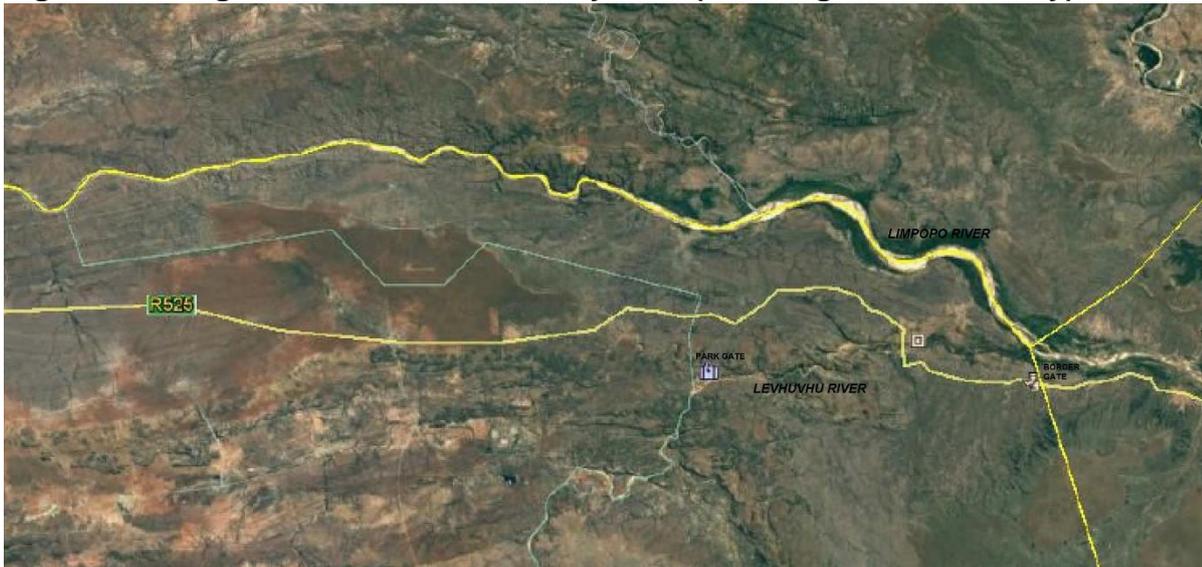
#### **1.2. Background to the study area**

This section presents a description of the origins of the Makuleke Region and a history of the Pafuri area and its people. It also provides a social and historical context for the Makuleke community, their economic and institutional circumstances, and the ecological profile of the Makuleke Region. For purposes of this study, it is important to indicate that the origins of the Makuleke Region, which is inside the KNP, formerly known as the Pafuri Triangle, can be traced to land dispossession and forced removals in the 1960s that were implemented so that the land could be incorporated into the KNP (Maluleke 2013). These will be further described in Chapter 2.

Figure 1 sets the location of this region within the larger region of southern Africa, featuring the Kruger National Park, South Africa and neighbouring countries with their parks.

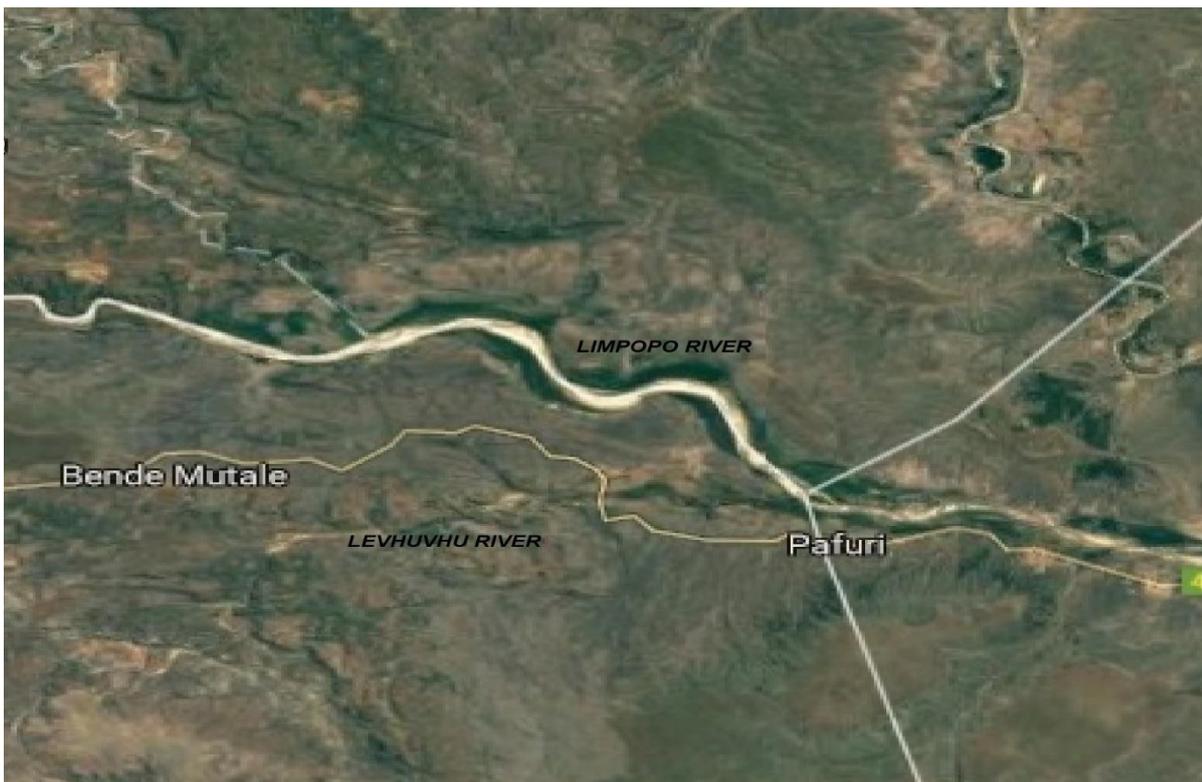


**Figure 2: Google Earth version of study area (showing KNP boundary)**



Source: 2017 Google Earth using AfriGIS (Pty) Ltd, US Dept of State Geographer. Image Landsat/Copernicus

**Figure 3: Google Maps version of study area**



Source: 2017 Google Earth using AfriGIS (Pty) Ltd, US Dept of State Geographer. Image Landsat/Copernicus

The Makuleke Region as now defined comprises 24,000 hectares of land and lies in the north-eastern corner of the KNP, bordering on Zimbabwe and Mozambique. It is bounded

by the Limpopo River in the north, the Luvuvhu River in the south and the Mutale River in the west (Maluleke 2013). The Limpopo River also serves as the boundary between South Africa and Zimbabwe, while the confluence of the Limpopo and Luvuvhu Rivers serves as the point at which Mozambique, South Africa and Zimbabwe meet, a place called Crooks Corner, which contains the greater proportion of the KNP biodiversity (Steenkamp and Uhr: 2000:1).

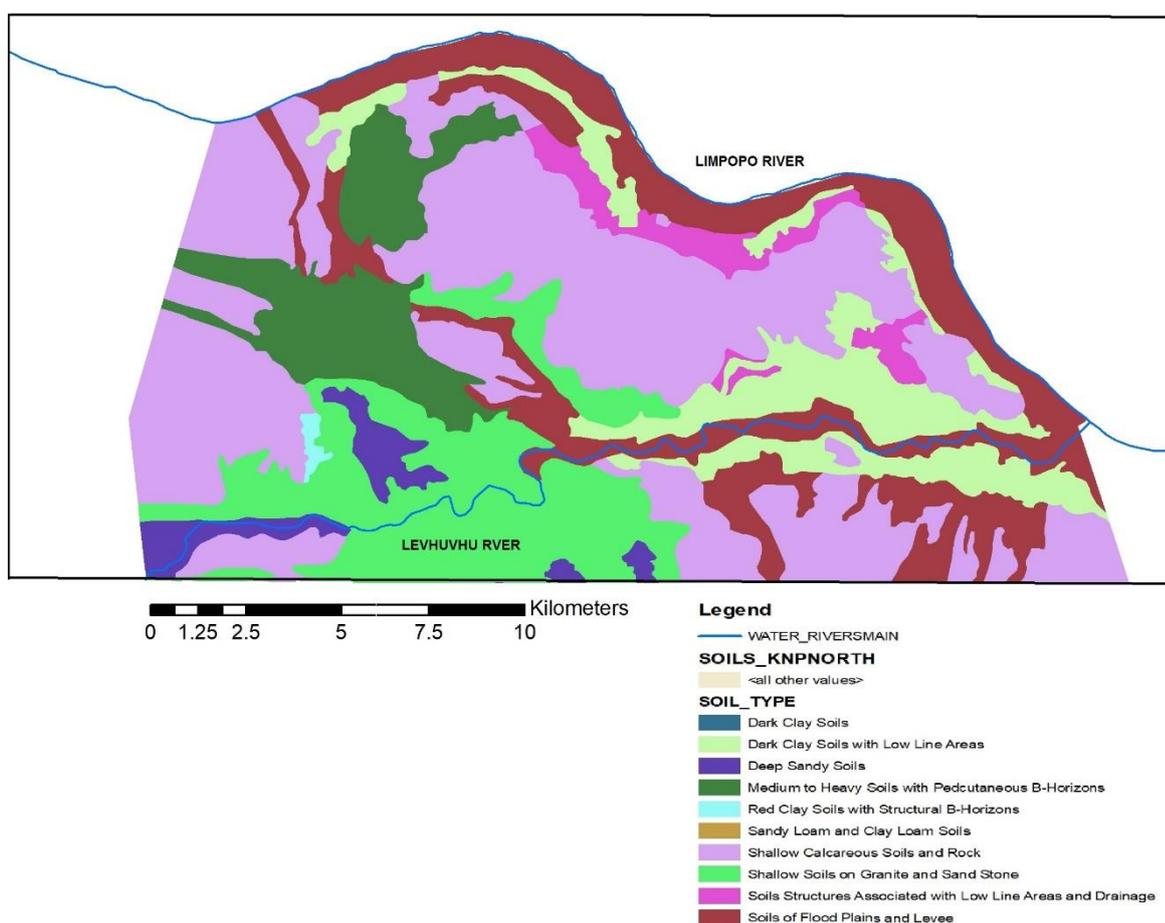
### **1.2.1. Physical description of the region**

The land is elevated in the West, narrowing in width and decreasing in height towards the junction of the two flanking rivers (Makuleke settlement agreement 1998). At the confluence of the rivers, the area culminates in extensive floodplains which influenced the declaration of the area as a Ramsar site: due to the wetlands which contains biological diversity that is of international importance. The Makuleke region falls in the Tropical Premontane Arid Thorn Woodland climatic region (Deacon 200). Climatic conditions vary from hot and humid during the summer months to mild and dry during winter months. As could be expected of low-lying area at a confluence of major rivers, the research area boasts dense alluvial soils, supporting rich plant growth even though the annual average rainfall is on the low side. The mean annual rainfall in the Kruger National Park decreases from south to north and from west to east. The rainfall in this region is the lowest in the Kruger National Park and the mean for the last 69 years was 424 mm per annum with a low of only 98 mm during the 1982/83 season. Research has shown that the lower the mean annual rainfall, the more unpredictable and variable the annual rainfall (Gertenbach 1980). The low and unpredictable rainfall renders this area unsuitable for livestock or crop farming and the only sustainable long-term use of this area is ecotourism.

The Makuleke Region's prominent features include riverine forests, riparian floodplain forests, floodplain grasslands, river channels and flood pans (Deacon 2007). The region has highly scenic landscapes with a wide range of habitat types, from floodplain grasslands through many types of savanna and thicket, to spectacular riverine and fever tree forests. The region thus contains a large number bird species, including some not common in the rest of South Africa or even in the KNP (Makuleke Conservation Development Framework

2011). The wildlife is a product of the vegetation, and of course the vegetation in its turn is the product of the soils.

**Figure 4: Soils within Makuleke Region**



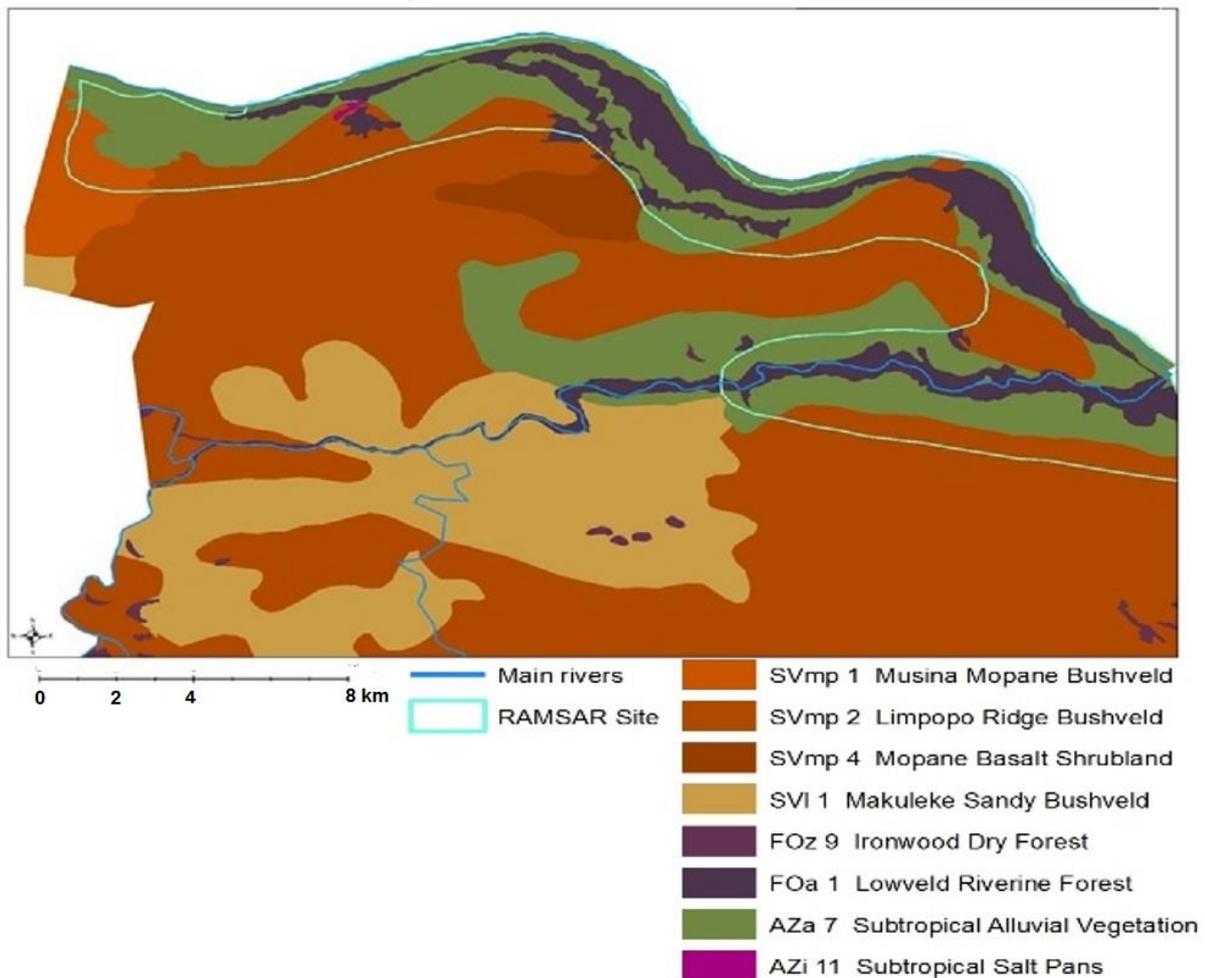
Source:  
Kruger  
National  
Park

The

Makuleke Region is considered to be one of the most significant areas in the KNP, especially from the biodiversity perspective. It has a high degree of variability in its landscapes, vegetation and wildlife, as outlined in the Master Plan, also known as the Conservation and Development Framework (Makuleke Conservation Development Framework 2012). For these reasons, KNP zoned the area as a botanical reserve. The Makuleke Region is also known for its abundance of pan water systems which, together with sections of the Limpopo and Luvuvhu River floodplains, were designated as a Ramsar Site (wetlands of international importance) on 22 May 2007 (Deacon 2007).

The vegetation, like most of the Limpopo Valley, is dominated by Mopane Bushveld, typified by *Colophospermum mopane*, locally popular for the habitat it provides for the moth *Gonimbrasia belina*, the larvae of which are a valuable high-protein food.

**Figure 5: Map showing the Vegetation of the Makuleke Region**



Source: South African National Biodiversity Institute, Vegetation 2012: Makuleke Contractual Park

Otherwise the vegetation is typically riverine or alluvial for the area, which has been proposed as a special wetlands site to be designated by RAMSAR, as indicated on Figure 5 above

### **1.2.2 Historical and cultural aspects**

The area's position at a confluence of rivers flowing into the Indian Ocean, clearly gave it some importance in the past, as recently excavated at the archaeological site of Thulamela just south of the Luvuvhu River, found to be an outpost of the former trading empire for a while centred at Great Zimbabwe. As a result of the later intrusion of European traders and colonists, mostly in the 19<sup>th</sup> century, this area found itself at the junction of no less than three countries which each pursued a different history, although the boundaries between them remain. In the early colonial period, the junction became known as 'Crooks Corner' apparently because of the active smuggling of various goods across the borders. It was still therefore a focus of international trade, only ending when modern transport systems and more efficient policing took over in the later 20<sup>th</sup> century. By that time the area had been settled by the people now known as 'Makuleke'.

The Makuleke people are the descendants of the Maluleke clan, which up to the 1820s lived at the confluence of the Limpopo and Olifants rivers in present day Mozambique (Harries 1984). They were forced to flee west and northwards by the northern migration of the Zulu leader Soshangane, who established the Gaza Empire in the 1820s after he had killed Chief Nxaba in northern part of Mozambique. Despite the presence of malaria and tsetse flies, the area to which the Makuleke people fled was rich in elephants and ivory, and they seized the important ivory trade centre of Xikunduko from a Venda-speaking chief (Harries, in Bozzoli, 1987). This area became known as the 'Pafuri' area and played a crucial role in the labour history of gold mining, as significant numbers of men were recruited there for employment in the mines on the Witwatersrand. The gold mining industry's impacts and effects extended far beyond the urban areas surrounding the gold mines, and through its mobilisation of African labour it orchestrated enormous social and economic changes in the rural labour supply areas (Harries 1994; Moodie 1994).

The community devised a strategy that would provide a sustainable source of economic development and income for the community and simultaneously ensured the ecological integrity of the land as well as protection of endemic wildlife species (UNDP 2012).

Prior to the forced removals in 1969 – documented in the next chapter together with the events leading to the co-management agreement – the abundance of natural resources, combined with agricultural practices, resulted in the availability of ‘natural wealth’ for the Makuleke community. The fertile soils on the river banks, nourished by nutrients carried in the waters of the Luvuvhu when it flooded, allowed the Makuleke community to cultivate even beyond the rainy season. The Makuleke people also used many wild fruits to sustain themselves when they occupied this land. Fishing and hunting were activities that enhanced their livelihood. Therefore, owing to the wealth of natural resources in the area, “the Makuleke Region was self-sufficient in food” (Harries 1987). The Makuleke people hunted animals and cultivated for their subsistence. Some of the animal products from hunting were sold, although the meat was also eaten locally. Hunting had a socially important role in addition to a nutritional one, as the distribution of venison was seen to reinforce kinship links and solidarity (Harries 1987). According to Harries (1987:100), “hunting and fishing, albeit primarily for subsistence purposes, were considered illegal by the Parks Board officials, and this conflict was part of the initial impetus for the removal of the Makuleke in 1969”.

Members of the Makuleke community have thus, over a lengthy period, depended on the management of natural resources for their daily survival in terms of food, fuel, building materials and spiritual nourishment. These natural resources were managed by means of communal laws, taboos and belief systems developed within a particular context (Fabricius and Koch in Fabricius et al., 2004: xiii).

This study concentrates mainly on two areas: firstly, the area where “traditional knowledge systems” were once used in the management of the natural resources when the Makuleke community was still within the Pafuri Triangle (Thornhill and Mello 2007:8). Secondly, local knowledge production in the Makuleke community should be considered. The rationale for focusing on such a traditional knowledge system is based on the fact that this knowledge was confined to a specific group in the Makuleke Region (Thornhill and Mello 2007:8). Recognising that such knowledge is never static and cannot be a stable system of knowledge, these forms of “traditional knowledge” formed part of the decision-making process deployed by the Makuleke people when they were in the Pafuri Triangle before removal. This was especially the case with agriculture, education and natural resource

management. This study aims to understand to what degree this historical background contributed to the readiness of the Makuleke people to adopt the co-management approach of the Makuleke Region in the KNP. The combination of scientific knowledge and this 'traditional knowledge' which had gone through changes historically, contributed towards the conservation management of the Makuleke Region, and was a compelling reason for forging a balance between the two areas of knowledge.

When conducting this study, my understanding, was that traditional knowledge is held by the community rather than individuals or families (Thornhill and Mello 2007:8). The fact that traditional knowledge is tacit (Thornhill and Mello 2007:8) means that it is not easy to codify, as it is embedded in everyday communal practices, initiatives, relationships and rituals.

According to Semali and Kincheloe (cited in Hesse and Wissink 2004: 49-50), "the traditional knowledge system reflects the dynamic way in which the Makuleke community had come to understand themselves in relation to their natural environment and how they organized a folk knowledge of fauna and flora, cultural beliefs, and history to enhance themselves". According to Hesse and Wissink (2004:47), ideas about modernisation and development are largely to blame for the ways in which traditional knowledge systems have been ignored and/or undermined. This was also the case with the Makuleke community. Problematic ideas and policies have emerged that insist that conservation and community development can only occur if communities such as the Makuleke abandon their traditional attitudes, institutions and behavioural patterns (Thornhill and Mello 2007:47).

This study covers knowledge management which, according to Thornhill and Mello (2007:7), caters for critical issues of organizational adaptation, survival and competency in an increasingly changing environment. Since the goal of knowledge management is to be sustainable, the processes of ongoing learning, unlearning and adaptation are necessary aspects of it. Schools and health facilities therefore become central for the deployment of knowledge to build communities that respect the conservation management of the Makuleke Region (Thornhill and Mello 2007:8).

The Makuleke community's participation in the management of natural resources was and still is more efficient than state management, as it improves efficiency and reduces the costs

of management. It is important, therefore, to note that the economic and financial viability of the Makuleke community, based on the availability of resources, stability and reliable operations, has been vital in improving the livelihoods of the Makuleke people (Maluleke 2013). It is my view that the sustainability of human and natural resources plays a significant role in defining the essence of the Makuleke community involvement in the wildlife economy of the Makuleke Region.

Some archaeological remains are still indicative of the economic activities in the Makuleke Region before the removal, included the following, and also reflected in Figure 6 above.

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Some archaeological remains are still indicative of the economic activities in the Makuleke Region before the removal, including various items now enshrined in oral history (see the map marked as Figure 6 above, positioning these remains). The acknowledgement of the cultural, heritage and historical context of the Makuleke Region is important for justifying the involvement of the Makuleke people in the co-management of the Makuleke Region. In addition, managing the Makuleke Region without taking into consideration its cultural significance would be questionable.

Some relevant cultural sites include the following. All photos of the following cultural sites taken by Madzhuta (2012).

### 1.2.2.1. *The Alex Thompson shop*

**Figure 6: Remains of Alex Thompson's shop (photo Madzhuta 2012)**



Source: Madzhuta 2012

Figure 6 shows the remains of the old Makuleke Store which was the centre of activity during the wild days of Crooks Corner. It was built in 1910 by Alex Thompson and William Pye, became the property of the trader W. Borchers in 1912 and was managed by Buck Buchanan until 1919. Later on, the shop was sold to Morty Ash who ran it until 1938. Then Sam Majika took over until mid-50s, while the last owner was John Fernandez who dismantled it and used its materials for 2 new stores (Bulpin 1999).

### 1.2.2.2. *First Fernandez shop at Gwalali and second at Head Kraal*

The ruins shown in Figure 8, are what is left of John Fernandez's store near Gwalali, in use from 1954 until 1969 when the Makuleke people were removed from the area. Fernandez set up the second shop close to the chief's compound, also known as 'head kraal', and ran both shops simultaneously.

**Figure 7: Remains of the Fernandez shop at Gwalali (photo Madzhuta 2012)**



Source: Madzhuta 2012

The Ruins of John Fernandez`s store close to the Pafuri airstrip, closer to the old Makuleke head kraal, was in use from the mid-1950s until 1969 when the Makuleke people were forcibly removed from the area. The broken store counter still is visible. The Fernandez family was among those who were removed from the Makuleke area, and after their arrival at Ntlhaveni, they continued their business (Norman Mugakula, personal communication 2017).

**Figure 8: Fernandez shop next to the Makuleke Head Kraal (photo Madzhuta 2012)**



### **1.2.2.3. The baobab (*Adansonia digitata*) tree 'Deku'**

The significance of this tree needs to be recorded as the site where the common property rights were discussed, and this establishes a context for the combination of the traditional knowledge and the western and scientific approach towards the management of the Makuleke Region as a contractual Park. The tree was also used as a site for the traditional court. Whoever contravened the law was brought to this tree and prosecuted. If a person was found guilty, they would tell him or her: “jika na Deku” meaning “turn around Deku” to negotiate payment (Norman Mugakula, personal communication 2017). The name Deku refers to a story about a tall woman, beautiful and light in skin complexion, from Rhodesia, today known as Zimbabwe. The woman arrived hungry, exhausted and thirsty one afternoon. She asked for water and, after drinking water she died immediately under this baobab. Her name was Deku. This baobab, thus known as 'Deku', is the tree that was used by the Makuleke Traditional Council when the Makuleke people were living in the Pafuri Triangle. Hosi Makuleke and his headmen would gather under this tree and discuss the affairs of their area – which became their by-laws under the common property rights arrangement and were used to govern their land. These rights included the harvesting of natural resources for their livelihoods. The tree was also used as tribal office and, as indicated, as a traditional court to prosecute those who contravened the laws and policies passed under his baobab tree.

**Figure 9: The Old Makuleke Tribal Office (photo Madzhuta 2012)**



The name of the tribe 'MAKULEKE' was carved into the bark of the tree before the Makuleke people were forcibly removed from their area by the apartheid regime in 1969. Later the bark was torn off by elephants.

#### **1.2.2.4. Nyala Tree (Home Affairs)**

Like the baobab tree described above, the significance of this tree needs to be recorded and preserved (Norman Mugakula, personal communication 2017).

**Figure 10: This Nyala Tree acted as a Home Affairs office (photo Madzhuta 2012).**



It is under this tree that the Makuleke people came to apply for their ID books, then known as 'dompas' from visiting government officials. When today people see a well-furnished office of Home Affairs, they should remember the Nyala tree and preserve it to remind the Makuleke people of where they came from, and what they came through. The pass laws in South Africa were designed to segregate the population and severely limit the movements of the non-white populace.

This legislation was one of the dominant features of the country's apartheid system. The indigenous population was required to carry these pass books with them when outside their compounds or designated areas.

#### **1.2.2.5. Crooks Corner**

A forgotten place, known as Crooks Corner (Figure 12), brings together three countries, Mozambique, South Africa and Zimbabwe, at the confluence of the Limpopo and Luvuvhu rivers. The place is also known as a former natural refuge of all kinds of people who had no great wish to look into the eyes of the law and who, at any moment might suddenly need to flee across an international border. These were people like ivory poachers, illegal black labour recruiters ('Blackbirders'), gun-runners and various other shady characters who had chosen the free lives of buccaneers and out-laws (Bulpin 1999).

**Figure 11: Crooks Corner viewed from the Makuleke Region (photo Madzhuta 2012)**



The significance of this corner needs to be understood as it adds value to the story of the management of the Makuleke Region from the historical and cultural points of view.

#### **1.2.2.6. Ruins of the Hosi (chief) Makuleke homestead**

This is the place where chief Makuleke and his family used to live. Features that are still clearly visible are two hut floors made of mud and cow dung. The one on the east was for the former Hosi Makuleke, who is the father of the current Hosi PJ Makuleke of the Makuleke community. His Majesty the Honorable Hosi Reuben Mugagula died inside the house of which the remnants are visible in the photograph below.

**Figure 12: Ruins of the Hosi Makuleke homestead (photo Madzhuta 2012)**



#### 1.2.2.7. *William Pye and Hendrik Hartman*

The next photographs (Figures 14 & 15) show the gravestones of Hendrick Hartman and William Pye made of sand and cement. These two were early white inhabitants of the area. It is said that Mr. Hartman died from sunstroke in 1918. He had cut the branches off a large thorn-tree next to his house to build a sheep enclosure. By doing this he was more exposed to the sun and heat. Mr Pye died of influenza in 1918 and he was the most loquacious inhabitant of Crooks Corner, a blackbirder and transport rider for the Makuleke Shop, and it was said that he lived there largely on a diet of quinine and whisky.

**Figure 13. Grave of Hendrik Hartman  
Madzhuta 2012)**



**Figure 14: The grave of William Pye (photo  
Madzhuta 2012)**



### 1.2.2.8. Ruins of the homestead of Murheyi Josias Shikhinyakhinya

Murheyi Josias Shikhinyakhinya was neighbour to Hosi Reuben Mugakula or Makuleke. Remnants of hut floors and a grain mortar were also observed at the site.

Lebombo ironwood (*Androstachys johsonii*) poles used for construction purposes are scattered all over the area. According to Norman Mugakula (personal communication (2017), “Mr Shikhinyakhinya could not take all his belonging to the truck during the forced removal in 1969 as everything was done in hurry and the other reason being that the truck could not accommodate the belongings of all people, hence these poles were left behind.”

**Figure 15: Ruins of Murheyi Josias Shikhinyakhinya’s homestead (photo Madzhuta 2012)**



These remnants were left in 1969 and they remain there today as nobody is allowed to remove archaeological objects. The acquiring of the Lebombo Ironwood (*Androstachys johsonii*) poles was in accordance with permission received at Deku, the then Tribal Office of the Makuleke.

### 1.2.2.9. Makuleke School and Swiss Mission Church

The remains featured in Figure 16 indicate the old Makuleke Primary School that was built in the 1880s by Swiss missionaries. It was used as a Swiss Mission church on Sundays but during the week it operated as a school. The first principal was Mr Silas Hatlani and the remains of his hut floors are still visible.

The bricks in the next photograph (Figure 17) are situated close to the old primary school and not far from the Deku area on a relatively flat surface. These fire burnt mud bricks were made by the Makuleke community in 1964 after all the villagers contributed money for the construction of a primary school in the area. It was unfortunate that the initiative of constructing this school was never fulfilled, as the people were removed before it could be constructed.

**Figure 16: Ruins of the Makuleke School and the Swiss Mission Church (photo Madzhuta 2012)**



The above bricks are a demolished one big classroom of the old Makuleke School which was also used as a Swiss Mission church. All these features of the Makuleke past are of interest to the modern community and can also be expected to play a role in tourism plans for the future.

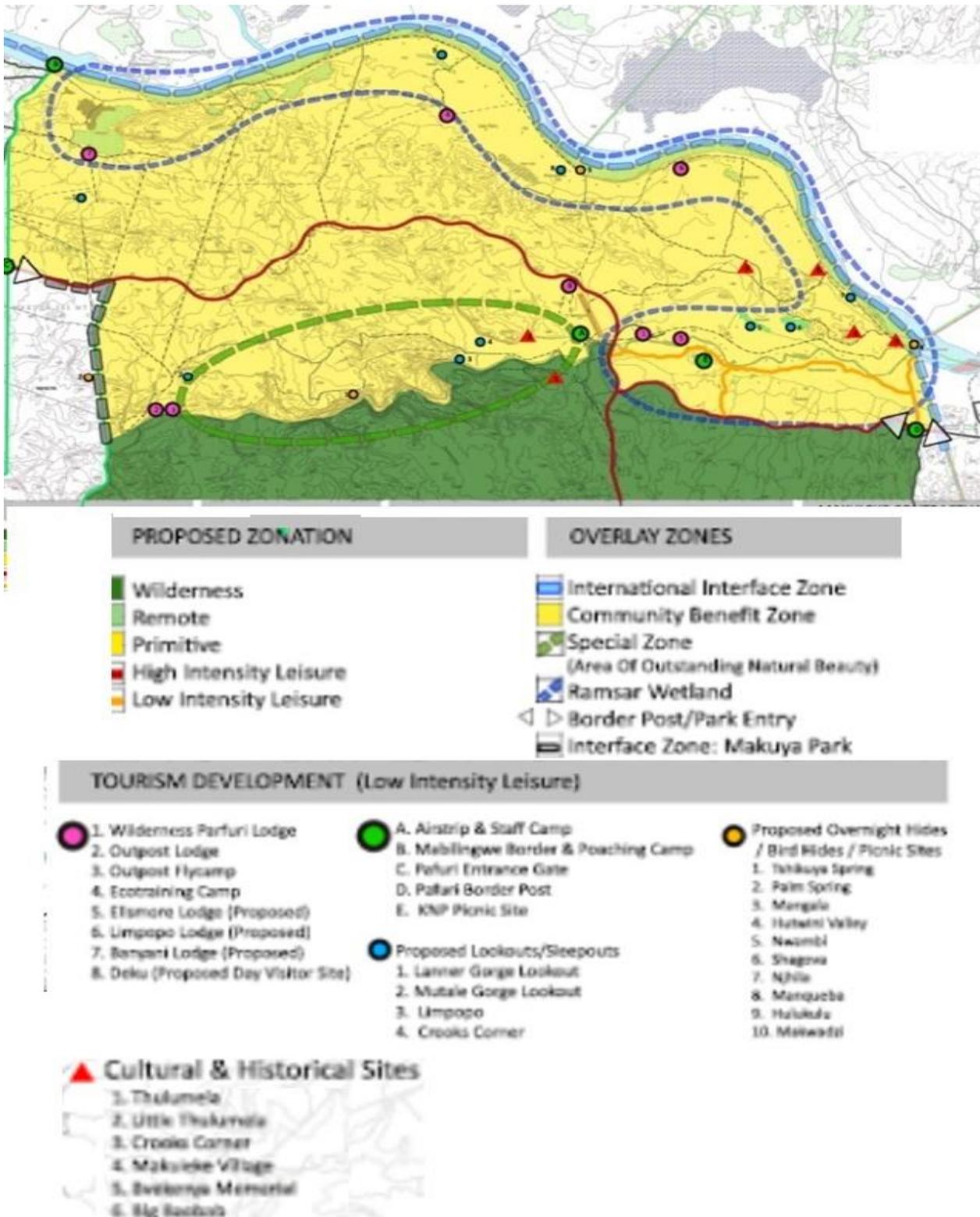
**Figure 17: Bricks made to build an extra classroom for the Makuleke School (photo**



**Madzhuta 2012)**

The above piled bricks were just formed and burnt to build an extra classrooms just before the removal.

Figure 18: Proposed zonation for tourism development and special features



Source: Conservation Development Framework for Makuleke Contractual Park

### 1.3. Motivation for study

The present researcher was born into the community which this study describes, which gives him insights not available to outsiders, but at the same time may introduce a particular bias into any description. It could be argued that any such bias was deepened by a history of direct involvement in the co-management of the protected area, as follows:

**Table 1: History of involvement**

PERIOD	ORGANIZATION	AREA OF INVOLVEMENT
1993	African National Congress (ANC)	One of the young people who approached the traditional council in the chieftainship dispute against Chief Mhinga
1994 – 1998	Makuleke Land Claims Committee	Coordination of the Makuleke land claim
1998 – 2001	Makuleke Communal Property Association (CPA)	Operations officer (Head of Administration) of the Makuleke CPA
2004 – 2012	Makuleke Joint Management Board (JMB)	Operations officer of the Makuleke JMB
2013 date	Makuleke JMB	Park Manager Contractual Park

The advantages and operation of this are further discussed in Chapter 3. This study was undertaken to gain some objectivity in regarding the issues that have arisen in the co-management of the protected area that will be described in the following chapters. Although it is a case study with a very small number of respondents, the respondents were chosen specifically to provide a broader and more distant view than could otherwise be provided by the researcher. The structure of the study and the sampling of respondents will be further described in Chapter 4, which considers the methodology used in the study.

### 1.4. Problem statement

The main purpose of protected areas co-management has to do with the priorities of land reform within protected areas: environmental conservation and socio-economic upliftment. However, the continued unequal power play between state and community, and the perpetual institutional and financial inadequacies in reality commonly lead to ineffective co-management implementation and negligible beneficial outcomes in South Africa.

According to de Koning (2010:6) most studies have dealt with the topic by means of a sector approach, focusing variously on social and 'land' rights, biodiversity conservation or economic issues. To address the complexity of the problem adequately, de Koning (2010:6) suggests that, "there is a need to look at specific case-by-case scenarios from social, biodiversity, conservation and economic perspectives simultaneously within the restrictions of the legal framework, in order to reach a mutually beneficial situation". There are few examples in which the financial and institutional feasibility of the conservation agency has been taken into account when addressing the issue of land (de Koning 2010).

One of the biggest problems experienced in South Africa, associated with co-management strategies at the community level, has been the lack of tangible benefits realised (DEA 2013; Lyver et al. 2014; Mashale et al. 2014). Meanwhile, expectations have been raised that, once communities were incorporated into conservation areas to be co-managed by the conservation authorities and the local claimants, there would be both economic and social benefits. While there are multiple context-specific factors that are likely to contribute to poor beneficial outcomes, the consequences of these are often similar: community disillusionment, reduced 'buy-in' from all parties, strained co-operative relations and, in some cases, complete dissolution of the agreements reached (Findlay 2015).

In the specific instance of the co-management agreement between the Makuleke community and SANP, the relationship between the two parties still needs further investigation, as there seems to be a clear separation between SANP and the community's vested interests. The main point to be investigated is how this arrangement functions in the light of the hypothesis that co-management arrangements are generally highly unequal. Evidence of this may be found in the way in which co-management is defined in the Memorandum of Agreement (MoA) between the Minister of Agriculture and Land Affairs and the Minister of Environmental Affairs and Tourism. Co-management is defined as an "agreement to co-manage the land by the management authority and the community where the management authority is defined as being an organ of the state as a lead manager" (DEAT and DLA 2007). This definition seems to defeat the good intentions of co-management, as it creates an environment where local communities come to the co-management arrangement as underdogs, followers of a leader. The conservation authority as an organ of the state enjoys the status of being the lead manager.

Moreover, the uncertainty of skills transfer by SANP to the Makuleke community as outlined in the Makuleke main settlement agreement leaves SANP officials with the technical and scientific advantage in the day-to-day conservation management and running of the Makuleke Region.

I agree with Steenkamp (2000) where he argues that the introduction of Community-Based Natural Resource Management (CBNRM) interventions at Makuleke have had unintended consequences. Such consequences relate to the awakening of the Makuleke community's bargaining power relative to that of the state (Ferguson 1994). This study therefore posits that the co-management arrangement is merely an ideological screen for other concealed intentions (Steenkamp 2000). It is an issue that, in my opinion, needs to be investigated rather than assumed.

The need to take into consideration the Makuleke community's aspirations in the co-management in the Makuleke Region cannot be overemphasized. Experiences from other parts of southern Africa suggest that both protected areas management and co-management need to complement each other in their contribution to conserving biological diversity. However, in many instances the efforts by rural people to conserve biological diversity are rarely recognized by governments (Murombedzi et al. 2003).

According to Dladla (1998:7) 'equal partnerships between local communities and the conservation authority became an elusive concept because the relationship is at best unequal'. Under normal circumstances, control of natural resources rests with the conservation authority's officials. I also agree with (Dladla 1998:7) when she says: "the issue of the conservation authorities having more over the local people and the nature of the relationship between the community and conservation authorities needs to change fundamentally".

### **1.5. Purpose of the research**

This study seeks to,

- Investigate the potential impact of co-management in the Makuleke Region and also in other areas where structures of co-management exist.

- Gather, analyse and document the views of communities on their co-management relationships with the KNP, specifically on how strategies for dealing with inequalities were developed.
- Investigate the extent to which this co-management contributes towards meeting the conservation, social and economic development objectives of the Makuleke Region, and how it contributes to the implementation of the Great Limpopo Transfrontier Park (GLTP) and the Great Limpopo Transfrontier Conservation Area (GLTFCA) at large.

In addressing the above, the following questions are posed.

- What is the community conservation theory underpinning the Makuleke co-management agreement programme, and how does it contribute to the implementation of the agreement in the Makuleke Region?
- What impact does co-management have in the protected area in the Makuleke Region?
- How does the Makuleke co-management agreement contribute towards the Makuleke communities, including those situated in or having a stake in the GLTP?
- What are the views of the parties to the Makuleke co-management agreement about the unequal relationship within this co-management framework?

The need to investigate available strategies to mitigate the unequal relationship between the state and local communities within a co-management arrangement cannot be ignored, given the historical legacy of land dispossession and forced removals in South Africa. This study aims to contribute to the understanding of how the co-management model in the Makuleke Region has attempted to address past injustices resulting from land dispossession. The aim is to provide knowledge about the day-to-day management of the Makuleke Region in the KNP. It also seeks to investigate the needs and aspirations of the Makuleke people in the co-management of the Makuleke Region and whether both parties to the Makuleke co-management achieved their intended objectives. The emphasis of this study is on what the settlement agreement refers to as “joint management of the Makuleke Region rather than co-management” (Kepe 2008). The argument is that there is in fact not much difference between the two in policy and in practice (Kepe 2008). The same questions will be asked concerning the communities living on the western border of the KNP, especially those that were dispossessed of their rights when they were removed from their ancestral areas.

It is argued that the creation of the resulting conservation area, for various reasons related to the forced removal, built up a high level of mistrust towards the KNP management over many decades (Andrew et al., 2000).

SANP has recently identified the concept of mutually beneficial partnership projects for new initiatives that seek to overcome this history of mistrust. These initiatives aim to contribute to the goals of the KNP as well as those of communities (Fabricius et al 2001). In terms of these post-apartheid interventions, formerly dispossessed communities are meant to benefit not only financially, but they also to attain intangible benefits such as a sense of pride in being the owners of the land (DeMotts 2005).

It is worth pointing out that the implementation of the co-management model in the Makuleke Region of the KNP has lasted more than a decade now, and it is critical to ascertain how successful this new management model for conservation has been in meeting its objectives, i.e. to balance the environment and the social and economic aspirations in the Makuleke Region to the benefit of the Makuleke community. Again, the role of government, including its perspective on the co-management agreement which assumes that conservation authorities are the lead managers, is contrary to more equitable ideas concerning power-sharing mechanisms.

It is important to investigate how co-management as power-sharing can contribute to the community's broad involvement in the management of the Makuleke Region and, in addition, the relationship between the Makuleke Region and the Great Limpopo Transfrontier Park (GLTP) needs to be understood. Central to this study is the interpretation of views, reactions and power relations of various people and role-players involved in the co-management arrangement in the Makuleke Region.

## **1.6. Limitations, timeframe and scope of the study**

The data for this study were collected between 2009 and 2014 and were limited to the Makuleke Region in the Kruger National Park and the Makuleke community. This study is also confined to the description and analysis of the process of establishment of the co-management agreement, its implementation and impact on the livelihoods of the affected

people, and on the conservation of biodiversity. The implementation of the Makuleke co-management agreement, as embedded in the conservation and development discourse, remains the main scope of this study.

### 1.7. Clarification of concepts

For the purpose of this study, it necessary to clarify concepts used as follows:

- **Co-management:** A process of management in which government shares power with the local resource users, with each given specific rights and responsibilities for a specified territory or a set of natural resources.
- **Biodiversity:** A biological diversity that generally refers to the variety and variability of life on earth – in other words the variability of the totality of genes, species and ecosystems within species, between species and between ecosystems.
- **Biodiversity conservation:** This involves saving life on Earth in all its forms and keeping natural eco-systems healthy.
- **Fortress conservation approach:** This is a conservation model based on the belief that an ecosystem must function in isolation from human disturbances.
- **Community conservation approach:** This is based on the ideal that there must be a balance between biodiversity conservation and development for the benefit of the people

### 1.8. Structure of the thesis

This thesis is divided into five chapters, each addressing a different aspect of its study.

**Chapter One** provides an introduction and the background to the study, including its rationale. It also provides a social and historical context for the Makuleke community, their economic and institutional context, and an ecological profile of the Makuleke Region.

**Chapter Two** provides documentation concerning the origins of what is now called the Makuleke Region, and also gives a background to the development of the idea of conservation and the political background to the negotiations. It focuses on the evolution of

co-management discourses as embedded in the community conservation approach, providing the theoretical background of the study.

**Chapter Three** expands on the policy and legislative framework of the co-management arrangement and its application in the Makuleke Region..

**Chapter Four** presents the methodological framework and a description of how this research methodology was utilized in the study.

**Chapter Five** presents the results of the research.

**Chapter Six** presents recommendations on how best the Makuleke co-management agreement can be implemented for the benefit of both the Makuleke community and the KNP.

## CHAPTER TWO

### THE ORIGINS OF THE MAKULEKE REGION AND DEVELOPMENT OF THE CO-MANAGEMENT CONCEPT

#### 2.1. Introduction

This chapter considers the land claims process which followed South Africa's democratic transition after the 1994 elections, but also looks at changes in the approach to conservation, which was a more global process. Together they both contributed to the co-management arrangement which is the subject of this study, but which is described more fully in Chapter 3.

Documentation is referred to, and theory considered, so that these two chapters also serve as a literature review.

#### 2.2. Some history regarding the approach to conservation

The dominant approach to conservation in the 20th century was to establish protected areas from which local communities were excluded (Hutton *et al.* 2005). The establishment of most of these protected areas in Africa and elsewhere in the world was often done without the involvement or consent of local people. As a result, these local communities were forcibly removed without compensation. History indicates that the paradigm of conservation has centred on 'preservationist' or 'fortress conservation' approaches, and the object of these models was to create reserves in which 'nature' remained 'pristine' and 'wild' primarily as a result of evicting and excluding local people, who were seen as exploiters and degraders of the land (Fabricius *et al.*, 2001; Jones and Murphree 2013; Von Maltitz and Shackleton 2004)

Given the above, the approach to these protected areas favoured the preservation of wildlife, fauna and flora (Hutton *et al.*, 2005) over the wellbeing of people. The view of many scholars (Brockington 2002; Kepe 2005; Rangarajan and Shahabuddin 2006; Timko and Satterfield 2008) is that the forced removal of people for the creation of these national parks and protected areas adversely impacted upon communities, which were often left further

marginalised and impoverished.. As a result of these removals, local communities found it difficult to access materials and resources that are important for the security of their livelihoods (Balint 2006; Brockington and Igoe 2006; Cernea and Schmidt-Soltau 2006). This has automatically increased the risk of human-wildlife conflict (Balint 2006), led to the disruption to community cohesion (Kepe et al. 2005) and resulted in psychological distress (Rangarajan and Shahabuddin 2006).

South Africa is no exception to the global trend regarding conservation-induced displacements (de Koning and de Beer 2014). However, the magnitude of dispossession was further exacerbated by the racially-based ‘apartheid’ policies that sought to undermine all non-white populations and specifically local black communities (Magome and Murombedzi 2003). Against this background protected areas and game reserves were created primarily for the benefit of the local white public as a source of recreation and leisure, and access to the parks for other demographic groups was extremely limited (Kepe et al. 2005). The dawn of a new democracy 1994 not only brought in political changes in South Africa but also changes to the manner in which the protected areas were to be managed and, where needed, to redress past injustices. In this period, and following the example of other African countries, South Africa began rethinking approaches to the future management of protected areas. This political pressure propelled South African National Parks (SANP) towards the establishment of ‘contractual’ national parks where conservation is managed jointly by the local communities and a public entity such as SANP (Reid et al 2004).

One result of the large expansion in ‘preservationist’ conservation parks throughout the twentieth century, and the forced relocation of many black communities, were the many land claims affecting many protected areas once South Africa became a democracy (Carruthers 2007; De Koning 2010b). For example, it was estimated that, up to August 2013, land claims had been lodged on 150 protected areas (DRDLR 2013). Until recently, the South African government struggled to reconcile this issue of land restitution with two of its other primary concerns, namely (1) widespread poverty and (2) biodiversity conservation. However, the emerging global discourse on community-centred conservation that characterises co-management models, with its strong ties to poverty alleviation and rural economic development, provided a framework within which all these conflicting issues and problems could be addressed.

According to Wande (2007:iii), the concept of co-management emerged as a tool that reconciles conservation integrity of the protected areas with the restitution of the rights that people had lost when they were displaced from such areas, and one that also fosters co-operation between countries in the region and between the conservation authorities and communities. It is worth indicating that the manner in which the co-management model had been designed was meant to contribute to the balance between the conservation of biodiversity and strict protection and state-funded centralized preservation of landscapes, now undergoing a paradigm shift (Whande 2007). It is important to note that this shift resulted in the establishment of various forms of contractual agreement over the years, and these included collaborative management and co-management arrangements of the protected areas.

However, co-management that focuses on state-led processes has been seen by some critics as reinventing the 'fortress' or protectionist approaches to biodiversity. It can be argued that such approaches have largely and technically side-lined people who had been dependent upon these natural resources (Hutton et al 2005). It is important to recognize, however, that co-management is widely regarded as providing an opportunity to achieve the complex goal of conserving globally significant biodiversity. This is achievable, but it cannot be overemphasized that there is an urgent need to integrate conservation based planning with development-based planning processes within protected areas in a way that will see communities benefiting from these protected areas.

Before the democratic transition of 1994, dispossessed communities adjacent to protected areas in South Africa were not allowed to access these areas unless their labour was needed there. After the democratic transition, the earlier management style, which had resulted in a fence-and-fines approach, became both politically and socially unacceptable (Grossman and Holden 2009:1). As a result, various approaches in line with transformation were initiated for the purpose of achieving the dual mandates, namely conservation of biodiversity and economic development (Grossman & Holden 2009:1).

Some of these initiatives advocated that a portion of park entrance fees be ploughed back into the communities living adjacent to protected areas, later refined until entrance fees were

paid to well-organized local institutions such as local management boards. Other models were also initiated.

### **2.2.1. *The Makuleke community and the co-management of conservation***

Unlike similar communities which may have user rights, the Makuleke community owns the Makuleke land as a result of restitution and is also part of a co-management arrangement of a portion of the conservation area in the KNP and owned by SANP. A number of conservation and development practitioners argue that the Makuleke co-management agreement is a model example of a scenario that brings together conservation and community interests and is seen as having multiple benefits (Hughes 2002). The argument suggests that the transition of 1994 created a legislative framework which allowed the establishment of contractual national parks where communities that had regained their rights to land could enter into a new relationship with the state.

According to Findlay (2015:3), “co-management, as a collaborative management strategy between different stakeholders, has been identified by the South African government as being a key mechanism in overcoming the highly contentious issue of land claims on protected areas”. In this context, the land under claim remains under conservation while at the same time beneficiaries who have successfully won the claim to their land have reinstated land ownership rights. They are afforded the opportunity to manage their land jointly with the conservation agency, and are accorded benefits including jobs and resource use rights. In this way, the three national priorities of land reform, environmental conservation and socio-economic upliftment are supposedly reconciled (Findlay 2015). It is important to indicate that many conservation areas, whether from the national or from provincial levels, whether fenced or not fenced, have been established with little if no regard for communities who had been living in or around these areas (Whande 2007). In most cases, the forced removal affected many people’s livelihoods, as well as their social cohesion, and customary rights and practices. As a result, human-wildlife conflict emerged, often undermining the viability of these protected areas.

Despite this, local people began recognizing the conservation of biodiversity as an important catalyst for economic development.

Under new legislations such as the National Environmental Management Protected Areas Act of 2003 (NEM-PAA), the sustainable utilisation of protected areas for the benefit of local people was well promoted (de Koning 2010). It is in this above context that the conservation agencies are coming under pressure as they must take into consideration the dual functions, and sometimes conflicting roles, of being promoters of both biodiversity conservation and rural development (De Koning 2010). It is necessary to bear in mind that in South Africa, for example, co-management emerged as a strategy to reconcile land reform, economic development and biodiversity conservation. However, in certain cases, co-management is not a viable option and will not lead to mutual benefits. The nature of the relationship between the community and protected area management may have to change fundamentally if the co-management initiative is to function properly. Addressing the immediate and long-term needs of the poor, while simultaneously conserving the country's biodiversity, is not an easy task, requiring all players to compromise where necessary (Kepe, et al., 2005:3–16). According to de Koning (2010:6), “policy decisions regarding natural resources are increasingly less a matter of technical expertise, and more a question of negotiation and agreement among stakeholders”.

### **2.3. The land claims process in South Africa**

“The transition from 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 regarded by many scholars as a post-apartheid programme that worked in a direct way to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights. However, the complexities surrounding the restoration of these rights to land have often been underestimated, and the competing interests involved tend to cause the process to be protracted, conflictual and emotionally charged ... [Thus] the post-apartheid land reform policies aimed to restore land to persons and/or communities that had been affected by racially discriminatory forced removals“(Maluleke 2013).

It should be recognized that, before the democratic dispensation of 1994, forced removals were widely implemented against black communities as a component of separate development policies and racial segregation. This led to many cases of social unrest with enormous suffering and hardship for many communities in South Africa. It is thus accepted that the land issues cannot be resolved without addressing past injustices. Currently 80,000 land claims around South Africa have been lodged with the CRLR (CRLR 2007:1). More impact occurred as a result of the extent of dispossession, poor quality of land in rural areas, and many cases of violence that accompanied resettlement, coupled with the overpopulation of such areas characterised black population such as in South Africa's, Zimbabwe, Namibia and possibly in most other parts of Africa.

These new legislative frameworks intended to redress the past injustices and imbalances so that equitable and sustainable social and economic development objectives could be achieved. This paradigm shift included national environment management acts which allowed disadvantaged communities to own land within protected areas. According to Steenkamp and Uhr (2000:1), these legislative frameworks played an important role as government tools or instruments for addressing the racially skewed patterns of land ownership generated over the past century of apartheid government. The issues of land and property rights were a central matter during the negotiated transition from the apartheid system to democratic rule. The new democracy in South Africa thus gave the Makuleke community an opportunity to reclaim their lost land and their autonomy. (Turner 2006:11).

### **2.3.1. *The Makuleke land claim processes***

South Africa's land reform programme is directed by the Department of Rural Development and Land Reform (DRDLR), previously the Department of Land Affairs, and seeks to redress these inequalities in three ways: (1) land restitution: restoration of land or alternative compensation to those unjustly dispossessed since 1913, (2) land redistribution: to re-allocate or transfer productive land to landless and previously disadvantaged people, and (3) tenure reform: to strengthen tenure security, particularly in communal areas (Restitution of Land Rights Act 1994). While acknowledging the necessity of all three elements in rectifying historical land injustices, in-depth discussion of each remains beyond the scope of this report and this thesis will examine only land restitution.

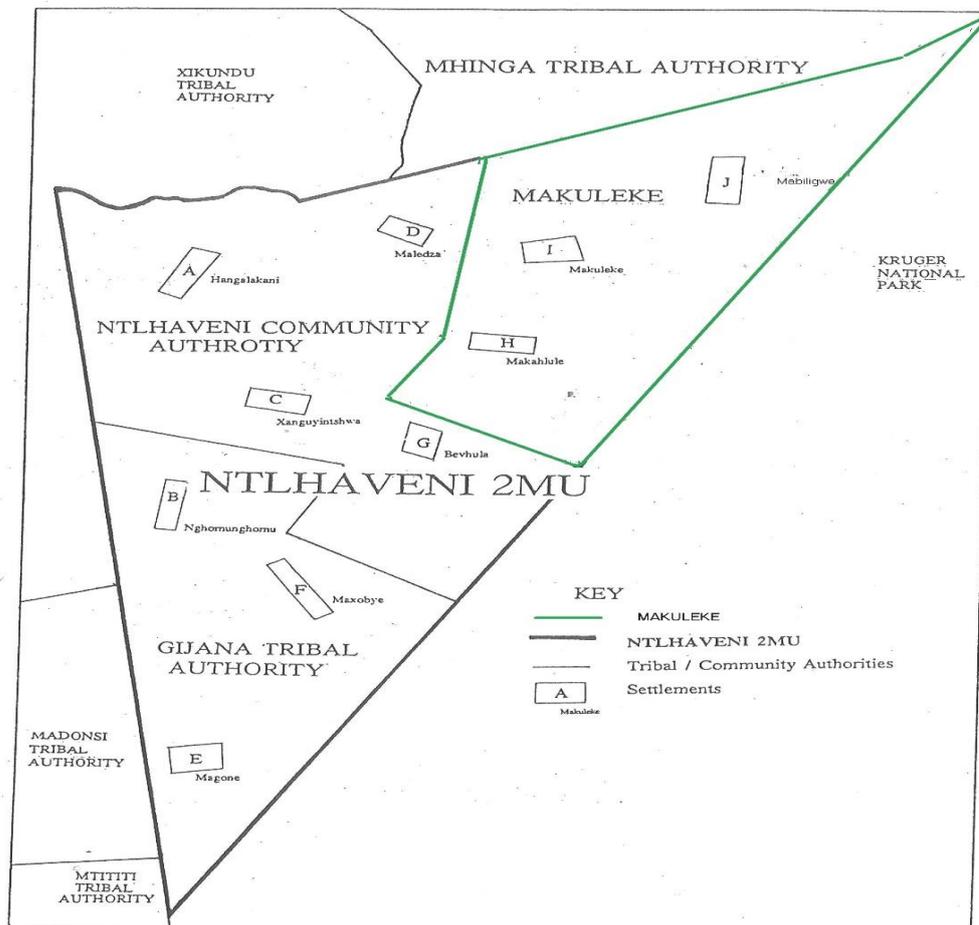
The Restitution of Land Rights Act (No. 22 of 1994) fulfils the Constitutional obligation of Section 25(7) where, according to this Act, “any person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, either to restitution of that property or to equitable redress” (Restitution of Land Rights Act (No. 22 of 1994). This Restitution of Land Rights Act informs the Land Restitution Programme and provides for the formation of a Commission for the Restitution of Land Rights (CRLR), as well as a Land Claims Court (LCC), to settle claims. While the Commission receives, investigates and processes claims, the Land Claims Court delivers judgements on conflicts and disagreements that may arise during land claims inquiries (Restitution of Land Rights Act (No. 22 of 1994). The Act also describes those that are entitled to lodge a claim as well as the protocol for lodging and settling a claim (Paterson 2011). The closing date for land claim applications was originally December 1998 but this has since been extended to 30 June 2019 to accommodate any claimants who were unaware of the earlier submission date (Annual Report 2014; Restitution of Land Rights Act: Amendment Act 2014). Although the Act itself does not specify exact resolutions for claim cases, it does outline ways in which restitution can be delivered, which include: (1) reinstatement of original land to claimant, (2) provision of alternative land, (3) financial compensation, (4) priority admission on other government-based land development programmes – or a combination of the above (Cundill, et al. 2013; Restitution of Land Rights Act 22 of 1994 as amended).

The history of the Makuleke Region would not be complete without an account of their land claim process and subsequent land restitution. Furthermore, the removal of the Makuleke community from their land was carried out with the intention of establishing the apartheid plan for the homeland of Gazankulu (Harries 1984). The first attempt to move the Makuleke community occurred in 1931 when the SANP, then known as the National Parks Board (NPB) started a programme aimed at incorporating the Pafuri Triangle into the KNP (Chief Makuleke personal communication 2010).

It was envisaged that incorporating the Pafuri Triangle into the KNP would preserve this ecologically rich area, end poaching and protect the nyala antelope that had migrated in search of grazing into the KNP for the first time (Harries 1984). The Makuleke community

was forcibly removed in 1969 and were displaced to Ntlhaveni (See the map of Ntlhaveni area as figure 19 below).

**Figure 19: Map of Ntlhaveni 2 MU**



The community was thus dispossessed of their rights in the Makuleke Region through racially discriminatory legislation and practices, and the people were finally settled on the farm Ntlhaveni 2 MU, a newly established reserve for Tsonga-speaking people located 70 kilometres from their original territory (Steenkamp 2000:1). On their arrival at Ntlhaveni, three villages were allocated for their occupation of the dispossessed: Makahlule (Block H), Makuleke (Block I) and Mabiligwe (Block J) (see the map of Ntlhaveni 2 MU also depicting the area occupied by the Makuleke community).

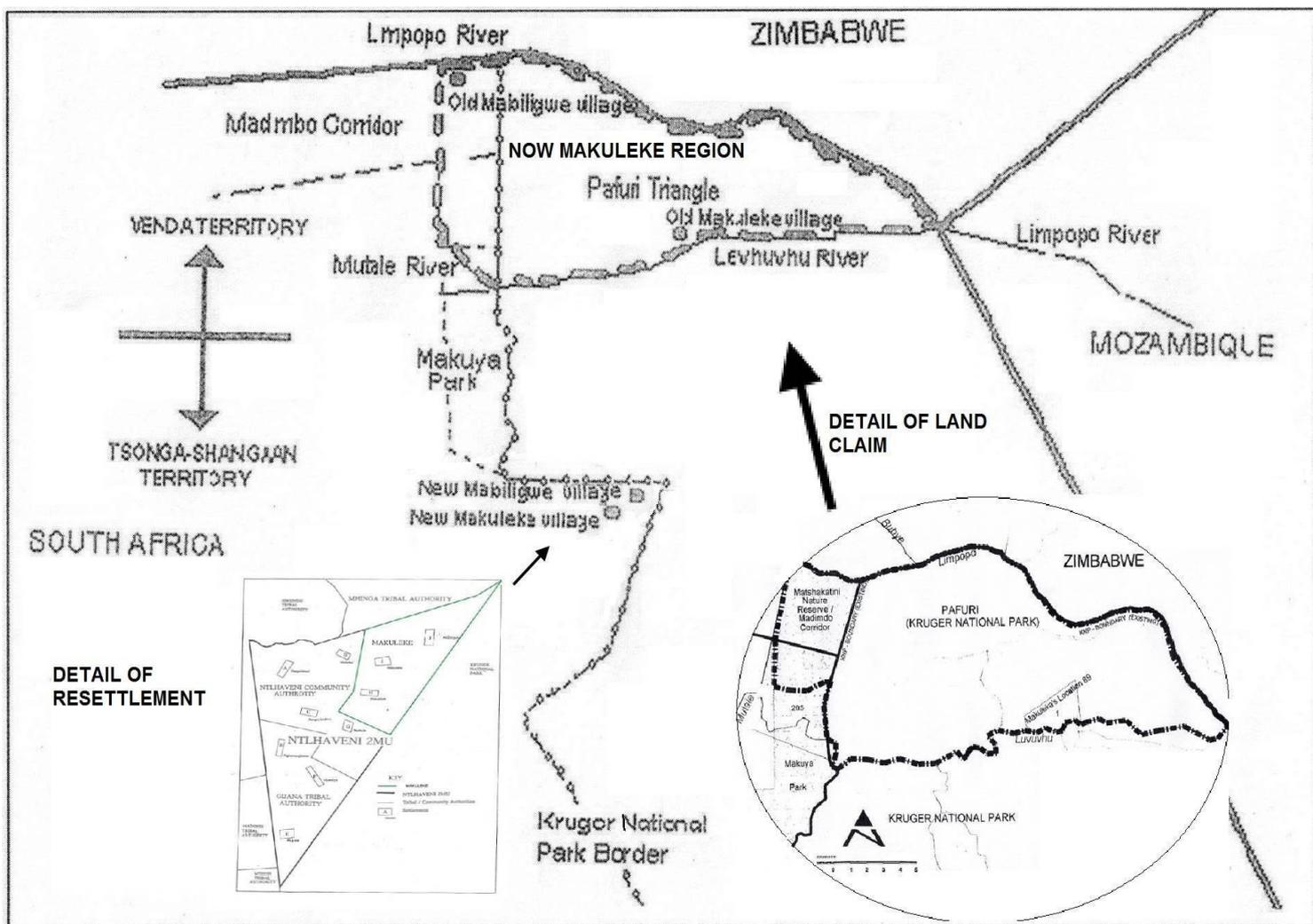
Though the whole of Ntlhaveni was excised for the Makuleke community, they ended up occupying on 5001 hectares which was far less compared to the one they had occupied in the Pafuri Triangle which today is known as the Makuleke Region. The other hectares were

occupied by other communities who were removed from other areas. (See the Map of the Ntlhaveni 2MU indicating a small portion that the Makuleke people had occupied as figure 19 above)

After the removal, the land was incorporated into KNP and a small portion was incorporated into the Madimbo Corridor, a military *cordon sanitaire* (Steenkamp 2000:1). This then enabled the Makuleke people to apply to the CRLR in 1995 for the restitution of land rights that they had lost when they were forcibly removed from their ancestral land in the Pafuri Triangle by the colonial and then the apartheid governments. The Constitution and the Restitution of Land Rights Act gave the Makuleke people the right to claim their rights that they had lost.

According to the submission by the Makuleke community on the Commission on Traditional Leadership Disputes and Claims (Commission on Traditional Leadership Disputes and Claims 2010:7), the removal of the Makuleke community from the Pafuri Triangle to the Ntlhaveni area produced both political and economic changes to the life of the Makuleke community. According to the submission, this removal had disastrous consequences for the community. The forced removal seriously disrupted the settled and successful existence that the Makuleke community had enjoyed in the region.

Figure 19 attempts to show the new settlement area where the Makuleke community ended up, the area to which the land claim applied, and the resulting Makuleke Region as it exists today, replacing the Pafuri Triangle, (See the consolidated map of resettlement, land claim and today's Maluleke Region). Politically the Makuleke community lost their autonomy as they had to recognize another traditional authority. While being incorporated into the Gazankulu homeland system, the Makuleke were subordinated to another traditional authority's interests (Turner 2006:6). Figure 20 below shows the consolidated map of resettlement, land claim and today's Maluleke Region



**Figure 20: Consolidated map of resettlement, land claim and today's Maluleke Region.**  
**Source Steenkamp 2000; Department of Constitutional Development 1997**

Following the removal, the Makuleke community was moved into the area of jurisdiction of a different chief, Adolf Mhinga, who was the father of the current chief Cedric Mhinga of the Mhinga Traditional Council (Mugakula 2012). At the time, Chief Adolf Mhinga was also the Minister of Justice in the apartheid-created Gazankulu homeland (Mugakula 2012). They were then subjected to the rule of a different traditional leader and no longer enjoyed the autonomy that they enjoyed before they were resettled in the Ntlhaveni area. In addition, the removal of the Makuleke community accelerated the shift from subsistence farming to the wage labour system (Turner 2006:11).

In the early 1990s a group, of which I was a member, of young people who were elected as leaders of the Makuleke branch of the African National Congress (ANC), approached the

elders of the Makuleke community who were challenging the appointment of Chief Makuleke at the level of a headman and not as a chief in his own right. As young elected members of the Makuleke ANC branch, we decided to join forces with the elders to fight against what they perceived to be oppression by the Mhinga Traditional Council. There were also participants from other groups such as churches, women's groups and youth within this community during this land claim process. The diversity of groupings involved was very important, as it demonstrated the cohesiveness of the community. As young people from a political party, we were advised by the senior members of the ANC who were members of the Malamulele Zonal Structure not to call ourselves the ANC, but rather a 'concerned community group'. This was so that the intervention would not appear to be party-politicized.

Subsequent to the above, and in the midst of challenging the appointment of the Makuleke traditional leader, the Makuleke community was introduced to the Legal Resources Centre (LRC), a non-governmental organisation based in Johannesburg. The introduction was made by one of the journalists, Eddy Koch, who had once visited Makuleke to write a story about the forced removals. He negotiated for almost four days for permission to interview the elderly people of the Makuleke community, as they initially refused to be interviewed, pointing out that they did not trust any white person. They still recalled what had happened during the forced removals. The intervention by some of the young people and other community groups in 1993 facilitated the interviews to carry on, and Eddy Koch proceeded after clarity was sought. Through the engagement of the Makuleke Traditional Council, I became aware of the fact that Koch did not promise anything except to let the world know that there had been no compensation for the Makuleke people when they were removed from the Pafuri Triangle. Koch introduced the leadership of the Makuleke community to attorneys at the LRC, who in turn advised the people that they had two cases instead of one, and that this included the land claim of the Pafuri Triangle. Working with Koch and the LRC, the Makuleke community was assisted in challenging both the chieftainship problem and the forced removal through a land claim process. Strategically, they opted first to deal with the land claim, after which it would be easier to challenge the chieftaincy.

When dealing with land claims within protected areas, the conservation authority must have a good understanding of the land restitution process in order to be proactive (De Koning

2010). Accordingly, in terms of the principles of the 1994 Act, when the Makuleke community lodged their claim for restitution against the SANP, the following processes unfolded.

- Validation: In line with the restitution process, the Makuleke land claim went through the process of validation through research conducted by an independent researcher, and it was confirmed as being valid.
- Gazette: After the process of validation, the land claim was gazetted and objections to the claim were made by communities in the area.
- These communities included Hosi Mhinga who claimed that the Makuleke community was not a legitimate claimant on the basis that they were his subjects, while the Mulejhe community cited that long before the arrival of the Makuleke community in the area, around the 1820s, they had occupied the area. The Mutele community, through their traditional leadership, also objected to this claim.
- Facilitation: It was during this period that the Mulejhe community withdrew their claim realizing that they did not have facts to contest the validity of the Makuleke land claim. It took more time before the Mutele and Mhinga communities withdrew their objections, which they were compelled to do by the Land Claims Commissioner.

The negotiations of this claim did not come easily, as SANP tried by all available means to avoid restoring the land to the community. The SANP together with the Wildlife and Environmental Society of South Africa (WESSA) submitted their objection to the Makuleke land claim. In their response to the claim, the SANP through their legal department submitted a letter to the Commission wherein they stated their strong opposition to the exclusion of the land from the KNP. One argument put forward by SANP was that land of exactly the same size as that within the KNP had been exchanged for the land the Makuleke people were then occupying. They further stated that the Nihaveni area is of the same value in terms of grazing and agricultural features. Their argument stood in contradiction to the statement of the Secretary of the Parks Board, in which he considered that it was obvious that the Pafuri region is agriculturally a more valuable piece of land than the arid grazing land offered in exchange (De Villiers 1996). According to Steenkamp (2001:165), the SANP had thus set a number of legal obstacles in the way of the Makuleke land claim and made it clear that they would resist any changes in the status of Pafuri. Underlying this position was a fear that the

claim, according to the then CEO of the National Parks Board (NPB), would set a precedent that could undermine the Kruger National Park (Robinson 1996:11).

There have also been various attempts from different environmental NGOs to try to block the Makuleke land claims from being processed. Expressing a similar sentiment, the CEO of the Wildlife and Environmental Society of South Africa (WESSA), at one of the NGO's forum meetings, said that, "the Makuleke land claim would set a precedent for success for other land claims in conservation areas. By weakening the status of the National Parks, this could set an unfortunate trend in motion of development incompatible with conservation. If our National Parks, which have a high degree of protection by the law, are not sacrosanct, the outlook for conserved land in general is poor...' (Robinson 1996). The outcome of the land claim seems to contradict Robinson's view. In what appeared to be an increasingly public campaign, there were other people such as John Hutton who are believed to have said through the media that if the Makuleke claim is upheld in respect of land inside the park, all conservation areas will be under threat, and any conservation status will not be worth the paper it is written on (Steenkamp 2001:165).

According to Steenkamp (2001:166), "the hard-line position taken by the SANP thus coincided with the effort to mobilize support from other quarters, including from the conservation NGOs". It seemed, however, that they did not get the support they wanted. An individual from the Department of Environmental affairs then emphasized that Pafuri met all the criteria for the declaration an area as a Ramsar site (Wetlands of international importance) and that integrated conservation areas were a prerequisite for the effective management of biological diversity. This triggered influential actors within the conservation establishment who took the view that emphasized the primacy of national good over the local interest, since the Pafuri area was part of the Schedule 1 Park (Steenkamp 1996).

Not only did the SANP object to the Makuleke claim, but so did other tribes such as the Mutele, Manenzhe, Mphaphuli and the Mhinga communities.

Some of these tribes, for example the Mutele chieftaincy, had in fact indicated their intention to lodge counterclaims against the Makuleke one. One of the underlying factors was that some of these tribes argued that the Makuleke chief was a headman under their authority. During the first meeting called by the Commission at Bateleur camp in the KNP, the

Mananzhes and the Mpaphulis withdrew their claims, but chief Mhinga remained. It is believed that the objection by the Mhingas gave the Land Claim Commissioner cause for concern. Although some of the Land Claim officials advised that the Mhinga claim must be disbarred with a view to continue with the Makuleke as the rightful claimants, Emma Mashinini, who was a commissioner, refused to exclude Mhinga and decided to take the Makuleke claim to the Land Claims Court because of the failure of the *locus standi* mediation (Steenkamp 2001).

One week after Dirkje Gilfillan took over as Land Claims Commissioner for Gauteng, Mpumalanga and Northern Province in March 1997 and assumed control over the Makuleke land claim, she informed Chief Mhinga that his claim as it stands did not meet the acceptable criteria for investigation in terms of the Restitution of Land Rights No. 22 of 1994, on the basis that it provided inadequate information. By the end of April 1997, she had taken a decision to reject Mhinga's claim. This indicated to the Makuleke leadership that she was prepared to drive the land claim process in a promising direction. The appointment of Gilfillan as a new Land Claims Commissioner, together with the cohesiveness of the Makuleke community, contributed to the progress that was made during and post the Makuleke land process. This was also noted by Conrad Steenkamp (2000:4) when he said, "the Makuleke people are an exceptionally cohesive community. Their internal organization further displays a marked degree of institutional hardness and is able to cope well with the classic internal community tensions and frictions".

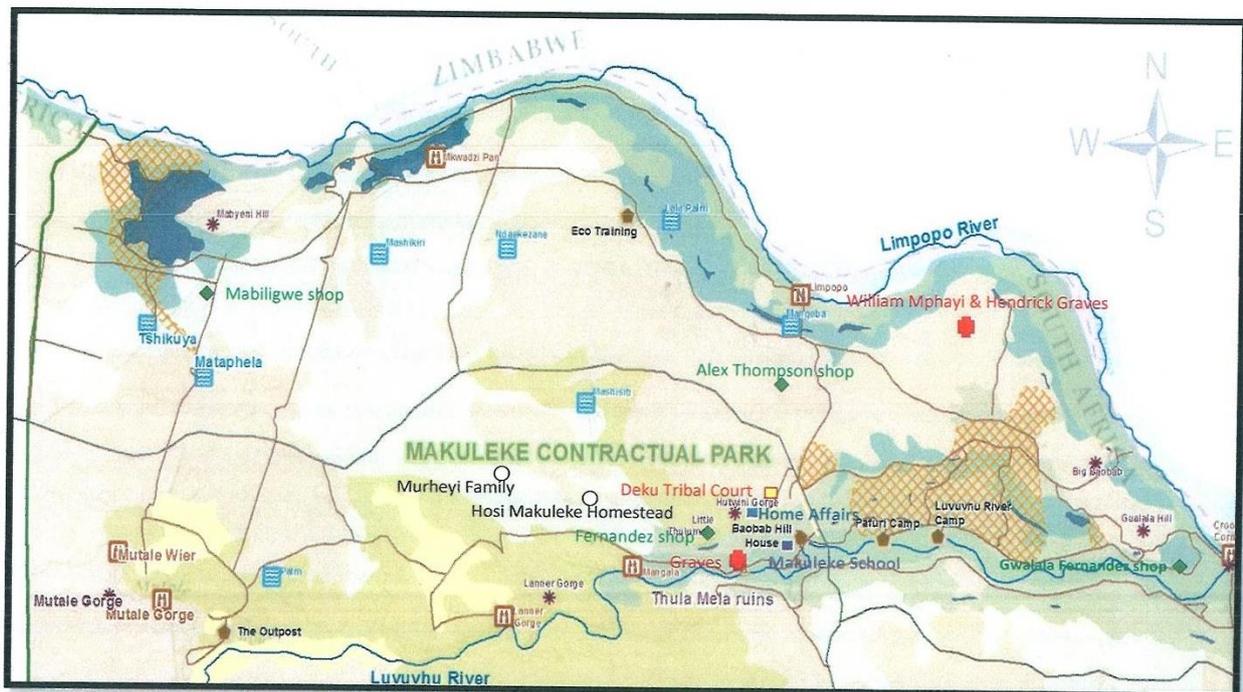
The submission by the Makuleke made clear that settlement of the land claim should address the need for restitution, as they had already accepted the conservation status of the land at the outset of the negotiations, a process that required extensive discussions within the community itself. This was triggered by the fact that there were those who wanted to resettle at Pafuri, as they still identified themselves with the land, while at the same time, there were those who believed going back would undermine their development within the village, and some people were by then not familiar with the old area.

Beside the challenges indicated above, there were also internal tensions within the community especially when looking at the land use options. Most of the elderly people wanted to resettle in the conservation area with a view to embarking on an eco-tourism business. It was eventually agreed to retain conservation status of the area where it had to

be deproclaimed as part of the broader KNP, which is a Schedule 1 park, later proclaimed as a Schedule 2b park or contractual park.

The negotiation process resulted in the conclusion of a settlement agreement between the Makuleke community and various parties, and this process was made an order of court when it was formalized by the Land Court in late 1999.

**Figure 21: Map of the Makuleke Region and its past and current features**



<b>Legend</b>		<b>Vegetation Types</b>	
Airstrip	Springs	Pan edges and Marshes	Mopane Woodland
Gravel Road	Park Boundary	Riverine Forest	Terminalea Woodland
Tar Road	Ramsar Pans	Acacia Thicket	Mixed Woodland
Trails Camps	Camps/ Lodges		Combretum Woodland
Landscape Features	Shops		
Lookout Points	Graves		
Court	Homes		
		Major Rivers	
		Off-road cycling area	
		School	
		Home Affairs (Nyala Tree)	

Source: ReturnAfrica: 2016

A fuller story describing the arrival at co-management and its operation will be given in Chapter 3. At this point what needs to be noted is the overall nature of the Settlement Agreement.

The Makuleke Settlement Agreement contains the following key provisions:

- It returns ownership and title to the Makuleke people of some 24,000 hectares of land between the Luvuvhu and Limpopo Rivers;
- The Makuleke people, in return, guarantee to use the land in a way that is compatible with the protection of wildlife and not to occupy it or farm or undertake any activities such as mining that would undermine the conservation objectives of the park. In addition, they add another approximately 2,500 hectares of land restored to them but outside the original park boundary;
- The Makuleke people have full rights to commercialize their land by entering into partnerships with private interests to build and operate game lodges as long as these are consistent with the wildlife management policies of the JMB, set up in terms of the agreement with SANP; and,
- The JMB comprises representatives from the Makuleke villages and the conservation agency to govern the way in which the wildlife of the Makuleke Region is protected. This institution is designed in such a way that residents can be trained over time to take over many of the conservation functions.

#### **2.4. More about the Makuleke community past and present**

According to Steenkamp (2000:4), “the Makuleke people are an exceptionally cohesive community. Their internal organization further displays a marked degree of institutional hardness and is able to cope well with the classic internal community tensions and frictions”. Steenkamp (2000:4) further explains that, during the course of the land claim, these tensions were almost always subordinated to the need to show a ‘united face’ to the outside world and what appears to be a tradition of sustained internal negotiation seems to have contributed to the ability of the Makuleke people to deal with the complex politics around their land claim.

This concerns the history of the Makuleke community before and after their arrival in the Pafuri Region, including their forced removal in 1969, which led to the near-loss of their identity. The Makuleke people subsequently occupied the Pafuri Triangle in accordance with their traditional laws and customs as beneficiaries of the South African Native Trust and Land Act No 18 of 1936. They also drew on their shared rules, which constituted a body of

customary indigenous law that established the social relations within the Makuleke community. These rules determined the access of the Makuleke people to the land that they held in common. Of significance here was the fact that the Makuleke community had established an independent political, social and economic lifestyle in the Makuleke Region (Maluleke 2012). Furthermore, owing to the wealth of natural resources in the area, the Makuleke community was self-sufficient in food. They were under the administrative control of the colonial and apartheid regimes from the time of the 1936 Land Act. The Makuleke community had a right to the small portion of the surveyed 1 000 morgan area called “Makuleke location” by the Native Location Commission, while the rest of the area was occupied in terms of their customary law even if they were regarded as squatters (Hoge et al. 1906).

However, despite challenging circumstances, the Makuleke people managed to retain aspects of their indigenous political and cultural system at Ntlhaveni, in spite of the process of cultural change to which they were subjected. Among other things, they retained their indigenous system of managing their natural resources. For instance, the cutting of thatching grass, harvesting of mopani worms, and brewing of marula juice could not be done unless a pronouncement was made by the Makuleke Traditional Authority as a way to initiate the harvest. These practices persisted in spite of the process of cultural change to which they had been subjected and in spite of the fact that they were under the administrative control of the apartheid regime for many years (Commission on traditional Leadership Disputes and Claim 2010). This reveals the capacity of the Makuleke people to sustain certain cultural practices over time, which has also helped in terms of maintaining the institutional resilience of the Makuleke people.

The history of the Makuleke Region can also be viewed within various contexts which include among others the following

#### **2.4.1.     *The Ecological Context***

Although the sustainability of natural resources has long been an integral part of rural southern African livelihoods, it is only in recent decades that outsiders have sought to promote this while attaching an economic value to natural resource management as a rural

economic development strategy (Fabricius and Koch in Fabricius et al. 2004: xiii). Fabricius and Koch (2004: xiii) argue that “government and donor agencies, however, continue to assume that rural communities place unsustainable pressure on these natural resources and that the belief has been that better practices, policies and management systems could halt environmental degradation”.

The establishment of the Makuleke Cultural Centre in 2000 created a platform for the management and sharing of knowledge that the Makuleke community sought to achieve immediately after regaining their rights to the land they had lost. The availability of two clinics and one visiting point meant for mobile clinic within the Makuleke community also played an important role in the identification, collection, management, production and dissemination of knowledge related to the health status of the Makuleke community. All this is important for development and for the success of co-management (Thornhill and Mello 2007:8).

#### **2.4.2. *The link between traditional knowledge and modernism.***

It should be remembered that, throughout human history, cultures in many parts of the world have developed different views of nature. Many of these views were rooted in traditional belief systems which people use to understand and interpret their biophysical world (Iaccarino 2013). These systems of managing the environment constitute an integral component of the cultural identity and social wellbeing of various ‘traditional people’, which would include the Makuleke people. The importance of traditional knowledge systems for the protection of biodiversity and the achievement of its objectives in the sustainable development of the Makuleke Region is slowly being recognized (Gadgil et al, 1993).

Article 8(j) of the international Convention on Biological Diversity urges the parties to the convention and all of us to respect, preserve, and maintain the knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation of biodiversity and sustainable use of natural resources (United Nations 1992). Given this, the most difficult part in approaching the knowledge contributed by indigenous cultures is best reflected in the way in which people describe and also how they name such knowledge: a problematic aspect of indigenous knowledge is how to define it. Berkes (1993) is of the view that there are many problematic definitions of indigenous

knowledge, but my view is that it does not matter how one defines it as there are many ways of interpreting traditional knowledge, including traditional ecological knowledge, local knowledge, indigenous science, folk knowledge, farmers' knowledge, fishermen's knowledge, superstition and tacit knowledge. The word 'traditional' for example, places the emphasis on the transmission of knowledge across generations, but might ignore the ability of traditional societies to adapt to changing circumstances (Berkes 1993). It is worth noting that 'traditional knowledge tends to develop a paradigm of the environment that emphasizes the symbiotic character of both humans and nature.

The 13<sup>TH</sup> conference of the parties to the Convention on Biological Diversity (COP 13 on CBD) took considerable steps to ensure that traditional knowledge relevant for conservation and sustainable use is protected and its use is encouraged with the consent of indigenous peoples and local communities (United Nations 2016). Guidelines for the recognition of traditional knowledge were adopted to assist governments in developing mechanisms at national level to guard against the unlawful appropriation of traditional knowledge. In addition the Nagoya and Cartagena Protocols, in recognition of the significant contributions of indigenous and local communities to their work, decided to use the term 'indigenous peoples' and 'local communities' in their decisions and official documents. Of course this does not change the obligations of the Parties or the legal interpretation of the protocols.

Those involved in the Makuleke co-management initiative in the Makuleke Region perceived a need for a balance between traditional knowledge and scientific knowledge for the proper day-to-day functioning of the Region. This was meant to close the gap that has developed between these forms of knowledge, even though the co-management arrangement in general is very unequal, especially with regard to the knowledge that SANP has prioritised in the conservation management of the Makuleke Region. It required recognition of the disparities in the resources and institutional capacity at the disposal of the SANP and its conservation management of the Makuleke Region. This has had the effect of undermining the local knowledge of the Makuleke people in the Pafuri area based on the organic or indigenous and traditional knowledge as reflected in their narrative of their time in the area. Traditional knowledge is nonetheless vital in the management of the Makuleke Region as a conservation area, as it functions as one of the resources and needs to be considered as such. An approach that recognizes the need for a fusion of 'western' or scientific knowledge

with indigenous or traditional knowledge (which obviously was not static and went through many changes historically) will forge a balance between the two and thus contribute to the proper functioning and sustainability of the Makuleke Region. What is therefore needed is a process that combines scientific knowledge with indigenous or traditional knowledge to ensure the proper functioning and sustainability of the Makuleke Region.

Modern or western contemporary culture and philosophy does offer interesting ideas about how to deal with problems of livelihood and conservation. However, I believe that western science does not hold the only criteria to determine the truth, but that any form of knowledge, be it western knowledge or traditional knowledge, makes sense within its own cultural context (Feyerabend 1987). The uniqueness of each of these forms of knowledge and an effort to use them simultaneously within the Makuleke co-management arrangement will assist towards the achievement of the conservation and development objectives in the Makuleke Region. In other words the dialogue between these forms of knowledge can become a tool for social collaboration as well as for discovering and enhancing knowledge for the sustainability of the Makuleke Region as a contractual park. The challenge is now to develop forms of conservation that engage with these past practices and 'traditional' ways of life so that the Makuleke co-management will be able to achieve its conservation and development objectives in the Makuleke Region. In other words, the dialogue can become a tool for social cohabitation as well as for discovering and enhancing knowledge about the sustainability of the Makuleke Region as a contractual park.

### **2.4.3. *The economic context***

According to Maluleke (2013:7), "The Makuleke community's involvement with the wildlife economy focused attention on the significance of Community Based Natural Resources Management (CBNRM) ... the CBNRM programmes in this wildlife economic context were developed on the back of several premises, including the claim that communities are more efficient managers of natural resources in their areas of jurisdiction than other agencies" It is undeniable that the involvement of the Makuleke community in the management of natural resources in the Makuleke Region has assisted in changing the mind-set of the KNP. It reduced conflict between the park managers and the people over their views on wildlife, leading to better outcomes for conservation and biodiversity (Maluleke 2013).

#### **2.4.4. Political context**

Following South Africa's first democratic elections in 1994, the new government, led by the African National Congress (ANC), instituted a suite of policy and legislative changes that sought to redress the race-based inequalities the previous government had created (Carruthers 2007; Crane et al., 2009; Kepe et al., 2005). One of the top priorities was to reverse the legacy of historical land dispossessions and forced removals that commenced with the Natives Land Act (No. 27 of 1913) and which was later expanded by other legislation, including the Group Areas Act (No. 41 of 1950). It was the implementation of these discriminatory laws that resulted in the forced removal of more than 3.5 million people (Dodson 2013), and produced the vastly skewed land ownership and widespread tenure insecurity that even today characterises much of rural South Africa (Carruthers 2007; Kepe et al. 2005; Pepeteka 2013). As a result, South Africa's land reform programme was one of the first major programmes instituted in the young democracy in 1994.

Subsequent to the signing of the settlement agreement, which marked the return of the Pafuri Triangle to the Makuleke community through a Deed of Grant, the present I was appointed Head of Administration of the Makuleke CPA, formed in accordance with the CPA Act No.28 of 1996, with the main aim of acquiring, holding and managing the restored land. The community was assisted by many people, including conservation-based NGOs and donors such as the Ford Foundation, Endangered Wildlife Trust (EWT), Peace Parks Foundation (PPF), Ligambiette, Africa Resources Trust (ART) and the Deutsche Gesellschaft für Technische Zusammenarbeit (GtZ) amongst others. These were supportive of the community but were equally concerned that the land should be retained as a conservation area.

A decision was later taken by the Makuleke community to retain the conservation status of the Makuleke region. Although the area can be considered remote in the sense of it being in the furthest north of South Africa, its position is of great strategic value as it links both the Gonarezhou National Park (GNP) in Zimbabwe and the Limpopo National Park (LNP) in Mozambique, an area regarded as the heart of the Great Limpopo Transfrontier Park (GLTP).

**Figure 22: Map of Greater Limpopo Transfrontier Park (GLTP)**

Source: Makuleke Conservation and Development Framework, 2012

The fact that it shares two international borders contributes to the area's national and international significance. Figure 14 shows the GLTP with the red shaded Makuleke Region located at the top of the KNP

**Table 2: Distribution of property rights to the Makuleke Region.**

RIGHT	POSSESSOR	RESTRICTIONS
ALIENATION	Makuleke CPA can sell, alienate or encumber the land	SANP has pre-emptive rights, must be notified of intent to sell & has first right of refusal

ACCESS	The Makuleke CPA and community members are entitled to access	Subject to JMB policy
PERMANENT RESIDENCE	-	Not allowed unless consistent with conservation
AGRICULTURE	-	Not allowed
USE OF NATURAL RESOURCES	Makuleke CPA may use sand, stone, etc. for building and other approved activities	JMB to set policy
BUILDING RIGHTS	Makuleke CPA can create commercial facilities (e.g. lodges); research facilities; a museum; a royal kraal	Must be consistent with conservation
INFRASTRUCTURE	Makuleke CPA	SANP can use as necessary to continue conservation management
SUBJECTIVE RIGHTS	State retains mineral resources; mining and prospecting is forbidden	If state policy changes, State must offer rights to the CPA at a fair and reasonable price

Source: Turner 2006

Table 2 above outlines the power-sharing approach and property rights regime of the co-management agreement in the Makuleke Region. This settlement agreement, which was made as a result of a court order, suggested a ground-breaking deal between the Makuleke community and SANP. In addition, the 3 000 hectares of land which was extracted from the Madimbo Corridor saw a slight expansion of the KNP, which was no doubt welcomed by SANP. The Makuleke community was merely pleased by the fact that the land was returned to them (Turner 2006:9). Meanwhile, the lack of conservation management expertise within the Makuleke community had compelled the Makuleke JMB to give powers to the KNP to undertake conservation management responsibilities on their behalf for a period of five years

as agents of the Makuleke JMB. Table 1 indicates the distribution of property rights in the Makuleke Region.

The settlement of the Makuleke land claim had an enormous impact on the wider Makuleke area. Although SANP had at first resisted the Makuleke land claim, the institution later changed its position and came to recognise that claimants relied upon natural resources for survival (Shackleton and Shackleton 2004:658–664).

The way in which land claims are settled also has an impact on the conservation agencies involved. Such agencies are mandated to ensure that protected areas are conserved according to legislation. Ultimately, the land restitution process in protected areas will be successful only if a good balance between conservation and development is achieved (de Koning and Marais 2009:66), which is why it is necessary to take a critical look at the balance which was a result of the Makuleke settlement agreement reached after two years of intensive negotiations was regarded by various people from different backgrounds, especially the environmentalists, as an important breakthrough. After intensive negotiations, which lasted almost two years, rights to land were restored to the Makuleke people under a settlement agreement signed in 1998. This land (now described as ‘farm Makuleke 6MU’) was restored on condition that the community formed the Makuleke MCPA in terms of the Community Property Association Act No. 28 of 1996.

To take transfer of the land, they had to agree to preserve its ecological integrity and use it only for purposes consistent with the preservation of such ecological integrity. The Makuleke CPA’s main objective has in fact been to use Makuleke Region in a manner that is compatible with the protection of wildlife and the area’s ecology, and not to inhabit it or to use it for agriculture or mining. The Makuleke CPA has full commercial rights to the land and has initiated an advanced programme for the development of a range of eco-tourism enterprises in partnership with investors from the private sector. Makuleke Region is used for these eco-tourism and related activities to alleviate poverty, provide employment and revenue, and to remedy the negative effects that the forced removal had on the livelihoods of the Makuleke community.

#### **2.4.5. *Functions of the Makuleke Joint Management Board (JMB)***

The main function of the Makuleke JMB is to ensure that the terms of the Makuleke settlement agreement, the Master Plan and the Deed of Grant are complied with. The JMB may from time to time amend the provisions of the Master Plan to conform to the ongoing objectives of the CPA and the SANP in relation to the Makuleke Region. The JMB is thus in charge of the conservation management of the Makuleke Region, while the Makuleke community retains full authority in terms of the commercial activities undertaken within the Makuleke Region. The JMB is obliged to ensure that any development taking place in the Makuleke Region complies with the settlement agreement.

According to the settlement agreement, the decisions of the CPA, whether related to commercial, conservation or social matters, shall be tabled and approved at meetings of the JMB and, once so tabled and approved, shall be deemed to be decisions of all members of the JMB. The Makuleke JMB must ensure that all regulations passed in terms of Section 29 of the National Parks Act, applicable to the Kruger National Park, continue to apply in respect of the Makuleke Region. Amendments to such regulations can only be made by passing resolutions in terms of clause 27.4 and 27.7 of the Makuleke Settlement Agreement.

In pursuance of the settlement agreement, the Makuleke community embarked on the process of commercialization of the Makuleke Region in 1999. The KNP, through the JMB, was invited to be on board as observers in the tendering process – especially during the first tender which resulted in the conclusion of the concession contract with Matswani Safaris for the erection of the Outpost Lodge. The conclusion of the concession contract with Wilderness Safaris and the Elsmore Company followed.

#### **2.5. *South African National Parks (SANP) perspective on the Makuleke settlement agreement***

SANP has concluded several co-management agreements with a range of actors for the management of protected areas. Private landowners as well as rural communities were involved. These co-management agreements have resulted in the incorporation of specific areas of land into protected areas, which are co-managed with the landowners for their

biodiversity use and economic development. In the case of the Makuleke community, SANP entered into a co-management agreement whereby SANP is obliged to give effect to the decisions of the Makuleke JMB, thus acting as an agent of the JMB. According to the Makuleke co-management agreement, the JMB may decide to appoint another agent, provided that the overall residual authority of SANP is not affected. If SANP is of the view that the JMB is failing to fulfil its conservation management obligations, it may either act in terms of its residual powers or declare a deadlock (Makuleke Main Settlement Agreement 1998).

The retention of national park status of the Makuleke Region enabled the community to concentrate on eco-tourism and the potential employment opportunities that eco-tourism could offer. However, on various occasions during the negotiations of the Makuleke land claim, SANP expressed concern that the expectations of the community about the creation of large-scale employment might be unrealistic (Phin Nobela, personal communication 2011). Concern was also expressed that the community might have received inappropriate advice from potential developers, giving rise to a conflict of interest and the inflating of the community's expectations to serve the developers' own ends (de Villiers 1999).

SANP's opinion of the Makuleke settlement agreement was at times therefore negative. There was discomfort about the settlement agreement, as it was feared it would set a bad precedent for communities which had suffered a similar loss of their rights as a result of forced removals. Since half of the KNP is under claim, this might result in the destruction of the world-renowned KNP itself. It is important to note that, in addressing the challenges of the land claims within the protected areas, a memorandum of agreement (MoA) was concluded in May 2007 between the responsible ministers of the Department of Land Affairs (DLA) and the Department of Environmental Affairs and Tourism (DEAT), based on National Cabinet Memorandum No. 5 of 2002, dated 13 September 2002. The MoA specifies an agreed position between DLA and DEAT to the settlement of land claims in protected areas which, according to de Koning (2010), was based on the following:

- “That where feasible and applicable, title in land shall be transferred to claimants without settlement rights and conditions of land use shall be registered against the title deed in respect of restored land.

- “That all the claimants for a protected area will be required to form one association to ensure representation into management structures appointed by the DEAT minister in accordance with the applicable legislation.
- “That, existing conservation agency shall continue to manage the land situated within the protected area after restitution until the DEAT minister reviews it.
- “That beneficiation of the claimants shall be structured in such a way that it may be tangible, realistic and optimal, though not compromising the financial sustainability of the said protected area.
- “The land restored in a protected area may not be alienated other than to an organ of state”

The reasons for SANP’s caution about the commercial viability of the Makuleke region over the short and medium term was that the climate conditions in the region are sometimes unfavourable, with a high incidence of malaria and very high summer temperatures. The rate of game-spotting in this region is also lower compared to the south of the KNP (Sandra Basson, personal communication 2011). These, together with the relatively underdeveloped tourism infrastructure and its distance from the main cities, has made the region the poorest-performing section of KNP. It was one of the reasons why plans to establish a camp were not followed up until the land was returned to the Makuleke community (De Villiers 1999). In contrast with this, SANP went ahead with the plans to build a rustic camp to the south of the Luvuvhu River next to Bobomeni, south of the Makuleke Region. This was challenged by the Makuleke community since it was perceived to violate the spirit of good partnership. Even though SANP co-manages some of these protected areas (like the one with the Makuleke community) on an equal basis, many of these communities are still finding it difficult to participate as equals in this kind of relationship. In most cases, SANP maintains its control over the partnership, and thereby contributes towards reinforcing what could be seen as the persistence of ‘fortress conservation’ principles.

Given the historical legacy of the land dispossession of the Makuleke community, there has been a particular need to provide equal participation for the Makuleke community in the wildlife economy. Experiences from other parts of southern Africa suggest that a wildlife industry and conservation development are complementary in their contribution towards conserving biological diversity (Murombedzi, et al., 2003). The Makuleke CPA has received

grants from various institutions such as government agencies, non-governmental organizations (NGOs), donors and foundations, and community members have been hired to work on projects in the Kruger National Park. These types of financial support have enabled the Makuleke to participate in all areas of co-management during the initial phase of implementing the settlement agreement, though the decisions was a short-term and unsustainable (Turner 2009:16).

Although many people, especially government employees, refer to the Makuleke co-management agreement as a model that could be used to resolve most of the land claims within protected areas, that cannot be use as the only model to be used when addressing the land claims within the protected areas. It is therefore not correct to rely much on the MoA concluded by DEAT and DLA as basis in which these land claims within the protected area had to be resolved. In politically sensitive circumstances, the risk might be that agreements may be reached outside the MoA (De Koning 2010), such as restrictions on title deeds and the alienation of land (Williams 2008). Besides the engagement with land claimants, the conservation agency is obliged to continue with public participation procedures as stated under the National Environmental Management Protected Areas Act (NEMPAA) and involving local communities (also non-claimants) in the work related to protected areas (National Environment Management Plan: Protected Areas Act 2003:27).

## **2.6. Theoretical points of departure**

A critical approach to the anthropology of development can be used to question the knowledge produced by development practitioners and those being developed, including that concerning conservation. Such a critical theoretical approach has allowed me to question whether the co-management arrangement which paved a way for development interventions in the Makuleke region did achieve its goals of producing equity through community participation or not. Understanding the anthropology of development can contribute beneficially towards a continuous questioning of the processes and assumptions involved in the conservation and development paradigm (Gardner and Lewis 2005). This led to the argument, for instance, that 'development' may be working to expand the power of the state, while at the same time claiming to be addressing the problems of poverty and deprivation in a neutral, technical and apolitical manner (Ferguson 1994). However, as historians have shown, conservation has always been highly political. The active resistance

of Africans to colonial conservation was brought to the fore through resistance to forced removals and adaptation to colonial policies (Ferguson 1994). Some scholars believe that “colonialism was not a simple meeting of two cultures and worldviews, with the one dominating and suppressing the other. Instead, it was a complex process of resistance and adaptation” (Said 1993). Similarly, the Makuleke community was not a passive victim of the oppressor’s exploitation but resisted removal from the Pafuri area when confronted by the former apartheid government. They also adapted and fought to retain their dignity and sense of identification with their land (Coplan 1987; Moodie 1994).

## **2.7. Conclusions**

The manner in which the Makuleke community approached their land claim process reflected their collective decision. It also demonstrates that the land claim and the traditional affairs of this community were inextricably bound. Members of the community also identified certain problems with the agreement. For instance, it is still not clear to many community members whether it was advisable for the Makuleke community to have chosen the conservation of biodiversity as the ideal, and only, purpose of the future land use. The return of the land had, in accordance with the settlement agreement and the Deed of Grant, some limiting conditions, namely that no settlement, agricultural practices or mining prospecting would be allowed in the Makuleke Region. Though the Makuleke community is currently the owner of the Makuleke Region, their access to the area is still regulated by the Joint Management Board, which had been tasked with the overall conservation management of the Makuleke Region. The lack of capacity of the Makuleke community within this co-management arrangement remains a concern.

By the time the Makuleke community had decided to retain the conservation management of their restituted land, there was no-one within the community who was qualified to take on the necessary management functions.

The questions thus remain as to whether or not the Makuleke co-management agreement is genuinely empowering and whether or not it has achieved its objectives of social justice and redress. The following chapter presents the research methodology and design.

## **CHAPTER THREE**

### **THE EVOLUTION OF CO-MANAGEMENT, THE THEORETICAL PERSPECTIVES AND APPLICATION TO THE MAKULEKE REGION**

#### **3.1. Introduction**

The previous chapter discussed the evolution of co-management, the theoretical perspective and application to the Makuleke Region. This chapter draws on the information gained to focus on the evolution of the co-management arrangement and how it came to be part of the picture in the settlement of the land claim for the Makuleke Region. It also highlights earlier conservation strategies already mentioned, for instance 'fortress conservation' which sought to separate humans from other species. In the course of this, it is revealed that the notion of co-management is embedded in the community conservation approach, and how it unfolded in the Makuleke Region will be examined. According to Adams and Hulme (2001:13), "co-management goals should be pursued by means of strategies that emphasize the role of local residents in decision-making about natural resources". Most parks continue to experience tremendous pressure from both developmental interventions and environmental regimes to ensure the conservation of environments and wild species of animal with their habitats. The fundamental issue at stake here is that the conservation of biodiversity should not exclude humans and should thus be extended towards the provision of economic opportunities for local communities (Child 2004).

#### **3.2. The political transition**

More than other African states, South Africa has been known for its long history of social inequality, which resulted in racially structured mechanisms of forceful removal and land dispossession, including political and economic disenfranchisement of indigenous Africans (Turner 2006). Political changes in African states after the 1960s put tremendous pressure on the apartheid government of South Africa to change. This pressure came from both internal unrest and the international community. As this unrest was intensified, South Africa succumbed to this pressure in 1990 by unbanning political movements such as the African National Congress (ANC) and the Pan-African Congress (PAC).

The first democratic elections in which all South Africans could participate took place in 1994. The importance of these developments lies in the shifting constituencies to which the pre- and post-independent governments had to be responsive as part of their continued legitimacy in relation to parks and conservation (Murphree 2004).

It could be said that, before 1994, the country's position on land was characterized by a harsh approach, whereby many of the local communities were deprived of their rights by means of forced removals triggered by the 'separate development' policies and racial segregation. This caused social unrest due to the suffering and hardship thus inflicted on the majority of South Africans. No problem concerning land can be resolved without looking at the history around it and without redressing past injustices. This, according to de Villiers (2003: 46), includes the extent of the forced removals, amount of land dispossession, the low quality of land in communal areas, and the violence that accompanied resettlement, coupled with the overpopulation of such areas. All this had a more severe on South Africa's black population than in Zimbabwe, Namibia or possibly in other parts of Africa.

As indicated in the previous chapter, the South African parliament, in line with the new constitution of the Republic of South Africa, promulgated the Restitution of Land Rights Act No. 22 of 1994, whereby the Commission on the Restitution of Land Rights (CRLR) and the Land Claims Court were created (de Koning 2010). The main objective of the Act was to provide for the restitution of land rights to persons or communities dispossessed after 19 June 1913 as a result of racial discriminatory laws or practices without equitable compensation (de Koning 2010). As mentioned in the previous chapter, the Constitution of the Republic of South Africa and the Restitution of Land Rights Act together gave the Makuleke people the right to claim restitution. This then enabled the Makuleke people to lodge, before the cut-off date for land claims of 31 December 1998, an application for the restitution of the land rights that they had lost when they were forcefully removed in 1969 from their ancestral land in the Pafuri Triangle by the then apartheid government.

The political transition described above was intended to reverse the effects of colonialism and apartheid (de Koning 2010), but although that there have been a number of claims resolved, there are still many outstanding while others have been resolved by means cash payments in place of restitution of land rights. Some are still to be finalised, especially the

most intractable, costly, complicated, and potentially conflicting claims in the rural areas (Ried et al. 2007:5). The manner in which these land claims are settled is likely have had an enormous impact on the local economic development in all rural areas, where unfortunately most people rely on natural resources to keep poverty at bay (Shackleton and Shackleton 2004:658–664). Not only can a land claim bring about an economic transformation, but it also has an impact on the conservation agencies involved. As described by de Koning and Marais (2009:66), conservation agencies are given a mandate to ensure that protected areas are conserved according to legislation. The land restitution process in protected areas will be successful only if a good balance between conservation and development is achieved.

South Africa's democratic change explicitly triggered the transformation of all sectors of society and parks, and this included social, economic and political changes. The majority of South Africans were effectively denied their rights to enjoy the benefits of the protected areas, often bearing the cost associated with the creation of these protected areas and also being excluded from them. Under the new dispensation, the 'fortress' or 'fence and fines' approach became politically and socially unacceptable. There were calls for the dual goals of biodiversity conservation and social justice to be met, and in this context co-management became the most popular approach for ensuring that conservation and social justice were both achieved. It was seen as a realistic approach to reconciling land claims and biodiversity conservation in South Africa and beyond. Following the resolution of most of the land claims within protected areas in South Africa, co-management arrangements became the preferred solution and have been between the conservation authorities and the land claimants who are legally awarded tenure rights to the land. For example, the African National Congress (ANC), in its Reconstruction and Development Programme (RDP) which is its major vision document later formulated as a government policy guideline document vividly addresses the co-management discourse in South Africa. This policy document focused on four fundamental principles i.e., participation, empowerment, economic and institutional transformation towards equity, and stability (African National Congress 1994).

The RDP policy in its approach was deeply reliant on collaborative participatory democracy processes between government and user-groups in decision-making processes for the use of natural resources, especially at the level of local community, (Stewart 1997).

Co-management in South Africa is characterised by two trends. One is that it should be based on a localised coherent community which has responsibility for its own natural resources, whether in the form of a collaborative management arrangement with the state or with some delegated responsibilities such as the Makuleke CPA was mandated to acquire. The community thereby holds and manages the Makuleke Region for the benefit of the entire community as a territorial group. The second trend calls for co-management practices where the government co-operates with functional groups, such as a fishing group which is not necessarily a coherent community.

The emerging interest of co-management in the protected areas is a blending of practice and theory (Grossman and Holden 2004). The 1990s ushered in significant changes in protected management discourses because managers of protected areas faced pressures from many people who demanded transformation within their areas. Co-management acknowledges pragmatic development and the progression of institutional choices in the management of protected areas. As indicated above, the political transition from colonial rule and apartheid to democratic rule globally has been a dominant theme for the past 40 years. This has compelled SANP, together with other conservation authorities, whether public and or private entities, to take account of what is happening, in itself a process of transformation within as a way of responding to the wave of change in South Africa (Grossman and Holden 2004).

The understanding that protected areas could play a critical role in fostering local economic development, in improving local livelihoods and in alleviating poverty grew rapidly after the 1990s (Carruthers 2007; de Beer and Marais 2005; de Koning and Beer 2014; Spenceley 2003). The World Park Congress (WPC) held in 2003 in, Durban, South Africa, for example discussed a shift away from 'purely ecological' reserve management perspectives to focus on more tangible ways in which protected areas could contribute to livelihoods and upliftment for communities.

The WPC discussions highlighted the positive contribution that conservation areas can make to sustainable development objectives and considered the practical mechanisms that could be used to improve the relationships between 'people and parks' (de Villiers 2009). Following this conference, the South African government committed itself to establishing a

national programme in which issues between local communities and protected areas could be suitably addressed. The aim of the 'people and parks' unit was two-fold: (1) to support the participation and involvement of local communities in the management of protected areas neighbouring them; and (2) to ensure tangible beneficiation to communities (and specifically land claimants) from protected areas and biodiversity conservation (DEA 2013). The People and Parks Programme, guided by NEMPAA (2003), is therefore regarded as a critical institution at the interface between land claimants, government and conservation agencies in South Africa. It is this programme, and the opportunities that it has afforded poor communities to voice their concerns, that contributed to the state's decision increasingly to endorse co-management as a strategy in protected areas (DEA 2013).

### **3.2.1. *Transition within the protected areas management***

During the colonial and apartheid era, the recreational interests of white residents were an important consideration behind the creation and the establishment of reserves. Furthermore, the preservation of sensitive areas and environmental conservation service functions provided good reasons for protected areas to be established before the worldwide growth of the tourism industry in the 1970s became the main economic contribution of parks to national economies, as it assumed a greater proportion of the GDP of many countries (United Nations 2011). Most of the African states, especially after their independence, have had to respond to their constituencies with different perspectives on the future management of their protected areas. These were initially viewed by most of the local communities as products of apartheid and the history of dispossession. Protected areas were seen to have been established on the ashes of indigenous homes and, even worse, were often the result of people being evicted from their ancestral lands to make way for wildlife (Peterson 1991; Magome and Murombedzi 2003).

Various countries around the world have initiated 'contractual' national parks, particularly Australia and Canada (Mabunda 2008). These national parks have been seen as a new way of performing dual responsibilities that of conservation management and of ensuring that there are benefits that accrue to local communities (Fabricius et al., 2004). By 1994, based on a growing number of international case studies, Steenkamp (2001) believes that "a multifaceted and powerful discourse about the need to reform natural resource management

regimes had emerged and the diverse and substantially interdisciplinary corpus of literature that emerged was consolidated around key themes to include the Community Based Natural Resource Management (CBNRM), Community Wildlife Management (CWM), Social Ecology (SE), Social Forestry (SF), Participatory Forest Management (PFM) and Community Forest Management (CFM)". CBNRM, Common Property Management (CPM) as an allied cross-cutting field of study touched upon all of these topics, and generated a large and growing body of literature" as various scholars such Steenkamp (2001), Shackleton et al. (1998), Van den Brink et al. (1995), Lawry (1990), Blewett (1995) and Bromley et al. (1992) would maintain.

For some years before the dawn of democracy in South Africa, tourists enjoyed their visits to South Africa's impressive network of national parks, but these tourists were mostly white people. Since 1994 improvements have been seen with regard to black people living adjacent to the parks being in a better position to access the parks and participate in their day to day conservation management. This is why tourists visiting the northern part of the KNP are noticing change, especially among the Makuleke people who are part of the co-management agreement concerning the unique beauty of the Makuleke Region. This region is now a contractual park in the northern portion of the KNP along with the Richtersveld National Park (RNP) and these areas are no longer under the control and ownership of the SANP but under communities originally dispossessed of their land rights. These are the 'contractual national parks' jointly managed by their communities and SANP by means of a co-management agreement.

All this brings to the fore the differences between conventional national parks and those parks which have now been declared 'contractual parks'. For the purpose of understanding these differences, it should be noted that in conventional national parks the state – or an official conservation agency or a parastatal – owns the land, while in contractual parks, where a co-management arrangement has become a central factor of the management approach, they do not. Instead, in the contractual parks, the conservation agencies are in partnership with the landowners through a joint management approach over the use of the natural resources, the day to day conservation management functions and other functions such as tourism. Importantly, the local communities who own land within a protected area

can enter into a co-management agreement with the state, or with private or corporate landowners who can still conclude a collaborative management agreement with the state.

The theme of 'benefit beyond boundaries' of the fifth WPC held in 2003 in Durban had, according to Steiner (2003), confirmed the linkage between conservation with local developmental needs through such initiatives – called 'conservation-with-development projects' by Stocking and Perkin (1992) as 'community-based natural resource management' by Fabricius *et al.*, (2004) as and as 'integrated conservation and development projects' (ICDPs) by Wells and Brandon (1992) as well as Barrett and Arcese (1995) According to Hutton *et al.* (2005), 'these co-management approaches, in contrast to the then dominant protected area narrative, recognized both the moral implications of the costs of conservation borne by local people and the pragmatic problem of the hostility of displaced or disadvantaged local people to conservation organizations practicing a 'fortress conservation' policy". Adams and Hulme (2001), Brandon *et al.* (1998), Bruner *et al.* (2001), Wells and Brandon (1992) and Western *et al.* (1994) are all of the view that "the paradigm shift from the fortress approach towards a broader vision of conservation within an inhabited economic landscape was widely endorsed by supporters of the idea of protected areas, who recognized that protected areas in biodiversity-rich developing countries were managed ineffectively, if at all, and thus provided little or no protection for biodiversity".

The rapid acceptance of the co-management approach advocating the involvement of local people in the management of conservation and protected areas has developed for at least four reasons (Barrow *et al.* 2000). The first of these was that of "tying conservation to sustainable development'. Another came from the idea about 'local people's action and participation as an alternative means of achieving positive transformation'. This was followed by ideas that cut across the developmental agenda that had emerged during the time of significant change within developmental discourses, from that of the 'top-down' 'technocratic' models to 'bottom-up, 'decentralized' and participatory planning'. Lastly, it was found to sit well within the renewed interest in the 1980s in the market, as an alternative to the state, and as a means of delivering policy change (Hutton *et al.* 2005). According to Mabunda (2008), in his presentation document to the South African cabinet regarding the land claims within the SANPs, "the Caracas Declaration which emerged from the 4th World Park Congress in Caracas, Venezuela between 10 and 21 February 1992 contained the

resolutions of the Congress on national parks and protected areas". He went on to say that "few countries embraced collaborative management and 'people and parks' concepts in the protected areas management discourse at that time". This had accordingly compelled the government to adopt the concepts of 'people and parks' and was later translated into various co-management regimes (Mabunda 2008). These, according to Mabunda (2008), "ranged from 'shadow management' to a parallel system of management". In some instances, this was interpreted as a joint management issue, resulting in perennial conflicts with people, and informed by diverse social, political, economic and scientific understandings (Mabunda 2008). The WPC did emphasize that social, cultural, economic and political issues are not peripheral to protected areas, but are central to them. This called for community participation and equitable decision-making processes, together with the need for mutual respect (Mabunda 2008). Mabunda (2008:11) is of the view that although "the relationship between people and parks is often ignored, Australia had, until 1990, included the Aboriginal people as part of the management of wildlife in the national consensus, and was the first country to recognize the value of reconciling indigenous people with conservation in the various successful land restitution cases that included conservation areas". In addition, India, Canada, New Zealand, the United States of America (USA), Indonesia and a handful of African states have, for example, initiated different models of co-management regimes (Mabunda 2008:11).

The change towards community conservation came at a time when the hostilities toward the apartheid regime within the southern African region were coming to an end and negotiations had begun to end it. The change also preceded the new approaches to co-operation between conservation authorities and neighbouring communities. This is the reason why Hutton et al. (2005) maintain that "the focus on state-led processes of conservation has been viewed as reversing the social and equity goals and gains of the community-based conservation approach and sustainable natural resources management. Widely implemented in the 1980s, the co-management arrangement emphasized decentralized natural resource management and an increased role for local people in decision-making over natural resource management". Coming after a century in which the main focus was on protected areas, emphasizing the exclusion of people from certain landscapes, the community-based conservation approach needed to address conflicts between conservation authorities and local communities. In the 1990s the national parks came under

increasing pressure, and funding for the conservation programmes started declining as the arguments for real conservation without development seemed to be of limited relevance to societies that needed to address poverty, economic growth and employment (Child 2009). The new relationship between these national parks and societies needed to be re-negotiated, and fortunately the idea that wildlife could pay its way and create employment had been tested on both private and communal land (Child 2009). This idea began to spread to various national parks, suggesting that many of them could fund themselves and play an important role as an engine of local economic growth with their new-found financial and economic power – which enhanced rather than detracted from biodiversity objectives (Child 2009).

### **3.3. The conservation paradigm shift**

Achieving sustainable development in areas such as South Africa where social, economic and environmental development agendas are all centre stage is something that cannot be achieved easily. Trade-offs usually occur at the expense of both social and environmental integrity, as decision-makers attempt to reduce poverty and deliver basic services (Igoe and Bronkington 1999). It is against this background that environmental sustainability becomes so important. Social and environmental considerations are inextricably bound to economic sustainability in South Africa. For the purposes of this study, environmental sustainability thus refers to the conditions in which productivity and the viability of ecological systems are managed at sustainable levels over time (Igoe and Bronkington 1999). However, conflict around issues of biodiversity and sustainable development constitutes what is termed as a ‘war of position’ as suggested by Gramsci (Igoe and Bronkington 1999).

### **3.4. The emergence of the co-management regime**

Transition did not only take place in the political arena but, as influenced by the global discourse and trends, various disciplines as represented by various policies and laws that support the principles of equity, social justice, participation, environmental sustainability, accountability and transparency (Whande 2007). Co-management was regarded as tool to reduce the transaction costs of patrolling (Whande 2007), something that came as a relief to the conservation authorities as it would mean that the community would also have to bear

the costs. The integration of local values and knowledge in decision-making is also recognised as necessary and beneficial because of the greater participation of resource-users and those owning the land (Whande 2007). Pressure from all these had pressurized a policy shift from a regulatory control towards co-operative and environmental governance models founded on collaborative relationships, negotiation and agreement among stakeholders (Whande 2007).

The formation of many South African conservation policies can be traced back to western values and ethics introduced in the colonial period (Grove 1987). Most of these global conservation efforts were based on exclusionary principles and such conservation approaches were generally top-down, in both their planning and implementation. It was in the light of this that conservation management was seen to be the function of government, and access to wildlife and traditional subsistence resources were generally made impossible without breaking the law (Grove 1987). The post-colonial shift created an 'action space' for community-based natural resource management within natural resources management programmes and related policies (Grove 1987). It is in this context, that South Africa had to redress the environmental legacy of the colonial and apartheid policies. In doing so, the South African government encountered not only a legacy of mistrust, dispossession and forced removals, but it also had to restructure the land distribution regimes that entrenched white ownership and control over natural resources (Christoffersen 1997; IUCN 1999).

It is a well-known fact that both 'fortress conservation' and community conservation approaches share the same ideas about 'nature'. In the view of the fortress conservation approach, the role and involvement of local people in the use of natural resources should be strictly controlled by the state, as this approach is grounded in the intrinsic value of nature. In contrast, the community conservation approach is basically utilitarian and anthropocentric (Jones and Murphree 2004: 63). Co-management, which can also be termed participatory management or collaborative management, can thus be seen as community approach to conservation management in which the government shares a certain measure of authority, responsibilities and functions in the management of a particular area, – whether protected areas, fisheries or forestry – with local resource users. Such participatory arrangements contain varying degrees of intervention or transfer of management responsibilities to resource users, and this includes technical advice or assistance provided by government.

The form of partnership normally depends upon the long-term objectives to be achieved, but these objectives need to be clearly established at the outset. The co-management approach has emerged as one tool that enables biodiversity and land claims to be reconciled in South Africa as well as in other parts of the world.

The partnership agreements were developed between local communities, who are the users of these resources, and other stakeholders, in a relationship that is broadly referred to as co-management or collaborative management. This has been the trend in South Africa and the rest of the region (Christoffersen 1997; IUCN 1999). It is important to note that the history of mutual aid and collective action in social and ecological affairs has been well established in communities over many millennia. Collaboration within small groups were essential to identify and gather edible and medicinal plants as well as to overpower animals, build shelters and to find and carry water (Borini-Feyerabend et al. 2008). According to Borini-Feyerabend et al. (2008: xxvii), “through time, communities gained their livelihoods by dealing together with the natural threats and opportunities in their surroundings, by developing productive technologies and practices and by producing knowledge and culture in the same process”. More recently, in various parts of the world, contractual parks have emerged as a new way of sharing conservation responsibilities between conservation agencies and rural landowners. Importantly, in conventional national parks, the state or the official conservation agencies own the land, while in contractual parks this is not the case. Instead, in a contractual park the conservation agencies collaborate with the landowners in the joint management of an area and its natural resources, including the conservation function and potential activities such as tourism.

According to Kepe (2008:312), still believes that “the potential of decentralisation of powers to be efficient and equitable had depended so much on the creation of democratic institutions with significant resources and discretionary powers”, a sentiment to which also subscribes. Also: “because co-management often hides a continued state of hegemony of protected areas, there are only a few cases in which these principles are being implemented and therefore a backlash is forming in some countries against the concept of co-management and the decentralisation of powers over natural resources’.

As earlier mentioned, co-management has now become the most popular approach for reconciling land claims and biodiversity conservation in South Africa and beyond. The co-

management arrangement was introduced after many of the land claims within protected areas in South Africa had been resolved. These co-management arrangements were created between the relevant conservation authorities and the land claimant communities legally awarded tenure rights to the land. Not that all co-management arrangements could work out well, and it would be naive to say that these partnerships can perhaps constitute success for the communities who might have claimed a piece of land within protected areas. There cannot be a 'size fits all' solution, since communities differ from one another. Using the case of a resolved land claim in Mkambati Nature Reserve, Eastern Cape Province, as well as insights from co-management literature, Whande (2007) identified and discussed three fundamental arguments as to why co-management does not perform satisfactorily in reconciling land restitution and conservation.

- The origin of the co-management idea in the conservation of high value natural resources (fisheries, forestry), rather than in or including concerns for resource rights.
- The neglect of key conditions for successful co-management, as discussed in the co-management literature.
- The ambiguity in settlement agreements, including the use of terminology and concepts that reinforce unequal power relationships, with the state emerging as the more powerful partner.

Unless there is a serious reassessment of the co-management idea as a way of reconciling land reform and conservation, and a possible review of settlement agreements that have relied on co-management, both the integrity of the "successful land claimant's rights" and that of conservation remain under threat.

Co-management is described in Section 42 of the National Environmental Management: Protected Areas Act (NEMPAA 2003:28–29). Although in this Act there is no definition of co-management as such, it does provide guidance as to the implementation co-management within protected areas in South Africa. In accordance with Section 42, the conservation authorities may enter into a partnership which may be in the form of co-management agreement, with another state institution or organ of state, a local community, an individual or other party – but the co-management is not to lead to fragmentation or duplication of management functions. I believe that it is the proactive right of the

conservation body to delegate certain functions to another party to the agreement and to come to an agreement for benefit sharing between the parties in areas such as the sharing of income, as well as access to and the use of natural resources. Section 41 of the Protected Areas Act (PAA) lays out the requirements of a management plan for an area proclaimed as a protected area that had been created through a public participation process that could have been involved or affected. In Section 39 of the PAA the purpose of including the management plan into the integrated development plan (IDP) of local municipality (LM) and district municipality (DM), is said to ensure that there is an alignment of activities taking place within the protected area and the IDP of either the local and or the district municipality. Protected areas should no longer be treated as islands, but as integral parts of the socio-economic environment (Feyerabend 2008:1; Kepe et al. 2005:8). The establishment of tourism facilities and business activities taking place in and around the conservation areas could exemplify such envisaged benefits beyond the boundaries. Unless there is a proper planning process that can yield benefits for the local economic development of the area in a co-ordinated way, such benefits would remain to be realized. The protected area is thus to be managed in such a way that there is provision for a sustainable flow of natural resources and services that will benefit local people, and will also ensure that there is a continuation of a sustainable consumptive use. This would provide for eco-tourism and many other related recreational facilities.

Berkes and Henley (1997:29) and Kepe (2008:314) refer to co-management as sometimes participatory, collaborative or joint.

Of course, there are many definitions of the term 'co-management' although it is generally regarded as a middle-range management option between state and community (Isaacs and Mohamed 2000: 2). According to Kepe (2008:314), this suggests and encourages participatory democracy, power sharing, local incentives for local use of natural resources, and a decentralisation of resource management decisions. These in their turn are referred as co-operative arrangements whereby a group of people and government work together as equal partners and have decision-making powers based on an agreed ratio (Feyerabend 2008:1). Berkes et al. (1991: 12) suggest that "co-management is the sharing of power and responsibility between the government and local resource users". Berkes (1994) was of the opinion that "the development of the ladder of participation, trying to cover the whole range of user group participation, has been applied to the discussion of co-management, although

the two extremes on this ladder are rather uninteresting (few modern resource management regimes can be based on 100% government influence or 100% local influence), the alternatives given in the middle indicate that there are different types of user group participation". These includes those from: "extreme centralisation of policy making and management functions to the complete devolution of those functions to an autonomous, independent, non-governmental organisation (Symes 1997)". What is more common in democratic countries is the creation of an in-between arena (within the two extremes on the continuum) where user groups can interact" (Hersoug and Raney 1996). When examining the definitions of co-management, the key concept relates to power-sharing between the state and stakeholders. However, the degree of participation, the interests and the influence, do vary from one user group to another, from one local community to another. As a result, there is no 'one fits all' model which can be applied to all South African marginalised communities. The models have to be crafted and developed specifically to the area, according to the type of arrangement and the type of resource, community and the level of capacity and expertise to administer such a co-management arrangement (Hersoug and Raney 1996).

Since there is no blueprint for co-management, various types of co-management/governance frameworks can be identified and the essential difference between management and governance is that management is about what is done, while governance is about who makes decisions and how (Feyerabend 2008:1).

The ability to move beyond the limitations of either state, private or community management is seen as a key benefit of co-management (Isaacs and Mohamed (2000:2). Hauck and Sowman (2005:7) are of the view that co-management should be seen as a promising alternative to resource management that merges the interests of a government which seeks to achieve efficiency and sustainability with those of landowners and resource-users who have concerns for self-governance, active participation and a variety of livelihood issues.

The KNP as a conservation authority in the Makuleke Region was mandated to carry on with its functions; that of the conservation management, now not alone but with involvement of the Makuleke community. The argument to be made here is that this mandate was sometimes met with conflicting views around the definition of the co-management by the state, which tends to defeat the notion of a partnership of equals and the sharing of authority,

power, responsibility and decision-making (Berkes and Henley 1997:29; Kepe 2008:314). This discussion relates to statements made by various scholars such as Isaacs and Mohamed (2000:1), Kepe (2008:312) and Kepe et al. (2005:13) that co-management in South Africa possibly represents a camouflage for the continuation of state hegemony regarding the protected area or national park concept, and that it evolved from an apartheid era strategy of entering into legal agreements with white private landowners to expand national parks. As good as the intentions might be, it is thus worth questioning whether co-management in its current form in South African legislation can work to reconcile the objectives of land restitution and conservation. According to Kepe (2008:315–319), “government departments dealing with land rights tend to disengage from the co-management process because it has its origin in the conservation of high-value resources and not in resource and/or land rights”. While it should be appreciated that biodiversity conservation is a national and international imperative, the current co-management model, according to Kepe (2008:315–319), has emphasised conservation interests over the land rights of claimants when one looks for examples in protected areas with irreplaceable biodiversity and limited development potential. One may therefore ask whether the proposed co-management arrangement in South Africa is sustainable and whether the government’s responsibility for biodiversity conservation can assist in achieving the objectives of the co-management.

In the absence of a unifying definition of co-management, there is a continuum of possible co-management arrangements depending on the degree of power sharing (Armitage et al 2007:3). The nature of community involvement in various co-management arrangements depends on a number of factors and ranges from state-driven to local community-driven which sometimes is privately managed. This then argues that co-management can range from an agreement between government and the local community who have rights over the land, or the resource-use groups who might have a common interest – where in particular the state consults with these groups or land owners – or to one in which the user groups have been assigned most of the power to develop, implement and enforce rules, and are required only to inform government of their decisions. The right of participation in protected area management can increase with land ownership (Borrini-Feyerabend et al. 2000:24; Turner et al. 2002:3). Of course, one cannot dispute the thinking that the management capacity of local communities also determines the level of participation of the local people.

There are other factors, such as group size, group coherence of the landowners, connectivity to the land, the development potential of the protected area, and the possibilities for outside support that also play their role in ensuring that the co-management is functional, and thus influence local people's' decision on how much they want to or can be involved in the management of a protected area. These also have an influence over local communities as landlords who have to choose how much they can or want to invest in a co-management arrangement, and thus how much risk they are willing to take. According to Berkes (1997:6), "co-management is feasible only if at least four conditions are met". These are (1) the relevant presence of appropriate institutional governance structures, (2) mutual relationships and trust between partners that are in agreement, (3) the protection of the legitimate local rights holders, and (4) legal protection of local rights, and economic benefits to these local communities.

Following the deliberations and the outcome of the 5th World Parks Congress (WPC) in Durban in 2003, the thinking to move the People and Parks programme and the land restitution process in South Africa from the ad hoc and consultation benefit-sharing models towards the lease, part lease/part co-management and co-operative co-management models became popular (de Koning 2009). These three models are currently supported under NEMPAA (de Koning 2003) and were therefore selected to form the basis of the national co-management framework (de Koning 2009).

It seems unrealistic to think of the other models at the moment, because NEMPAA requires the appointment of a conservation agency recognised by the state. It takes a lot of capacity-building and empowerment of the future landowners to reach the delegated and/or privately-managed stage. However, it is clear from consultations with land claimant representative structures, especially those attached to the KNP, that as future landowners they expect to move in the direction of the delegated and privately managed models. This expectation has, according to Borrini-Feyerabend (2008:4), been supported by recent thinking in the conservation world in which the various World Conservation Union (IUCN) protected area categories from strict nature reserve to managed resource protected area, and governance types from state-driven to community-driven are described in the so-called IUCN 'protected area matrix'.

The International Union for the Conservation of Nature (IUCN) defines a protected area as “an area of land and/or sea specially dedicated to the protection and maintenance of biodiversity; and of natural and associated cultural resources and managed through legal or other effective means (de Koning 2009a:12). According to de Koning (2009a: 12), the principle applied in the IUCN protected area matrix is that every governance type can exist in each IUCN protected area category, including national parks, strict nature reserves and wilderness areas. This means that, in certain situations and countries, national parks can be managed between the state and communities through co-management model. The question to be posed here is whether and when South Africa wants to move into this scenario, since a first step towards the realization of this arrangement is to allow for a genuine co-operative co-management approach as defined in the international context, where there is real sharing of power, responsibilities and decision making. The co-management model currently promoted in South Africa comes closer to the consultation and benefit-sharing model than the cooperative co-management approach as understood in the international context (de Koning 2009a:12). To the view taken by de Koning (2009a: 12) is that “co-management is a long-term commitment that requires adequate time and resources if the objectives are to be achieved”. In my view, the planning stage in itself is a time-consuming process for which significant resources are required before management decisions can be negotiated. In many cases, co-management arrangements are established over a five-to-seven-year period, particularly when local organisations need to be developed and empowered.

However, other studies of co-management show that the operational budget often increases by 25–50 per cent over the ideal budget, depending on the type of co-management and the specific situation (Reid et al. 2004:395–397). Government is bound to recognise that adequate time and resources are required to establish co-management, and to ensure that the commitment and funding are in place, including adequate support structures and training facilities (Hauck and Sowman 2005:15–18).

As already stated, in South Africa co-operative co-management is being advocated as the preferred settlement option within the land restitution process in protected areas. In order to offer direction to all parties to the co-management agreement, the collaborative process is outlined. Since co-management cannot be a linear process, these stages can cut across one another or differ in sequence, depending on the environment in which they are

embedded. It is best to get a neutral party to facilitate the processes between the state and the local community for the purpose of establishing a co-management agreement.

There is need for ongoing support to government agencies and local communities aimed at strengthening the leadership and to ensure for fair representation of the community during the implementation stage (Hauck and Sowman 2005:41). The issue of capacity-building for local people should start in the early stages of the land restitution and co-management processes. The need for leadership skills, communication skills, benefit-sharing mechanisms, as well as monitoring and conflict resolution and conflict management are critical for the success of co-management (Turner et al., 2002:29). Training for these is usually not within the capacity of the conservation agency, as they can be arranged through various government departments with the assistance of NGOs and/or universities. It is unfortunate that little of this support has been available in the case of land restitution processes, as it seems to be believed that training should take place only after the land title is issued and the land is transferred (Turner et al., 2002, 31). It was expected that KNP, as the conservation authority, would continue transferring the requisite skills to the Makuleke community, as outlined in the main settlement agreement, but that seemed difficult to realize. In a case study on the Makuleke contractual national park, some community members who serve on the Joint Management Board commented on the difficulty they experienced in familiarising themselves with the technical expressions used by the KNP officials during the initial years of the implementation of the of co-management (de Villiers and van den Berg 2006:20).

All the same, the Makuleke community did receive a lot of external support and I am of the view that, without this external assistance, the Community Property Association (CPA) would not have been able to cope with the complex legal, commercial and environmental issues that had to be dealt with during the implementation of the Makuleke co-management agreement. It is nonetheless more advisable that a community which has a claim to land within protected areas and decides to enter into a co-management agreement with the state or with the private sector, that all parties should thoroughly understand co-management and its implications. In furtherance of that, they must understand that the co-management structure normally consists of a Joint Management Board (JMB), comprising of selected members of the land claimants' representative structure(s) and the conservation agency.

The JMB takes strategic management decisions and development of the area being co-managed, in line with the existing management plan (MP) for the area, which in the terms of the National Environmental Management of Protected Areas Act (NEMPAA) is to be reviewed regularly. A day-to-day operations team should be in place to implement the decisions taken by the JMB or CMC (Turner et al. 2002:45). All parties to the co-management agreement are bound to share the cost on an equal footing as it is also important to understand that co-management is about equal power-sharing between the parties to the agreement (Borrini-Feyerabend et al. 2004). As indicated earlier, the cost of managing the Makuleke Region is met by a 50/50 contribution, although their agreement explains vividly that the community has full commercial rights. It is important therefore to tailor any such agreement, as there is no universal blueprint when establishing co-management (Ludwig 2001:758–764).

As a middle-range management option between state and the local communities, co-management covers various partnership agreements, the degrees of power-sharing, as well as the combination of the local and centralized management systems (Jentoft 1989). Co-management as a concept originated in the social science disciplines as an alternative to the 'top-down' management tradition-based approach characterised by government control which unfortunately did not work (Jentoft 1989, 1994).

Looking at the fishing industries, for example, it was important to come up with an alternative to the privatisation of resources, most often in the form of Individual Transferable Quotas (ITQs) (Jentoft 1989). While there have been people who earlier wrote on co-management and were eager to specify the concept, later writers have defined co-management to be as inclusive as possible (Jentoft 1989; 1994). They have thereby made of it both a research and a management model. In its latter role co-management should include a considerable degree of responsibility borne by the land owners on behalf of the users, not only as token consultations (Jentoft 1989; 1994). Co-management requires a formal arrangement delineating responsibilities and management tasks. However, in many cases the specifications have been less than precise. Sagdahl (1992) says it concisely: the concept of co-management is widely used but poorly defined.

It is important at this juncture to differentiate between management in general and the more specific task of managing natural resources. Management in general may comprise a large

number of tasks including the building of infrastructures, credit, education and training, as evidenced for example in the fisheries sector, while resource management on the other hand is usually confined to the fixing of outtake or resource utilisation and distribution (Hersoug and Rames 1996). Much of the unfortunate confusion surrounding the co-management debate is due to a mixing of the concepts (Holm et al. 2000). The fact that fishermen for example are able to share in the controlling of fishing or the allocation of space, does not necessarily prove that they are able to handle the much more intricate question of how much should be fished and how it should be distributed.

In order to define resource management, at least three minimal requirements have to be considered (Holm et al., 2000):

- An intention of resource management, not unintended effects of measures undertaken for other reasons;
- Some kind of theory linking the resource utilisation to the future state of the resource (this may be formal or more casual, but the idea is important);
- The management measures have to be enforced in practice (not only on paper). If these requirements are fulfilled, we can talk about resource management.

If resource management is to function as co-management, we must in addition require that the local users have a significant say in all major decisions regarding the outtake. Defined as strongly as this, there are not many examples of resource co-management in South Africa today.

During the first IUCN World Conservation Congress in 1996 held in Montreal, Canada, the issue of collaborative or co-management took centre stage and was approved by the Congress as Resolution 1.42 on collaborative management for conservation (Borrini-Feyerabend et al., 2004). Part of the requirement was to gather case studies and other examples of co-management to demonstrate that it was workable. This Congress thus created a platform for forming the IUCN Commission on Collaborative Management. During the second IUCN World Conservation Congress in 1972, the interaction with the Commission on Environmental, Economic and Social Policy gave rise to the Collaborative

Management Working Group (Borrini-Feyerabend et al. 2004). The Congress reconfirmed the importance of co-management approaches.

In the Makuleke case, especially the elderly people wanted to go and resettle in the claimed area, while all the young people and those who understood the cost of going back to the area argued that getting the ownership of the area while retaining it as part of the conservation area for eco-tourism business would be the best option. This community engagement over the land use option resulted in a decision taken by all members of the community, young and old, that the land had to be retained as part of the conservation area, while also ensuring that the Makuleke community became part of the day-to-day decision-making process regarding the conservation integrity of the area in partnership with SANP. In terms of the Makuleke settlement agreement, any decision had to be based on consensus with the Makuleke Joint Management Board (JMB). In addition to the above, the decision of the Makuleke community would be the decision of the Makuleke JMB once tabled in a constituted meeting of the JMB

Borrini-Feyerabend et al. (2004) are of the opinion that “co-management should not be restricted to state-community partnerships only but can also be applied within community-to-community relationships”.

Furthermore, this co-management arrangement is rarely described within the local community with reference to traditional ways and understanding about relating common property rights to the natural resources and community-conserved areas. An example of this is sustainable use, which can be seen also through the harvesting of resources, such as the cutting of thatching grass or the collection of edible and medicinal plants in community-conserved areas. Over time, a community such as the Makuleke had gained their livelihoods by engaging the various natural resource opportunities in their surroundings (Borrini-Feyerabend et al. 2004).

Borrini-Feyerabend et al. (2004) are of the belief that most environmental scholars shared the thinking that the creation of many of the protected areas was an intervention that had to deliver visible and tangible successes. From this perspective, even though many protected areas have been created in places such as botanical gardens, with limited potential for becoming tourist destinations, they still have significant potential value in one way or another

(Igoe and Bronkington. 1999). Garland (2008:52) argues that, “the notion that conservation and the creation of protected areas generate many kinds of capital with potential to circulate and generate further value at the global level is something that had to be investigated further”. Garland (2008) maintains that “there are different kinds of social capital when it comes to environmental interventions”. For instance, communities living inside and adjacent to protected areas established their livelihoods through a variety of asset uses, such as hunting and fishing in a collective, well controlled manner. Also: “Collaboration within these communities was important, especially in relation to the collection of edible and medicinal plants”. This made it possible for the livelihoods of such communities to be improved by collective action by which they were also able to deal with threats and opportunities that surrounded them. Of course, this in turn generated communal technologies, knowledge and cultural practices (Borrini-Feyerabend et al., 2004). Indigenous people throughout the world have been responsible for the retention of ideas and practices of common property. The communal management of pastures, forests, fisheries, wildlife, wetlands, lakes and rivers should also be included. The communal property approach to resource use was also typically created under strict rules and regulations formulated by local people, and usually embedded in institutions that have proved their worth through centuries of trial and error (Borrini-Feyerabend et al., 2004).

In the case of the Makuleke community, for example, these rules included the collective use of natural resources such as thatching grass, which could not be harvested until the chief had made a pronouncement for opening the season.

Africa has been justly famous for its remarkable array of species and ecosystems that were also critical to the lives of its people for subsistence, as they were the source of essentials such as food, medicines and building materials. This continues despite cultural change, when for example people continue to rely on traditional medicinal practices more than on hospitalization. Often if not always, African people also gained their livelihoods in ways that included different types of farming and a wide range of other activities. They had varying degrees of success depending on their access to natural resources and employment while under pressure from social, economic and environmental changes. In the past, and also the present, life for many people had been characterized by daily struggles in which much power and ingenuity are needed to secure livelihoods in the face of various crises. Subsistence farming in the Makuleke community has likewise been a key to the rural economy, as a

direct source of employment and income (van der Linde et al. 2001). Farming was one of the important activities of the Makuleke community when they used the environment for their subsistence on the floodplains of the Levuvhu and Limpopo Rivers.

In the 1990s local communities such as the Makuleke became the focus of new approaches in global governance. This generally involved the devolution and decentralization of power over natural resource management. These policy shifts also allowed the Makuleke people to undergo a series of conservation awareness and empowerment initiatives together with capacity-building. This involved exposure to the rules and regulations of various national and international conservation and tourism treaties such as those emanating from the World Trade Organization (WTO), Trade Related Intellectual Property Rights (TRIPS), World Park Congresses (WPC) and the IUCN (Bertrand and Kalafatides 2003).

Following the adoption of the 'responsible tourism' strategy as embedded in the White Paper on tourism, South Africa drafted national tourism guidelines targeting the tourism sector which aimed to address the triple bottom line for sustainable development, i.e. economic, environmental and social sustainability (Spenceley and Goodwin 2002). Prior to the Johannesburg World Summit on Sustainable Development, South Africa hosted the first conference on 'responsible tourism' destinations in Cape Town in 2002 (Spenceley and Goodwin 2002). The Cape Town conference resulted in a declaration that called upon tourist enterprises to adopt a responsible approach, to commit to specific responsible practices, and to use this for market advantage (Spenceley and Goodwin 2002). The Declaration states in particular (Spenceley et al. 2002) that responsible tourism should:

- Minimize negative economic, environmental and social impacts;
- Generate greater economic benefits for local people and enhance the well-being of the host communities, improve working conditions and access to the industry;
- Involve local people in decision-making processes that affect their lives and life chances;
- Make a positive contribution to the conservation of biodiversity and of cultural heritage, to the maintenance of world diversity; and

- Provide more enjoyable experiences for tourists through more meaningful connections with local people, and a greater understanding of local cultural, social and environmental issues.

In essence, the Makuleke co-management arrangement in the Makuleke Region has to be seen within the framework of the triple bottom line of economic, environmental and social sustainability. The eco-tourism consultant, Peter John Massyn, is one of those who share the view that the Makuleke co-management approach has become one of the shining examples of economic, environmental and social sustainability (Peter John Massyn, personal communication 2012).

### **3.5. Extensive conflict in the conservation and development arena**

There are many areas in which public development and conservation programmes have brought serious threats to the lives of the people who are staying in or adjacent to protected areas. This is more evitable during the establishment of the Limpopo National Park in Mozambique cited as an example.

The 'top-down' approach in conservation and development planning during the establishment of the above national park in Mozambique, including its implementation, tends to impose high social and ecological costs on the most affected people: those who had lived within protected areas for decades in the past and who were dependent on natural resources for their livelihoods (Borrini-Feyerabend *et al.*, 2004). The establishment of protected areas had devastating consequences for local people who eventually were forcibly removed. Many local people lost the rights they had to their ancestral land as a result of forced removals and this was usually done without any compensation. Though there was some consultation that took place about compensation that the relocated residents in Limpopo National Park are to receive, these complementation were still then to be realized, and this created a tension and or serious conflict between such people and the state as represented by the conservation authorities. In other words, evictions frequently resulted in hardship and impoverishment (Brockington 2002). Many of the assessments carried out on biodiversity conservation in the name of poverty alleviation suggest that protected areas have been unable to reduce or address the issue of poverty, but have instead exacerbated socio-economic difficulties for rural populations (Brockington 2002). According to the Durban

Accord (World Parks Congress 2003: 2), “the impact of protected areas on local communities, and also on the economy, has been variable”, as the international communities raised concerns that, “many costs of protected areas are borne locally, particularly by poor communities, while the benefits are accrued globally (World Parks Congress 2003: 2).

### ***3.5.1. Conflicts increase complexity and uncertainty of ecosystem and natural resources management***

The failure to balance the interests of conservation management of protected areas against the development interests of local communities has caused many conflicts between local people and conservation development. Worldwide environmental changes and other human-made risks such as engagement with genetically modified organisms have fuelled public anxiety over ecosystems and natural resource management discourses (Pimbert and Wakeford 2001). Given that communities are not homogeneous, the manner in which problems and solutions are perceived cannot be the same, and there is therefore a need for flexible responses to and adaptive management of natural resources.

These can best be grounded in customary practices and participatory learning and action (Pimbert and Wakeford 2001). In facing such challenges, co-management processes and flexible institutional agreements are increasingly sought to assure new forms of dialogue and participatory decision-making that are responsive to particular contexts (Gunderson and Holling 2002; Berkes et al. 2003).

### **3.6. Emerging interest in global governance principles and processes**

From the broader view, the management and governance of natural resources has in the main resulted in a situation that has sparked national and international debates (Borrini-Feyerabend et al. 2004). Such a dialogue, according to Borrini-Feyerabend et al. (2004), reflects a positive attitude and commitment from various conservation practitioners, including policy decision-makers, regarding the management of natural resources. This has been viewed as a positive move for the promotion of local involvement in all spheres of social, environment and economic development (Borrini-Feyerabend et al 2004). Of course, with regard to civil societies such as indigenous peoples and local community-based

organisations (CBOs), the environmental and development NGOs, trans-national corporations, bodies concerned with international and national law, scientific and local expert groups and professional associations have all regarded themselves as 'hands-on' their advocacy concerning decisions affecting the lives of local people. They have also called for appropriate mechanisms to redress of past injustices (Borrini-Feyerabend et al 2004). At the very least, this has created more recognition of the legal and user rights of the local people who had been so dependent upon natural resources for their livelihoods and who had also been demanding access to information and involvement, including representation in policy formulation and decision-making processes in areas in which these people had been residing.

In the light of all this, there have been demands for change in organizations such as the International Union for the Conservation of Nature (IUCN), a world conservation union founded in 1948. The IUCN has been rethinking the conservation management approach so as to cater for collaborative management (CM) and/or the co-management of natural resources, and has accordingly derived some concrete lessons of action (Borrini-Feyerabend et al 2004).

The old-order 'fortress' approach to conservation management, characterized by conventional governance structures and roles also based on a centralized and hierarchical authority, started to lose popularity and was increasingly perceived as inadequate. More flexible institutional arrangements and institutional capacity became the goal of change, as characterized by interdependence between various role-players and various approaches to collaborative management with increasing reference to a respect for human rights (UNDP 2002).

In addition to all this, co-management is being seen as also empowering local communities so that they engage and contribute constructively to the protected areas.

### **3.7. Sustainable use of natural resources within protected area management as applied in the Makuleke Agreement**

In its broadest philosophical context co-management practice has been linked to the sustainable use of natural resources. In contrast to 'fortress' conservation theories, co-

management theory suggests that, “the main problem with wildlife and other natural resources is not overuse which the conservation authorities would argue, but the conservation of land for agriculture and livestock” (Child 2004:64). As a result of such thinking, it took for example Makuleke community could agree on a sustainable approach to land use in the Makuleke Region which seemed to be in line with devolutionism. Jones and Murphree (2004) define devolutionism as “the transfer and delegation of power from a higher structure to a lower structure, more especially by the central government to local or regional administrations”. As with other countries in the region, South Africa had underlying issues that influenced the way in which development in the community conservation should unfold. These required the adoption of insights from studies and experiences in organizational and institutional dynamics (Jones and Murphree 2004). The delegation of power and or responsibilities was insufficient to tap the managerial potential of land and resource users; so for the Makuleke community to take full responsibility for the land, it had to be connected to full ownership of the Makuleke Region. As far as the Makuleke community was concerned, co-management provided the right incentive for effective management of the Makuleke Region – and this meant real empowerment and devolution of the right to manage, benefit and dispose of or sell the land (Jones 2004).

The Makuleke community had, as a result of the co-management arrangement and their deed of grant, and through their Communal Property Association (CPA), the right to acquire, hold and manage the Makuleke Region for their benefit; and they also had the right to dispose of or sell the land should they wish to do so, although SANP retained the right of first refusal. The Makuleke community concluded that “the settlement agreement gave the community full rights to the land and the utilization of the natural resources, provided that they used it in a way that would be compatible with the ecological integrity of the area” (Makuleke Main Settlement Agreement 1998). In terms of this agreement, the rights given to the Makuleke community were to be exercised in a manner so that the land was used sustainably for development in a way that would be compatible with the conservation of biodiversity for the economic benefit of present and future generations (Makuleke Main Settlement Agreement 1998).

What seems to be suggested is that the Makuleke co-management arrangement had the highest probability of land use being sustainable where the Makuleke community as a prime beneficiaries would be allowed to utilize natural resources with full commercial rights.

However, it was Zimbabwe and Namibia which were seen to be at the forefront of this type of Community Based Natural Resource Management (CBNRM) policy development and also the sustainable use of natural resources. Child (2003) was of the view that 'there was no accidental economic instrumentalism because of the outstanding economic and ecological success that the two countries had achieved through the devolution to the owners of ranch and farmland of strong proprietary rights over wildlife. It was also due to political demand upon the independence of the Zimbabwe and Namibia at the conclusion of liberation struggles, that the transfer of this economic power from white-owned land to communal land users was seen as part of the transition. In the Makuleke case, the Joint Management Board (JMB) also sought to provide supportive investment endeavours through ensuring land entitlements to motivate the sustainable use of natural resources (Child 2003).

Jones and Murphree (2004) believed that the devolution and economic instrumentalism policy arising from Namibian and Zimbabwean thinking for example had resulted in the 1970s promulgation of the legislative framework that gave the local owners the right to own the wildlife, especially in the commercial agricultural sector.

South Africa went beyond Zambian and Zimbabwean thinking on wildlife policy after democracy by adopting the principle of ownership of wildlife by local communities such as the Makuleke community. In terms of the South African legislation, communities which had lost rights over their land as a result of racial discrimination and forced removals could claim the ownership of the rights they lost over their ancestral land. This is the reason why the Makuleke community not only had user rights but also owned a portion of land within the protected area, and accordingly all the game on that land belonged to them when they were on their land. Steenkamp and Uhr (2000:19) are of the opinion that what the CBNRM should advocate must be the harmony of interests between wildlife and people. Of course this looks good from the policy level, but in reality it had never been very difficult to achieve in the case of the Makuleke co-management arrangement. This is not to say that there no good will from the parties to this co-management arrangement, but the lack of capacity to achieve its intended objectives contributed to an imbalance.

The fact that the Makuleke Region did not have its co-funding made it difficult for the programme to realize its potential. Also, because the initial participation of the National

Parks Board (today known as SANP) in the development planning processes at Makuleke actually promoted the interests of the SANP at the expense of Makuleke interests. SANP's participation was that of 'conservation participation in community development' rather than the other way around, as the Makuleke conservation development programme served to mask the aggressive advance of SANP interests which seemed to have surpassed the interests of the Makuleke community (Steenkamp and Uhr 2000:19). The underlying factor with regard to the CBNRM intervention in the Makuleke Region was the effort exerted by the Makuleke community. The CBNRM was part of a broader development plan derived from an overhead planning exercise which was conceived as a blueprint development intervention (Steenkamp and Uhr 2000:19); the Makuleke community's high degree of internal cohesion proved it to be otherwise. The CBNRM interventions within the Makuleke community initially represented a development blueprint mostly imposed on local communities. This did not shift the focus of the Makuleke people, as their primary goal was to ensure that they should first acquire ownership rights of the Makuleke Region before focusing on the development objectives which did not consider unintended consequences. This assisted them, as they were able to retain the full power and ownership rights that ensured their total control over the land.

The willingness of the Makuleke traditional leadership to co-operate with a democratic form of community structure in the form of the Makuleke CPA avoided the tensions that normally occur within communities which are involved in the CBNRM programmes. Many communities turn against CBNRM programmes to the extent that it becomes difficult to achieve their fundamental objectives (Fabricius and Koch 2004:80). This was not the case with the Makuleke people, as they were able to turn the top-down planning process around to become a more bottom-up community-based planning process. This was made possible with the help of their technical advisors, who assisted them throughout the negotiation process of the land claim. Steenkamp and Uhr (2000:19) are of the opinion that, although the boundaries between top-down and bottom-up planning are not always clear, the Makuleke planning process was more bottom-up.

Steenkamp and Uhr (2000) were also of the belief that the structural difficulties were perceived to be less inimical for the conservation interests to steer community development processes. It was undoubtedly this bottom-up approach that gave the Makuleke community control over the planning process, and this enabled the Makuleke people to be in charge of

their planning processes rather than the opposite whereby KNP was to take the lead. Even though there was no middle-ground meeting of top-down and bottom-up planning processes, little scope existed for negotiating the framework within which the development intervention took place. The Makuleke Region (Steenkamp and Uhr 2000) and the Makuleke community had to fight to ensure that the community retained power and control over their own CBNRM initiatives.

### **3.7.1. *The status of the co-management arrangement in the Makuleke Region***

The Makuleke co-management arrangement was regarded as a shining example of the relationship between a local community and the state, and was accepted after an intensive negotiation period. The agreement clarifies the rights and the responsibilities of both the Makuleke community, especially in areas such the sustainable utilization of the natural resources in the Makuleke Region, and SANP which focused on the conservation of biodiversity and the sustainable use of natural resources. The agreement was based on the premise that, if conservation and development could be simultaneously achieved, then the interests of both conservation and development could be served.

The Makuleke JMB, which was formed immediately after the conclusion of the settlement agreement, discussed the implementation of the agreement, focusing on development and the way the Makuleke community would derive income from their restituted land. The details of its genesis, inception and programmatic development have varied within the region even though CBNRM in southern Africa was based largely on a common conceptual foundation (Jones 2004).

The manner in which the CBNRM was introduced by the GtZ-TRANSFORM intervention at Makuleke, especially during the early stage of the land claim, was considered inadequate. According to Steenkamp and Uhr (2000:2), “the CBNRM intervention in the Makuleke Region did not give explicit recognition to the existence of ongoing conflicts of interest between the communities on the one hand and conservation bodies, including the State, NGOs and other interested parties, on the other hand.” The underlying assumption, as argued by Steenkamp and Uhr, is that,

“... if those conflicts of interest are not dealt with, formally and informally, by structuring the associated institutions and processes accordingly, then the existing power relations between parks and people are likely to be strengthened to the detriment of the people, ‘project success’ and, eventually, conservation itself” (Steenkamp and Uhr 2000:2).

Although both the KNP and the Makuleke CPA seemed to be very pleased about signing the settlement agreement whereby they had ensured that the Makuleke JMB meetings were held immediately after the signing of the settlement agreement in 1998 and before the registration of the CPA in 1999, the process of implementing the settlement agreement was not without conflict (Steenkamp and Grossman 2001).

The first issue which tested the implementation of the co-management agreement was a hunting proposal. Even though the proposal was presented to the Makuleke JMB’s meeting (minutes dated 21 January 2000) in line with the settlement agreement, which stated that, “the decision of the Makuleke CPA will be the decision of the Makuleke JMB once tabled in the formal constituted meeting of the JMB” (Makuleke Main Settlement Agreement 1998), the issue was not accepted by the KNP leadership.

This was made worse when the South African public heard through the media and animal rights organizations that the Makuleke people were intending to hunt in the KNP. A senior KNP member went to the extent of instructing the Makuleke community’s representatives who were at the annual Safari Club International (SCI) convention in Reno, Nevada, in a letter that they should cancel advertising the hunting packages and return to South Africa, claiming that hunting was illegal in the national park (Mabunda 2000). The letter was directed to Dr David Grossman and me, with instructions to leave the convention they were then attending.

Some of the SANP/KNP officials did not consider that the proposed hunting by the Makuleke community would not be taking place in the KNP but in the Makuleke Region, which was a contractual park where the sustainable use of natural resources was allowed. To the surprise of the CPA, the hunting proposals that were submitted by the Makuleke community a year after the first hunt was conducted were turned down by the SANP members of the JMB. They objected even though the numbers of selected species to be hunted were well within the quota as per the CITES regulations. When the Makuleke community proposed to

add nyala and eland to the quota, SANP representatives on the Makuleke JMB did not agree and a deadlock was declared. The settlement agreement allowed that a deadlock could be registered and be submitted to the head of SANP and the Chairperson of the Makuleke CPA, which is what the JMB did.

A wildlife expert who was an ex-director of conservation services of SANP was approached to provide an independent opinion about the harvesting of an eland and a nyala in the Makuleke Region. His recommendation was in favour of the Makuleke community and the hunting of those species went ahead. Not only did SANP object to the hunting, but when the Makuleke CPA concluded a concession contract with Matswani Safaris to build a lodge in the Makuleke Region, they stated that the site where the lodge would be built was a wilderness area according to their zoning, and that nothing could be built in a wilderness zone. In a context where the focus was primarily on the high value of wildlife resources, the development in the Makuleke Region had to take into consideration four important elements (Child 2004) as attested by Hector Magome, Director: Conservation Services in SANP (Mavis Hatlani personal communication 2012).

### **3.7.2. *The rationale behind the Makuleke co-management arrangement***

In the early stages of the Community Base Natural Resource Management (CBNRM) programme, embedded in the co-management framework, focus was exclusively on wildlife management when safari hunting was the sole land use option. This was due to the fact that the early amendments to legislation were made only in the wildlife sector because by then, wildlife hunting as the land use option had produced significantly more tangible and visible benefits compared to other options for the use of the natural resources. Wildlife management and its overall maintenance within a partly agriculturally-oriented landscape, on the other hand, incurred more costs and had created more conflict between wildlife and people (Hughes 2001). In addition, the development of the legislative framework that followed created a conducive environment for the local community to have more control over forests and timber resources, as well as other non-timber forest products such as grass or medicinal plants, including activities such as grazing (Fabricius et al. 2004). It is worth indicating that, today, every country within SADC for example has developed legislation and policies that allow ownership, or use and/or benefit from the use of the natural resources

within their communal lands (Fabricius et al. 2004). These CBNRM programmes were developed on the basis of several premises, namely that:

- Communities are part of the management in areas of their jurisdiction.
- Community management must create an environment for income generation and benefit thereof and had to contribute towards poverty reduction by ensuring that economic incentives for conservation are realized.

Co-management as an initiative was on the premise that it must be able to move beyond the limitations of state, private or community management (Hughes 2001) towards an understanding of the dynamics enforcing the capacity of community-based institutions, and for the state understanding of local conditions – as without them serious shortcomings arise that eventually tend to undermine both state and local-level environmental management's efforts to benefit from natural resources (Hughes 2001). These could be addressed by combining the knowledge and strengths of both the state and the local communities.

According to many scholars, co-management is also viewed, as further serving to produce the benefit of transcending strictly defined property rights and combining them in imaginative ways to build productive, mutually beneficial relationships (Katerere 1999). There seems thus to be a need to examine the current natural resources. The South African rural economy should be seen in the context of the social, political and economic discourses, particularly in areas such as agriculture, forestry, water resources and conservation. Even though the CBNRM approach in SADC had been built largely on the basis of a common conceptual formulation, the fundamental aspects of its genesis, inception and programmatic development have reflected a different approach. These differences were as a result of the specific political economy, institutional and social dynamics of each country within the SADC region.

The approach could have been different in most of the SADC countries, especially in countries such as Botswana, Mozambique, South Africa, Zambia and Zimbabwe, as they had to view the development of their CBNRM programmes within more or less the same parameters. In all of these, attempts were made to devolve power over the control and the management of the natural resources. This was demonstrated by those communities bordering on protected areas whose people had gained some of the benefits from the use

and management of natural resources similar to those enjoyed by landowners on leasehold and title-hold land, especially in Zimbabwe. Furthermore, these resource management initiatives were supposed to respond to the challenges of engaging traditional councils together with the local people in the management and benefit-sharing of hunting in state 'game management areas', as in Zambia (Child 2004). All these obviously had a specific influence on the growth and development of suitable programmes involved in the management of natural resources elsewhere in the world.

### **3.8. The sustainability of conservation, transformation and livelihoods**

The history of forced removals and dispossession in South Africa when the protected areas were established led to the establishment of the 'fortress' kind of conservation practices that failed to take into consideration the need and the importance of balancing conservation with development that would address the basic needs of the local people (Khan 1990). This history of authoritarian interventions was in contrast to the substantive and procedural rights of the post-apartheid South African democracy, which promotes ideals of participation, accountability, involvement and transparency of the local people in the use and the management natural resource (SASUSG 1999). In addition to the sustainability of natural resources as one fundamental policy element, recent legislations have endorsed the approach that governs use of natural resources by ensuring the establishment of community-based organizations (CBOs) to manage resources; this includes amongst others the catchment management agencies (SASUSG 1999). Sustainability in this context should translate into current actions that do not cause irreversible damage, so that the future generation might enjoy the use of the natural and other resources, especially if this precludes future sustainability (SASUSG 1999). In addition to the expectation of sustainability, it is therefore implied that renewable resources should be utilized within their capacity for renewal. In other words, the current users must use the resources with the understanding that they be renewed for future generations and that alternative resources and technologies with lesser environmental impact should be identified, developed and adopted to avoid extinctions. This also means that this principle of sustainability could be referred, for example, to tourism development which should have the least possible negative impact on the environment through the implantation of measures which naturally would

minimize energy and natural resource consumption, waste streams, and operating impacts (SASUSG 1999).

South Africa is faced with the task of promoting socio-economic development meet the needs of its population while ensuring that environmental integrity remains intact and that systems and services on which people rely on are not depleted or destroyed. The difficulty lies in trying to engage the national and international discourse in ensuring that sustainable development goals are met. It is encouraging that the progress and development of the international environmental discourse can be traced back to the 1950s and 1960s when contrary views started being expressed that eventually resulted tensions between conservation and development (UNDP 2003). The more that such tension was aroused, the more some of the western nations were compelled to consider that industrialization and exponential growth in consumption and population numbers could jeopardize national resources (Hutting 2000).

The promulgation and the implementation of environment policies in South Africa have contributed much towards a commitment to their inclusion the development and in many other policy domains, naturally including those dealing with natural resources. These relate to the formulation of national environmental policies by the Department of Environmental Affairs and Tourism (DEAT), especially in that they had to embark on an extensive public participation process known as the Consultative National Environmental Policy Process (de Koning 2010).

The promotion of co-management or partnership models has profoundly influenced resource use and the establishment of the legislative frameworks. Not only was an environmental legislative framework initiated that advocated co-management arrangement or partnerships, but it also specified resource sectors, which included amongst others agriculture, forestry and water (Njobe et al. 1999). As a result, policy guidelines are needed that aim to ensure that implementation strategies are created to monitor the intended outcomes. The link that emerged between the polyvalent discourses and the rights of the local people or indigenous people had created a demand for substantial forms of participation (Njobe et al. 1999). In Australia and Canada, for example, the restoration to the indigenous communities of lost rights in the land introduced participatory co-management

arrangements within some protected areas (Hill and Pres 1994, Sheehan 2000; Morrison 1997). Also, when considering the management of community resources like fish and water, more emphasis was placed on the joint management of some protected areas such as forest reserves and national parks, and these were often promoted as the most advanced and progressive expression of local participation in the conservation management paradigm, for which a growing number of cases had emerged (Long et al. 2001:15).

This chapter discusses the policy and legislative framework that acted as a base for the co-management regime. In addition, this chapter provides a summary of the relevant national, provincial and local legislative framework, an overview of the international policies, norms and standards, including conventions that are relevant to the establishment of the co-management arrangement, and the Makuleke Settlement Agreement was reached to date between the Makuleke CPA and the SANP

### **3.9. Creating a legal space for co-management**

The following areas constituted the legal space which supports the establishment of the co-management scenario.

#### **3.9.1. *The constitutional mandates***

The promulgation and also the Acts, and emergence of policies and regulations in South Africa, Namibia and Zimbabwe that devolved the ownership rights over wildlife to land owners such as the Makuleke community was necessary but not sufficient for the development of commercial wildlife production supportive of co-management. According to Bond et al. (2004:39), the most important and fundamental expression of these public policies are in the national constitution. The constitution of South Africa thus directly and explicitly facilitates co-management by recognizing the right of people, citizens and civil society in general to participate in decision-making processes and in the governance of a protected area designated by national and local institutions. One of the fundamental aspects in which constitutions and basic laws of countries that provide support for co-management, is by not neglecting the power of the local institutional context. They do this by allowing the devolution of power towards the management of protected areas and natural resources and

by allowing for responsibilities with governance at the lowest level by maintaining a culture and system of participation in the policy decision-making and governance processes. In South Africa, for example, the Constitution is the supreme law of the land and its Bill of Rights is the cornerstone of democracy (Constitution of the Republic of South Africa Act 108 of 1996). Section 24 of the Constitution specifies that everyone has the right to an environment which is not harmful to human health or well-being, and to have the environment protected for the benefit of present and future generations through reasonable legislation and other measures. These rights provide within South African law not only the foundation for the protection of the environment, but also redress rights lost as a result of the forced removal of people when protected areas were established, such as happened with the removal of the Makuleke people from the Pafuri Triangle. The importance of promoting conservation and the redress of past injustices is thus provided for in the Constitution.

This forms a strong basis for protecting the integrity of South Africa's ecosystems, thereby securing a long-term vision of ecological and socio-economic development for present and future generations.

In accordance with the constitution, the South African government has developed many policies on various issues in order to reduce and also to redress the issue of poverty and social inequality (Department of Land Affairs and Department of Environmental Affairs and Tourism 1998:7). Of most importance for the Makuleke community was the development of the land reform programme in South Africa. This was put in place according to the principles set out in the ANC's Reconstruction and Development Programme (DANCED 1997a).

The White Paper on South African Land Policy which was adopted by the Cabinet in April 1997 (DLR and DEAT 1997) helped to address the effects of earlier social, political and economic deprivation. This policy document had three strategies to reverse land dispossession, namely land redistribution, land restitution and land tenure reform, all of which get support from the supreme law of the country, i.e. the Constitution of the Republic of South Africa (DLR and DEAT 1997). It is a well-known fact that the goal of land restitution was to redress past injustices by ensuring that all people who might have lost their rights in land as a result of being dispossessed and who also were forcibly removed from their land through the 1913 Natives Land Act – like the Makuleke people – would be allowed the get

their land back. According to DLR and DEAT (1997 7), issues of fairness and justice for individual communities and the country at large are important when providing support for the process of reconciliation and development and for ensuring that a new management model, such as co-management, in protected areas is realized. The realization of an enabling environment by redressing the past injustice and the finalization of the land claims is provided for in the Restitution of Land Rights Act No. 22 of 1994, as amended. This is the policy that guided the Makuleke in their endeavour of claiming back their land.

Not only was the Restitution of Land Rights Act important in this case, but also the Land Claims Commission and the Land Claims Court were established as institutions that had to ensure that the process of restoring land to its rightful owners was realized.

Gilfillan (1988) maintained that, “the current government’s policy on land claims within protected areas does recognize that restitution is not just a mere restoration of land as a commercial resource, but must also address the social degradation and loss of identity suffered as a result of the dispossession and subsequent removal”. She went on to say: “the equitable redress of past injustices should be seen to address rights lost on land and yet maintain conditions that preserve the environmental integrity of protected and ecologically sensitive areas in the interests of conservation that will benefit local people (Gilfillan 1988). The Makuleke people’s regaining of their rights, it should be pointed out, was based on the understanding that they would not resettle on the original land or practise agricultural activities but that they wished to retain the conservation status of the area (Gilfillan 1988). The thinking of Gilfillan was thus treated as her own, even after a series of the general meetings by the Makuleke people in which the issue of not going back or going back was discussed at length – until people decided rather to retain the ownership of the land as part of the protected area with the understanding that they would benefit from it economically.

Makuleke people understood the implications of retaining the conservation status of the land, and among these implications being that indeed they would own a piece of the Makuleke Region but must make sure that they used it in a way that would be compatible with the conservation integrity of the area ((Gilfillan 1988). Although the Makuleke people declared their area to be part of the conservation area, as specified in the Makuleke Settlement Agreement and the Deed of Grant, it is worth noting that they enjoy full ownership

with commercial rights as well as the full package of right of access to the area (Makuleke Main Settlement Agreement 1998).

The signed agreement submitted to the Land Claims Court by the Makuleke community, read with the amendments made by the parties since the referral of the matter to the Court, stipulated that “the land constituting the Pafuri Triangle and some part of the Madimbo area be returned to the Makuleke people through a registered communal property association in terms of the Communal Property Association Act”: (Dodson 1999:4-5).

### **3.9.2. *Environmental policies and protected areas co-management.***

Although it is a country with a turbulent socio-political history, South Africa has a wealth of biological assets and environmental resources (DEAT 2007). However, widespread biodiversity loss and species extinction have also been noted across the country (DEAT 2007). In recognition of this, the South African government made a formal commitment to reducing biodiversity loss and supporting national conservation initiatives by ratifying the Convention on Biological Diversity (CBD) in 1996. In line with this agreement, and with its own Constitutional imperative to secure ecologically sustainable development and use of natural resources according section 24(iii) of the CBD and the constitution of the Republic of South Africa (1996), South Africa revised its environmental legislation (Paterson 2011). A key aspect of this was the development of the National Environmental Management: Protected Areas Act, No. 57 of 2003 (NEMPAA 2003). This Act, administered by Department of Environmental Affairs (DEA, previously known as DEAT), appoints the State as the trustee of all protected areas in South Africa in terms of Section 3(a) of the Act (NEMPAA 2003). Through Section 38 (1) (a) of this Act, the Minister of Environmental Affairs is required to charge the management of any protected area to an appropriate entity, be it an individual, organisation or organ of state (, and this entity is then obliged in terms of Section 39 to draw up a management plan detailing the conservation-related activities to take place in the protected area and in this this case is the South African National Parks (SANP). Under this national-level directorate, each province also has its own conservation department, (either directly or as a parastatal which fulfils the provincial and municipal-level responsibilities of non-SANP-managed reserves (Carruthers 2007; Paterson 2011).

While the Act describes various models of environmental protection, ranging from national parks to protected environments, from an ecological perspective, it also recognises that protected areas can and should contribute positively to the livelihoods of local people. This is emphasised in Section 2(e) which states that this law should “promote [the] sustainable utilisation of protected areas for the benefit of people”. Equally, Section 2(f) promotes the “participation of local communities in the management of protected areas” (NEMPAA 2003:13).

As a result, the establishment of co-management partnerships between local communities –as well as other parties – and reserve authorities in jointly managing protected areas is outlined in Section 42 of the Act (Paterson 2011).

In global discussions, these collaborative systems of management acknowledge local stakeholders as active players in decision-making and they promote the equitable sharing of both power and responsibility between local- and national-level governance structures (Borrini-Feyerabend et al, 2004; de Koning and de Beer 2014).

### **3.9.3. *The principles of South African co-management agreements***

Firstly, the Memorandum of Agreement (MoA) between the then Minister of Environmental Affairs and Tourism (DEAT) and the Minister of Land Affairs (DLA) on how the land claims within the protected areas were to be addressed, stipulates that “all protected areas under land claim are to remain conservation areas (‘conservation in perpetuity’) regardless of the settlement or the outcome of the claim and this is in recognition of protected areas as assets of national and international importance (DEAT and DLA 2007:4). Secondly, where claimants choose the restoration of original land as their form of restitution, as opposed to alternative land or financial recompense, they must enter into co-management agreements with the state. Under these circumstances, the land claimants obtain full ownership of the land and are active decision-makers in reserve management, but they cannot re-occupy the land. As a result, the power and authority of the successful land claimants in reserve land management is restored, despite their not being able to resume full residence (DEAT and DLA 2007:4). In these situations, the conservation agency maintains management authority over the reserve. The MoA also states that the co-management agreements must be “sustainable, effective and compatible with relevant conservation and development

mandates” and that they must “result in tangible and realistic direct and indirect benefits for [successful] land claimants” (DEAT and DLA 2007::5). In other words, these agreements are a means of ensuring that the conservation management of these protected areas is carried out without any prejudice but aimed at the sustainable use of natural resources that will favour principles that are pro-poor and egalitarian.

Despite the approval of the MoA and the government sanction of co-management agreements, the settlement of land claims on protected areas remained extremely sluggish in the first decade of the 2000s. As a result, the South African government published the ‘National Co-Management Framework’ in 2010 (DEAT and DLA 2010). This document sought to clarify the creation and implementation of co-management strategies and thereby speed up the settling of these often contentious land claims (DEAT and DLA 2010). The Framework identified three potential models of co-management, namely:

- *FULL CO-MANAGEMENT*, which refers to an “agreement in which the title deeds are completely restored and the successful claimants are fully involved in the management of the reserve”. In this strategy, the “existing management authority”, such as the provincial conservation agency, remains the main management authority of the reserve and continues to deal with the day-to-day conservation management of the protected area (DEAT and DLA 2010). However, the establishment of Co-Management Committees (CMCs), of which the successful claimants will form part, are to be active in the bigger operational decisions of the reserve and in the development of potential tourism opportunities (DEAT and DLA 2010). Here, despite communities being unable to take up “physical occupation” of a protected area, they can actively engage in the growth and progress of the reserve as well as derive benefits from the access to natural resources and revenue-sharing (DEA 2010:4). The success of this model lies in the income-generating potential and tourism prospects of the reserve (DEAT and DLA 2010). This proviso severely limits the application of the model, as most protected areas in South Africa remain primarily state-subsidised and rarely generate any net profit (Cundill et al. 2013; De Koning 2010b). In these instances, the development of Community-Public-Private-Partnerships (CPPPs) are key to ensuring the success of such co-management agreements (De Koning 2010a; Spenceley 2003).

- *FULL LEASE*, which refers to agreements in which the state restores the full title deeds to the claimant community and then leases the reserve back to those who had taken ownership in the interim (DEAT and DLA 2010). In these situations, the possibility of local economic development through tourism is very restricted and the socio-economic benefits associated with implementing full co-management agreements would not provide adequate restitution. In these agreements, the current management agency maintains all authority in running the conservation reserve and the new landowners have no role in the management and development thereof (DEAT and DLA 2010). Rent, often in the form of a community levy, provides direct financial compensation to the claimants for the period of the lease agreement. There are multiple options for lease contracts, including 'fixed cash leases', 'flexible cash leases', 'percentage share leases' and 'share of income leases' (DEAT and DLA 2010). The adoption of any of these leases would require careful consideration and would be based on the particular social, economic and ecological characteristics of the reserve and the claimant community.
- *PART-CO-MANAGEMENT/PART-LEASE ARRANGEMENTS* represent a combination of the other two models. Here, the circumstances around the land claim calls for a tailored contract in which some elements of both co-management and lease agreements are included. While the National Co-Management Framework (2010) remains vague on the absolute characteristics of this model, it does suggest that these agreements should be seen as part of a continuum in collaborative management and that a 'part co-management/part-lease' would fall anywhere between the two extremes (DEAT and DLA 2010).

Each of these strategies offers different benefits and has different drawbacks. The effectiveness of each model depends on its relevance and appropriateness in addressing the specific social, economic and environmental needs of the reserve and claimant community in question (DEAT and DLA 2010). Outlined below are the fundamental principles behind each model.

The Protected Areas Act provides for the co-management of a protected area by a management authority and private owners. According to Section 42 of the Protected Areas Act, “the management authority may enter into an agreement with another organ of state, a local community, an individual or other party for the co-management of the area by the parties” (NEM:PAA 2003). According to the National Framework on Co-management, “co-management is defined as management, contemplated in section 42 of the NEMPAA: Act 57 of 2003, of land by the Management Authority, being an organ of the state as a lead manager and the claimants in accordance with the co-management agreement entered into between these parties” (DEAT and DLA 2010). The institutional arrangements agreed upon for the implementation of the co-management agreement should provide for a clear definition of procedures, roles and responsibilities, including agreement on a dispute resolution procedure. This includes the requirement that the ownership of land by claimants without physical occupation and other restrictions on the land must not do harm to the conservation integrity of Protected Areas. In South Africa, protected areas which had been declared contractual parks are managed in terms of a joint agreement. These principles thus indicate the rights and responsibilities of both parties in a joint management agreement.

It was explained above that most SADC countries have in recent years devolved rights over the ownership of wildlife and tourism enterprises to the local communities, which in the main provide incentives for sustainable resource management. It is worth noting that an attempt to return the rights these communities might have lost were preceded by the devolution of authority to freehold and animal farmers in certain countries over the ownership of wildlife (Jones and Murphree 2001). This devolution of ownership rights to freehold farmers in parts of the SADC countries also provided the strongest examples of states that enable landholders to make their own decisions with regard to ownership and management of wildlife and the protected areas in general. As a result, there seems to have been improved conservation of wildlife on freehold land (Jones and Murphree 2001).

Except for South Africa, most countries within SADC only have user rights, which are weak compared to ownership rights. This is what has caused most government officials in South Africa so reluctant to relinquish control over wildlife and or natural resources (Murphree 2004). Even though the Makuleke people have ownership rights over the Makuleke Region as a conservation land, some of the KNP officials have held onto control over decision-

making concerning the management of the area. Where policy and/or legislation needed to be enabling and flexible, including adapting to the specific social and ecological circumstances, they remained prescriptive and inflexible. For the communities, rights over natural resources have to be linked to security of tenure.

Policy and legislation tend to provide for systems of decision-making and representation in community institutions that unfortunately often do not coincide with local forms of decision-making and representation. It goes without saying that policy and legislation need to strengthen the rights of local communities over the ownership of natural resources. The provision of security of tenure over the land, and an enabling environment where local institutional arrangements may be integrated for progressive co-management are necessary in this country and also other parts of the SADC region. These processes are of course critical if the land had to be incorporated into or remain part of the protected areas so that it could be used in a manner that remains consistent with the NEMPAA, the Management Plan of such a protected area and also with the National Environment Management: Biodiversity Act No. 10 of 2004. It seems obvious that any person intending to invest in restored land, especially in those areas acquired in terms of the South African Land Reform processes and which had been retained as part of a conservation programme, should be well apprised of the requirements of the legislation. SANP and DEA should be working together on a process whereby they ensure an appropriate endorsement to the title deeds of all land currently incorporated into the national parks and where co-management is at a play.

The new democracy in South Africa initiated many policy changes that were aimed at redressing the social injustices and inequality experienced during the apartheid era, with the intention of improving the quality of life of poor local people (Wynberg and Kepe 1999:13). These policies included, amongst others, the land policy reform as outlined in the South African constitution, which was also aimed at a unitary, non-racial and non-sexist system and a prosperous South Africa (Wynberg and Kepe 1999:13). In the main, South African land policy aimed to devise secure forms of land tenure that could resolve disputes and provide a way forward for people who had been victims of land dispossession. The primary beneficiaries would be South Africans who had suffered the loss of their land rights due to forced removals. Under this policy (Wynberg and Kepe 1999:13), landholdings based on permits would have to be replaced with the rights held by groups or communal tenure, and

these would be upgraded into legally enforceable rights. It had been the aim of this policy that, through restituted land rights, local people who had lost their rights through forced removals would be able to reclaim such rights, and would be able to make an informed decision about the land use option that would best suit their needs. It was on this understanding that the Makuleke community decided to hold their regained land under a co-management arrangement for the benefit of both the current population and future generations.

Furthermore, the return of the Makuleke Region should be viewed within the framework of some suspensive conditions such as no resettlement, no agricultural activities, no mining or prospecting and, as indicated in Chapter 2 above, the land should remain part of the KNP in terms of section 2B of the repealed National Parks Act (Dodson 1999:4-5). This implies that the Makuleke Region would be de-proclaimed from being part of the KNP and be proclaimed as a contractual park for a period of 50 years, and that this would be reviewed after 25 years. The strategic position of the area provided for the South African Defence Force to continue to execute its statutory mandate of border control. The terms of agreement also oblige SANP to transfer skills to the Makuleke people so that they could effectively participate in the day-to-day conservation management of the area through an established Joint Management Board (JMB) by means of a management plan. The Deed of Grant confers “full commercial rights to the Makuleke people and also the rights for sustainable harvesting of the natural resources in the area” (Dodson 1999 4-5).

It seems clear that a necessary prerequisite for a successful co-management framework or agreement is the establishment of a legal framework through some form of legislation. Such arrangements will address some of the obstacles around the bringing together of conservation and development at all levels – namely the regional, national and international – and should be sanctioned by various aspects, processes and instruments (Borrini-Feyerabend et al 2004). These include elements such as national legislation and policies. Unless proper legislative and policy frameworks are in place and well adhered to, the likelihood is that such a co-management initiative is doomed to failure. Co-management arrangements established in the absence of a supportive legislative framework become dysfunctional. However, co-management arrangements can still be a vehicle for social change, especially in areas where common property rights are practised, and this research

takes cognizance of these issues. Borrini-Feyerabend et al (2004) believe that “the ideological foundation of co-management is one that places people unambiguously at the centre of the development process, but it also understands that the state, the market and civil society, including local communities, NGOs and individuals, have a positive role to play in this process”.

Notably, legislation and policies that create favourable environments for a co-management arrangement are likely to pursue three types of goals

1. The need for human activities, including the manner in which the utilization of resources can take into consideration ecological sustainability. The Makuleke co-management agreement thus captured vividly the sustainable utilization of natural resources (Makuleke Main Settlement Agreement 1998).
2. The understanding that the rights of local people and the manner in which social and economic benefits can be enhanced for the benefit of all parties must be well balanced for an effective co-management arrangement. Thus the agreement between the Makuleke community and SANP conferred right of ownership over the land to the Makuleke community which is being held by the Communal Property Association, a registered entity for such purposes (Makuleke Main Settlement Agreement 1998).
3. Good governance should play a critical role in empowering local people so that they are able to take informed decisions in various democratized structures (Borrini-Feyerabend et al 2004). In the Makuleke case, the agreement compelled the Joint Management Board (JMB) to take into consideration the day-to-day conservation management that they should establish. This indicates that co-management requires a legislative framework and policies that ensure that extremes are avoided and good governance approaches are simplified.

What this shows is that adequate legislation and policy frameworks should arise from broadly shared norms and national visions and should be seen as providing guidance and direction for good governance with regard to the biodiversity conservation management and natural resources management. The legislative framework should be a result of an internally-driven, participatory process of engagement that generates a sense of ownership and commitment. In an ideal situation the policy environment, would derive from and be

consistent with socio-economic and sustainable development, for society and environment (Borrini-Feyarabend et al 2004).

Conservation and development policies in South Africa are inextricably bound and can be influenced by external agencies (DEAT 2008) as indeed happened with the Makuleke people, so that their decision was a result of a series of advice inputs from the external agencies that were working with them at that time. This is the reason why, in most instances, explicit statements of public policy on issues and sectors relevant to co-management arrangements are well documented in legislative frameworks (DEAT 2008).

#### **3.9.4. *Biodiversity conservation policies***

The dawn of the new democracy in South Africa provided for the review of much legislation which van Linde (2006) viewed as related, so that “not only did the South African Constitution provide for a right to land reform and equitable redress of past injustice but also to the promotion of environmental integrity, hence the promulgation of the National Environment Management Act: Biodiversity Act No. 10 of 2004; and the National Environmental Management Act: Protected Areas Act No. 57 of 2004” (NEMPAA). This implies we are obliged to protect the environment for the benefit of present and future generations through the use of natural resources to promote justifiable economic and social development (van Linde 2006). The legislation on protected area management, biodiversity conservation, and forestry resources has therefore embraced both environmental protection and social justice. This breaks decisively with the past ‘fortress conservation’ regime and instead promotes a community conservation approach that emphasises social justice and the country’s environmental agenda. According to Wynberg and Kepe (1999:14), this has been the most fundamental policy shift in the conservation sector.

In the main, there has been a shift from scientist-driven and wildlife-oriented conservation to an approach that emphasizes socio-political concerns with human needs, rights and access to the use of natural resources in an equitable and sustainable manner. This shift in orientation has not, however, jettisoned concerns about environmental sustainability. Biodiversity conservation policies should also be read together with the Development

Facilitation Act 67 of 1997, which outlined the conditions stipulating that development should take place within the framework of the Act.

This Act also implies that the development initiatives involving the Makuleke community need to take place within the framework of a co-management arrangement. It also addresses the policy implications for reclaimed conservation land in the Makuleke Region. What this means is that the Makuleke co-management agreement would ensure that environmental and developmental rights are strengthened to enhance social, economic and environmental sustainability in the Makuleke Region.

Such legislation requires that all processes and co-management should be transparent, consistent and fair. In ensuring efficient policy implementation, and in response to pressure for policy changes to meet the rural development challenges outside the protected fences, the basic law which had been governing protected areas since 1976 was repealed. The outcome was the Protected Areas Act (PAA), which is seen as a more user- and community-friendly policy. These conservation-based policy measures take into consideration that future protected areas in South Africa will not be sustainable unless they move away from not considering the interests of local people (Collins 2010:8). According to Collins (2010:8), “these new laws allow for the co-management, sustainable harvesting and creation of inclusive park forums”. In addition, South Africa hosted the World Parks Congress (WPC) in 2003 with the theme “benefits beyond boundaries” and the South African government endorsed the outcomes of this WPC, part of which created an enabling environment for a community conservation approach where local communities which had previously lost land may now be part of the management team for protected areas through a co-management approach, thereby ensuring that they also benefit economically from opportunities related to biodiversity conservation (Collins 2010:8). There have been various actors and agencies that contributed towards the operationalization and development of the co-management framework. These initiatives drew on the published Community Based Natural Resource Management (CBNRM) guidelines and published regulations to work towards the enactment and implementation of the PAA.

In addition, section 36 of the NEMPAA requires that “the Minister of DEA must inform the Registrar of Deeds in writing of the intention to declare an area part of the national park (this is irrespective of whether or not the land in question had been acquired by Public Works, by

SANP, by DEA, or whether such land is privately contracted and secured for a national park in terms of a contractual park agreement) or withdrawn from a national park” (NEMPAA 2003). All processes as stipulated in the Act had to be followed, which includes also the recording of such declaration or withdrawal in the relevant registers of the properties concerned, such as against the title deeds, and this is the process which was followed when transferring the land claimed by the Makuleke people as it was deproclaimed and also proclaimed as a contractual park in the northern portion of the KNP. Where a contractual park agreement is to be concluded, there are processes that need to be followed which include: (i) Negotiations between parties concerned; (ii) Execution before a notary public; (iii) The public consultation process envisaged in sections 31 and 33 of the NEMPAA followed in terms of obtaining the Minister of DEA’s final support for the formal incorporation of the said land into the national park concerned; and (iv) The Minister to officially declare the land formally incorporated into a national park by publication of a notice to this effect in the national government gazette (Steenkamp 2001). This process is followed prior to the inclusion of the land to form part of the national park, and it is important to note that the landowner would have to obtain the environmental authorization for such an initiative. Environmental authorization processes can however take a while, sometimes between one of two years – in some instances, even three to four years – before the conclusion of the contractual arrangement (Steenkamp 2001).

It is understood that, if the contracted land falls within the core area of a national parks, SANP will automatically become part of the management of such land once that contractual agreement is concluded. Signing the contractual agreement would mean that the process is final, as there are some administrative requirements that will ensure that it be observed. However, there is evidence that SANP is often prepared to manage land simply as part of the national park. This had been done at their own risk, since the entire process can be lengthy. SANP argues that, no matter how long it might take, management over the land still had to be exercised.

What is important among the issues that are entailed in the settlement agreement between the Makuleke people and SANP is how the land attached to the Makuleke Region had to be used, the framework of the kind of co-management, the commercial development, and how the cost of managing the Makuleke Region had to be handled.

Agreement over some issues was critical, and these included the question of fencing, clear access to the area by the Makuleke people, the issue of law enforcement – bearing in mind that this is the responsibility of the KNP as a designated conservation authority – dispute resolution and the manner in which the relationship between the Makuleke people and the conservation authorities should be managed (Grossman and Holden 2009). In the main, the declaration of the Makuleke Region as a contractual park is in line with section 2b of the repealed National Parks Act of 1976, which latter was endorsed by Section 20(1) to be read with 20(3) of the National Environmental Management: Protected Areas Act 57 of 2003 (NEMPAA) (Grossman and Holden 2009). In addition, the Makuleke Region had, through the Makuleke JMB, been obliged to draft its own management plan, which was first adopted in 2000, and this was done through the Makuleke Settlement Agreement which acted as the guiding document in the implementation of the co-management arrangement over the Makuleke Region.

### **3.10. International legal framework**

Not only did the national policy and legislative framework have to be taken into consideration regarding the establishment of the co-management arrangement, but also the international policy frameworks and instruments as they also play an important role in influencing the political, economic and cultural conditions of a local area. The co-management approach is recognised worldwide, and that between Makuleke people and SANP is considered to be a good example. Reference may also be made to the Aboriginal land rights in Australia, where many co-management agreements in the form of contractual parks were established in the course of highly political land claims processes when at long last the ownership of land was transferred to those indigenous people who had lost their rights on their land due to the forced removal from areas such as Kakadu. This confirms that the co-management arrangement can be traced back to 1978, when one of the first co-management agreements on Aboriginal land was signed (Hill and Press 1994). This had a particular influence on the manner in which South Africa had to deal with its experiences of land claims within protected areas, as more pressure was exerted on the South African government after 1994 when local communities started claiming the rights they had lost when they were forcefully removed from their ancestral land for the expansion of protected areas such as the KNP.

In Botswana, for example, the Botswana Wildlife, Conservation and National Parks Act of 1992 provided for wildlife use on communal land to be allocated by Tribal Land Boards through the Wildlife Management Areas and Controlled Hunting Areas (Jones and Murphree 2001). In addition, the Botswana policy on Wildlife Conservation of 1986 had also initiated an enabling environment for the participation and involvement of local people in wildlife management for socio-economic development and for the sustainable utilization of natural resources. Another example is that of Malawi which in the 1990s explored the co-management possibilities between protected areas and local people (Jones and Murphree 2001). Mozambique also took a decision to experiment with wildlife use and the utilization of the natural resources through the National Directorate for Forestry and Wildlife (Direcção Nacional de Florestas e Fauna Bravia-DNFFB) in its Ministry of Agriculture as well as the Ministry of Environment and the Institute for Rural Development. The establishment in 1999 by the Ministry of Environmental Affairs in Namibia of conservation policies on communal land outside of protected areas had provided a good example of the involvement of the local communities in the management and also the sustainable utilization of the natural resources within protected areas by the neighbouring communities. The conservancy concept did not restrict people, including the local communities, from embarking on commercial farming within the conservancies, as it can take place within communal areas as well. The Namibian conservancies policy was amended to enable any community living in a communal area, who wish to declare their area, or any part thereof, as a conservancy to apply to the Minister of Environment and Tourism for their designated land be declared a conservancy (Jones and Murphree 2001). An exemplary arrangement is the Zambian Administrative Design (ADMAD) programme whereby Wildlife Management Authorities were established to allow local communities to take part in decision-making processes towards wildlife management and revenue distribution from the sale of the wildlife products (Jones and Murphree 2001).

One example of the fundamental importance in the international arena of community-based natural resource management was what is called 'natural resource governance' which was adopted by the Convention on Biological Diversity (CBD) in 1992 (Borrini-Feyerabend et al 2004). Its significance resides in the inclusion of areas such as traditional knowledge and practices and it is of course legally binding. It is also an approach that goes beyond indigenous groups, as it involves all local communities.

The CBD does emphasize the importance of participation by local people in the conservation of biological diversity, and in the benefit-sharing mechanisms derived from the use of natural resources (Borrini-Feyerabend et al 2004). Article 8(j) of the Convention commits parties, subject to their national legislation, to respect and maintain traditional knowledge, innovations and practices of indigenous people and local communities (Borrini-Feyerabend et al 2004). The CBD also indicates that “these practices should embody traditional lifestyles relevant to the conservation and sustainable use of biological diversity” (Borrini-Feyerabend et al 2004). Furthermore, the CBD suggests that “the national legislation should promote their wider application with the approval and involvement of the holders of such knowledge and it also encourages the equitable sharing of the benefits arising from the utilization of such knowledge” (Borrini-Feyerabend et al. 2004). Similarly, article 10(c) of the CBD stipulates that “each country should protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with the conservation or sustainable use requirements” (CBD 1992). In all these, it advocates for support to the local populations in development and implementation of remedial action in degraded areas where biological diversity has been reduced, and encourages co-operation between governmental authorities and the private sector, including local communities, in developing methods for the sustainable use of biological resources (Borrini-Feyerabend et al 2004).

The CBD programme of work on protected areas approved at the 7<sup>th</sup> Conference of the Parties to the Convention in February 2004 included an entire programme on governance, participation, equity and benefit-sharing (Borrini-Feyerabend et al 2004). This programme allows for full and effective participation of indigenous people and local communities in the establishment and management of protected areas (Borrini-Feyerabend et al 2004). Borrini-Feyerabend et al. (2004) consider that this recommends the parties, to “*inter alia*, establish policies and institutional mechanisms with full participation from local communities to facilitate the legal recognition and effective management of indigenous and local community-conserved areas in a manner consistent with the goals of conserving biodiversity and the knowledge, innovations and practices of these local communities” (Borrini-Feyerabend et al. 2004).

In the main, the CBD recommended that, “the parties implement specific plans and initiatives to effectively involve the local communities, with respect for their rights consistent with national legislation and applicable international obligations, stakeholders at all levels of protected areas, planning, establishment, governance and management, with particular emphasis on identifying and removing barriers preventing adequate participation” (CBD 1992). In addition to this, the CBD recommended that “the parties should promote an enabling environment (legislation, policies, capacities and resources) for the involvement of local communities and relevant stakeholders in decision-making, and the development of their capacities and opportunities to establish and manage protected areas, including community-conserved and private protected areas” (United Nations 1992).

### **3.11. Financial and economic policies**

One of the fundamental considerations in the co-management arrangement in Makuleke is that, the cost of managing the Makuleke Region as a conservation area is now being borne by two entities instead of one. The Makuleke settlement agreement says that: “the cost of managing the Makuleke Region is the responsibility of two parties, namely the Makuleke people contributing 50% and SANP contributing 50%” (Makuleke Main Settlement Agreement 1998). Within this framework, several of the activities that would be otherwise performed by state agencies are now shared between the state and the Makuleke community, which is a party to the Makuleke co-management agreement. This arrangement was seen as a relief to the KNP, since it had previously contributed 100% towards the overall conservation management costs of the Makuleke, formerly known as Pafuri, area. The Makuleke co-management arrangement makes the following provisions with respect to income and expenditure: that the yield from all income-generating activities, excluding gate fees, will accrue to the Communal Property Association (CPA) (Makuleke Main Settlement Agreement 1998). This settlement agreement goes on to say that “after five years of the implementation of the Makuleke co-management agreement, the Makuleke community through the Makuleke CPA will be liable for 50% of the management costs provided that the amount does not exceed 50% of the CPA’s net profit, unless the CPA elects otherwise while SANP is responsible for the maintenance of infrastructure used solely for its conservation functions” (Makuleke Main Settlement Agreement 1998). The same applies to the CPA with respect to infrastructure used for tourism and other commercial activities and, in case of

shared infrastructure, a ratio for establishment and maintenance will be determined later (Makuleke Main Settlement Agreement 1998).

### **3.12. Conclusions**

In focusing on the evolution of the co-management framework, this chapter discussed the theory aspect of co-management. It is within this theoretical context that political changes as having transformed the approach to conservation were discussed. However there is still more to be done if this transformation is to be complete. The chapter linked various theoretical frameworks of co-management to the case study of Makuleke, which I believe had a positive impact on the Makuleke community. I would be very naïve should I fail to indicate that not only did this co-management impact positively on the Makuleke community, but also negatively. It revealed that the Makuleke co-management arrangement was formulated within the context of various economic, environment and political changes, including the policy shift at both global and national levels. Accordingly, this chapter noted the emergence of the sustainable development doctrine as a fundamental element to the co-management paradigm and that it has been ratified by various international protocols and by governments which are member states of the UN. Be that as it may, the implementation of this co-management agreement had to be looked at

It also became clear that the contractual park should not be seen in the context of a scientific approach only, as it was in the first phase of the implementing the Makuleke co-management agreement, but also within the context of the sustainable utilization of natural resources. Various examples show how co-management theory impacted on the policies and thinking underpinning the arrangements in the Makuleke Region. It may also be pointed out that, for South Africa to conserve biological diversity, promote the sustainable use of natural resources and facilitate the equitable sharing of benefits deriving from natural resource use, the country has to align itself with the principles of the Convention on Biological Diversity (CBD). In addition, South Africa has accepted international norms by signing international conventions such as the Convention on International Trade in Endangered Species of wildlife, fauna and flora (CITES) and the Ramsar Convention, both of which had been instrumental in the development of the Makuleke co-management arrangement. It was again within this chapter that the international discourses had resulted in a more general

constitutional reform process that acknowledges the importance of local participation in the management of natural resource conservation, including environmental governance which naturally affects the benefit stream deriving from natural resources.

The move from 'fortress' conservation to the community conservation approach will not be well done until the heart of conservation institutions and resource management moves out of the hands of scientists, biologists and conservation bureaucrats to be more participatory. Only then will the benefits be realized for the local communities who have been living in and around protected areas (Borrini-Feyerabend et al., 2004). Various elements of co-management, especially looking at community-based natural resources management (CBNRM) as a programme, and a number of issues identified stakeholders within the Makuleke co-management arrangement as substantial players.

This chapter also confirmed that the settlement of the Makuleke land claim has become a positive example of the paradigm shift by the conservation authorities from 'fortress' conservation to the community conservation approach. One fundamental factor that triggered this shift was that conservation had to be seen to accommodate the two aspects of economic and social development, which is the cornerstone of the contractual policy now applied to national parks. With the Makuleke co-management model, the ideal solution for reconciling conservation and development within these protected areas becomes a reality. The move to accommodate local people, who were sometimes the victims of forced removals, has become symbolic of the transformation agenda.

The principles and practices of conservation goals and strategies that advocated the need for the participation and the involvement of the Makuleke community in management and decision-making processes regarding use have become important in the day to day conservation management of the natural resources in the Makuleke Region.

Concerning the policy and legislative framework of the co-management agreements relevant to the Makuleke Region as a contractual park, the granting of 'contractual parks' over 'protected areas' which came as a result of South African land reform created more opportunities for communities which resulted in the betterment of their lives. This saw the State relinquishing their rights in favour of co-management agreements for these areas

through Joint Management Committees. There are various reasons why the State adopted the co-management approach rather than relying exclusively on command-and-control strategies. Amongst these are the State's ability to structure and regulate protected area management that ensures both conservation and the economic development that will uplift the living conditions of the local communities.

If the co-management arrangement is seen as creating a platform for economic benefit to these local communities, such an approach does create a motivation to maintain their restituted land as part of the conservation areas to be jointly managed by the State and the communities. The recognition of the community in the decision-making in these areas reduces tension between the State and the local people.

The following chapter present the research methodology and design

## CHAPTER FOUR

### RESEARCH METHODOLOGY AND DESIGN

#### 4.1. Introduction

Chapter 2 discussed how the Makuleke Region came into being and mentioned some of the problems calling for further investigation, and Chapter 3 looked in more detail at aspects of co-management. Both of these drew heavily on documents consulted by me in the course of this research.

This chapter presents the general research methodology and design employed for this study. Cohen and Manion (1980) indicate that the aim of methodology is to help us in understanding, in the broadest possible terms, not the products of the scientific enquiry but the process itself (Cohen et al. 1980.p. 26). Accordingly, this chapter begins by outlining the meaning and differences between quantitative and qualitative research methodologies, as well as the epistemological approach adopted here. It then outlines the research methodology and the research methods used, beginning with a justification for the phenomenological approach, a methodology which incorporates the qualitative and quantitative methods. Also outlined is a framework for analyzing the impact of the co-management arrangement, and central to this framework is an analysis of the range of formal and informal organizational and institutional factors that influence the manner in which the Makuleke co-management agreement unfolded. My own relationship with the Makuleke community is then discussed. The appropriateness of the case study format is explored and the strengths and weaknesses of the data collection methods employed are discussed.

The case study approach was chosen because the co-management arrangement does affect the Makuleke community in one way or another – mostly in many ways. There are three identifying attributes of the case study approach that enabled me to look at this research holistically. The first is that my attitude as the researcher is one of searching, as opposed to testing, which makes the process a consistent one of the reformulation and redirection as data are gathered.

The second is that the approach allowed the gathering of sufficient information to understand the specific characteristics of the case study and to identify the similarities and contrasts with similar studies conducted elsewhere. The third is the investment of trust in me as a researcher to integrate and interpret the data (Sellitz et al. 1995, 59). This case study approach consisted of the data collection methods; a secondary literature survey; structured and unstructured in-depth interviews.

This chapter also describes how I was able to engage the respondents, both from the Makuleke community and the KNP, including members of the Makuleke concessions, concerning their knowledge and understanding of Makuleke history, the land claim and its post-settlement processes. In this way truth could be more deeply penetrated, in terms of the respondents' beliefs and also the justification of facts. Although both types of research methods were used, the qualitative approach became the dominant one. In this study nonetheless, the mixed methods approach and associated research strategies were used in answering the research questions.

#### **4.2. Methodological framework and research philosophy**

The philosophical foundations of this study were developed from a predominantly positivist epistemology, which assisted me to recognize the naturalistic and also the interpretive epistemology as embedded in the nature of the relevant knowledge and its limits. This approach enabled me to probe the origin, nature, methods and limits of the knowledge embedded within the Makuleke community. Understanding and interpreting the approach to the involvement of the Makuleke people in the establishment of the Makuleke co-management arrangement in the Makuleke Region was the main aim. In addition, I was able to shape the research being personally and directly involved in the dynamics that are the focus of this research project, with a practical interest in its findings. The research approach adopted also aligns with Creswell's pragmatic 'mixed methods' approach in which there is a concern with application and finding answers to problems, hence the need for a qualitative approach (Creswell 2003). However, it was necessary for me to be sensitive to the nature of the personal involvement in the topic that was being researched.

To accord with what Yin (1994) says, that “the research design is an action plan for getting from ‘here’ to ‘there’, and where ‘here’ may be defined as the initial set of questions to be answered, and ‘there’ is a set of conclusions (answers) about these questions”, the research design in this study was used as a guide throughout the process of collecting, analysing, observing and interpreting observations. This was done so as to identify what had to be investigated and also to know how it is identified (Babbie 1998). The use of either qualitative or quantitative methods, or both, is in line with what Durrheim (1999) believes: that it depends on the purpose and orientation of the study. The understanding of a qualitative study and research design was based in what Durrheim (1999) argued to be open, fluid and changeable. The methodology was thus not defined in technical terms, implying that the research plan was not fixed and could change as the study unfolded.

The use of a qualitative approach was triggered by the understanding that the design of the study did not provide a fixed step-by-step plan to follow, but was determined by choices and actions at different stages. This in contrast to the quantitative approach, where research the method and design are more fixed, and specified in advance, so being defined by technical considerations that cannot be changed or altered (Fouche et al. 2002). The use of a qualitative research method and design thus allowed for a more explorative study into the role of community participation and involvement during the establishment and implementation of the Makuleke contractual park as a co-management arrangement. This also allowed me to establish a relationship of trust with the respondents to get more detailed information. A qualitative research methodology offers certain other advantages, in that it requires one-to-one interaction with the participants, individually or in a focus group, that allows for an understanding of the research topic in more depth (Leedy and Ormrod 2001). The qualitative approach therefore allows a more accurate understanding of how others see the world and provides a holistic understanding of the feelings and worldviews of the participants in such a study (Neuman 1997). In the current study, the use the use of qualitative research methods was based on the understanding that I would be able to draw on a range of research approaches such as interviews, observation and textual analysis.

A qualitative approach was largely chosen because it provided rich data from participants and allowed a deeper and clearer understanding of the topic under study.

This approach took the line of Bogdan and Taylor (1975), who recommend engaging with people at a personal level to observe how they develop their definition of the world. My association with the Makuleke community and the Makuleke JMB, required a more self-reflexive approach in the field

Schumacher and McMillan 1993 have provided insights into how to do research that facilitates an understanding of the participants' own views of their social reality. An understanding of a methodological point of departure that advocates the study of experience from the participant's perspective" (Cohen et al 2000) was imperative, hence the use of the qualitative research methodology. I was able to obtain more information by means of intensive engagement with the respondents through interviews, and also observation of the manner in which the Makuleke CPA's conducted their co-management with the KNP over the Makuleke Region. An analysis of community conservation or community-based natural resource management and trans-boundary natural management assisted in investigating how individuals in the Makuleke community understood their social world, especially by recognizing that knowledge is socially produced within communities (Seidler 1994: 78).

The use of the phenomenological approach was triggered by the understanding that the social world is not fixed or settled, but is, instead, a shifting, changing and dynamic social reality (Seidler 1994) –as indicated in discussion of the links between traditional knowledge systems and modernism in Chapter 2.

This approach is a method that subscribes to the principle that: "all we can describe is that which we can know through our observations of the world" (Williams and May 1996, 27). The observations are for me and are shaped by my own consciousness. Harvey (1990), views the phenomenological paradigm as the basic component of an analytical process, essential consciousness, or– on a more practical level– a framework that influences interactive processes. The selection of this research methodology was therefore based on my understanding of the nature of social reality and the way in which the social world is understood, as not fixed or settled but shifting, changing and dynamic. Social reality is not an "external force, objectively identifiable and independent of man" (Filstead 1979, 35). Instead, people are conceived of as active agents in constructing and making sense of the realities they encounter" (ibid: 36). A phenomenological analysis of community-based

conservation and wildlife conflict within the redefining of conservation debate should “restore validity and importance to how individuals understand the social world, recognizing that knowledge is socially produced within a community” (Seidler, 1994: 78).

Another consideration in choosing this particular research methodology is that people and parks programme in general, and particularly in the Makuleke community, is of a sensitive nature. Harvey (1990) highlights the nature of sensitivity research in relation to what is allowed in society, the limits of the impact of such research on people’s lives and their behavior, issues of guaranteeing data quality, and the tendency of the powerful elite to dominate the research process. Sensitivity influences each stage of the research process. The issues that arise at each stage also vary. They could be methodical, technical, political, or legal (Harvey, 1990: 1).

The qualitative research method was thus deployed because it uses a range of research approaches such as interviews, observations, and documentary textual analysis (Bogdan et al. 1975). According to Bogdan et al. (1975), qualitative research refers to research procedures which produce descriptive data, people’s written or spoken words and observable behavior (Bogdan et al. 1975). It was through phenomenological theory applied to qualitative research that this study sought to understand participant observation, open-ended interviews and personal documents.

While using qualitative research methodology, I adopted an interactive model for qualitative research design which outlines various components such as purpose of the research, conceptual context, research questions, methods and validity (Maxwell, 1996). It was through the qualitative research method that enabled me to know people on a personal level and observe how they develop their own definitions of the world (Bogdan et al, 1995). It helps me to understand human behaviour from the actor’s own frame of reference.

This research was based on ongoing primary research in the Makuleke Region in the KNP where I had worked since 2004, having been born and raised there and continuing to reside in the Makuleke community. Had I not been part of the Makuleke community and worked there in various roles, this would have been a limitation on the study, since insights were gained at various levels. Firstly, I acquired unique insights through his involvement and also

through having participated from an initial phase of the Makuleke land claim, during its negotiations, and during the post-claim period. Secondly, the fact that I am presently working in the Makuleke region on behalf of the Makuleke JMB influenced the choice of the phenomenological approach. According to William and May (1996:27), “this approach is a method that subscribes to the principle: All we can describe is that which we can know through our observation of the world”. The selection of this research methodology has clearly influenced my understanding of the nature of the research problem as well as the way in which Makuleke people are seen to make sense of their social reality. One raises sensitive issues when dealing with topics such as people and parks in general, and the Makuleke case in particular. Harvey (1990:1) believes that “this sensitivity influences each stage of the research process. The issues that arise also vary, and could be methodological, technical, political or legal.” Whenever information was encountered that could be classified as sensitive, the real names are disguised in this report in order to protect identities.

### **4.3. Data collection**

Three data collection methods were used in this research: the primary literature survey, the secondary literature review – both technically secondary sources, many already referred to in this thesis – and then structured and unstructured in-depth interviews as sources which would otherwise be called ‘primary’ but will here be called ‘direct’ to distinguish them from the literature sources.

As this study draws heavily on a qualitative approach, it should be specified that data were collected from a variety of sources such as published and unpublished documents, archival records, interviews, direct observation, participant observation and physical artefacts. Denzin and Lincoln (1994) are of the view that “qualitative research methodology involves the study and use of a variety of materials with the hope of informing a better understanding of the subject under scrutiny”.

Three particular attributes were identified for the purpose of this case study approach (Sellitz et al 1965:59), and the first is the attitude adopted by me. In the main this is a process of consistent reformulation and redirection as data is gathered. The second attribute is characterized by the fact that the approach allowed for sufficient information to be gathered

to understand the specific characteristics of the case study and to draw out the similarities and contrasts with other cases studied. The third is the investment of trust, to integrate and interpret the data. Two categories of data collection were in fact used, and they can be distinguished as primary and secondary.

#### **4.3.1. Primary sources**

Primary literature analysis consisted of an evaluation of correspondence between the relevant parties, including the files at the Makuleke CPA offices, SANP, and the Makuleke concessions, i.e. the Wilderness Safaris, the Outpost Lodge and the Return Africa

Other primary data were obtained in various direct ways, including by means of formal interviews and informal discussions with peer groups within the village. Not only were interviews conducted from the outset, but observations were also used to obtain data for the purpose of this research. The observation processes were made easier by virtue of my position as an employee of the Makuleke JMB. Also before working for the Makuleke JMB, I also worked for the Makuleke CPA that initially gave me the latitude to attend all the Makuleke CPA and the JMB meetings. Therefore, many of the observations about the relationship between the Makuleke CPA and the KNP were obtained through involvement directly or indirectly in the affairs of the Makuleke co-management arrangement. Not only did I attend these meetings, but I was also able to contribute in reaching particular decisions.

The advantage in being a member of the Makuleke community who had been intimately involved in local struggles over land and the development of the community was of great value in terms of the legitimacy and access to the information. My understanding of community dynamics was also useful, since participating in local community meetings enabled greater insight into the experiences and perceptions of local residents. However, there were disadvantages in being a part of the community; for instance, it was important to ensure that any research undertaken would not be perceived as undermining the current leadership of the Makuleke CPA or the Makuleke community at large.

### 4.3.2. *Direct information gained from questionnaires and interviews*

The use of semi-structured interviews assisted in exploring the data more creatively. I gave the all documentation – the introductory letter, the consent form, the document called ‘survey questionnaire’ and also the questionnaires (see Appendices A 3 – to my two research assistants, Elmon Chauke and Attorney Hlungwani. The first three documents were then used as an introduction to potential respondents, and were presented and interpreted by my research assistants so that consent could be obtained before they continued with the interviews based on the questionnaires.

Community interviews included the leadership of the community, the elected community structure, elderly males and females within the community, and young people between the ages of 15 and 25. Outside organizations and structures that were interviewed included the Makuleke CPA, the Makuleke JMB, and the Makuleke consultative forum. The result was a record of in-depth interviews with 45 individuals within and outside the Makuleke community, reflected in the description of results in Chapter 4.

#### 4.3.2.1 *Description of the respondent sample*

**Table 3: Sample of respondents**

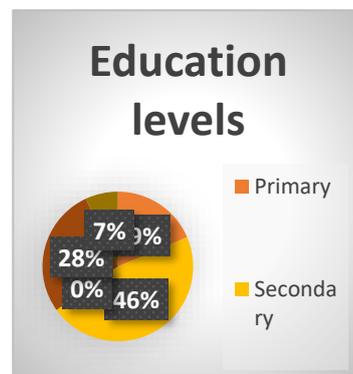
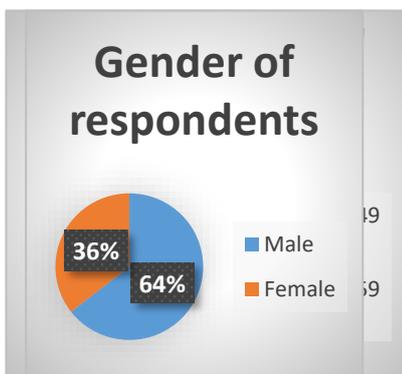
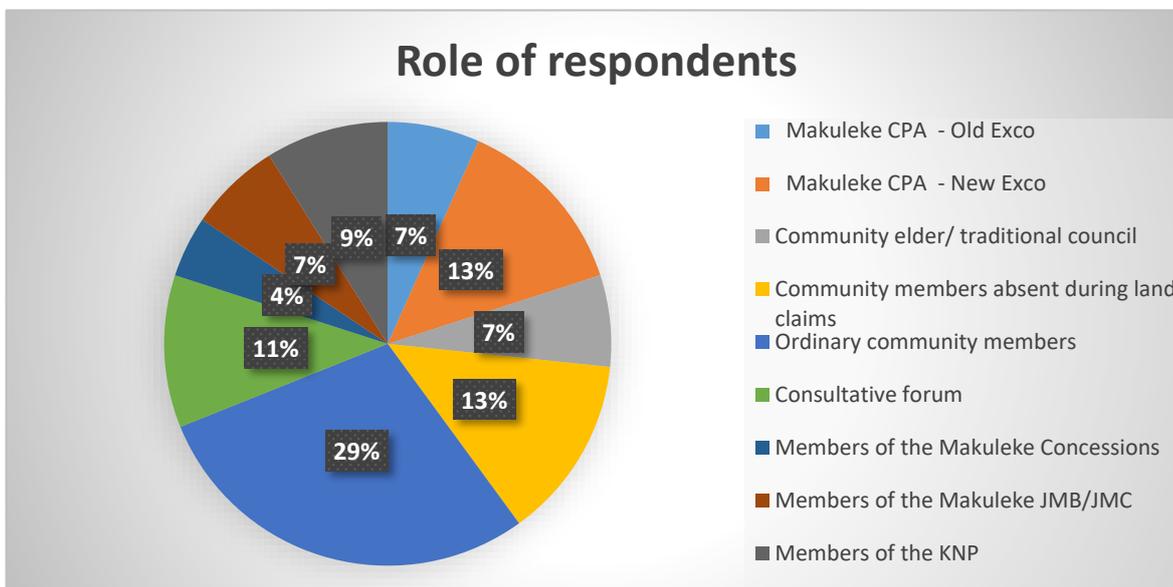
PARTICIPATION ROLE	NO. OF PEOPLE INTERVIEWED	POPULATION
Makuleke CPA		
- Old Exco	3	12
- New Exco	6	9
Community elder/ traditional council	3	21
Community members absent during land claims	6	15
Ordinary community members	13	*150
Consultative forum	5	15
Members of the Makuleke Concessions	2	3
Members of the Makuleke JMB/JMC	3	6

Members of the KNP	4	10
• TOTALS	45	241

\* Population only estimated, as involved 3 villages, assuming 50 people in each

This sample of 45 individuals therefore broke down into the categories reflected in Figure 22, which also provides the demographic information assembled from the questionnaires when the interviews took place:

**Figure 23: Breakdown of sample**



The questionnaire and the range of responses is in Chapter 5.

reported

Fontana and Frey (1994) point out that the meaning and knowledge produced during interviews is “not simply gathered, but rather created in the interaction between the participants and me as the researcher”. The interviews therefore took on the characteristics of two-way traffic, as active and dialogic interaction took place between the participants and me. Both were actively participating in the construction of meaning and knowledge (Holstein and Gubrium 2004). Drawing on Holstein and Gubrium’s (2004: 145) observations, it would seem that all interviews were active negotiations during which participants actively and selectively gathered, took away from, added to and transformed facts and experiences into artefacts for the occasion. Those who participated in the interviews would, according to Denzin and Lincoln (1994:353), piece together experiences. They thereby mediated and altered knowledge as it was conveyed to me and influenced by my characteristics and perceived interests.

The Interviews aimed at providing insights into people’s own realities, perspectives and experiences regarding the origin and meanings of the co-management arrangements (Byrne 2004). It was on this basis that these interviews also investigated perspectives on the future relationships of the parties involved in the co-management arrangement in the Makuleke region. The interviews represented one possible reality of the social world experienced by the participants; however, in reality they reflected the complexity and contexts of the lived situations experienced by the participants in the research (Filstead 1979).

The interviews were open-ended and allowed for flowing conversations during the course of day-to-day interactions with the respondents from both the Makuleke community and KNP officials. In interviews, as Punch (2005:180) notes, knowledge and meanings are not independent of the context in which they were conveyed and so I found it was necessary to be sensitive to this context and to consider what was said during the interviews in relation to these contextual complexities.

The research conducted in the Makuleke villages made it possible for the participants to get a clear understanding of the co-management agreement in the Makuleke Region.

Thus the research participants in the Makuleke Region and Pafuri Triangle played an important role by providing me with information about the history of the relationship between the Makuleke people and SANP. When conducting interviews with members of the

community, we used the Xitsonga language. However, with people from outside the community, English was used.

A group of parastatals such as the Limpopo Tourism Agency (LTA) also participated in this research. The fact that I was working for the Makuleke JMB also facilitated the gathering of information that might otherwise have been impossible to find. A superficial account of the process may have been the only version obtainable had I not been able to establish a relationship with the leadership community. The insights gained through this relationship and the accumulation of knowledge over an extended period of time facilitated the choice of the phenomenological approach described above. Of course, ethical considerations were addressed by explaining to the interviewees the purpose of the research. This was also done to create honest relationships between the participants and me in the interviews. Depending on the time available, an interview lasted for more or less three hours. After each interview the interviewees were asked whether they could think of other actors that had been, or are, important in the implementation of the Makuleke co-management arrangement.

### **4.3.3 Secondary sources**

These include a literature survey on redefining conservation and the establishment of the co-management arrangement, largely described in Chapters 2 and 3. Some references are also made to the literature on the history of the Makuleke community, their removal and their lives in the new Makuleke area, i.e. the Ntlhaveni area.

The literature search also examined government policies, nationally and internationally. This literature was mainly used to identify any gaps or inconsistencies in theory and/or practice. I also consulted secondary literature on the topics covered in the interviews, which included studies by Steenkamp (2001, 2004); Poonan (2000); Tapela (2001); and Turner (2000). Some discussions were held with some of these researchers who had done work with the Makuleke community.

I used other secondary data sources for information, and these included published and unpublished materials on the Makuleke co-management arrangement. Of course, some of the review and analysis consisted of an evaluation of correspondence between various parties in the Makuleke CPA and the Makuleke Region respectively that was made available

for perusal. These included the files in the Makuleke CPA offices and those in the KNP library. Some of this literature focused on the history of the Makuleke people. In addition, the literature search also included government policies and legislative frameworks that covered the establishment of co-management practices.

This study was thus situated in a broader body of literature on co-management and people-centred approaches to conservation. My attendance of, and presentations to, various CBNRM conferences and or meetings in the country and those dealing with the issue of the relationship between local people or communities and protected areas were important in tracking the development of the co-management agreement and its implementation, especially in areas such as the Mdluli and Mjejani communities in the southern part of the KNP. The information enabling the analysis of policy implementation at the operational level was thus derived from scholarly literature as well as from interviews.

#### **4.3.4 *Ethnography***

As ethnography is the systematic description of a social setting or set of relationships, this research also looked at the local cultural systems, behaviours, beliefs and norms of the Makuleke community, thereby assisting the understanding of how the Makuleke community and various stakeholders lived and responded to the interventions regarding the use of their land. In the context of such an ethnographic approach, this study sought to establish the needs of the community, the KNP and the Makuleke CPA. Thus a feedback session of the initial findings was presented to assist in formulating their needs. Continuous reflection on how to promote an ethical approach to the research contributed to ensuring that the researched community would participate and benefit from the research. This could help them to develop strategies to address their challenges.

The context of ethnographic research entailed observations of social interactions, behaviour and perspectives within the groups or teams. This allowed me to gather and document the 'culture' of the parties to the Makuleke co-management arrangement and better understand their perspectives and practices within the partnership arrangement. It enabled insights into the variety of ways in which each party to the co-management arrangement saw their partnership.

#### **4.3.5 *My observations as participant***

As already made clear, I was both a participant in and an observer to the study, given the fact of residence in the community, taking part in the Makuleke land claim process and currently working for the Makuleke JMB. As explained by Darlington and Scott (2002: 18), such a researcher cannot be written out of the text, as it is necessary to reflect continuously on the research process itself. Just as the participants were active in creating knowledge, so was I, and because there was co-production of knowledge, it was impossible to exclude personal characteristics, social position and bias. My involvement in any given development within the Makuleke community could provide an element of influence, and of course this might have been viewed as such. The interpretation of events might have been biased because of my position within the village. The data from an interview would inevitably be interpreted by me as researcher – may be a particular biasness and of the worldview, and this would in turn influence the creation of knowledge. It was therefore important for me to disclose my role as a researcher when the interviews were being conducted and in the texts that followed the research (Fontana and Frey, 1994:368). It is in the above context, and also in the light of these influences on the research process, that the discussions and the interpretation in the interviews could be better understood. According to Bryne (2012:182), it is not possible to obtain a complete picture of the participants' realities or to completely understand the research topic without a reliance on what the participants say. It was possible only to gather a representation of their views and opinions. This led me to understand the implication that what emerged in an interview depended on the context, mood and nature of the encounter and the familiarity, gender, class and cultural background of all actors (Darlington and Scott 2004:55); the participants' self-censorship and self-presentation had to be based on these characteristics.

Members of the community and the KNP explained how happy they were to see a member of the community also working for the Makuleke community, conducting research on the same area that he supervises. Most of the community members were pleased that one of their own would pursue academic research on a topic that touched their hearts, i.e. the co-management of Makuleke Region in the KNP. Even though I was and am fluent in the participants' languages of Xitsonga and English, there are still cultural norms, such as respect when interacting with elderly people that influence the way in which I had to present myself. The majority of the interviews that were conducted so far with the Makuleke residents

were in Xitsonga (Shangaan), although some chose to respond in English when it was easier for them to express themselves thus on certain topics.

It would be very naive to fail to indicate that power relations in interviews conducted within the Makuleke community became one of the important concerns in the process of conducting this research, especially given the move away from the traditional paternalistic view of the interview (Fontana and Frey 1994:369). It was with the above understanding in mind, that I became concerned about the possible perception that I was an all-powerful researcher, and that the participants would perceive themselves as subordinates and passive repositories of knowledge to be mined (Darlington and Scott 2002:49; Holstein and Gubrium 2004:141). Also to be recognized was the influence of what Darlington and Scott (2002:49) and also Holstein and Gubrium (2004:141) refer to as a 'research context', in which the researcher retains power over the interviewing process by virtue of editing the interviews, and then objectifying them by transcribing them and applying selection and interpretation of the written text (Denzin and Lincoln 1994: 353).

Despite these limitations, I positioned myself as a person who sought to gain insights into the everyday realities and perspectives of the respondents, and this facilitated rapport and access to the respondents. However, my educational and social status in the community could not be disregarded as it certainly had some degree of influence over the manner in which the participants projected themselves throughout the interviews (Holstein and Gubrium 2004). My academic status may therefore have influenced some interviewees who perceived me as occupying a position of influence within the community. I was also considered to one of the elders of the Makuleke community by virtue of my participation in various important social activities and events.

Since the research took the form of a 'case study', a survey profile of the Makuleke community was undertaken. Existing programmes were also assessed and evaluated. In addition, data was available on the social, health, education, population and economic aspects of the community.

As indicated above, the other interviews conducted were both structured and semi-structured and these were used to enhance an understanding of the history and the social

dimensions of the Makuleke people, the land claim process and the post-claim activities, described in preceding chapters.

In preparation for the fieldwork, I engaged with people who had been at the forefront during the pre- and post-land claim processes which are the subject of this study. Different sources of information within the Makuleke community were derived from literatures generated through studies done on the Makuleke people, oral history done by and on behalf of the Makuleke community, studies done within the Makuleke community including, newspapers, magazine articles, and information on websites from the public, private and civil society sectors. Although this approach was useful, it soon became clear, however, that some information was not available by these means or, if available, was outdated.

The research respondents were first approached personally, as some of them were already interacting with me in various capacities.

Because of the conservative traditional cultural practices which currently prevail among rural South Africans, the role of women in areas such as decision-making disadvantages capable individuals, and the Makuleke community is not exempt from this. It was observed that women within the local context had to be more assertive to ensure their views were heard, so women are likely to be under-represented as sources of information in this study.

Not everyone who was scheduled to meet with me did eventually present themselves, as timing was sometimes problematic. As a result, some interviews were conducted by telephone and via email, especially with those some distance from the case study area. Even though the questions were prepared, some were bound to be altered in order to explore particular themes in greater depth. As I was a member of the community, an interpreter was not required when conducting these interviews especially with the Makuleke people. A questionnaire was designed as a tool to collect data for part of the study, and a systematic sampling method was used. During the process of fieldwork, two research assistants were appointed who were responsible for the distribution of the questionnaires. This excluded members of the KNP, the Makuleke JMB and those from the lodges established in the Makuleke Contractual Park, with whom personal interviews were instead conducted.

#### 4.4 Ethical considerations

The purpose and significance of the research was explained to all the people interviewed. This assisted in getting permission for the interviews to be conducted, and there were no refusals. The respondents' participation was voluntary and they were reassured that their interests would not be endangered because of the information that they were giving.

Ethical principles concerning the participants in this study were thus addressed, and included the protection of privacy. The privacy of the information provided to the researcher had to be respected and an informed consent form was accordingly provided (see Appendix A2). An undertaking was also given to disseminate the research findings to the Makuleke CPA and the Makuleke JMB respectively, as well as to other interested parties. This should assist them in any future realignment of the co-management arrangement. The respondents were assured that their responses would be captured accurately.

Respondents, especially those who were interviewed individually, were given enough information about the aims of the research as well as the procedures that would be followed so that they were able to choose whether they wished to participate in an interview or not. According to Schulze et al, 2002:17), "participants should be given enough information pertaining to the study before the actual process of data collection takes place".

This was done to avoid a potential conflict of interest such as not balancing the views, wishes and realities of the Makuleke people and those of the KNP due to the my involvement in the co-management structures and also my role as an employee of the Makuleke JMB. This included situations where the Makuleke community had to take decisions which were contrary to the co-management agreement entered into by SANP and the Makuleke community. An example of such a decision took place when an anti-poaching unit was appointed in the Makuleke Region, a decision which I was able challenge as not being in accordance with the Makuleke Main Settlement Agreement.

Events unfolded in this manner. I was born in the Makuleke community and continue to live there, was involved in the initial phase of the Makuleke Programme but was later removed from this process before being appointed as an Operations Manager of the Makuleke JMB. This resulted in some of the members of the Makuleke CPA feeling unsettled. The

investigation into the appointment of the Ntomeni Ranger Services as an anti-poaching unit was seen by some few members of the Makuleke who were close to service provider as a betrayal and as unethical because they felt I was there to undermine their authority, as I would question such an appointment in my interviews with them.

#### **4.5 Data analysis**

The analysis covered all data collected, whether from documents, interviews or questionnaires. My understanding of data analysis is in line with what Cresswell (1998) refers to as a “process of moving from raw data to evidence-based interpretations that are the foundation for published reports”. Content analysis of documented data, which is a “systematic, replicable technique for compressing many words of text into fewer content categories based on explicit rules of coding was then done” (Stemler 2001), was equally important for “the process of bringing order, structure and meaning to the mass of collected data” (de Vos 2002). This process is referred to as an analytical circle that proceeds through phases such as familiarization, data segments, categorization and description of data collected. Through this process, themes emerged from the data, and where applicable to these themes, verbatim quotes were presented to preserve the meaning attached to them. The findings were documented, discussed and verified by the literature. The document analysis was concluded by comparing and presenting the findings of both data collection methods.

The findings were compared with the similarities to, and discrepancies between, data derived from documents and also data obtained from focus groups. A similar comparison was made between findings from the interviews with the officials and with community representatives.

#### **4.6 Conclusions**

Research concerning the Makuleke co-management agreement became easy to conduct, as it is well documented and literature review easily available.

However, the bias that naturally occurred as a result of my association with the Makuleke co-management arrangement may be hard to ignore, as it may manifest itself in many ways such as favouring particular literature viewpoints that I may agree with unaware. My relationship to the Makuleke community was an intimate one and was also a product of the support that was given to the community during the time I was involved with the Makuleke CPA, my current work in the Makuleke JMB, as well as the fact that I was born in Makuleke and continue residing there. But due to the ethical considerations that I also outline in this chapter, I would attempt to balance my presentation of chosen methodologies emphasising all angles to counter the prevailing viewpoint I may have chosen. Within the co-management arrangement the balance of power play is hard to ignore, and obviously someone with conservation knowledge, resources, and expertise will surely dominate – as it is the case with the Kruger National Park (KNP) as a principal party to the Makuleke co-management arrangement.

As part of the approach adopted, I tried to ensure that presentation of all data and its analysis resulted in consolidated responses that are equally distributed and even. It is clear that the interplay in the dual relationship phenomenon between the Makuleke Community and South African National Parks will be the key to unlocking the success of the co-management arrangement.

This chapter discussed the method and design of the study, including the approach used in gathering and analysing the data obtained. It also indicates the reason for a phenomenological approach to the study which accordingly enabled me to facilitate the participants' understanding of their social reality on the ground. The rationale, as I understand it, indicates that it would assist me towards a better understanding of the design, planning and execution of the Makuleke co-management arrangement. I also indicated in this chapter the significance of environmental policy and which functioned as an approach for analysing and understanding change and continuity in the policy process. I also indicated the role that the different research methods played in this study and how I used them to analyse the understanding of the concepts from my own perspective as a researcher. The use of the ethnographic approach sought to provide insights into the Makuleke peoples' point of view.

Again, my involvement in the community assisted enabled me to undertake community mobilization in the course of various initiatives during the research period and in interviews with members of the community. It is worth mentioning, however, that access to confidential information related to the Makuleke land claim processes, and knowledge of the capacity-building programme under the auspices of the Makuleke Land Claim Committee, strengthened the relationship between me, members of the community and employees of KNP who were interviewed. Therefore my relationship, and my social position within the Makuleke community by critically reflecting on the influence this may have had on the process of doing ethnographic research at home was then clarified. My participation in the Makuleke JMB also enabled me to document an ongoing engagement process between the Makuleke community and KNP officials, and this provided me with an advantage to be so anxious of knowing what could be the impact of the co-management arrangements on both the Makuleke community and SANP in the longer run.

The following chapter presents the results and discussions of the interviews as undertaken.

## CHAPTER FIVE

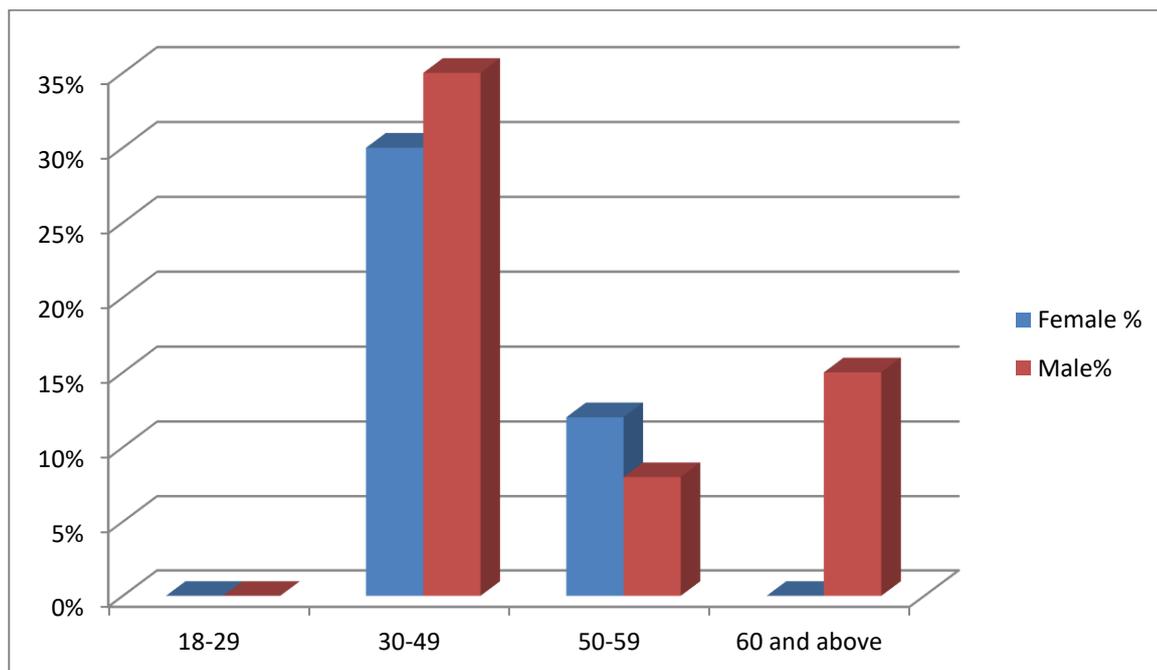
### RESULTS AND DISCUSSION

#### 5.1. INTRODUCTION

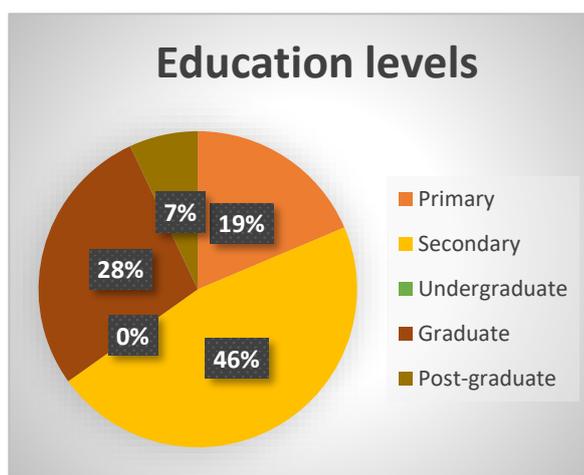
The previous chapter discussed research methodology and the design used for the purposes of this study. It described the administration of a questionnaire and the structured and semi-structured interviews which accompanied it under the heading: “Direct information gained from questionnaires and interviews”. This chapter mainly concerns itself with the information thereby gained, but uses information obtained by other means in the course of discussion.

#### 5.2. DEMOGRAPHIC PROFILE OF THE RESPONDENTS

**Figure 24: Gender and age grouping of respondents**



It should be noted that, in the age group of 60 years and above, no women were interviewed, although in the 50-59 yr age group they were in the majority. Education level was also elicited (Figure 24), and another feature to be noted is that there were no respondents at the level of university undergraduates. Figure 25: Level of education of respondents; Figure 25 below depicting the level of education.

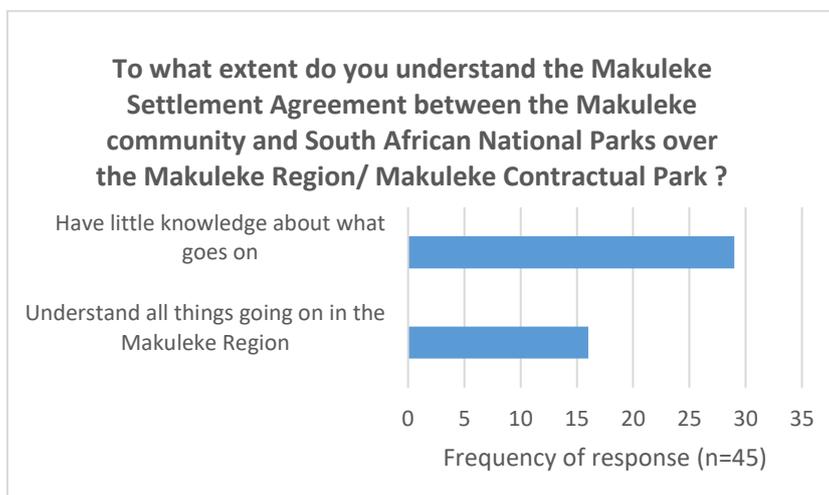


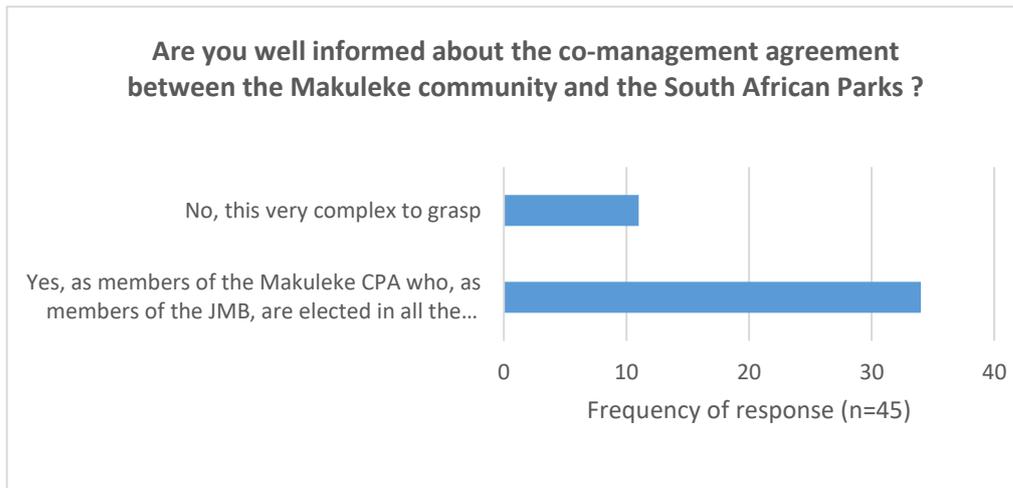
**Figure 25: Level of Education**

### 5.3. OTHER RESEARCH FINDINGS

As the questions grouped themselves into certain categories, these categories are here treated as headings, under which are given the various charts derived from a grouping of the responses to each question in the category. No statistics were applied as the sample was too small, and in all cases raw frequencies of response are given, not percentages.

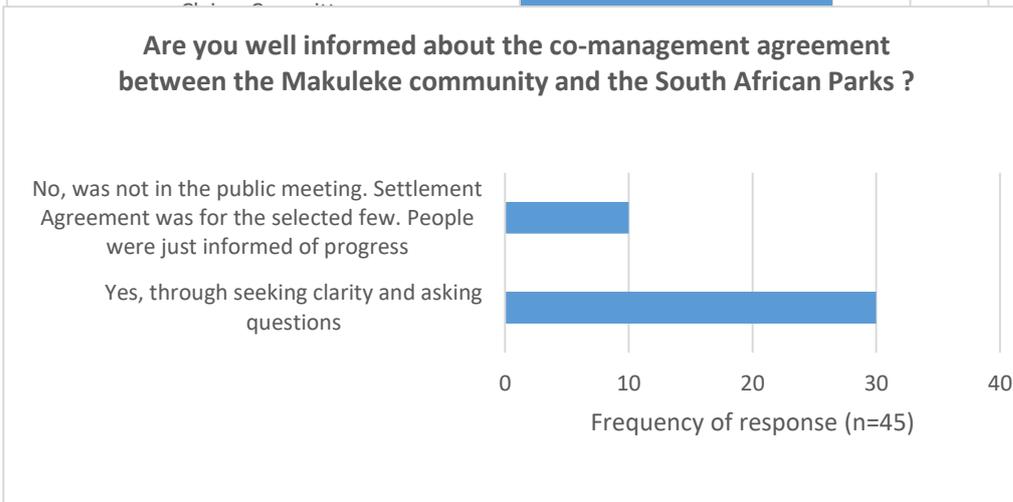
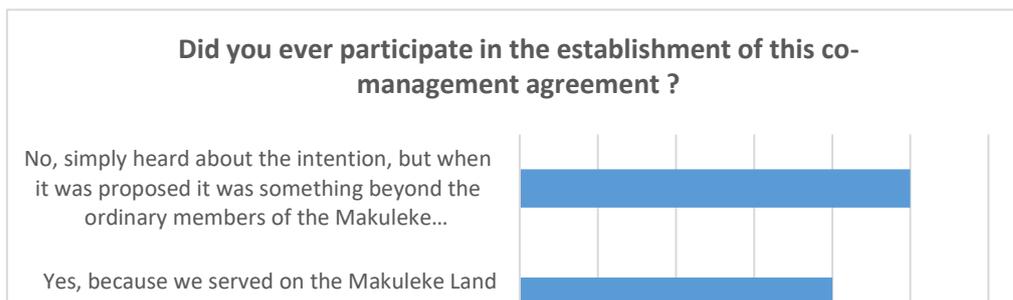
#### 5.3.1. *Involvement, information and understanding*

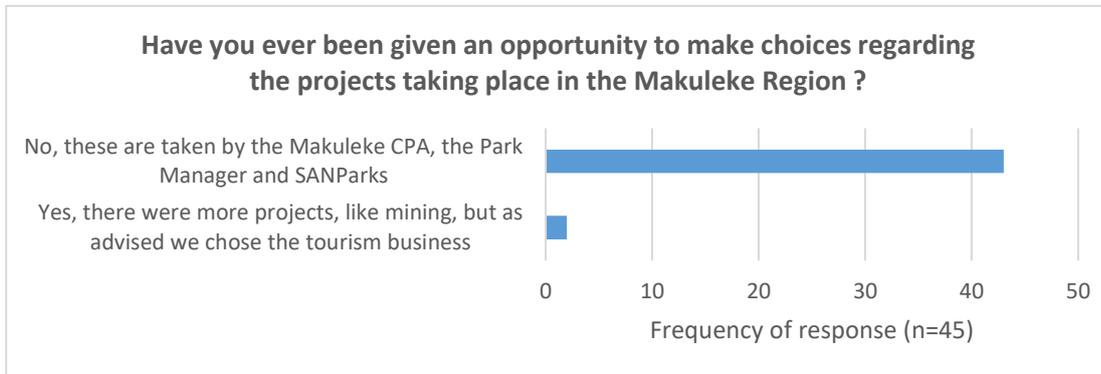
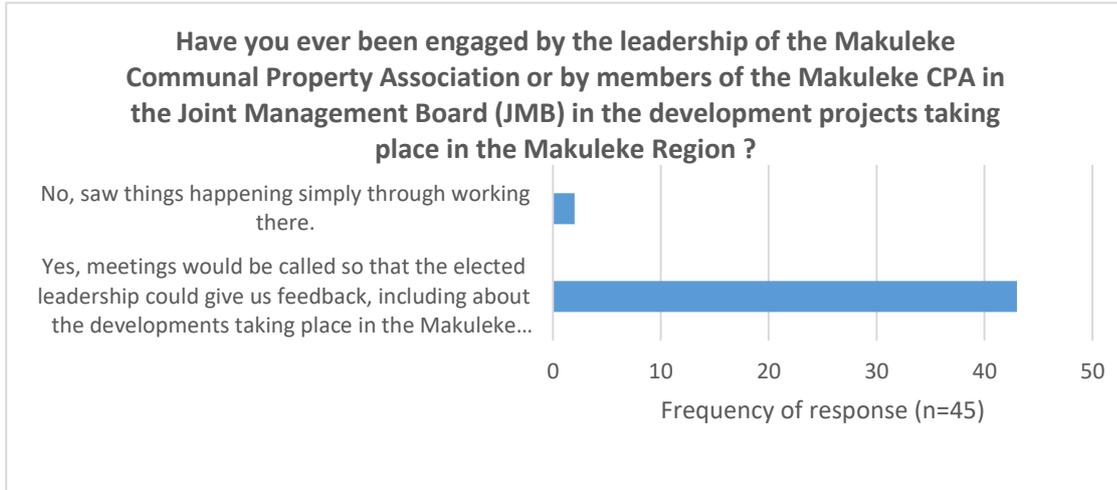




**Are you informed about the Makuleke Communal Property Association (CPA)?**

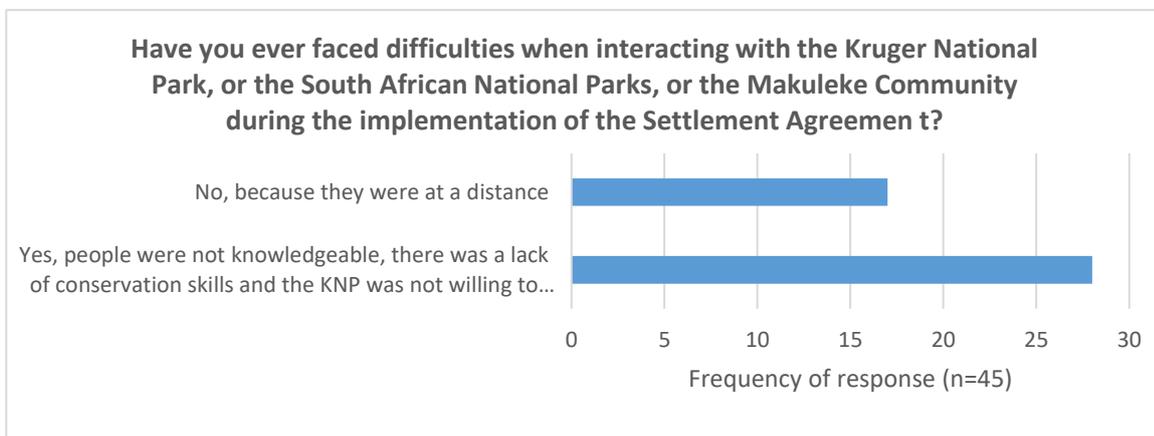
Yes **UNANIMOUS**

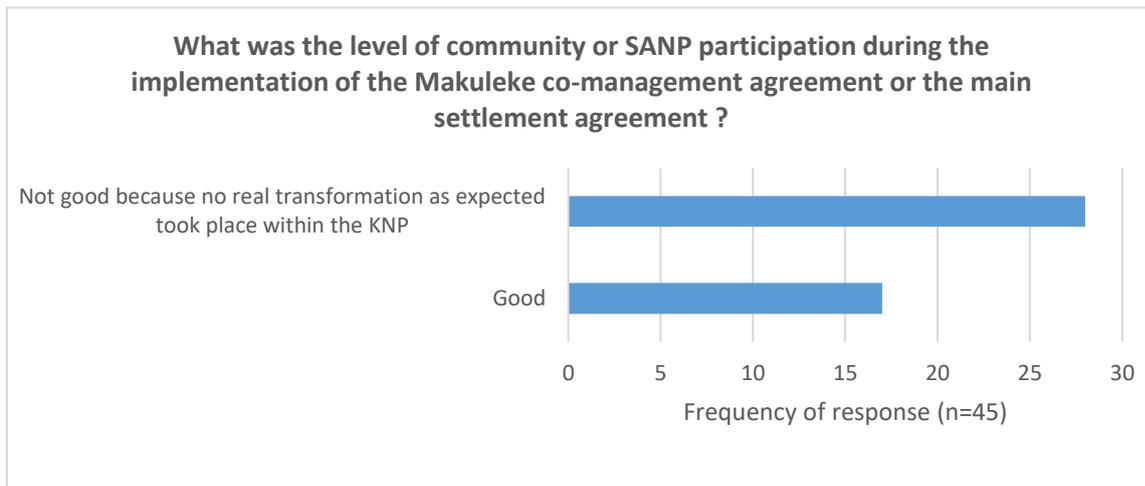




**5.3.2. Views on co-operation**

Although views on co-operation might be seen as synonymous with views on co-management, there is a difference. This difference is recognized here in the distinction of another heading representing a different category wherein co-management is specifically addressed.

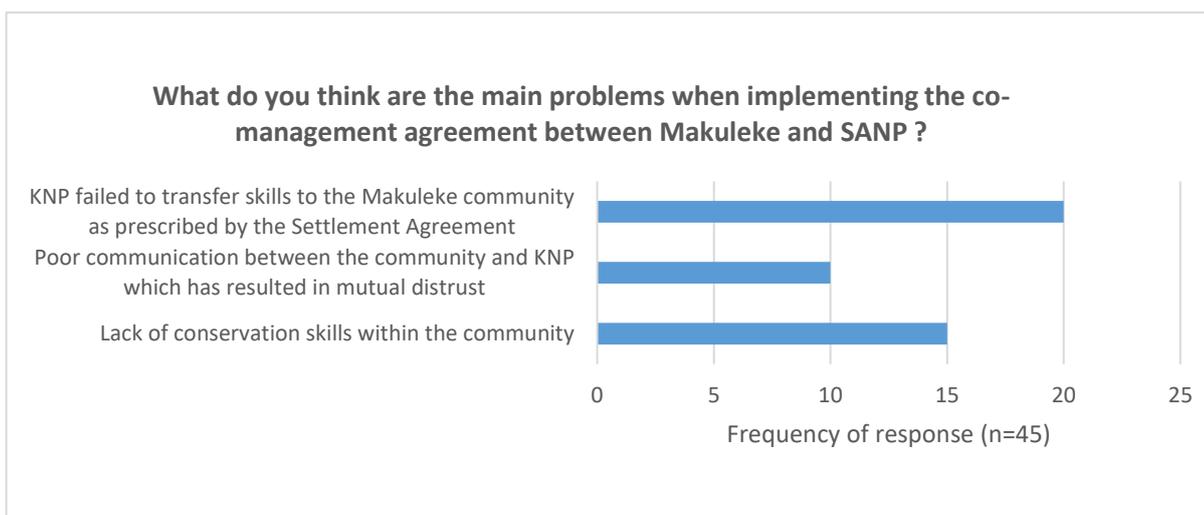




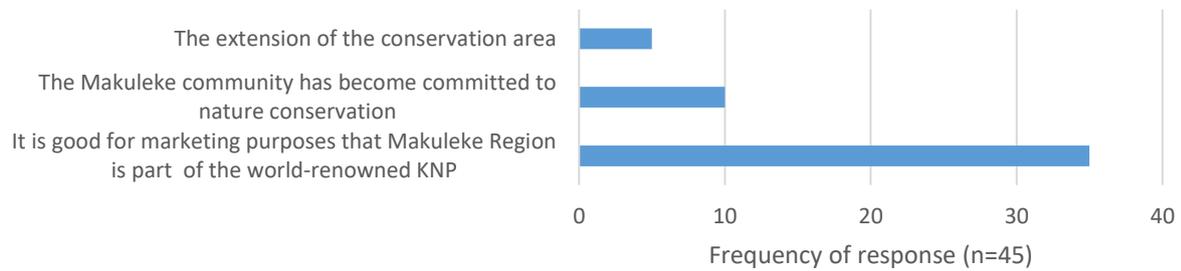
**Do you think consultation is important between the executive committee of the Makuleke CPA and the entire community, and between KNP and Makuleke CPA, over the implementation of the projects in the Makuleke Region ?**

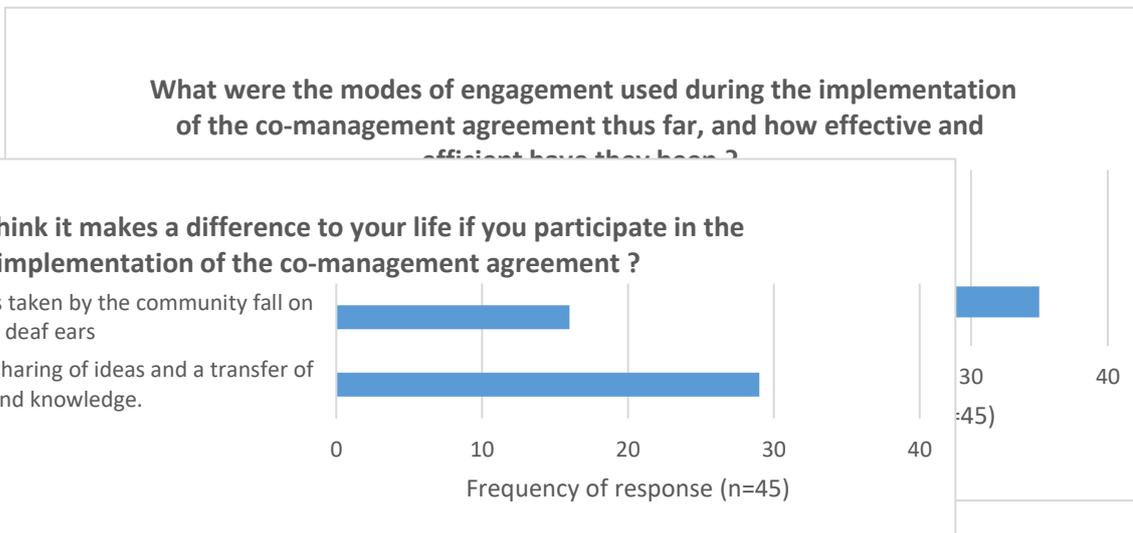
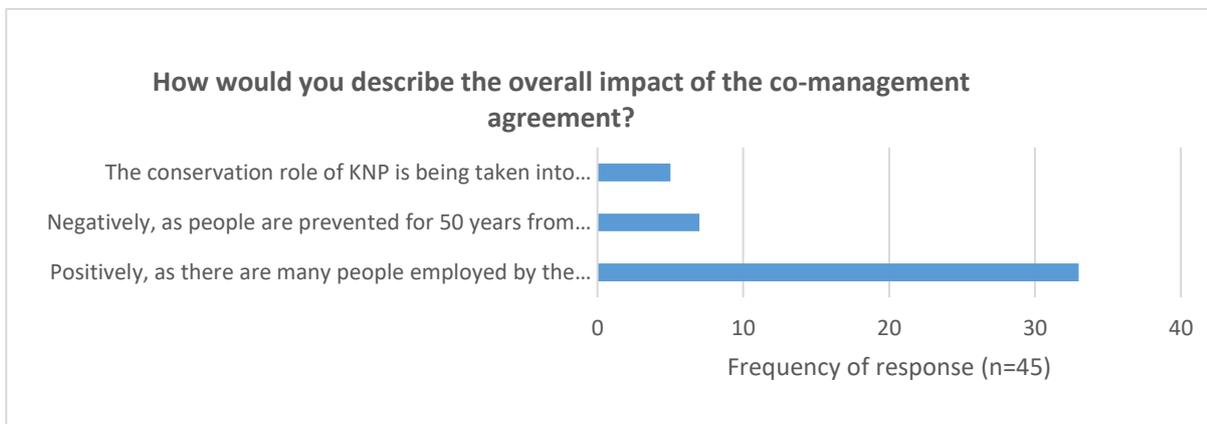
Yes **UNANIMOUS**

**5.3.3. Views on co-management**

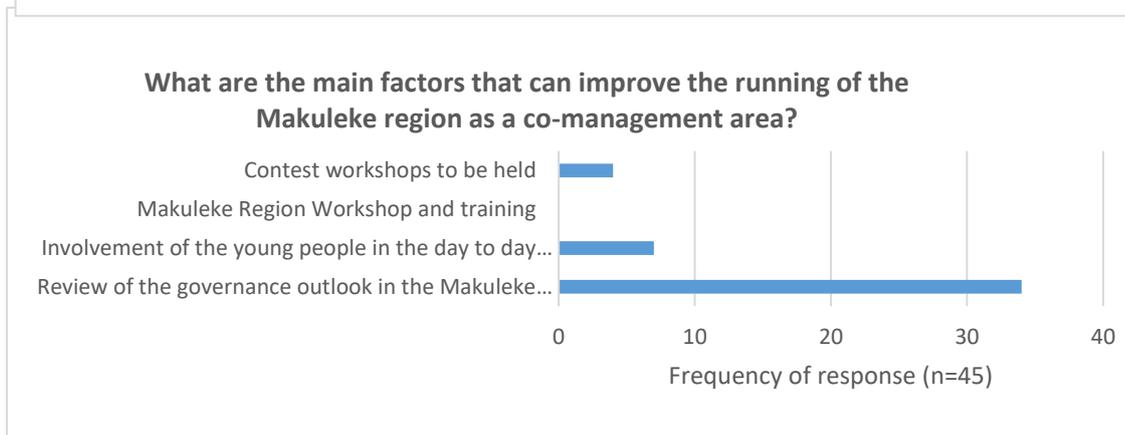
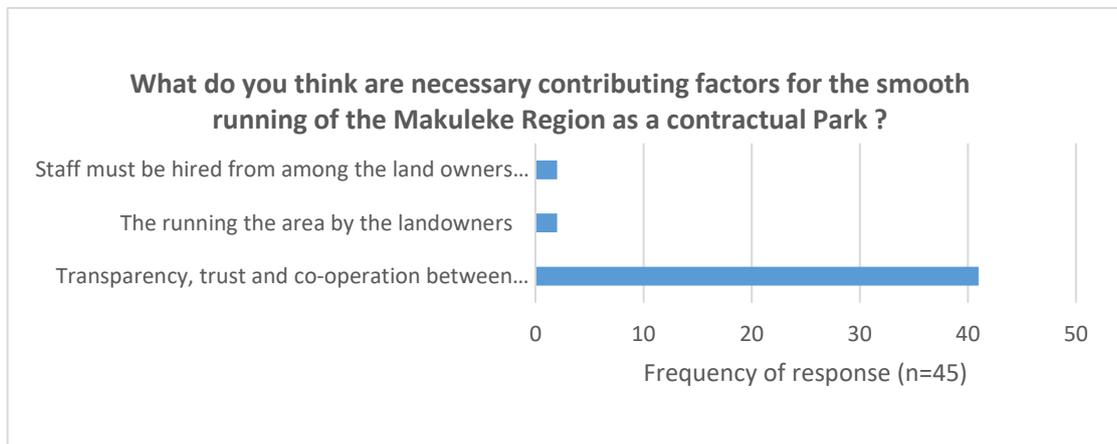


**What do you think are the main benefits of the co-management agreement between the Makuleke community and the KNP ?**

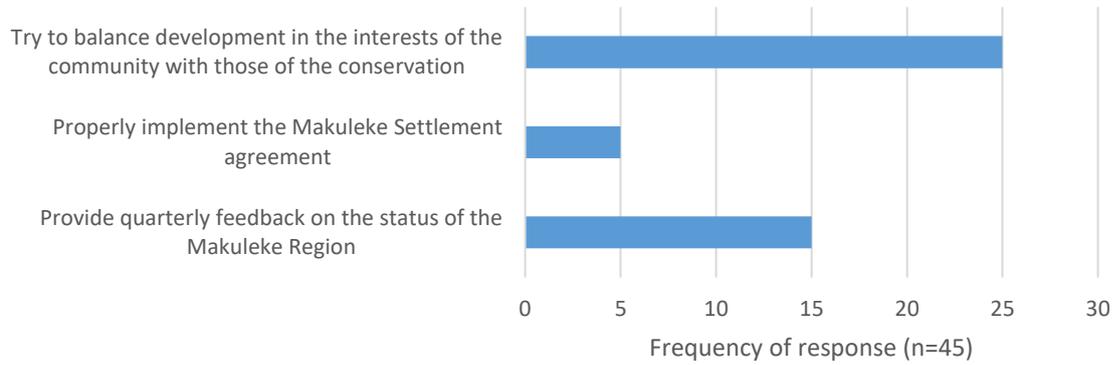




**5.3.4. Views on the possibility improvement**



**What recommendations can you make in order to improve the implementation and the management of the Makuleke Region as a contractual park or co-management area ?**



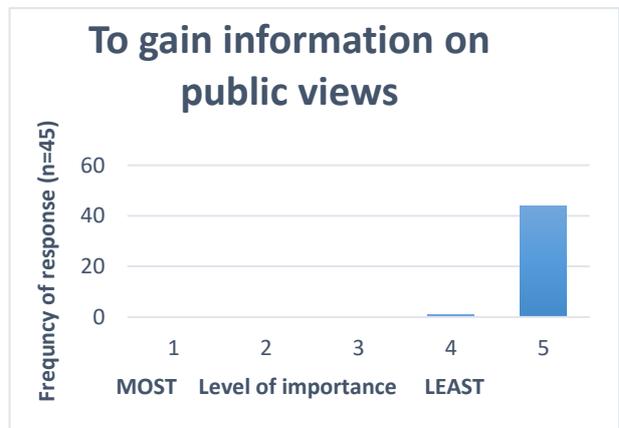
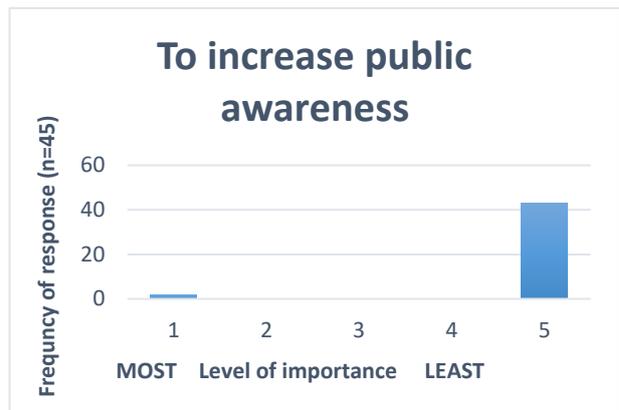
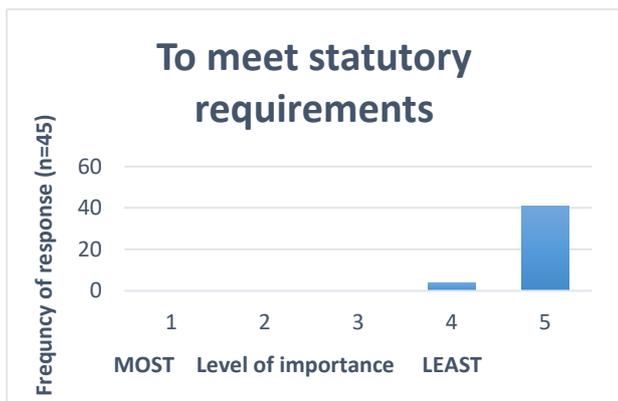
**Would you say that the present approach to the implementation of the co-management agreement in the Makuleke Region is adequate ?**



**5.3.5. Purpose of consultations**

Only one question on the questionnaire did not give the option of an open-ended answer. Question 11 asked respondents to assign an importance to each of five different reasons provided by the questionnaire, preceded by this question:

What do you think is the main purpose of these consultations during the implementation of this co-management agreement?



It will be noted that very few of the respondents considered any of these purposes to have very much importance.

#### **5.4. DISCUSSION AND INTERPRETATION**

Of those people who had been instrumental in the Makuleke land claim by virtue of their role in it, those who had been the first members of the Makuleke CPA Executive Committee (Exco) believed that, due to the progression of time and the cycle of placing CPA Exco members into positions of leadership, the level of understanding at the time of the critical events differed from the current levels of understanding. It is unfortunate that, with these changes, institutional memory within the leadership has been lost. Other people, such as the Consultative Community Forum, have little knowledge of the Makuleke Settlement Agreement and of the relationship between the Makuleke community and the SANP regarding the Makuleke region as a contractual park.

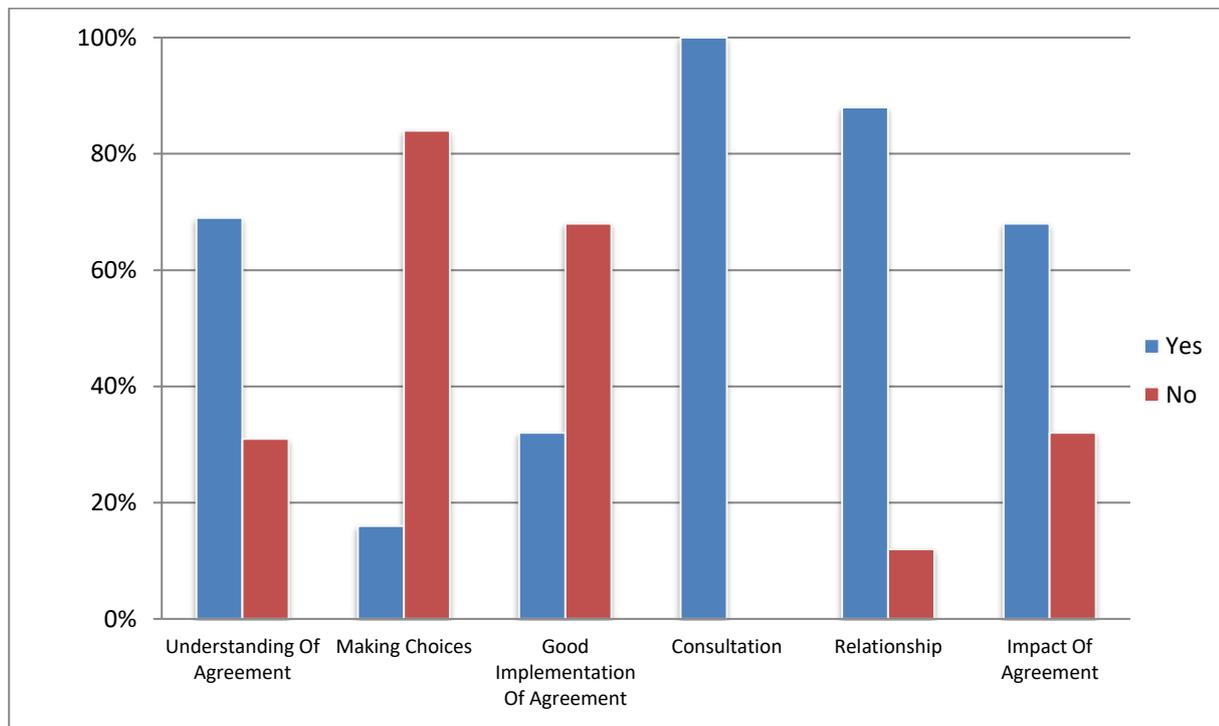
The main concerns raised by the stakeholders in the course of the interviews can be reduced to two issues. Firstly, there were unmet expectations, as almost all the concessionaires had projected income-related benefits for the Makuleke community that would be seen growing year after year, something that is not happening now. Although there are some financial and employment benefits granted to Makuleke people by the concessionaires, it has not yet approached the projection by either of them. The expectations about benefits were heightened by the consultation work prior to the development of the area and by commitments made by the concessionaires through projections of anticipated income to be shared with the Makuleke CPA. As the community's most valuable asset, there were expectations that the Makuleke Region would deliver significant dividends to the Makuleke community that would in turn improve their livelihoods.

##### **5.4.1. *Analysis of responses***

Further analysis was carried out on the findings as reflected under Section 5.3 above, in order to gain some understanding and insight.

This attempts to represent the views of the respondents with regard to the extent to which the Makuleke community members were familiar with the co-management arrangement concluded between the SANP and the Makuleke community

**Figure 26. Analysis of participants' responses**



The responses to the question about understanding the agreement between the Makuleke community and SANP indicates that 63% of the respondents said they had a clear understanding of processes, while 37% did not understand the agreement. On the question of making choices about the types of projects desired, 16% indicated that they were given opportunities to participate in the choice of the community projects, while 84% indicated that projects would be presented to them after they had ratified the decision taken on the kind of projects that the community would undertake. These included the concession contracts that the community had to conclude, since only a few had had an opportunity to decide with whom the Makuleke community would conclude the agreement. Thus through this study, the implementation of the agreement had to be investigated in order to check whether the agreement was implemented according to expectations.

On this question, 32% respondents indicated that the level of implementation was satisfactory while 68% felt that implementation was still lacking.

This means that, even though the Makuleke co-management agreement might have yielded some good results, these came with challenges.

It is my understanding that consultation plays an important role in any given project design and any processes that involve community buy-in. In terms of the Makuleke co-management processes, almost all those interviewed attested that they were consulted by the elected leadership of the Makuleke CPA regarding the development taking place in the Makuleke Region from the beginning of the Makuleke land claim process and including the post-land restitution processes. Consultation in this case played an important role as it enabled members of the community to be *au fait* with the situation and to be conversant with the issues regarding the development that was unfolding. Most of the respondents indicated that they appreciated the manner in which the Land Claims Committee engaged them, as they felt they were thus in charge of the development processes in the Makuleke Region. Indeed, public awareness was raised within the Makuleke community through this consultation process.

One woman reported that it assisted them in ensuring that they would be empowered to be part of the decision-making processes and it empowered them to approve something that they understood. However, they were also concerned that such consultation seemed to have been deteriorating, and that the level of participation by community members was nonetheless limited mostly to consultation and that being consulted is a low level of participation.

#### *5.4.1.1 Relationships*

Respondents indicated that the relationship between SANP and the Makuleke community has generally been improving, especially when one looks at the new members of the SANP on the JMB, with only 12% of the respondents being concerned about the relationship between the two parties to the co-management agreement. The current members of the Makuleke JMB, especially the SANP members, understand the community's interests.

### 5.4.1.2 Impact of the Agreement

Almost 68% of the respondents indicated that the Makuleke co-management agreement had impacted positively on both the Makuleke community and the SANP. However, 32% of the respondents still believed that people's lives had not improved and that an underlying factor could be that, when the land was returned to them after a successful land claim, the co-management arrangement in the Makuleke Region had not been sufficiently well explained in terms of the benefits to be derived from retaining the conservation status of the Pafuri Triangle.

### 5.4.2. Financial benefits

The projections provided by the developers led to expectations of an income of about R6 million a year by 2006 (Collins 2010:15). Such a target, however, has not been met because of poor turnover performance contrary to the expectation of the concessionaires. Secondly, there were issues constraining the community's experience of other less tangible benefits such as knowledge. This study found that income raised as benefits from the Region was limited (Mavis Hatlane personal communication 2010). Table 5 below reflects the projected income after 2004 as anticipated by the CPA, based on their concession contracts. The projections were provided by the concessionaires when proposing to invest in the Makuleke Region.

**Table 4: Income projected by the concessionaires from 2005**

	2005	2006	2007	2008	Totals
	SA RAND	SA RAND	SA RAND	SA RAND	SA RAND
CONCESSION LEASE FEES	744 640	2 781 532	3 460 113	6 603 205	13 589 490
PERMANENT JOBS	1 901 340	2 308 488	2 577 301	9 345 564	16 132 693
ANTI-POACHING	430 000	430 000	430 000	430 000	1 720 000
<b>TOTALS</b>	<b>3 075 981</b>	<b>5 520 022</b>	<b>6 467 417</b>	<b>16 378 773</b>	<b>31 442 183</b>

Source: Collins 2010:15

One thing to be noticed is that the above projections were not realised as income from the tourism lease fees. The Makuleke community received far less than the projected income over the years (See the actual financial calculations below as Figure 5).

**Table 5: Actual financial benefits (in South African Rands)**

<b>Year</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
Restitution Grant	5 400 000,00	-	-	-	-
Hunting	460 000,00	1 500 000,00	1 500 000,00	-	-
<b>Year</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Restitution Grant	-	-	-	-	-
Hunting	-	-	-	-	-
<b>Concession fees</b>					
1.The Out- post	91 007,26	108 433,70	210 472,78	241 548,00	51, 574,14
2.Pafuri Camp		230 633,91	496 836,33	1077 532,24	540 451,27
3.Eco-Training		21 890,00	160 655,00	172 270,00	180 000,00
5.Elsmore Lodge					
<b>Year</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Restitution Grant	-	-	-	-	-
Hunting	-	-	-	-	-
<b>Concession fees</b>					
1.The Out- post	185 719,09	150 920,54	119 045,98	355 918,44	480 265,12
2.Pafuri Camp	706 000,00	626 764,69	767 400,00	856 580,25	142 381,87
3.Eco-Training	180 000,00	216 485,00	234 645,00	Training	Training
5.Elsmore Lodge					
<b>Year</b>	<b>2015</b>				
Restitution Grant	-				
Hunting	-				
<b>Concession fees</b>					
1.The Out- post	586 452,96				
2.Pafuri Camp	370 745,00				
3.Eco-Training	182 750,00				
5.Elsmore Lodge	929 240,00				

Source: Makuleke Development Trust: 2016

Table 5 above indicates the accumulated income over past years, including the Makuleke lease fee income from 2005 to 2015.

Another critical element in the beneficiation model, particularly if one looks at South African rural areas, is that of the access-and-benefit-sharing in terms of land and natural resources. In these situations, communities often continue to rely heavily on biological resources for domestic use and income generation, and therefore the possibility of increasing those resource-use rights has significant positive implications for the beneficiaries.

However, the emphasis on nature reserve commercialisation and privatisation has meant that the developing community resource-use strategies have fallen by the wayside (Isaacs and Mohamed 2000). These perceptions fail to acknowledge the growing global understanding that sustainable resource use is an increasingly important mechanism in achieving conservation goals, and that 'preserving' nature need not be the only route. These concession contracts also contradict the potential of improved access-and-benefit-sharing to the Makuleke community as it restricts the Makuleke community from harvesting of natural resources such as hunting. The Makuleke community had to get permits from the managing authority and this specifically excluded them from obtaining the very benefits the agreement set out to provide (Knieter 2014). These stipulations also underscored the government's bias towards realising conservation goals rather than community-based development ones.

These unmet expectations caused frustration in the community. The employment-related benefits were constrained by the fact that relatively few Makuleke people had the required expertise and knowledge to be hired in senior tourism-related or management jobs. While there were plans in place to address this issue, it remains a matter of a concern (Mavis Hatlane personal communication 2010). Despite the fact that there seems to have been some enterprise development and support initiated by the Makuleke concessionaires to access services that would benefit the Makuleke community, this did not satisfy the community.

Among the opportunities initiated by the Makuleke concessionaires, for example, were the supply of eggs, fresh vegetables and hand-crafted articles, as well as services such as plumbing, thatching and transportation (Mavis Hatlane personal communication 2010). However, in the wake of the recession of 2008, one sector that was adversely affected was the tourism industry and this resulted in a decline in demand for eco-tourism products. This impacted negatively on the Makuleke concessions and the Makuleke CPA's income from tourism.

#### **5.4.3. *Non-financial benefits***

The co-management agreement did not benefit only the Makuleke community, since SANP as the conservation authority also benefited from this co-management arrangement. SANP

are well respected worldwide as they seemed to be able to manage the required transformation by means of this kind of arrangement. The fact that the Makuleke Region remained part of the conservation areas had been a bonus for them, and this refers also to the situation in the Great Limpopo Transfrontier Park (GLTP) as the Makuleke Region became a section of the area comprising the GLTP.

Most of the respondents said that there was an inadequate flow of information, as much information, especially in terms of what was happening in the Makuleke Region, did not reach the community at large. They said the community had lost faith in the current leadership as they did not know what was going on in the Makuleke Region and how things were being run, but they were of the view that once better leadership was elected during the next general meeting, the situation would improve. This researcher's view when conducting these interviews within the community was that even the members of the broader community needed to be better apprised of what was happening in the Makuleke Region.

Some respondents believed that changing of the Makuleke CPA leadership after three years was contributing to the questionable nature of the current outlook of the Makuleke co-management arrangement, although it seemed that this was being addressed by all parties to this agreement. To those attending the election of the CPA leadership as per the CPA constitution, it was obvious that almost 80% of the incoming members would be new ones, and about 20% or less would be re-elected incumbents to continue as members of the Makuleke Exco. This broadened the gap between the Makuleke CPA and the KNP officials who had been members of the Makuleke Joint Management Board (JMB) for some time. While most of the respondents believed that the constitution could be changed, there were those who believed that a cycle of three years was good, as they did not the Executive Committee (Exco) to have lifelong members. I observed that the issue of changing members of the Makuleke community to be their representatives on the JMB was contributing to the incapacity of the Makuleke community with regard to the Makuleke JMB. It was found that, even though proper handing over and induction was being done, that alone did not match the efforts already made towards building the capacity of those members who had been voted out.

The response from the current leadership was that most of those who were voted out had not participated closely enough in the affairs of the Makuleke CPA and that this undermined the institutional memory.

#### **5.4.4. Summary of training conducted for the Makuleke people**

Not only did the Makuleke people receive training, but also job opportunities were created as a result of community and SANP cooperation. A summary is given here of the employment created by the co-management agreement.

**Table 6: Training done with Makuleke people**

INSTITUTION	AREAS OF INTERVENTION	NUMBER OF PEOPLE INVOLVED
Transform and EWT	Formal training on conservation and business studies as a training project to assist the Makuleke community funded by GtZ-Transform and EWT	21 students registered with Technikon South Africa. UNISA as distance learning project
University of Witwatersrand	Project and Programme management	5
Eco-Training Southern Africa Wildlife College	Field Guide training	20
University of Limpopo	Natural Resource Management	15
GtZ	Leadership and development Facilitation	1
Tourism Services Thetha	ZOPP (Goals Oriented Project planning)	30
CPPP	Leadership Skills	15
Ntomeni Ranger Services	Development of training manuals	12
John Mwangi Group for Environmental Monitoring	Field Ranger training	20
Southern Life	Financial management	13
IMMSA (Independent Mediation of Southern Africa)	Conservation and development Environmental	20
	Women Facilitation	30
	Community mediation	2
	An ongoing capacity building programme targeting the leadership through workshop	40

Source: Makuleke CPA: personal communication (2016)

#### **5.4.5. Employment of Makuleke people in the Makuleke Region**

The following employment statistics indicate the number of people employed by the by the tourism industry in the Makuleke Region.

**Table 7: Employment statistics**

NAME OF LODGE	NUMBER OF MALES EMPLOYED	NUMBER OF FEMALES EMPLOYED	TOTAL NUMBER
The Outpost	5	29	34
Pafuri Camp and Baobab Hill	12	15	27
Levubu Camp	3	1	4
Eco Training	5	0	5

Source: Makuleke CPA 2016

## **5.5. THE IMPACT OF THE CO-MANAGEMENT AGREEMENT ON THE MAKULEKE PEOPLE**

The impact of the co-management agreement in the Makuleke Region should be viewed in terms of how the agreement is being implemented. The Settlement Agreement may be viewed negatively or positively, although its negative aspects seem to be much less than the positive aspects. The Makuleke Settlement Agreement itself was and is not a contributing factor towards the negative aspects, but the manner in which this agreement was being implemented contributed much towards looking at the relationship it created in terms of inequality. The unequal relationship between the Makuleke community and the SANP represented by the KNP (which by the time of concluding this agreement was celebrating 100 years of existence), was evident especially in terms of capacity differential between the parties to the agreement. Most of the meetings of the JMB were characterised by a zero-sum “I win and you lose” kind of attitude. The unequal relationship was based on the difference in expertise regarding conservation management and also related to the costs of the day-to-day operation of the Makuleke Region. During the initial period of this relationship SANP used its technical and scientific knowledge to bypass the interests of the Makuleke community, while at the same time the Makuleke community would try to bargain by using their ownership rights over the land.

The lack of trust between the parties to the Makuleke Settlement Agreement contributed much towards the lack of any smooth running of the Makuleke co-management agreement. This mistrust made it difficult for the Makuleke community to expose the financial details so that clause 43.3 of the Makuleke settlement agreement could be implemented. This clause

says: “the actual costs incurred in the operational management of the Makuleke Region, which shall specifically exclude any costs in relation to overheads of the head office of the SANP or any other indirect costs of the SANP, but shall include the direct costs incurred in:

- conservation management within the Makuleke Region;
- the establishment and/or maintenance of infrastructure utilised solely in relation to the operational management of the Makuleke Region;
- rehabilitation of the land where the SANP withdraws from existing infrastructure, which infrastructure is not required by the JMB; and
- the administration of the JMB; and
- costs shall be determined by the JMB upon information supplied by the CPA and the SANP. This operational management cost shall be borne by the SANP for an initial period of 5 (five) years from the commencement of this agreement, unless the CPA elects in its discretion to contribute thereto during that initial period. Upon termination of the initial 5 (five) year period, the CPA shall be liable for 50% (fifty percent) of the operational management cost of the Makuleke Region: Provided that the CPA's contribution to the total operational management cost of the Makuleke Region shall not exceed 50% (fifty percent) of its net profit, unless the CPA at its own election decides otherwise” (Makuleke Main Settlement Agreement 1998).

This unhealthy relationship was fuelled by the fact that the KNP objected to the move by the Makuleke community to sustainably utilize their natural resources when, in 2000, the community decided to embark on harvesting through hunting two elephants and two buffaloes. It was not that the Makuleke community was not allowed to hunt in the Makuleke Region, but the KNP wanted to demonstrate its power, and so took a step which was not in line with the Settlement Agreement. The Agreement is clear about the right to the sustainable use of the natural resources by the Makuleke community in the Makuleke Region.

On the positive side, this co-management agreement made by the Makuleke people, especially their decision to retain the conservation status of the area, was celebrated internationally. The community received various forms of technical, financial and moral support from different stakeholders as a result of their decision. Under the terms of co-

management, the Makuleke community was able to commercialize their area in which they concluded various concession contracts, and appreciable income was accumulated over the years. Even if the KNP failed to adhere to their obligation of transferring the necessary skills to the Makuleke community as the Settlement Agreement required, their participation in this co-management arrangement did a lot for the Makuleke people, even in terms of capacity building.

A number of training programmes were not funded by KNP but by various NGOs which decided to support the Makuleke community as a result of the decision they had taken regarding the retention of the conservation status of the area when their land was returned after the successful land claim. (See Table 4 above depicting the training provided to the Makuleke people to enable them to participate equally in this co-management arrangement).

## **5.6. OVERALL OBSERVATIONS**

It may be noticed that, throughout this study, the building of a hard and strong institutional arrangement has been considered important for managing the relationships between the Makuleke community and SANP as outlined in the Makuleke co-management agreement. This kind of relationship is needed to uphold the Makuleke co-management ideal. Moreover, the Makuleke co-management model is being recognized and has been regarded as one of the progressive co-management strategies within and outside the country.

An issue to be addressed within the JMB was that of different expectations and interpretations of the parties involved in the Makuleke Region. The KNP officials were there to ensure that the conservation of biodiversity in the Makuleke Region was well maintained, while the Makuleke community and their commercial partners were concerned that development should take place in the Makuleke Region without any compromise. This seemed to be less focused on whether this development would compromise the ecological character of the area. It may also be said that SANP, on the other hand, continued to adopt an “I win and you lose” situation by over-maximising their technical control in the Makuleke Region (Steenkamp and Grossman 2001).

If the expectations of the different parties in the Makuleke Region were not well managed, there was a likelihood that the Makuleke Region co-management process could stall. However, the willingness of both parties to the Makuleke co-management agreement enabled the continued existence of the Makuleke co-management agreement and the Makuleke Region as a contractual park as opposed to a community-owned private game reserve (Steenkamp and Grossman 2001). Steve Collins (personal communication 2010) was of the view that “one of the weaknesses of the JMB as a management authority of the Makuleke Region was the lack of implementation of resolutions that were made in the JMB meetings”, and this I tend to agree with him on this matter. However, this was addressed in late 2003 when the Makuleke JMB decided to employ a JMB operations officer. The parties involved agreed to jointly fund a full-time operations officer, and I was appointed to work as operations officer for the JMB. Discussions during the fieldwork with the JMB members made it clear that all stakeholders were satisfied with this appointment. The appointment of an operations officer has made the JMB more effective despite the fact that the incumbent became one of the ongoing expenses of the Makuleke CPA, accounting for 20% of their budget (Steve Collins, personal communication, 2010).

While the institutional arrangements and governance model within the Makuleke agreement was designed to support this co-management initiative, in reality the parties did not seem to co-operate as effectively as they should. Decision-making through the JMB was sometimes slow, skewed, and at times threatened to frustrate the implementation of key strategic objectives. There were also a number of unilateral decisions taken by both the CPA and KNP that undermined the trust between these two bodies. This occurred in areas where they might indeed each have had the right to adopt such an approach – for example, in decisions around commercial development but also in areas where they did not have jurisdiction, such as the governance structures of the JMB.

Such decisions were nonetheless perceived to undermine mutual relationships and the result was that the JMB was becoming predominantly a forum for information-sharing and not one for true collaboration. It could be noticed that, in circumstances where the JMB did not have any decision-making power or was without a proper delegation of authority, the ineffectiveness of the Joint Management Committee (JMC the operational wing of the Makuleke JMB) in addressing operational issues often resulted in a breakdown of communication between the concessionaires, the CPA and KNP. Consequently, operational

issues had to be dealt with in the JMB in an *ad hoc* fashion and on a basis which technically reduced the powers of the Makuleke JMB as decision-makers. Their capacity for policy advocacy became that of mere implementers, automatically making them players and the referee at the same time.

It may also be noticed that, through the original Master Planning and development processes, a vision for developmental bias within the community was identified, but differences emerged as to how this was to be understood. The Makuleke community's main focus was on development and financial interest without taking into consideration the future ecological sustainability of the Makuleke Region. At the same time, KNP was interested in keeping the ecological integrity of the area, and seemed to be arguing against any form of development that would benefit the Makuleke community. This was perhaps just a sign of two strands of thought within the co-management agreement, one for the preservation of the Makuleke Region's ecological status, and the other focused on socio-economic benefits. One area for concern to be observed was the danger to the Makuleke community in relying upon one source of income.

A problematic issue throughout this study was the lack of joint funding to keep Makuleke co-management in a state whereby both parties to the agreement would be pleased. After concluding the concession contract, representatives of the Makuleke community felt that they had to comply with their commercial partners who were then able to dictate terms of conduct in the Makuleke Region. This nearly undermined the co-management arrangement in the Makuleke Region because KNP was technically side-lined even if they were members of the Makuleke JMB. This study has made clear that that the initial purpose of the Makuleke community that of entering into a tourism-based venture with a private sector partner of their choice, was not what was finally achieved.

The contract concluded by the Makuleke community and Wilderness Safaris also compelled the two parties to appoint a private security company to carry out law enforcement – which was contrary to the Main Settlement Agreement, the guiding document of the relationship between the Makuleke community and SANP in the Makuleke Region. The negligence in implementing the co-management agreement on the part of both parties to Makuleke co-management resulted in the appointment of the Ntomeni Ranger Services (NRS) to conduct

law enforcement in the Makuleke Region. This had been a function performed by the KNP ever since the inception of the Makuleke Region as a contractual park.

The question that might be asked is: how did it come about that the Makuleke community and KNP allowed this to happen, when the parties to the concession had earlier recorded their agreement to strengthen security by appointing an independent anti-poaching unit in the Makuleke Region – a process which was contrary to the settlement agreement. SANP officials, in the course of the interviews, confirmed that they were not happy that a third party was appointed as security implementer for the Makuleke Region, whereas according to the settlement agreement and also in terms NEMPAA, this was their responsibility.

The appointment of NRS was just one indication that the Makuleke co-management agreement was under stress. The situation was exacerbated by the fact that the owner of the private company which had contracted to do the anti-poaching and law enforcement in the Makuleke Region had criticized the KNP. The fact that NRS were appointed while the KNP officials on the JMB were so silent seemed to question the capacity of both members of the Makuleke community and KNP officials on the Makuleke JMB, as this had nearly contributed to the co-management agreement being undermined. All these issues contributed to an unhealthy relationship and mistrust.

The lack of proper funding for this co-management model further contributed to a backlog of issues which remained unattended to. In cases where decisions were made by the JMB, the funds needed were not always available to implement such decisions. The compliance by SANP with the settlement agreement was undermined by budget constraints being cited at all times. The areas affected included the maintenance of roads which were left unattended, especially when SANP realized that the land belonged to the Makuleke community. It would seem that the SANP officials were not sufficiently conversant with the terms of the Settlement Agreement, but to some degree there were indications that there was a reluctance to relinquish the power they had had before the land was transferred back to the Makuleke community (Reid 2001; Steenkamp and Grossman 2001).

It is interesting to observe that, within the Sengwe community in Zimbabwe when declaring their land as part of the Gonarezhou National Parks (GNP) and also among those living

within the Limpopo National Park in Mozambique, community interests grew as a result of the co-management model that had been concluded in the Makuleke Region. Until these groups interacted with the Makuleke community, it took some while before they agreeing that their corridor should to be part of the Great Limpopo Trans-Frontier Park (GLTP). In other words, the fact that the Makuleke Region had been part of the GLTP greatly influenced the Sengwe people to declare their corridor a part thereof. This also included the understanding by the communities in Mozambique who, by virtue of being Shangaan and thus knowing the Makuleke community, agreed that the declaration of the LNP in Mozambique as a National Park could proceed. This made it legally possible for the GLTP to be declared.

According to the Makuleke CPA Executive Committee (personal communication 2010), members of the Makuleke community in the JMB were not happy when they realized that they had been sidelined during the creation of the GLTP, of which the Makuleke Region is a part. All these incidents occurred despite the fact that Makuleke community were the owners of the Makuleke Region which became part of the area constituting the GLTP, linking the Gonarezhou National Park (GNP) in Zimbabwe with the Limpopo National Park (LNP) in Mozambique. The Makuleke Region became strategically important as it links the major parts of the GLTP and thus could be seen to be the heart of the GLTP. Although the KNP representatives on the Makuleke JMB promised to take this matter up with their principals, the situation has remained unchanged.

## **5.7. SUMMARY OF THE MAIN FINDINGS**

This summary is informed by the objectives of this study and the research undertaken so far. It includes, firstly, investigation of the potential impacts on the Makuleke Region of the Makuleke co-management arrangement. Secondly, gathering, analysing and documenting the views of the parties to the Makuleke Settlement Agreement and the extent to which this co-management contributes towards meeting the main objectives of both conservation management, and the socio-economic development objectives of the Makuleke Region. It has been found how it has contributed and is still contributing to the development and the implementation of the Great Limpopo Trans-Frontier Conservation Area (GLTFCA).

There are both positive and negative features to the Makuleke co-management agreement. From the positive viewpoint, this arrangement made it possible for the Makuleke community to be part of the decision-making process of day-to-day management of the Makuleke Region. This has therefore come to be seen as a tool to reconcile both the conservation and socio-economic development in the Makuleke Region. The co-management arrangement gave the Makuleke community the ability to earn from tourism and the sustainable use of natural resources an income for development. In fact, the Makuleke successfully earned about R2 million from hunting and had two lodges operating in the Makuleke region within a short period of getting their land back.

Development in the Makuleke Region came first through a strategy focusing on conservation at an initial stage and subsequently placing strong emphasis on conservation throughout the whole process of the implementation of the co-management agreement. The strategy advocated that development should be based on sound conservation. A second strategy addresses conservation through development, focusing on development projects. This assumes that development is an indispensable precondition and incentive for successful conservation. On a more general note, the co-management initiative in the Makuleke Region allowed the Makuleke community to recognize the shift from a community which was anti-conservationist as a result of the forceful removal, to one which appreciated the role that a protected area approach could play in the lives of local people.

The co-management arrangement in the Makuleke Region was faced with many challenges capable of impeding the conservation and socio-economic goals. This study revealed that there were a number of challenges that reflected unresolved tensions in attempts to implement the Makuleke settlement agreement. While biodiversity conservation within the Makuleke Region may be recognized and appreciated, SANP officials have emphasized conservation interests far more than the interests of the community, even though SANP is party to the Makuleke Settlement Agreement. While it was possible to believe that the Makuleke co-management arrangement would approach its implementation through a moderated combination of the two extremes mentioned above, that did not happen. One of the problematic areas was where SANP, as parties to the Makuleke co-management

agreement, had initially pushed their own conservation agenda rather than promoting development. It became very difficult for the parties to meet on middle ground.

Even though members of the Makuleke JMB were becoming more comfortable with each other during their meetings, which were generally constructive, tensions did emerge (Steenkamp and Grossman 2001). My observation through this study was that the first major dispute which arose within the Makuleke JMB was about the hunting concession that was granted in the Makuleke Region in 2000. This was when the SANP strongly objected to the proposal to hunt in the Makuleke Contractual Park despite the fact that the proposal to hunt had already been tabled and accepted by the Makuleke JMB in a properly constituted meeting as per the Settlement Agreement. According to the Makuleke Community Property Association (CPA) Executive Committee, this was a key issue of contention with SANP whereby government first attempted to prevent the Makuleke CPA from conducting trophy hunting on their land. The delays involving the approval of the environmental impact assessment and the misunderstanding on the issue of trophy hunting, were caused by SANP officials. The 'I win, you lose' approach by both parties to the Makuleke co-management agreement seemed to be one of the reasons why this co-management was on the verge of collapsing, especially during the first five years of its existence.

The appointment of Ntomeni Ranger Services (NRS) as an anti-poaching unit in the Makuleke Region was also a symptom of the collapse of the Makuleke co-management arrangement.

This study found that many of the co-management arrangements and transfrontier park initiatives did advocate the participation of local communities. The problems which arose could be that the manner in which communities were involved became an issue of concern. History has shown that the involvement of the people was mostly required when labour was needed (Griffin et al 1999). International borders are political, not ecological boundaries and key ecological attributes and systems may be transnational. The underlying importance of the transnational agenda is the view that co-management of natural resources, accruing across trans-geopolitical boundaries through nationally-led international protocols, can add value to the peaceful resolution of transnational conflicts and the enhancement of regional economic development and integration. One of the argument by the Makuleke community

and the Makuleke JMB simultaneously was its exclusion from the core planning and the development of the Great Limpopo Trans-Frontier Park (GLTP) even if in South Africa is comprised of the Makuleke Region and KNP. It is my understanding that, it would have been appropriate to involve the Makuleke JMB as a management authority of the Makuleke Region, but this was not the case.

## **5.8. CONCLUSIONS**

Until clause 43.3 of the Settlement Agreement is met, which specified: “Upon termination of the initial 5 (five) year period, the CPA shall be liable for 50% (fifty percent) of the operational management cost of the Makuleke Region : Provided that, the CPA's contribution to the total operational management cost of the Makuleke Region shall not exceed 50% (fifty percent) of its net profit, unless the CPA at its own election decides otherwise “ the principle of equal sharing of the costs of conservation management of the Makuleke remains a challenge. It will be difficult for the co-management arrangement to address the issue of financing this model if the trust between the parties to the co-management arrangement is not sustained. Notably, in failing to comply with the requirement of equal contribution towards the management of the Makuleke Region, SANP remains the sole contributor to the cost of managing the Makuleke Region, which technically gives them the power to influence the day-to-day management of the Region. Until such time that the Makuleke CPA provides their financial statements in order for the JMB to ascertain whether the CPA's net profit does exceed the obligatory contribution of 50% of the cost towards managing the Makuleke Region, the power-sharing mechanisms remain a dream, and co-management as power-sharing in practice turns out not to meet the intention of the co-management framework.

This chapter emphasized that transparency, consultation and co-operation between executive members and community members are keys to maintaining cohesion and that such cohesion is needed in the relationship of the Makuleke with SANP. For the success of this co-management arrangement, especially in the next decade, the involvement of youth in the running in the running of the Makuleke CPA and JMB respectively is necessary. Concluding agreements between the Makuleke community and also with the private sectors without proper consultation with the broader community members was strongly criticized.

Some of the respondents within the community expressed their disappointment with the KNP because of its failure to fulfil certain obligations in terms of the Settlement Agreement, including maintaining the roads which had been allowed to degrade while no one took responsibility for them.

As in other parts of the world, one of the biggest challenges associated with the co-management arrangement was the inadequate beneficiation realised at the community level (DEA 2013; Lyver et al 2014; Mashale et al. 2014). There had been many expectations, both economic and social, that remained largely unmet. While there are multiple context-specific factors that are likely to contribute to poor beneficiation outcomes, the consequences of these are often similar: community disillusionment, reduced buy-in from all parties, strained co-operative relations, and in some cases complete dissolution of agreements (Findlay 2015).

While co-management remains the only viable strategy for the democratic governance of other protected areas in South Africa, it is no longer an official model offered for settling land claims within protected areas, in particular in the KNP. The terms and conditions for settling land claims within protected areas differs from one situation to another.

Moreover, with Cabinet Decision Number 5 of 2002, that there shall not be a transfer of land under claim, only monetary compensation becomes the ideal situation. This was fuelled by the Cabinet decision that was finalised in late 2008 which stipulated that no land rights would be restored to communities on the basis of claims made on the SANP reserves. The only remaining options for equitable redress were financial compensation or alternative land (Findlay 2015). This decision came after the settlement of the Makuleke land claim in which the historically displaced community won the claim to their land in Kruger National Park in 1998 after the settlement agreement had been concluded. Concerns have been raised that this decision to exempt KNP from co-management arrangements sends out mixed messages to key stakeholders about the effectiveness of the strategy. A question to be asked would then be: If co-management is not an effective settlement strategy for a well-established tourism hub such as Kruger, what precedent does this set for the success of co-management elsewhere? (Findlay 2015).

Good governance is equally important at the project and community levels. One of the guiding principles of this strategy is that governance and accountability should devolve to the lowest level possible. As such, this strategy supports sustainable community-led resource management. The focus here is at two levels:

- Support for and strengthening of existing community governance structures (traditional authorities, CPAs, other elected committees) that can create a conducive environment for livelihood interventions. This can also ensure that any projects implemented are supported by the community and that any shared resources and benefits are distributed to communities in fair and transparent ways. There can be several interventions within one community and these would all be subject to the community governance structure.
- Ensuring that every project or initiative has appropriate governance and accountability mechanisms. The design, planning, scheduling and budgeting of interventions should seek ways in which to achieve maximum empowerment of local stakeholders.

To achieve these, careful screening of potential projects should be undertaken. In addition, capacity-building interventions at the community leadership and project levels may be appropriate, and these would include formal training programmes such as:

- Governance-related training, including monitoring and evaluation, communication and conflict management;
- Project management training, including procurement, project management, fund management and contract management;
- Technical training, including new methodologies and approaches relevant to specific projects, sectors or interventions (e.g. water wise agriculture, holistic planned grazing and customer facing service for the tourism sector).

Such training can include formal, informal and experiential components of shared learning through exchange. Capacity building can also be achieved through creating opportunities for shared learning. This can be done by arranging visits by members of the concerned communities to other projects with a similar focus, especially in a network of conservation nodes, or by supporting stakeholders to learn more about different projects within the same developmental area. Youth exchanges are also possible and align with the proposed Great Limpopo Trans-Frontier Conservation Area (GLTFCA) Youth Programme.

The following chapter presents the desired outcomes for the Makuleke community's involvement and how the implementation of co-management can be improved.

## **CHAPTER SIX**

### **CONCLUSIONS AND RECOMMENDATIONS: THE DESIRED STATE**

#### **6.1. INTRODUCTION**

The previous chapter discussed the findings and the results of the research undertaken so far.

This chapter presents a suggested direction for the protected areas co-management agreement the Makuleke Region of the KNP to be shared with the Maluleke JMB. This chapter takes into consideration the acknowledgement by both the Makuleke CPA and the KNP of the fundamental reasons for why the relationship between these two parties should be continuously maintained, based on the benefit-sharing mechanism and common objectives. By so doing, there will be an assurance that the ecological integrity and sustainable development taking place in the Makuleke Region are taken care of. Of importance is the need to retain the conservation of biodiversity and the socio-economic development processes by which this co-management model is defined.

#### **6.2. THE LESSONS LEARNED**

One of the fundamental lessons learned when trying to assess the impact of the Makuleke co-management agreement, was that reflected in the limitations and successes of the co-management arrangement. Three major factors that encourage the establishment of co-management regimes in protected areas are as follows:

- 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 .

- Sustained funding for the variety of components 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.
- The involvement of other agencies, such as NGOs and intergovernmental organizations (IGOs). These “greatly contribute to the success of the co-management establishment by providing external sources of funding and support, as well as technical expertise” (Maluleke 2013: 6).

“The establishment of co-management processes should encourage broad participation of local communities and the conservation authorities, as was the case in the Makuleke Region, and hence the co-management agreement was concluded with success. For those role-players who still need to engage each other, especially the communities involved with conservation agencies, the process should not be 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” (Maluleke 2013:7 ).

Another factor that impedes co-management arrangements is unequal management capacity among parties. “While this factor does not prevent a co-management arrangement, it should be clear to parties to agreements that there may be a need, for some considerable period of time, for information sharing and capacity-building to enable equitable representation among the parties to the co-management arrangement. This unequal status raises important, and often difficult to resolve, issues related to resource conservation and utilization and to a large extent becomes one of the main contributors of conflict” (Maluleke 2013: 7) .

It has been further argued that “the formation and establishment of a contractual park or a co-management arrangement is difficult where the attitudes and perceptions of local communities are not supportive of conservation efforts and the conservation authorities are not supportive to the interests of the local communities, even though they might be partners to the co-management arrangement. Problems may arise with the differing interests and priorities of the parties. Where language and cultures differ, extensive capacity-building and awareness education needs to be carried out for both the conservation officials and key members of local communities” (Maluleke 2013).

Another factor needed to assist the community in their relationship with SANP is unity among themselves. It is important that members of the community, especially those in the leadership, be transparent to the people whom they lead. They also need to ensure that consultation in all developmental processes takes place. This will strengthen co-operation between executive members as elected officials and their constituency, and thereby ensure the social cohesion that is needed in interactions with SANP

In the past ten years or so of the existence of the Makuleke co-arrangement, it became apparent that co-management can be very unequal. This inequality is sometimes fuelled by a number of factors including, amongst others: (i), “different levels of knowledge (both theoretical, scientific and experience to do with the conservation and management of protected areas), (ii) the big brother approach by parties to the co-management arrangement, especially by those who are more knowledgeable partners in the agreement and stronger in their contribution to the financial resources that parties brings to the table” (Maluleke 2013: 8). The provision of adequate post-settlement support to new landowners, to ensure that land continues to be productive, could be part of an ideal solution to the above challenges. Land has for many years been the key to empowering and disempowering people so that spatial segregation based on race became entrenched in the body politic long before the 1913 Act (Maluleke (2013),. Many thought that it would be relatively simple to create a more balanced playing field through the co-management of protected areas, but this has proved to be a simplistic approach (Maluleke (2013). There is a need therefore to rethink the implementation pattern of the Makuleke co-management agreement.

### **6.3. RECOMMENDATIONS**

The following describes the desired outcome for the Makuleke co-management agreement, and also describes how implementation can be improved. I presented these views to the members of the Makuleke CPA Exco and to the KNP through the Makuleke JMB, and also to members of the JMC where all these structures were accepted it. In addition, approval was also granted by members of the Traditional Council and to the members of the Makuleke Consultative Forum which is composed of representatives from the three villages comprising the Makuleke community.

#### **6.3.1. *Mastering the settlement agreement***

The need for the Makuleke community, the SANP and the Makuleke JMB to accept the Settlement Agreement as the guiding document for the implementation of the Makuleke co-management cannot be overemphasized. This will enable both parties to the co-management agreement to share an understanding of the agreement and will promote its implementation.

#### **6.3.2. *Monitoring and evaluation***

Evaluating the performance of the Makuleke co-management agreement on an annual basis is necessary to establish whether any significant positive or negative changes might have taken place.

#### **6.3.3 *Skills transfer, training and capacity building***

Although the Settlement Agreement compels the KNP to transfer skills over time, this is a requirement still to be realized. For the purposes of the partnership, there is an urgent need for the KNP to initiate the transfer of skills so that through this initiative they will be able to close the inequality gap.

One of the more common issues inhibiting effective co-management is the lack of institutional capacity of and support for both the Makuleke community and the members of the Makuleke JMB.

Both government and non-governmental organizations (NGOs) can assist in providing training and capacity-building for community members in various aspects of reserve management, administration, conflict resolution, and the identification of development opportunities.

Even though people would say that there were successes in the Makuleke region in terms of the ways in which all parties to the agreement worked together to overcome environmental challenges, I believe that there is a need for more training and capacity-building to empower members of the community in all the areas related to conservation management, so that they are able to contribute meaningfully to this co-management arrangement. Since the level of expertise within the Makuleke community could not in any way be considered equal to that of the KNP, the KNP was declared an agent of the Makuleke JMB for the first five years of its existence, which meant that the KNP was intended to come up with a skills transfer programme. Capacitation of the rural poor is essential to overcoming the power imbalances between stakeholders and for providing skills such as leadership training, conflict resolution and contract maintenance which are all critical for the new landowners to have a voice in the proper execution of co-management (Turner et al. 2002).

#### **6.3.4 Consultation, trust and relationships**

Consultation should not be undertaken simply for the purpose of compliance with the Settlement Agreement, but in order to avoid inappropriate actions being taken or to avoid the spirit of the agreement being undermined.

To do this effectively would require a considerable level of trust between the parties. To promote a spirit of partnership and equality, it is recommended that all partners work together as a team and avoid undermining each other. Decisions concerning the Makuleke Region should be taken in a way that conforms to the spirit of the Settlement Agreement and that the consensus approach had to be maintained.

### **6.3.5. *Power sharing mechanism***

If co-management is about sharing power, parties to a co-management agreement should bear equally the costs of the day-to-day management of the area. This would avoid a situation where one party becomes the powerhouse because of having more financial muscle because that party would seem to be contributing more money towards the management cost of the area than is the other. Similarly, appropriate policies could also establish the right and capacity of local communities in such co-management arrangements to make money, and the community should be given sole autonomy and accountability in the use of such income.

### **6.3.6. *Participation***

As members of the Makuleke community interacted with officials of the KNP in the course of negotiations, the need for equal participation by the local community and the KNP became clear as a necessary condition for real transformation in the Makuleke co-management arrangement. I consider that transforming the outlook of the JMB will assist in addressing the historical legacy of land dispossession and the former lack of participation of the Makuleke people in the management of the Makuleke Region. Comparisons with other areas in South Africa suggest that a co-management arrangement where conservation and development are inextricably entangled can ensure that these are complementary in terms of their contribution towards both the conservation of biodiversity and towards socio-economic development.

This study explores how a successful co-management arrangement encompasses a variety of fundamental elements such as the right to land ownership, partnerships with the private sector; open and transparent competitive bidding processes; technical support; skills development; together with strategies for conflict mediation and adaptability. It also requires a strong organizational structure, meaning a clearly defined structure which is governed by a set of rules and regulations so that it can take decisions based on these rules and regulations without undue influence being imposed from outside. This analysis was easily accepted by all parties to the Makuleke Settlement Agreement and also by other community bodies.

The co-management arrangement for the Makuleke Region and also for other parts of the country is becoming an important tool in reconciling the conservation of biodiversity with community development in protected areas where co-management efforts are in place. The protected area co-management arrangement for the Makuleke area should include the following principles:

- A certain level of empowerment, especially of the Makuleke community, so that it can close the gap of unequal relationships.
- A departure from established ways of thinking about the environmental and ecological policy. Some changes in this are necessary for the devolution of power.
- Local engagement, ownership and control should be truly interactive.

Co-management arrangements in the Makuleke Region need to go beyond consultation and redirect social and economic benefits from conservation and commercial development back into communities.

Unless geographically-defined communities are allowed to share power and responsibility with government managers, both the conservation and commercial development in the Makuleke Region could be at risk.

### **6.3.7. *Economic instrumentalism and the Makuleke Example***

An important economic consideration that has a bearing and has an impacts negatively on the outcome of co-management is the increased price of goods and services, accompanied by rapid changes in production, information and communication technology (Borrini-Feyerabend et al. 2004). If co-management agreements are supported by proper legislation, policies and procedures which are properly implemented, it could become viable instruments for protecting the interests and needs of local communities (Borrini-Feyerabend et al 2004). For example, a co-management arrangement would be strengthened by legislation that catered to local interests, placing selected resources beyond the reach of a competitive bidding process and protecting local markets whenever necessary (Borrini-Feyerabend et al. 2004).

There is need for today's governments to assess carefully the compatibility of evolving international environment, labour and safety standards against national policies designed to support co-management (Borrini-Feyerabend et al 2004). Co-management practices rely on a national legislative framework and they cannot be achieved without having the supporting policies in place. In reality, and in practice, creating an economic environment for the co-management of natural resources calls for radical structural reforms (Borrini-Feyerabend et al 2004). This arrangement does combat poverty and reduce social and economic inequality although at a broader national and international political and economic scale, the required policies may present major obstacles as well as opportunities for co-management. For instance, neo-liberal policies such as trade liberalization, privatization and the predominance of competitive market forces in the regulation of access to natural resources impacts negatively on co-management, as these in the main favour more powerful economic players, usually at the expense of marginalized people and communities (Borrini-Feyerabend et al. 2004).

#### **6.3.8. *The role of cultural and other tourism***

There are a number of sites that the Makuleke people have said they would like management to take into consideration when co-managing the Makuleke Region as a contractual park. These should be open to the public as a way of showcasing the culture, heritage and history of the Makuleke people and for their benefit. The combination of the traditional knowledge systems (IKS) and modernism becomes a matter that the management of the Makuleke area as a conservation area cannot ignore. The opening of these sites will also remind visitors that the creation of parks and other protected areas was done at the expense of local communities who were displaced. Visitors will be taken back in time to see the park when it was a place of abode for the local communities, who lived harmoniously with wild animals.

It is therefore to be strongly recommended that such an initiative should be part of the overall management of the Makuleke Region and the following points should be heeded:

- Tourism by nature is destructive and its effects therefore need to be regularly monitored.
- Because of this, only a few representative sites should be opened to the public.

- Sacred sites are better off not opened to the public. The sacredness of the sites is however known by local communities, and this is only a reminder that once a place is open to visitors, it becomes a public place, and repeat visitors will tend to visit these places without a tour guide.
- Where necessary, documentation by means of photographs should be kept for comparative analysis in the future.
- If tour guides are to be used, then very little signage should be erected at the sites, as this tends to attract unguided visitors.
- Some interesting structures, especially those of a type no longer found in the communities, should be reconstructed for the education of the youth and to provide information for the visitors.
- Discernable cultural materials lying on the surface should not be collected for archaeological purposes but, if collected, must be stored in a 'museum' for recreational and educational purposes.
- The site visits can be combined with Village Tours.

#### **6.4. THE FUNDAMENTAL ROLE OF THE CO-MANAGEMENT AGREEMENT**

In reviewing the protected areas co-management for the Makuleke Region, it is apparent that the implementation of this model has still to address appropriately the ecological characteristics of the environments in the Makuleke Region, keeping their integrity and functions while at the same time assuming that a flow of benefits from this area does reach the Makuleke people. To a large extent this is about the wildlife content and its management.

In addition, there is a need to ensure that the technical and social characteristics of the environment within the Makuleke Region are in accord. This requires dealing effectively with the conflicting interests and concerns of various social actors within the Makuleke Region. It is apparent that the challenge is mostly one of process, in determining for whom and how the management of biodiversity conservation and the natural resources in the Makuleke Region should be arranged.

An attempt to address this challenge revealed a rigidness or unwillingness to accommodate each other's interests. This suggests that ongoing capacity-building processes are imperative to ensure that both the conservation and development goals in the Makuleke

Region are met. Given the fact that the conservation of biodiversity in the Makuleke Region is of local, national and international interest, the understanding of this development by all parties should also be the same. By ensuring this, the balance of interest between conservation and community development will be realized. It is therefore important that all parties share equal pride in the success of the Makuleke co-management model and the practical benefits that accrue from such success.

In addition to such considerations, it becomes advisable for the implementation process of co-management to be undertaken in such a way that it gives more explicit recognition to the existence of ongoing conflicts of interest between the Makuleke community and KNP so that these may be dealt with formally or informally. This will assist in balancing the power relations between the Makuleke community, KNP and other stakeholders in the Makuleke Region. A review of the power relations between the Makuleke community and KNP, as well as the commercial partners who invest in the Makuleke Region, will then have to be structured more appropriately. The involvement of the KNP cannot be limited to the conservation of biodiversity, and it may be advisable that they be involved in community development endeavours, even if indirectly. This will make it more possible for both parties to negotiate the implementation of the agreement as equal partners.

Effective co-management requires the availability of a resource that is considered as worth managing, as it involves the input of resources (time, effort, finance) by the parties to the agreement. The 'transaction costs' of participation in meetings, monitoring, enforcement and management can be considerable and were often underestimated where the Makuleke Region was concerned. It is therefore important that SANP and the Makuleke community should both continue to recognize and commit to providing these resources for the co-management model to remain sustainable.

A clear example of how things can go wrong is when co-management systems are imposed by means external donated funds without creating the basic foundation for stewardship and long-term sustainability of a scheme.

Significant changes to the governance structure of the co-management agreement for the Makuleke Region are therefore proposed. This governance structure will need to ensure more effective management of the Makuleke Region. It is thus proposed that the Makuleke

JMB of the Makuleke Region should function as a 'Board of Directors' in a company, being a high-level decision-making body instead of being merely an implementer. It is further recommended that:

- The role and function of the Makuleke Joint Management Board (JMB) be significantly reviewed and altered in order to provide, *inter alia*, a more strategic role for it, focused on policy development and advocacy, leaving the day to day management of the Makuleke Region to its operational wing, which is the Joint Management Committee (JMC).
- There must be a written delegation of authority to the JMC administrative wing of the JMB that it should take charge of the day-to-day management of the Makuleke Region. Such a JMC would be required to be accountable to the Makuleke JMB for its operations
- The JMB Board of Directors shall be responsible for the establishment of a Makuleke JMB Conservation Trust that will be a vehicle for the fundraising and administration of the funds to be used towards the core functioning of the JMB. It is important that this trust should be distinct from the Communal Property Association (CPA) trust which serves as a vehicle through which funds from the area are channelled primarily for socio-economic development activities in the Makuleke villages. The proposed new trust will source external funding to be directed towards expenditure in the Makuleke Region. Legal advice should be sought as to how this could be established.

In addition, the co-management arrangement should not be rigid, but flexible, to respond if the need arises to accommodating and addressing specific issues, as time and circumstances differ from one place to another. A more inclusive approach to decision-making is needed for co-management to function in an equitable way.

The co-management arrangement remains an ideal tool to meet the conservation, social and economic objectives in the Makuleke Region if it is sufficiently participatory.

This study also demonstrates that the co-management arrangement in the Makuleke Region does impact positively on the conservation of biodiversity as well as on livelihoods.

## 6.5. THE PROPOSED RELATIONSHIP BETWEEN THE MAKULEKE REGION AND THE GLTP.

With regard to the Great Limpopo Trans-Frontier Park (GLTP), the Makuleke JMB should have the opportunity to be represented on the management structures of the GLTP. As the Makuleke Region is a privately-owned area located at the hub of the GLTP, it is important that the Makuleke JMB should be recognized and represented in several of the management structures of the Transfrontier Park forum. For the success of the GLTP, conservation is best achieved when local people own or make substantial inputs to collective decision-making affecting natural resources in their proximity and are therefore motivated to contribute to nature conservation. It became very clear in this case study of the Makuleke Region that participatory and iterative project planning, implementation and monitoring provide the basis of good communication and shared understanding, but also of flexible and responsible project management. Responsive management within this co-management arrangement became a key factor for guiding a learning-by-doing process in which capacities were being developed and experience replicated.

- Promoting collaboration across boundaries at a local, district, provincial and national level is imperative in trans-boundary work. Such an initiative supports work that is done collaboratively and in partnership, even where the boundary being transcended is between only two of three trans-frontier countries. In all cases of trans-boundary work, a high degree of co-operation is required at all levels. An initiative focused on cross-border social networks is receiving more support now from the GLTP and the Great Limpopo Trans-Frontier Conservation Area (GLTFCA). The GLTFCA recognizes the importance of managing ecosystems in a holistic way. This is true for social ecologies as much as for fauna and flora where cross-border communities share common histories and cultures. In this context, there are opportunities to support stronger international linkages, through exchanges as well as by exploring the opportunities associated with existing cross-border trade and the movement of people.

Cross-border management of shared challenges such as illegal hunting and livestock theft is also important. Ownership of resources or right of use should be allowed to devolve to the lowest possible level. The Makuleke co-management

agreement will be in a good position if the guiding principles described here are applied.

- In the interests of a comprehensive community mandate and support, a legal entity should be shaped which has strong, democratically-mandated and fully accountable governance structures and systems. It should also be equipped with technical ability in the form of suitably qualified partners and/or mentors to manage and protect the resource base and Community Based Natural Resource Management (CBNRM)-related business ventures.

#### **6.5.1. *Proposed Service Level Agreement***

The KNP plays several important roles in the Makuleke area, including that of implementation agent providing conservation management services to the JMB and that of conservation agency responsible for the Pafuri Region. Such work should be done by means of a proper service-level agreement to be concluded between the Makuleke JMB and the KNP that will clarify the scope of the activities in which the KNP will be involved, define the resources (budget and personnel) that will be allocated to conservation management in the area, and determine a set of performance measures against which parties can hold one another to account.

#### **6.5.2. *Appointing appropriate human capital***

One of the challenges identified in this study was the nature of the current leadership of the community, where 70% of this leadership can hardly communicate other than in Xitsonga. This was due to fact that the electoral system for the Makuleke Communal Property Association (CPA) only now checks the academic level of the candidates who are nominated to stand for the Makuleke CPA Executive Committee. The outcome of the previous elections meant that the community had to live with less educated leadership. It also became increasingly clear that that unless the Makuleke CPA changed their electoral system, those who were more vocal in general meetings would also prevail with their views. It is therefore time to introduce certain criteria for qualifying to be elected to the Makuleke Executive Committee (Exco). This, after all, is the highest body of the Makuleke CPA. Such criteria

would assist in enabling the Makuleke Exco members to interact with their colleagues on other bodies.

In addition, there have been Makuleke people who believed that the distribution of benefits within the Makuleke community was not done equitably.

For the success of any co-management arrangement, the responsibilities of both parties to the agreement with regard to joint decision-making cannot be overemphasized. Institutional arrangements and required institutional capacity present numerous challenges. For instance, the appointment of Ntomeni Ranger Service (NRS) led by Mr. Jack Greef, was made by one party i.e., the Makuleke representative on the Makuleke JMB, while the other party, KNP, was silent about this appointment even though it was contrary to the Settlement Agreement. The view of SANP was that they were not involved in the appointment of Ntomeni Ranger Services. Although the Makuleke Main Settlement Agreement stipulates the transfer of skills as a key responsibility of the SANP, full compliance with such responsibilities remains a challenge.

### **6.5.3. *Balancing the conservation of biodiversity with community development***

Rethinking protected co-management in the Makuleke Region should bring to the fore the notion that conservation and development are inextricably bound. Understanding between the conservation agencies and local communities, including other stakeholders such as the conservation-based NGOs, the Makuleke concessions and research institutions such as universities, should become a priority. While it is recognized that biodiversity conservation is a local, national and international imperative, the co-management arrangement in the Makuleke Region should ensure a balance of interests between conservation authorities and the Makuleke community for this relationship to be fully functional. If this can be fully realized, there is no reason why key government policies such as land reform should face challenges, and these will be readily and legitimately accepted by all parties.

A significant issue in this chapter is the manner in which the power relations between the Makuleke community and SANP have been structured.

It has been argued that SANP interests were clearly preferred over those of the Makuleke community in a bid to be more structured regarding biodiversity conservation. This unfortunately gave SANP an upper hand in the co-management arrangement.

## **6.6. CO-MANAGEMENT AS CO-OPERATIVE GOVERNANCE**

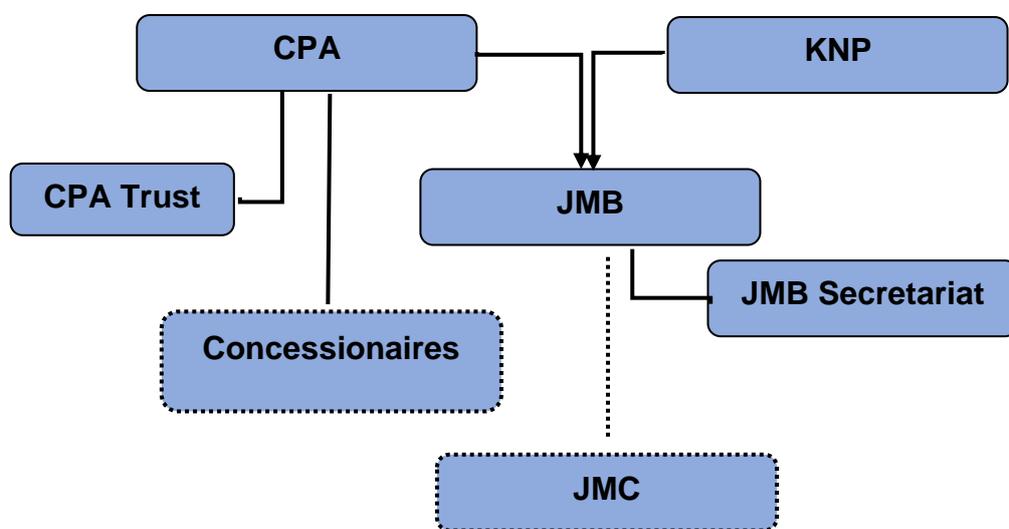
Co-management in the Makuleke Region is more than community-based resource management (CBNRM) or community-based conservation (CBC) and is not only about the Makuleke community or SANP, but is about advocating for co-operative governance. Understanding this complex notion can present a challenge but can also provide an opportunity to align conservation and development better.

There are challenges which, when overcome, would assist in addressing the challenges of community conservation in the Makuleke Region. The first is the inability and discomfort of conventional science and resource management to deal with multiple objectives. Members of the Makuleke co-management agreement are either primarily dedicated to conservation or primarily keen on development, so can have different objectives. Secondly, community-based approaches to conservation have rarely employed strong deliberative processes, as conservation, as conceived at the local level, tends to be different from conservation as conceived by the other parties – in this case parties to the Makuleke co-management agreement. It is therefore important to indicate the need for a multi-faceted approach so that the Makuleke community becomes partners and not the obstacles to conservation within the Makuleke Region.

In the main, the Makuleke co-management agreement has in the past decade or so been reluctantly implemented and poorly informed by theory. Parties to the Makuleke co-management agreement can clearly improve in conceiving, researching and analysing the co-management arrangement especially in regard to scale, organization, uncertainties and dynamics.

## **6.7. THE GOVERNANCE FRAMEWORK**

For the Makuleke co-management arrangement to function properly, there must be a clear line between the decision-making level where strategic issues are dealt with and the operational or administration levels where issues that are of an operational nature are addressed. This is reflected in the proposed governance structure of the Makuleke JMB as opposed to the existing governance structure currently under review. The existing structure which includes all stakeholders in the Makuleke Region, especially the concessionaires, is reflected in Figure 4.

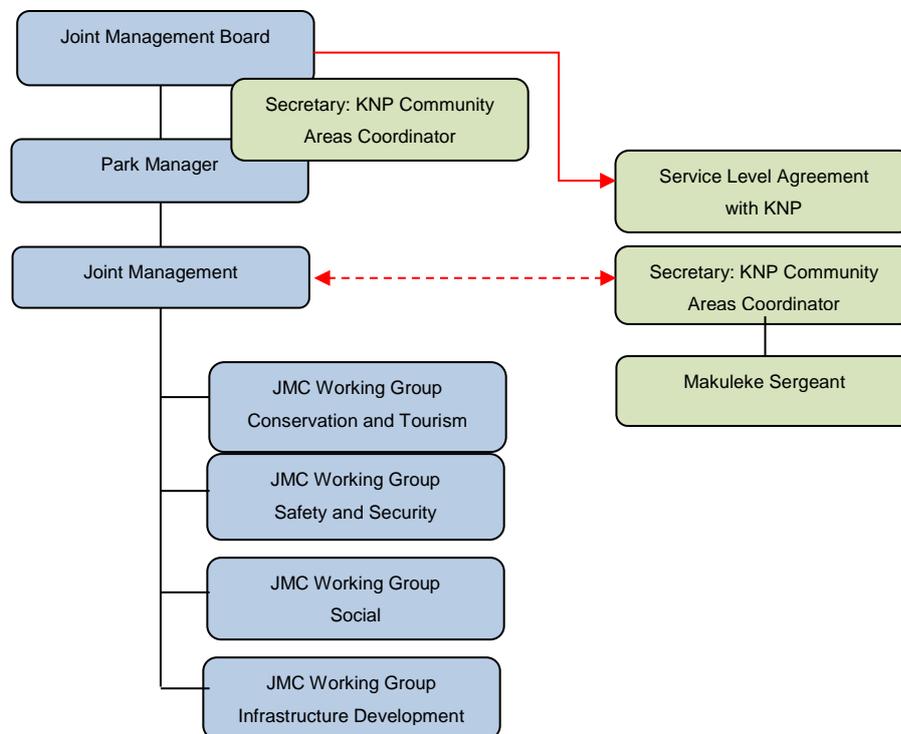
**Figure 27: Existing Institutional Arrangement**

Source: Makuleke Management plan : 2000

In rethinking the protected areas co-management initiative for the Makuleke Region, it would seem that the Makuleke-KNP partnership should be reviewed to make clear which parties to the Main Settlement Agreement should benefit from the arrangement. The argument here is about the manner in which each interprets the Settlement Agreement, by which the KNP puts more focus on conservation management and neglects the development aspect, while the Makuleke community focuses more on developmental aspects while neglecting the conservation aspects. A review should suggest ways of encouraging ongoing co-operation for mutual benefit that will restore the balance between the conservation of biodiversity and community development in the Makuleke Region. It is for these reasons that significant changes to the governance arrangement are proposed to ensure more effective management of the area.

The lack of consistency in terms of institutional and governance arrangements, especially on the side of the Makuleke community in their relationship to the JMB, is a cause for concern and requires a review. Figure 5 provides a diagram for the proposed new governance arrangement for the Makuleke JMB.

**Figure 28: Proposed new governance structure for the Makuleke co-management arrangement**



It is therefore proposed that a revised management plan needs to ensure that all interested parties are in agreement about the governance aspects of the Makuleke co-management model, and that it accommodates the interests of all the stakeholders in the Region, including the concessionaires who were not part of the initial institutional arrangement in the Makuleke JMB. Stakeholders in the Makuleke Region would need to select the people to represent them on the Makuleke JMB as resource persons who would actually not have voting powers but will be allowed to contribute towards the affairs of the Makuleke JMB. The decision-making process needs to operate more strongly on a consensus basis, but if disputes remain unresolved, a deadlock-solving mechanism will need to be available, as stipulated in clause 38 of the Main Settlement Agreement which states that:

- “In the event that the parties to the JMB are unable to reach consensus on any issue, which issue has been discussed at not less than two meetings of the JMB and has not been or is unlikely to be resolved by them, either party (‘the initiating party’) shall give written notice in writing of that matter (‘the deadlock issue’) to the other party. The notice shall fully describe the deadlock issue and the resolution which the initiating party requires.

- “Within 15 (fifteen) business days of the notice referred to is delivered, the chief executive officers of each of the CPA and SANP shall meet at a mutually convenient date, time and place to discuss the deadlock issue (‘the discussion meeting’).
- “In the event that the deadlock issue is resolved at the discussion meeting, the fact and detail shall be recorded in writing and a resolution shall be passed accepting such resolution at the immediately succeeding JMB meeting and no further procedure in terms of this clause 38 shall take place.
- “In the event that no discussion meeting is arranged within this period, or that the discussion meeting is not attended by both the chief executive officers of the CPA and the SANP, or that the discussion issue is not adequately resolved at the discussion meeting, either party shall be entitled to refer the matter to mediation” (Makuleke Main Settlement Agreement 1998).

For the success of the Makuleke co-management agreement, the need to properly manage the multi-party stakeholder approach in the Makuleke Region cannot be over-emphasized. The management of the interaction between the stakeholders will ensure that there will be no party that can do as it wishes, since this would be contrary to the Main Settlement Agreement for the Makuleke Region. Unilateral action by one party has already undermined the integrity of the decision-making process. It is critical, therefore, that the misunderstanding that exists with regard to the multi-stakeholder approach for the Makuleke Region needs to be resolved so that the integrity of the agreement is restored. It is thus proposed that the Makuleke JMB should function as a ‘Board of Directors’ for the Makuleke Contractual Park and it is therefore recommended that the role and function of the JMB be significantly (de Villiers 1999) and vividly outlined in order to provide for the following:

- A more strategic role focused on policy development and advocacy, gauging progress, lobbying and negotiating for political interventions on specific issues;
- Fundraising,
- Providing advice to the Community Property Association (CPA) on commercial decisions.

This marks a significant departure from the mandate of the existing JMB which is in keeping with the Settlement Agreement, which is primarily focused on conservation management. The recommendation is that the Board should have the ability to implement commercial decisions made by the CPA as outlined in the management plan for the Makuleke Region (e.g. marketing decisions related to the Makuleke Region as a tourist destination). Where new commercial decisions need to be made (e.g. contracting with new concessionaires), it is recommended that the Board serve in an advisory capacity to the shareholder (namely the Makuleke CPA). The Makuleke CPA will retain its right to make final commercial decisions, but only after consultation with and input from the Makuleke JMB. In other words, while it is recommended that commercial development be explicitly included as falling within the mandate of the JMB, it remains subject to the Settlement Agreement regarding its commercial rights.

In general, the decisions to be made will be guided by the management plan embodied in the Settlement Agreement for the Makuleke Region, and there should therefore not be too much conflict between the Makuleke CPA and the Makuleke JMB in this respect. It would be good if an official of the JMB were given more responsibility where this person would be required to play an important role in the area, which would include ensuring effective park management at an operational level but also implementation of the decisions of the Board as per the management plan. The Park Manager should also chair the Joint Management Committee (see below) and will have the responsibility of ensuring the establishment and effective implementation of the working groups.

The Joint Management Committee (JMC) should also be strengthened to enable it to support day-to-day operations in the Makuleke Region. The purpose of the JMC would be to make operational decisions on a consensus basis, especially with regard to issues relating to operations in the Makuleke Region, and the JMC should have sufficient delegated authority from the Board to take such decisions, but allowing these decisions to be ratified by the JMB.

For the proper functionality of this the new proposed model, it is also recommended that various working groups be established to cover for example the following areas:

- Safety and Security;
- Conservation and Tourism;
- Infrastructure Development, and
- Social development.

## **6.8. SUCCESSION PLAN**

In reviewing the approach of the Makuleke co-management agreement, it is particularly important to consider human resource capacity, since the Makuleke JMB has operated with only one employee for almost ten years. The lack of a succession plan in the Makuleke co-management arrangement is cause for concern because, if anything happens to this employee, the institutional memory may fail and this could undermine future processes. Unless the broad notion of sustainable development, which comprises socio-economic development, biodiversity, heritage conservation and sustainable tourism, including effective park management, is not taken cognizance of by the co-management arrangement, the objectives of the co-management model will be hard to attain. It is for this reason that sustainable development plays such an important role in a co-management arrangement; elements such as social, economic and environmental aspects are dependent on one another. None of these can be fully functional unless they are linked to a strongly effective park management. The opportunity to define a possible way forward from the current situation towards an envisaged ideal state with regard to the protected areas co-management arrangement in the Makuleke Region is what has made this an ideal case study. Once a rethinking process takes place and is completed, the vision for the management of the area remains a key to successful implementation.

Even though this co-management arrangement is essentially a partnership between the Makuleke community and SANP, external factors have emerged over time.

This refers mainly to the role of the new stakeholders such as the concessionaires with business interests that should be integrated into the management of the Makuleke Region. There must be horizontal linkages between stakeholders such as the Makuleke community, SANP, the Makuleke JMB and the concessionaires – as they all play a part in the successful implementation of the of the co-management agreement in the Makuleke Region.

The above recommendations should be implemented in a manner that promotes the ability of the Makuleke JMB to implement commercial decisions made by the CPA, and these should be evaluated on the extent to which the Makuleke community is able to accrue substantial benefits from the Makuleke Region. It is for such reasons that the recommendations will add value, ensuring that the goals of both conservation management and development are met. It is therefore proposed that there should be a service level agreement between the Makuleke JMB and KNP, especially as the KNP is acting as an agent of the JMB on conservation issues in the Region. The service level agreement must ensure that the Settlement Agreement is implemented. This agreement will also define the duties and key performance areas of the Makuleke Contractual Park Manager, the roles and responsibilities of each of the key stakeholders in the Makuleke Region and the codes of conduct to which all parties will have to adhere.

The set of thematic working groups that have recently been established in the Makuleke Region should be given the opportunity to advise the JMC on specific issues relating to the overall conservation management and commercial development of the Region as a contractual park. The objectives of the working groups would be to advise the JMC on the day-to-day operational issues relating to the conservation and development management taking place in the Makuleke Region.

The meaningful involvement of the Makuleke community in the day-to-day conservation management of the Makuleke Region is a key factor towards ensuring the future of the Makuleke Region as a contractual park. For future reference, the fundamental factor that any government must consider is that establishing protected areas co-management agreements requires commitment regarding both political and financial support. If the conservation authority can try technically or non-technically to push the involvement and the participation of Makuleke people to the margins, it will be a sure sign of collapse of this famous relationship. Government should therefore review its funding pattern in relation to the implementation of co-management endeavours for protected areas in South Africa and beyond. It would be preferable to release funds to the co-management authorities rather than to the State representation on the JMB, such as the KNP in the Makuleke Region. The situation for the Makuleke Region is that the KNP representation on the JMB is funded by

its own organization, i.e. SANP, which also has a subsidy from government as a state-owned agency, whereas the Makuleke people are funding their own representation with money that could have been directed to community projects. It is unfortunate that the lack of compliance with the implementation of the settlement agreement regarding the funding of the Makuleke Region is presenting challenges for the Makuleke people, since funding challenges will become unavoidable over time and contribute further to the inequitable relationship that presently exists.

It is thus proposed that the cost of conservation management should be administered from a central fund through a conservation trust. This is actually provided for in the Settlement Agreement, as follows:

- The actual costs incurred in the operational management of the Makuleke Region which costs shall specifically exclude any costs in relation to overheads of the head office of the SANP or any other indirect costs of the SANP, but shall include the direct costs incurred in conservation management within the Makuleke Region; the establishment and/or maintenance of infrastructure utilised solely in relation to the operational management of the Makuleke Region, rehabilitation of the land where the SANP withdraws from existing infrastructure, which infrastructure is not required by the JMB; and the administration of the JMB; and shall be determined by the JMB upon information supplied by the CPA and the SANP.
- This operational management cost shall be borne by the SANP for an initial period of 5 (five) years from the commencement of this agreement, unless the CPA elects in its discretion to contribute thereto during that initial period. Upon termination of the initial 5 (five) year period, the CPA shall be liable for 50% (fifty percent) of the operational management costs of the Makuleke Region: Provided that the CPA's contribution to the total operational management costs of the Makuleke Region shall not exceed 50% (fifty percent) of its net profit, unless the CPA at its own election decides otherwise as indicated in 6. 6 above (Makuleke Settlement Agreement 1998).

## 6.9. CONCLUSIONS

Protected areas co-management has become a compelling governance model, especially among people who have ownership rights over their natural resources and if such natural resources are within protected areas. If the Makuleke co-management arrangement can be properly implemented, this is likely to contribute to improvements in the conservation of biodiversity as well as socio-economic gains. Although the protected areas co-management has evolved into a complex and challenging initiative, it has shown that it can provide a mechanism that brings together conservation and development in an equitable and sustainable manner.

This study has indicated that the co-management agreement could bring not only monetary benefits to the Makuleke people but also the capacity to utilize ownership rights to make decisions over the use of the Makuleke Region. The argument that the KNP has been using to oppose the development proposed for the Makuleke region would be irrelevant if the co-management arrangement for the Region is seen in terms of its intended objectives: that of the conservation as well as development management of the Region. The collective approach adopted by the Makuleke community has become a key factor in seeing that the Makuleke co-management agreement achieves its objectives. In addition, the Makuleke people will realize more benefits from the Region if a revised co-management agreement can be implemented as here proposed.

Furthermore, to ensure the success of the Makuleke co-management agreement, there is a need for ensuring that good governance is strengthened by allowing the Makuleke JMB to function as a management authority. This will create a platform for effective, efficient and equal participation of all parties to the co-management agreement. Such participation would serve to ensure that most decisions are taken on a consensual basis.

For the success of co-management in the Makuleke Region, there is a need that parties to a co-management agreement should create a partnership model that will avoid competition between parties other than complementing each other. It should also avoid a situation where disunity and dishonesty take centre stage in the management of the Makuleke Region.

Though the above shared with individual stakeholder during the time of conducting this study, and there was in principle agreement with most of the participants, they would formerly be presented and discussed also with both the Makuleke CPA and the KNP through the Makuleke JMB for their consideration

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## **LIST OF INFORMANTS**

Chief Makuleke, personal communication, 6 March 2010.

Mavis Hatlane, personal communication, 21 May 2010.

Mavis Hatlane, personal communication, 9 February 2012.

Norman Mugakula, personal communication, 5 May 2017

Peter John Massyn, personal communication, 9 June 2012.

Sandra Basson, personal communication, 17 April 2011

Steve Collins, Personal communication, 7 October 2010.

## APPENDIX 1 LETTER OF INTRODUCTION TO RESPONDENTS

**Stand No 704/705**

**Makuleke Village**

**Box 448**

**Saselamani**

**0928**

Dear Participant

Research in the establishment of the Makuleke co-management agreement between the Makuleke community and the South African National Parks over the Makuleke Region in the Kruger National Park, South Africa, the implementation of this co-management agreement and its impact to both the conservation of biodiversity and community empowerment

I am Gezani Lamson Maluleke, a doctoral student at the University of Stellenbosch I am currently undertaking a research study on **Rethinking Protected Areas co-management in the Makuleke Region, South Africa**. I therefore would like to request you as a member of the Makuleke community (also being a member of the Makuleke Communal Property Association) or a member of the Makuleke Joint Management Board, or an official of the South African National Parks, or a member of the Makuleke concessions and/or a friend of the Makuleke community which is my population which I intend to include as a respondent in my research

Kindly be assured that the information provided in the enclosed questionnaire will be kept confidential. Thank you for participating in the survey.

**Regards,**

**Gezani Lamson Maluleke**

**APPENDIX 2      CONSENT FORM**

**Stand No 704/705**

**Makuleke Village**

**Box 448**

**Saselamani**

**0928**

Public participation survey in the **Rethinking Protected Areas co-management in the Makuleke Region, South Africa**

I hereby agree to an interview on the above mentioned subject. I will be available on \_\_\_\_\_ at \_\_\_\_\_

Yours faithfully

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Full Name: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

## APPENDIX 3 SURVEY QUESTIONNAIRE

Identification Number \_\_\_\_\_

### SURVEY QUESTIONNAIRE

**NB: To be distributed to the respondents at Makuleke, Mabiligwe and Makahlule communities and also with some official of the South African National Parks including the officials of the Makuleke concession**

This questionnaire is administered as part of a large research project conducted on the establishment of the Makuleke co-management agreement, its implementation and its impact to the Makuleke community and the conservation of biodiversity. This research is within the framework of my topic which is “**Rethinking Protected Areas co-management in the Makuleke Region, Kruger Nation Park South Africa**”. The information provided in the questionnaire will be kept confidential and will only be used in the analysis of the responses to the questionnaire. Every effort has been taken to maximize clarity and minimize the time necessary for this survey completion. If you do experience difficulty in interpreting or answering any of the survey questions, please contact me at 072 478 5006

The aim of this is to:

- See how co-management in the Makuleke region has incorporated biodiversity as a tool that realizes the conservation and socio economic development that benefits the Makuleke people.
- Investigate the extent to which this approach is contributes to meeting the conservation, social and economic development objectives of the Makuleke Region and how it contributes to the implementation of the Greater Limpopo Transfrontier Park (GLTP) and Greater Limpopo Transfrontier Conservation Area (GLTFCA).
- Investigate the potential impact of co-management on the protected areas management.

Gather, analyse and document the views of communities on their co-management relationships, especially how they develop strategies for dealing with inequalities

In addressing the above, the following questions will be addressed:

- What is the co-management model and how does it fit in the community conservation approach?
- How does this new management model challenge the ‘fortress conservation’ paradigm?

- How do the Makuleke community and the South African National Parks manage the unequal relationships embedded in the co-management arrangements?
- What are the conservation, social and economic impacts of the co-management model in the Makuleke Region and the broader Great Limpopo Transfrontier Park?

Note: The information required in this survey questionnaire will be used only in the analysis of the responses and questionnaire.

**APPENDIX 4****Research Questionnaire****Section A**

Please tick the block next to the appropriate answer or supply the required information.

<b>1. Age Group</b>	
18-29 years	
30-49 years	
50-59 years	
60 and above	

<b>2. Gender</b>	
Male / Female	

<b>3. Level of Education</b>	
Primary	
Secondary	
Undergraduate	
Graduate	
Post-graduate	
Other (please specify)	

**Section B**

1. To what extent do you understand about the Makuleke Settlement Agreement between the Makuleke community and the South African National Parks over the Makuleke Region / Makuleke Contractual Park?

Understand all the things that go on	
Have little knowledge of what goes on	
Things that goes on are incomprehensible	

2. Are you informed about the Makuleke Community or Makuleke Communal Property Association? If yes, please specify

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3. Are you well informed about the co-management agreement between the Makuleke community and the South African National Parks? If yes, please specify

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4. Have you ever participated at the establishment of this co-management agreement? if yes, how?

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5. Have ever participated in the public meetings discussed the establishment of the Makuleke co-management agreement? If yes, specify

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6. Have you ever been engaged by the leadership of the Makuleke communal property association or the Makuleke JMB about the development projects taking place in the Makuleke Region?

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7. Have ever been given an opportunity to make choices of the projects taking in the Makuleke Region?

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8. Have you ever faced difficulties when interacting with Kruger National Park of South Africa National Parks or the Makuleke community

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9. What is the level of community or SANP participation during the implementation of the Makuleke co-management agreement or the main settlement agreement?

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10. Do you think consultation is important between the executive committee of the Makuleke CPA and the entire community and between KNP and the Makuleke CPA over the implementation of the projects in the Makuleke Region?

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11. What do you think are the main purpose of these consultations during the implementation of this co-management agreement? Please rank the following statements, where 1 is the most important and 5 is the least.

To meet statutory requirements	
To increase public awareness	
To gain information on public views	
To decide between particular options	
To empower the Makuleke CPA or Makuleke community	

12. What do you think are the main problems of trying to implement the Makuleke co-management agreement?

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13. What do you think are the main benefits of this co-management brought to the Makuleke community and to the KNP?

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14. How would you describe the overall impact of this co-management agreement?

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15. What were the modes of engagement used in the implementation of the co-management agreement to this far and how effective and how efficient this had been?

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16. Would you say that the present approach in the implementation of the Makuleke co-management agreement of the Makuleke Region is adequate? If yes and if no, why?

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17. Do you think it makes difference in your life when of having participated in the in the implementation of the Makuleke co-management agreement?

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18. What are the main factors that can contribute towards the improvement of the running of the Makuleke region as a co-management area?

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19. What do you think are the contributing factors that are necessary for smooth running of the Makuleke Region as a contractual park?

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20. What are the recommendations that you can make in order to improve the implementation and the management of the Makuleke Region as contractual park or co-management area?

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**THANK YOU FOR TAKING PART AND FOR COMPLETING THIS QUESTIONNAIRE.**

## APPENDIX 5

# Main Agreement

## Relating to the Makuleke Land Claim (as amended)

*As signed by the parties on 30 May 1998  
and as amended by the parties by way of different counterparts  
signed between 11 and 15 December 1998*

**Parties:**

The Makuleke Community  
South African National Parks  
Minister of Environmental Affairs and Tourism  
Minister of Public Works  
Minister of Land Affairs  
Minister of Minerals and Energy  
Minister of Agriculture  
Minister of Defence  
and  
Member of the Executive Council For Agriculture, Land and  
Environment, Northern Province

*Note: This cover page does not form part of the agreement as signed.*

**AGREEMENT**

between

**THE MAKULEKE COMMUNITY**

**SOUTH AFRICAN NATIONAL PARKS**

**MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM**

**MINISTER OF PUBLIC WORKS**

**MINISTER OF LAND AFFAIRS**

**MINISTER OF MINERALS AND ENERGY**

**MINISTER OF AGRICULTURE**

**MINISTER OF DEFENCE**

and

**MEMBER OF THE EXECUTIVE COUNCIL FOR AGRICULTURE, LAND AND ENVIRONMENT, NORTHERN PROVINCE**

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## AGREEMENT

### 1. PARTIES

- 1.1 MAKULEKE COMMUNITY
- 1.2 SOUTH AFRICAN NATIONAL PARKS
- 1.3 MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM
- 1.4 MINISTER OF PUBLIC WORKS
- 1.5 MINISTER OF LAND AFFAIRS
- 1.6 MINISTER OF MINERALS AND ENERGY
- 1.7 MINISTER OF AGRICULTURE
- 1.8 MINISTER OF DEFENCE
- 1.9 MEMBER OF THE EXECUTIVE COUNCIL FOR AGRICULTURE, LAND AND ENVIRONMENT : NORTHERN PROVINCE

### 2. INTERPRETATION

- 2.1 The headnotes to the clauses of this agreement are inserted for reference purposes only and shall in no way govern or affect the interpretation hereof.
- 2.2 Unless inconsistent with the context, the expressions set forth below shall bear the following meanings:

"the/this agreement"	this agreement and all schedules annexed hereto;
"the additional land"	that land owned by the State and consisting of: <ul style="list-style-type: none"> <li>1. a portion of the proclaimed Matshakatini Nature Reserve marked as "Portion of Matshakatini Nature Reserve" on the diagram attached hereto as Schedule 1; and</li> <li>2. a portion of the unproclaimed Makuya Park marked as "Portion of Makuya Park" on the diagram attached hereto as Schedule 1;</li> </ul>
"business day"	every day of the week excluding Saturdays, Sundays and official public holidays of the Republic of South Africa;
"commercial activities"	subject to the provisions of this agreement, all activities, which are capable of being conducted within the Makuleke Region and are of an income producing or commercial nature; and which shall include but not necessarily be limited to eco-tourism; provided that such activities: <ul style="list-style-type: none"> <li>1. do not cause the material permanent or semi-permanent destruction of renewable or non-renewable resources within the Makuleke Region other than as permitted in terms of this agreement; and</li> <li>2. have been approved by the competent authority after an environmental impact assessment as may be required by law, where such approval is required in terms of clause 11.1.5; and</li> <li>3. do not contravene the Deed of Grant; and</li> <li>4. do not contravene the provisions of this agreement, and in particular clause 31 hereof; and</li> <li>5. do not impact upon the conservation status of the land, except insofar as such activities may be regarded as sustainable use of the land without permanent or semi-permanent degradation of the land; and</li> </ul>

6. do not contravene the Master Plan; and
7. are to be associated with the conservation of the land;

*[Definition amended ito cl. 49.4 by para. 4.1 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

"community"	those members of the Makuleke community who were dispossessed of their rights in the land in 1969 due to the forced removal of members of this community from the land, as well as their direct descendants and any other person who is admitted to the CPA in terms of its constitution; <i>[Definition amended ito cl. 49.4 by para. 4.2 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]</i>
"conservation"	the conservation and study of wild animals, flora and fauna and objects of geological, archaeological, historical, ethnological and other interests in such a manner as the land shall be retained in its natural state, as far as may be practical and for the benefit of enjoyment of the community and visitors;
"CPA"	the Makuleke Communal Property Association, upon its registration in terms of Section 8 of the Communal Property Association Act, 1996 as amended, or its successor-in-title; <i>[Definition amended ito cl. 49.4 by para. 4.3 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]</i>
"Deed of Grant"	the deed of grant to be given by the Minister of Public Works, in terms of which the land is to be granted to the CPA; the conditions of title specifically related to the terms of this agreement shall be substantially in the form set out in Schedule 3, insofar as these conditions constitute registrable conditions of title; <i>[Definition amended ito cl. 49.4 by para. 4.4 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]</i>
"JMB"	the Joint Management Board established in terms of clause 25 of this agreement;
"the KNP land"	that land owned by the State, and incorporated into the Kruger National Park as a schedule 1 park in terms of the National Parks Act and consisting of that area marked as the "Pafuri Portion of the Kruger National Park" on the diagram attached hereto as Schedule 1;
"the land"	the portion of land described by the figure "a B C D E F G H J K L m middle of Limpopo River n middle of Luvuvhu River a" and referred to as "the farm Makuleke No 6 - MU" in schedule 2 attached hereto; <i>[Definition amended ito cl. 49.4 by para. 4.5 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]</i>
"the Makuya Park"	that land owned by the State and consisting of that area marked as "Makuya Park" on the diagram attached hereto as Schedule 4;
"the Master Plan"	the master plan to be prepared by the JMB as soon as possible after the establishment of the JMB, and which shall be reviewed by the JMB from time to time; and in the absence of and until a master plan is prepared by the JMB, the draft Management Plan for the Kruger National Park (volume 7 and 8), 1997 as at the signature date, and attached hereto as Schedules 6 and 7;
"Makuleke Region"	the land referred to in clause 23.3; <i>[Definition amended ito cl. 49.4 by para. 4.6 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]</i>

"MEC"	Member of the Executive Council for Agriculture, Land and Environment : Northern Province;
"Minerals Act"	Minerals Act, 1991 as amended or substituted by any other Act;
"Minister"	Minister of Environmental Affairs and Tourism;
"National Parks Act"	the National Parks Act, 1976 as amended or any other Act replacing it;
"party/parties"	unless the context requires otherwise, "parties" shall mean: <ol style="list-style-type: none"> <li>1. In Chapters 1 and 3, all the parties to this agreement listed in clause 1; and</li> <li>2. In Chapter 2 shall mean the SANP and the CPA; and "party" shall mean:  <ol style="list-style-type: none"> <li>1. In Chapters 1 and 3, any one of the parties to this agreement, as the context requires; and</li> <li>2. in Chapter 2, either the SANP or the CPA, as the context requires;</li> </ol> </li> </ol>
"SANDF"	The South African National Defence Force or its successor-in-title;
"SANP"	South African National Parks, as referred to in Section 5 of the National Parks Act or its successor-in-title;
"the signature date"	the date of last signature hereto;
"the State"	the Republic of South Africa;

2.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this agreement.

2.4 Unless inconsistent with the context, an expression which denotes:

- 2.4.1 any gender includes the other genders;
- 2.4.2a natural person includes an artificial person and vice versa;
- 2.4.3 the singular includes the plural and vice versa.

2.5 The schedules to this agreement form an integral part hereof and words and expressions defined in this agreement shall bear, unless the context otherwise requires, the same meaning in such schedules.

### 3. **INTRODUCTION**

3.1 The community (as it was constituted at that time) was removed from the land in 1969 and formally dispossessed of the land in 1975 in terms of Government Notices 129 and 130 (Government Gazette 4732 of 6 June 1975), issued in terms of the Development Trust and Land Act, 1936. The KNP land was incorporated into the Kruger National Park, as a schedule 1 park in terms of the National Parks Act.

*[Clause amended to cl. 49.4 by para. 5.1 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

3.2 The additional land was incorporated in part:

- 3.2.1 in the Madimbo corridor, later proclaimed as the Matshakatini Nature Reserve in terms of Administrators Notice 4 (Provincial Gazette 4799 of 1 January 1992) and

- is administered in terms of the Nature Conservation Ordinance, 1983, as amended and managed by the MEC and the SANDF, and
- 3.2.2 in the territory later known as the Republic of Venda presently managed by the MEC for purposes of nature conservation and known as the Makuya Park, and in respect of which the Minister of Land Affairs has the disposal authority in terms of the State Land Disposal Act, 1961.
- 3.3 In terms of the Restitution of Land Rights Act, 1994 as amended, the community submitted a claim to the Commission on Restitution of Land Rights, for the restitution of the land to themselves and have established the CPA to acquire, hold and manage the land.
- 3.4 This agreement is concluded after mediation of the community's claim to the land under the auspices of the National Land Reform Mediation Panel.
- 3.5 Notwithstanding that the parties have conceded that the community had occupied that land marked as "Portion of Mutele Traditional Authority" on Schedule 1 hereto, prior to the community's removal therefrom as set out in clause 3.1, the community has, in terms of clause 21.2, waived its rights in respect of this land as a gesture of good neighbourliness and goodwill, as this land is presently occupied and utilised by members of the Mutele community.  
*[Clause amended to cl. 49.4 by para. 5.2 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*
- 3.6 The community is willing to agree to the land being protected as an area of conservation, and for the land to be protected by its declaration as part of the Kruger National Park in terms of Section 2B(1)(b) of the National Parks Act for an initial period as agreed to in terms of this agreement: Provided that in so doing the community, through the CPA, maintains active participation in the management of the land, its rights to determine what commercial activities may take place on the land and conduct such commercial activities.  
*[Clause amended to cl. 49.4 by para. 5.3 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*
- 3.7 The SANP and the Departments of Land Affairs and Environmental Affairs and Tourism has agreed to facilitate in the restoration of the land to the community; provided that it is assured that the ecological integrity of the land shall be maintained and that those commercial activities implemented in respect of the land do not degrade the land or impact overtly on the conservation of this land.
- 3.8 To achieve the objective of maintaining the ecological integrity of the land the parties have agreed that the Deed of Grant shall provide *inter alia* that the land shall be maintained as an area of conservation.
- 3.9 Notwithstanding the status of the land as a conservation area, the CPA requires the land to facilitate in the upliftment of the community by:  
 3.9.1 providing a source of income through commercial activities; and  
 3.9.2 providing job opportunities in all spheres on the management of the land, and in this regard requires an active voice with regard to all income producing activities to be undertaken on the land, subject to the terms and conditions of this agreement.
- 3.10 The land shall be restored to the community through the CPA, subject to it being utilised solely for the purposes of conservation and associated commercial activities. Upon restoration of the land to the CPA, the land will be incorporated into the Kruger National Park, as a contractual park in terms of Section 2B(1)(b) of the National Parks Act, to be known as the Makuleke Region of the Kruger National Park.  
*[Clause amended to cl. 49.4 by para. 5.4 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

- 3.11 In order to meet the interests of both the SANP and the CPA in the land, it has been agreed that:
- 3.11.1 the SANP shall, in terms of Section 12(1) of the National Parks Act control, manage and maintain the Makuleke Region for the purposes set out in Section 4 of the National Parks Act, subject to clause 28;
  - 3.11.2 the SANP shall, in addition to its obligations in terms of Section 12(1) of the National Parks Act, undertake as agent of the JMB all such things necessary for the day-to-day conservation management and control of the Makuleke Region as directed by the JMB, subject to clause 30;
  - 3.11.3 the CPA shall have a discretion to decide upon and implement commercial activities on the land, subject to those constraints set out in this agreement and the Deed of Grant.
- 3.12 In addition, the community shall retain the utilisation rights to the land set out in clause 33 in terms of this agreement.
- 3.13 The parties wish to regulate their respective rights and obligations, in accordance with the terms and conditions contained in this agreement.

## CHAPTER 1- SETTLEMENT

### 4. **CONDITION PRECEDENT**

- 4.1 This entire agreement is subject to the fulfilment of the following conditions precedent by not later than 31 December 1999, or such later date as the CPA (or, prior to the registration of the CPA, the community), SANP and the Minister of Land Affairs may agree in writing:
- 4.1.1 an order of court being made in terms of clause 22;
  - 4.1.2...
  - 4.1.3 the formation and registration of the Makuleke Communal Property Association, in terms of Section 8 of the Communal Property Association Act, 1996, as amended with membership complying with the Land Claims Court's determination in terms of clause 4.1.2; and the ratification of this agreement by the Makuleke Communal Property Association, after its registration, and in terms of the constitution of the Makuleke Communal Property Association; and
  - 4.1.4 the exclusion of the KNP land from the Kruger National Park in terms of section 2(3) of the National Parks Act.
- [Wording before the first colon and sub-clause 4.1.1 amended and sub-clause 4.1.2 deleted ito cl. 49.4 by para. 6 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*
- 4.2 The parties shall use their best endeavours to procure the fulfilment of these conditions precedent as soon as reasonably possible after the signature date.
- 4.3 If all of these conditions precedent are not fulfilled by the date specified in clause 4.1, this agreement shall be of no force or effect and no party shall have any claim against any other party for anything done hereunder or arising hereout : Provided that in such an event the community's claim to the land in terms of the Restitution of Land Act, 1994 shall be restored in its entirety, and provided further that in such an event all the other parties to this agreement reserve their rights to dispute such claim.

### 5. **EXCLUSION OF LAND FROM THE KRUGER NATIONAL PARK**

The Minister hereby undertakes that upon an order of court being made as contemplated in clause 22, he shall use his best endeavours to procure that the KNP land is excluded from the Kruger

National Park, by means of a resolution of Parliament in terms of Section 2(3) of the National Parks Act.

*[Clause amended to cl. 49.4 by para. 7 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

## 6. **EXCLUSION OF LAND FROM THE MATSHAKATINI NATURE RESERVE**

The MEC hereby undertakes that upon an order of court being made as contemplated in clause 22, he shall procure that that portion of the additional land incorporated in the Matshakatini Nature Reserve is excluded from the Matshakatini Nature Reserve, in terms of Section 14 of the Nature Conservation Ordinance, 1983.

*[Clause amended to cl. 49.4 by para. 8 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

## 7. **GRANTING OF TITLE**

Upon the exclusion of the KNP land from the Kruger National Park in terms of Section 2(3) of the National Parks Act the Minister of Land Affairs hereby undertakes to procure the transfer of the land to the CPA, in terms of the Deed of Grant.

## 8. **DECLARATION OF THE MAKULEKE REGION**

The Minister undertakes that upon the land being transferred to the CPA in terms of the Deed of Grant that he shall procure the declaration of the land as a national park in terms of Section 2B(1)(b) of the National Parks Act.

## 9. **MAKUYA PARK**

To the extent that the MEC exercises any powers in that portion of the Makuya Park marked "portion of Makuya Park" on the diagram in Schedule 1 on a non-obligatory basis, he shall cease doing so upon the transfer of the land to the CPA.

*[Clause amended to cl. 49.4 by para. 9 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

## 10. **COMMENCEMENT AND DURATION**

Subject to the provisions of clause 4 this agreement shall come into effect on the signature date and shall remain in force, unless otherwise agreed between the parties.

## 11. **CONDITIONS OF USE**

11.1 The use of the land shall be subject to the following conditions:

11.1.1 no mining and/or prospecting activities (as defined in the Minerals Act), may take place in, on or under on the land. Notwithstanding the aforementioned, but subject to the provisions of the Minerals Act, the excavation of sand, stone, rock, gravel, clay and soil by:

11.1.1.1 the CPA for the purposes of building on the land and other commercial activities;

11.1.1.2 the JMB for the purposes of fulfilling its conservation management obligations in terms of this agreement; or

11.1.1.3 the SANP for the purposes of fulfilling its obligations in terms of this agreement or the National Parks Act,

shall not be prohibited : Provided that:

(i) prior to any such activities being undertaken an environment impact assessment as may be required by law must be conducted and the undertaking of such activities must be approved by the competent authority in terms of such law; and

- (ii) such activities are not in contravention of the Master Plan at the time that such activities are to be undertaken.
- 11.1.2 no part of the land may be used for residential purposes insofar as such purposes would conflict with the land being maintained and utilised as an area of conservation and associated commercial activities;
- 11.1.3 no part of the land may be used for agricultural purposes;
- 11.1.4 the land is to be utilised and maintained solely for the purpose of conservation, and associated commercial activities; and
- 11.1.5 no development of whatsoever nature may be made on the land prior to the an environmental impact assessment as may be required by law being undertaken and the approval of the competent authority in terms of such law being obtained in respect of such development; and
- 11.2 The parties agree that insofar as the provisions of clause 11.1 constitute registrable conditions of title, that the terms and conditions contained therein shall be registered as conditions of title in the Deed of Grant.
- 11.3 The parties agree to abide by all the conditions of this agreement and of the Deed of Grant.

## 12. **PRE-EMPTIVE RIGHTS**

The parties record that the following condition shall be registered as a condition of title within the Deed of Grant: the CPA may not sell or otherwise dispose of, alienate or transfer any of the land to any person, other than a person or body controlled by or beneficially owned by the CPA, without first offering the land to the SANP. Should the SANP not accept the CPA's offer within 45 (forty five) business days the CPA may, during a period of 180 (one hundred and eighty) business days after expiry of the 45 business day period, sell and transfer the land to a bona fide third party at no less than the price at and on conditions which are not more favourable to the purchaser than those at which the SANP was entitled to purchase the land.

*[Clause amended ito cl. 49.4 by para. 10 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

## 13. **INFRASTRUCTURE**

The parties agree that all infrastructure acceding to the land shall become the property of the CPA upon transfer of the land to the CPA, and that such transfer shall be effected within the Deed of Grant.

## 14. **MINERAL RIGHTS**

14.1 The parties agree that the mineral rights in the land shall be reserved in favour of the State. In return for the community agreeing to this provision the parties agree to the provisions of clauses 14.2, 14.3, 14.4 and 14.6.

*[Clause amended ito cl. 49.4 by para. 11.1 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

14.2 The parties agree that no mining and/or prospecting activities (as defined in the Minerals Act) may take place in, on or under the land, save as is provided in this agreement. Notwithstanding the aforementioned, but subject to the provisions of the Minerals Act, the excavation of sand, stone, rock, gravel, clay and soil by:

14.2.1 the CPA for the purposes of building and other commercial activities;

- 14.2.2 the JMB for the purposes of fulfilling its conservation management obligations in terms of this agreement; or
- 14.2.3 the SANP for the purposes of fulfilling its obligations in terms of this agreement or the National Parks Act,
- shall not be prohibited : Provided that:
- a).prior to any such activities being undertaken, an environmental impact assessment as may be required by law must be conducted and the undertaking of such activities must be approved by the competent authority in terms of such law; and
- b).such activities are not in contravention of the Master Plan at the time that such activities are to be undertaken.

*[First sentence of clause amended to cl. 49.4 by para. 11.2 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

14.3 It is further agreed that while it is current State policy that all State owned mineral rights in the Republic of South Africa remain vested in the State, in the event that such policy should for any reason change and the State wish to divest itself of the mineral rights in the land, that:

- 14.3.1 the State must first offer the mineral rights in the land to the CPA at a fair and reasonable price;
- 14.3.2 the CPA shall be afforded a period of 90 (ninety) business days to consider the State's offer and give its written acceptance of such offer;
- 14.3.3 should the CPA not accept the State's offer within 90 (ninety) business days, the State may offer the mineral rights in the land to a bona fide third party at a price that is not less, and on conditions which are not more favourable to such third party than those at which the CPA was entitled to purchase the mineral rights: Provided that, as a condition to such sale the third party undertakes to compensate the CPA in respect of any loss of surface rights as a result of any mining or prospecting activities.

14.4 In the event that the State applies to a court of competent jurisdiction or other competent authority to amend, overturn, remove or expropriate the condition referred to in clause 14.2, the State agrees that:

- 14.4.1 it shall consult with the CPA prior to making any such application;
- 14.4.2 it shall procure that the CPA shall be given a bona fide and reasonable opportunity to participate with either the State or any third party in the prospecting (as defined in the Minerals Act) and/or mining (as defined in the Minerals Act) of minerals in, on or under the land; and
- 14.4.3 notwithstanding the provisions of this clause 14.4, the CPA and/or the SANP may in its/their sole discretion oppose any such application by the State or any other interested third party, on any grounds it/they deem/s fit.

14.5 The parties record that the land was previously subject to the following claims:

- (a) claims licence number 21983 held by Giant Reefs Gold Mining Company Limited; and
- (b) claims licence number 36672/3 held by G S de Vries;
- but that these claims holders have undertaken to abandon their claims, and that the Department of Land Affairs has agreed in return to compensate them to the amount of R12 400 in total.

*[Clause amended to cl. 49.4 by para. 11.3 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

14.6 Notwithstanding the provisions of clause 14.4, the Minister of Minerals and Energy undertakes that in the event that the condition referred to in clause 14.2 is overturned, amended, removed or expropriated in such a manner as to allow prospecting or mining to take place on the land; that he shall not grant any person permission to prospect or authorisation to mine the land if:

- 14.6.1 an environmental impact assessment as may be required by law has not been conducted or the approval by the competent authority in terms of such law has not been obtained; or
- 14.6.2 in the opinion of the Minister of Minerals and Energy, after consultation with the Minister such activity is not in the greater interest of the land than as an area of conservation; or
- 14.6.3 the person to whom the permission or authorisation is to be granted does not undertake to compensate the CPA in respect of any loss of surface rights to the land as a result of mining and/or prospecting activities.

14.7 The parties agree that insofar as the provisions of this clause 14 constitute registerable conditions of title, that the terms and conditions of this clause 14 shall be registered as conditions of title in the Deed of Grant.

## 15. **BORDER LINE CONTROL**

15.1 Notwithstanding the provisions of clause 13, the parties agree that the SANDF is entitled to:

15.1.1 utilise the existing infrastructure of the land; or

15.1.2 construct new infrastructure on the land:

15.1.3 utilise the land in any other way;

to perform any duties prescribed by statute, including that of border line protection and control, in consultation with the JMB or, in the event that Chapter 2 is not in force at the time, with the CPA. The SANDF may utilise the land and infrastructure on the land for any other purpose only with the prior approval of the JMB or, in the event that Chapter 2 is not in force at the time, of the CPA.

*[Clause amended to cl. 49.4 by para. 12 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

15.2 The Minister of Defence hereby undertakes that the SANDF shall rehabilitate the land where it withdraws from infrastructure utilised or erected in terms of clause 15.1, and such infrastructure is not required by the JMB or the CPA, as the case may be.

## 16. **ERECTION OF A VETERINARY FENCE**

The Minister of Agriculture hereby undertakes to:

16.1 erect a new veterinary fence along that portion of the western boundary of the land from the northern most point of the game fence of the Makuya Park, northwards to the new veterinary fence that shall run west to east within the Matshakatini Nature reserve;

16.2 maintain the veterinary fence erected in terms of clause 16.1, and the fence located on the western boundary of the Makuya Park (forming part of the additional land); and

16.3 remove any veterinary fence it has erected on the land, which fence is not required for veterinary purposes any more.

## 17. **OPEN ECOLOGICAL SYSTEM WITH NEIGHBOURING CONSERVATION AREAS**

An open ecological system shall be maintained between the Makuleke Region and the remaining portions of the Matshakatini Nature Reserve north of the veterinary fence to be erected in terms of clause 16.1 and the Makuya Park, allowing free movement of game between these properties, provided that the management practices in these adjoining properties are acceptable to the MEC, the SANP, the SANDF and the CPA and that other reasonable conditions are met by them. These parties agree to enter into discussions in this regard, as the need arises, but reserve the right to erect and maintain a fence on the boundaries between these properties if they believe that this is appropriate.

*[Clause amended to cl. 49.4 by para. 13 of the written agreement between all the parties,  
signed in counterparts between 11 and 15 December 1998]*

## 18. **MINISTER OF LAND AFFAIRS**

The Minister of Land Affairs undertakes, in respect of the transfer of the land contemplated in clause 7, to direct in terms of Section 42(1) of the Restitution of Land Rights Act, 1994, that any transfer duty or other fee that would otherwise be payable by claimants be defrayed in full from money appropriated by Parliament for that purpose, or in consultation to the Minister of Finance that no transfer duty, stamp duty or other fees contemplated in Section 42(1) of that Act shall be paid in respect of the said transfer.

## 19. **SECURITY OF TENURE**

19.1 It is recorded that the Makuleke community, upon its removal from the land as set out in clause 3.1, was settled on and currently occupies a portion of the farm Ntlhaveni 2 MU ("Ntlhaveni"), as indicated on Schedule 5 hereto. The term "Makuleke community" in this clause 19 means the community as defined in clause 2, but excluding the members of the Mutale community admitted to the CPA in terms of its constitution.

*[Clause amended to cl. 49.4 by para. 14.1 of the written agreement between all the parties,  
signed in counterparts between 11 and 15 December 1998]*

19.2 The State, represented by the Minister of Land Affairs, hereby waives any right that the State may have to have Ntlhaveni returned to the State.

19.3 The State undertakes not to deprive the Makuleke community or members of the Makuleke community of any formal or informal rights the Makuleke community or any members thereof may have acquired since their occupation of Ntlhaveni following their removal in 1969, unless such deprivation complies with section 25 of the Constitution of the Republic of South Africa, 1996.

*[Clause amended to cl. 49.4 by para. 14.2 of the written agreement between all the parties,  
signed in counterparts between 11 and 15 December 1998]*

19.4 The State will, in accordance with the law applicable at the time, take any steps required so as to secure the tenure rights in Ntlhaveni used by the Makuleke community on an individual and communal basis within this area.

19.5 It is recorded that the Makuleke community is protected in its occupation and use of Ntlhaveni in terms of the Interim Protection of Informal Land Rights Act and the Extension of Security of Tenure Act.

## 20. **RAMSAR STATUS**

The parties undertake not to perform any act in any manner which is or may be in conflict with the State's obligations in terms of the "Convention on Wetlands of International Importance" : Ramsar.

## 21. **FULL AND FINAL SETTLEMENT**

21.1 Subject to this agreement coming into effect in terms of clause 4, the Community hereby confirms that this agreement is in full and final settlement of its claim in terms of the Restitution of Land Rights Act, 1994, referred to in clause 3.3.

*[Clause 21.1 amended to cl. 49.4 by para. 15 of the written agreement between all the parties,  
signed in counterparts between 11 and 15 December 1998]*

21.2 As a gesture of good neighbourliness and goodwill the community hereby specifically waives its rights to that land marked as "Portion of Mutele Traditional Authority" on Schedule 1 hereto.

*[Clause 21.2 inserted into cl. 49.4 by para. 15 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

## **22. LAND TO BCE TRANSFERRED IN TERMS OF ORDER OF COURT**

The parties agree that an order of the Land Claims Court in terms of section 35 of the Restitution of Land Rights Act, 1994, be made generally to the following effect:

upon ratification of this agreement by the CPA (once registered) as is provided for in clause 4.1.3 and upon the exclusion of the KNP land from the Kruger National Park in terms of section 2(3) of the National Parks Act as contemplated in clause 7 the Minister of Land Affairs shall procure the transfer of the land to the CPA in terms of the Deed of Grant subject to the conditions set out in Schedule 3, which conditions shall be registered as conditions of title insofar as they constitute registrable conditions of title.

*[Clause amended into cl. 49.4 by para. 16.1 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

## **CHAPTER 2- MAKULEKE REGION**

### **23. THE MAKULEKE REGION**

23.1 The Minister hereby undertakes that:

23.1.1 immediately upon the exclusion of the KNP land from the Kruger National Park, in terms of clause 5, that he shall by notice in the Government Gazette declare the land as forming part of the Kruger National Park, in terms of Section 2B(1)(b) of the National Parks Act subject to the terms and conditions of this agreement;

23.1.2 upon the termination of Chapter 2, or upon request by either party in terms of clauses 24, 27.7, or 37, that he shall, in terms of Section 2B(1)(b) of the National Parks Act, exclude the land from the Kruger National Park; and

23.1.3 insofar as reasonably possible, he will not legislate or regulate in such a manner as to impact materially on the rights of the CPA and the community in terms of Chapter 2, in a negative manner.

23.2 All the parties to this agreement being Ministers of Departments of the State and the MEC hereby confirm that the Minister has consulted with them with regard to the declaration of the land as part of the Kruger National Park in terms of this clause 23, and confirm that they concur with such declaration.

*[Clause amended into cl. 49.4 by para. 17.1 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

23.3 The land shall, upon its declaration as part of the Kruger National Park in terms of clause 23.1, be known as the Makuleke Region.

*[Clause amended into cl. 49.4 by para. 17.1 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

### **24. DURATION OF THE MAKULEKE REGION**

24.1 Subject to the provisions of clause 24.3, the Makuleke Region shall endure for a period of 50 (fifty) years from the date of declaration thereof in terms of clause 23.1.1; provided that after a period of 20 (twenty) years either party may request the Minister to exclude the Makuleke Region from the Kruger National Park in terms of clause 23.1.2, on 5 (five) year's written notice to the other party and to the Minister.

24.2 The CPA and the SANP shall have the right within 2 (two) years prior to the expiry of the Makuleke Region as part of a national park in terms of clause 24.1 by agreement, to jointly request the Minister to extend the duration of the Makuleke Region for a further period of 50 (fifty) years, or such shorter period as agreed to between the parties.

24.3 For so long as the Makuleke Region remains in existence, it shall be subject to the provisions of the National Parks Act and the terms and conditions of this agreement. In the event that any one or more of the provisions of this Chapter is held to be invalid, unenforceable or illegal in terms of the National Parks Act, then this Chapter shall be construed as if such invalid, illegal or unenforceable provision is not a part of Chapter 2 and Chapter 2 shall be carried out as nearly as possible in accordance with the original terms and intent: Provided that to the extent that the CPA is so fundamentally deprived of its intended rights as envisaged in this Chapter that the CPA cannot reasonably be expected to continue with the provisions of this Chapter, the CPA shall be entitled to require the Minister to exclude the land from the Kruger National Park in terms of clause 23.1.2.

24.4 For the avoidance of doubt, the parties hereby record that ownership of the land shall at all times vest in the CPA, irrespective of the termination of Chapter 2 or the termination of this agreement.

## 25. **ESTABLISHMENT OF A JOINT MANAGEMENT BOARD**

25.1 The SANP and the CPA shall establish the JMB, which shall manage the Makuleke Region as set out in this Chapter.

25.2 The JMB shall at all times consist of 6 (six) members, appointed as follows:

25.2.1 at the signature date each of the CPA and the SANP will be entitled to appoint 3 (three) members to the JMB, to remove any such member and to replace any such member who has been removed or ceases for any other reason to be a member;

25.2.2 the parties record that the number of members appointed by each of the CPA and the SANP will in the future change, it being intended that the proportion of SANP members to CPA members may decrease over time as determined by the JMB.

25.3 Any person appointed a member shall:-

25.3.1 hold office until:-

25.3.1.1 he shall have been removed therefrom by the party appointing him; or

25.3.1.2 he shall have resigned therefrom by notice in writing to the JMB; or

25.3.1.3 he shall have served for a period of 3 (three) years from his appointment;

25.3.2 not be entitled to appoint an alternate member to himself. Only the party appointing a member shall be entitled to appoint an alternate member.

25.4 The first members of the JMB shall be:

25.4.1 As appointed by the CPA, after its formation and registration, in terms of Section 8 of the Communal Property Association Act, 1996, as amended, and in terms of the CPA's constitution; and

25.4.2 as appointed by the SANP:

25.4.2.1 Mr Madoda David Mabunda;

25.4.2.2 Mr Willem Petrus D Gertenbach; and

25.4.2.3 Ms Elizabeth Mhlongo.

25.5 The appointment to or removal from the office of member of any person or persons shall be made by notice in writing to the JMB and to the other party and shall take effect immediately upon receipt of such notice.

25.6 A chairman of the JMB shall be appointed from the members of the JMB and that the office of chairman shall be rotated between a member appointed by the CPA and SANP respectively on an annual basis. The first chairman of the JMB shall be nominated by the

- CPA. Should the chairman not be present at any meeting of the JMB, the members of the JMB shall elect one of their number to act as the chairman for that meeting.
- 25.7 The chairman of the JMB, or of any meeting of the JMB, shall not be entitled to a second or casting vote in addition to his deliberative vote as a member of the SANP or the CPA.
- 25.8 JMB resolutions in order to be of force and effect must be approved by both the SANP and the CPA.
- 25.9 For either of the SANP or the CPA to approve a resolution for the purposes of clause 25.8, the majority of its members present must approve the resolution. Accordingly, the vote of each of the CPA and the SANP will be decided by the majority of its respective members attending the meeting. The CPA and the SANP can determine the majority decision of its members in camera. If either of the CPA or the SANP does not obtain a majority vote of its members present at the meeting or as provided for in terms of this clause 25, then that party shall have voted against the resolution for the purposes of clause 25.8.
- 25.10 A quorum at all meetings of the JMB shall consist of 4 (four) members (or their alternates) of whom 2 (two) shall be appointees of the CPA and 2 (two) of the SANP. If, within 30 (thirty) minutes after the time appointed for any meeting a quorum is not present, the meeting shall be dissolved and it shall stand adjourned to a date to be determined by the CPA and the SANP jointly (which date shall not be earlier than 5 (five) business days and not later than 15 (fifteen) business days after the date of such meeting) at the same time and place (or if such place be not available at such other place as the members may appoint). At such adjourned meeting a quorum of the JMB shall consist of 2 (two) members (or their alternatives) of whom 1 (one) shall be an appointee of the CPA and 1 (one) of the SANP. If at such adjourned meeting a quorum is not present, the meeting shall again be adjourned in terms of this clause 25.10 until such time as a quorum for an adjourned meeting is present.
- 25.11 A resolution signed in writing by all the members present in South Africa who are not less than a quorum for a meeting of the JMB shall be as valid as if it had been passed at a meeting of the JMB, duly held and constituted. Any such resolution may consist of several documents in like form, each signed by one or more of the signatories to the resolution. A resolution passed in terms of this clause 25.11 shall be entered in the JMB's minute book and be noted at the next succeeding meeting of the JMB. Any resolution referred to in this clause 25.11 shall be deemed to have been passed on the date it was signed by the member last signing it.
- 25.12 The members shall, unless otherwise agreed, meet at the JMB's premises:
- 25.12.1 subject to the provisions of clause 25.12.2 not less than 6 (six) times a year; and
- 25.12.2 whenever so required by either party, on 10 (ten) business days notice in writing (exclusive of the day of receipt) to the other party.
- 25.13 Notwithstanding the provisions of this clause 25, the parties agree that the CPA's alternate members may attend all meetings of the JMB; provided that such alternate members shall not have a vote in respect of decisions of the CPA unless such persons are acting in their capacity as alternates to members of the CPA.
- 25.14 The JMB may authorise invited guests of the CPA and/or the SANP to attend meetings of the JMB; provided that such invited guests shall not be entitled to vote at any meeting of the JMB.
- 25.15 The secretary of the JMB shall forward a copy of the agenda and all supporting documents (including the minutes of the previous meeting) to each of the members at least 5 (five) business days prior to a meeting of the JMB.

- 25.16 Meetings of the JMB and of all committees of the JMB may be held by means of such telephone, electronic or other communication facility as permits all persons participating in the meeting to communicate with each other simultaneously and instantaneously, provided that the meeting shall be properly minuted by the secretary of the JMB and forwarded to all members for formal adoption.
- 25.17 The secretary of the JMB shall cause a copy of the minutes of any proceedings of the JMB including those referred to in clause 25.16, to be disseminated to all members within 5 (five) business days of the meeting.
- 25.18 Each party shall bear its own costs in respect of the participation of their members on the JMB.

## **26. MANAGEMENT OF THE MAKULEKE REGION**

- 26.1 The JMB will observe and give effect to:
- 26.1.1 this agreement and in particular Chapter 2 hereof;
  - 26.1.2 all relevant provisions and regulations of the National Parks Act insofar as it is enabled to do so;
  - 26.1.3 the Master Plan; and
  - 26.1.4 all resolutions and decisions passed by the JMB.
- 26.2 Subject to clauses 28 and 31, the JMB will be responsible for the day-to-day management and operations of the Makuleke Region.

## **27. FUNCTIONS AND POWERS OF THE JMB**

- 27.1 The JMB shall do all things which are necessary to ensure that the terms of this agreement (and in particular Chapter 2), the Master Plan and the Deed of Grant are complied with.
- 27.2 The JMB may from time to time amend the provisions of the Master Plan to conform with the ongoing objectives of the CPA and the SANP in relation to the Makuleke Region.
- 27.3 Pursuant to the provisions of Section 12(2)(b) the National Parks Act, the SANP hereby irrevocably authorises the JMB in respect of all conservation management related activities undertaken within the Makuleke Region, and it is hereby recorded and agreed that subject to clause 27.5 the CPA retains full authority in respect of all commercial activities undertaken within the Makuleke Region to:
- 27.3.1 construct and erect such roads, bridges, buildings, fences, landing stages, swimming pools, and carry out such other works as may be necessary in respect of such activities;
  - 27.3.2 take such steps as will ensure the security of visitors, the animal and plant life in the Makuleke Region, and the preservation of the Makuleke Region and the animals and vegetation therein in a natural state;
  - 27.3.3 reserve areas as breeding places for animals or as nurseries for trees, shrubs, plants and flowers;
  - 27.3.4 provide accommodation for visitors to the Makuleke Region and facilities in connection therewith;
  - 27.3.5 provide meals and refreshments for visitors to the Makuleke Region;
  - 27.3.6 carry on any business or trade for the convenience of visitors to the Makuleke Region;
  - 27.3.7 supply any other service for the convenience of visitors to the Makuleke Region;
  - 27.3.8 establish, erect, equip and maintain any building, structure, depot or premises required in connection with any matter referred to in clauses 27.3.4, 27.3.5, 27.3.6 or 27.3.7, or let any site required for such a purpose;

- 27.3.9 make such charges as it may determine in connection with any matter referred to in clauses 27.3.4, 27.3.5, 27.3.6 or 27.3.7, or which are to be paid in respect of permission under section 23 of the National Parks Act to enter or reside in a park;
- 27.3.10 authorise any person to carry on, subject to such conditions and the payment of such charges as it may think fit, any activity, other than the sale of liquor, which may in terms of clauses 27.3.5, 27.3.6 or 27.3.7 be carried on by the JMB;
- 27.4 For the purposes of Sections 2B(1)(b), 12(2)(b) and 21 of the National Parks Act, the parties, to the extent that they have the power to do so, hereby irrevocably authorise the JMB to determine in respect of conservation management matters, and subject to clause 27.5 hereby irrevocably authorises the CPA in respect of commercial activities to determine, which persons may:
- 27.4.1 enter or reside in the Makuleke Region without the permission of the JMB or any officer of employee authorised to grant such permission;
- 27.4.2 convey into the Makuleke Region or within the Makuleke Region be in possession of any weapon, explosive, trap or poison;
- 27.4.3 within the Makuleke Region hunt or otherwise wilfully kill or injure any animal;
- 27.4.4 within the Makuleke Region disturb any animal;
- 27.4.5 within the Makuleke Region take, damage or destroy any egg or nest of any bird, or take honey from a beehive;
- 27.4.6 wilfully cause a veld fire, or any damage to any object of geological, archaeological, historical, ethnological, educational or other scientific interest, within the Makuleke Region;
- 27.4.7 introduce any animal or permit any domestic animal to stray into or enter the Makuleke Region;
- 27.4.8 remove from the Makuleke Region any animal (other than an animal lawfully introduced into that park), whether alive or dead, or any part of an animal;
- 27.4.9 cut, damage, remove or destroy any tree or any part thereof, dry or firewood, grass or other plant in the Makuleke Region;
- 27.4.10 within the Makuleke Region remove seed from any tree or other plant without the permission of the JMB or any officer or employee authorised to grant such permission;
- 27.4.11 feed any animal in the Makuleke Region; or
- 27.4.12 drive a motor vehicle in the Makuleke Region without a valid driver's licence, or permit any other person to drive a motor vehicle in the Makuleke Region without a valid driver's licence.

*[Portion of clause before first colon amended to cl. 49.4 by para. 18 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

- 27.5 Notwithstanding the provisions of clause 25.8 any proposal, directly related to the generation of income by means of commercial activities which the CPA may be considering in terms of clauses 27.3 and/or 27.4, shall be submitted to the SANP for joint discussion, prior to the CPA deciding thereon. Thereafter, the CPA shall be entitled to make its decision in respect of such proposal, subject to the terms of this agreement and in particular clause 31.2. The decision of the CPA shall then be tabled at the next meeting of the JMB and once so tabled, shall be deemed to be a decision of all the members of the JMB.
- 27.6 The parties record that the Makuleke Region is subject to all regulations passed in terms of Section 29 of the National Parks Act, applicable to the Kruger National Park, and agree that until and except insofar as the JMB proposes any amendment or addition to such regulations by passing resolutions in terms of clause 27.4 and such resolution is given effect to in terms of clause 27.7, that such regulations shall continue to apply in respect of the Makuleke Region.
- 27.7 Notwithstanding the provisions of clause 27.6, the parties and the Minister undertake to do all things necessary to give effect to any resolution of the JMB in terms of clause 27.4,

including the passing of any regulation in terms of Section 29 of the National Parks Act to bring such resolution into effect. To the extent that the SANP or the Minister fail to approve any resolution of the JMB in respect of clause 27.4, the SANP and the Minister shall be deemed to be in breach of this agreement: Provided that such a breach shall only be deemed to have occurred if the failure to approve such a resolution of the JMB has the effect of fundamentally depriving the CPA of its intended rights as envisaged in this Chapter. In the event of a breach of this agreement as envisaged in this clause 27.7 the CPA shall be entitled to require the SANP and/or the Minister to remedy the breach upon 21 (twenty one) business days written notice to do so. If the SANP and/or the Minister fails to comply with such notice, the CPA shall be entitled to call upon the Minister to exclude the Makuleke Region, in terms of clause 23.1.2, on 2 (two) years notice to the SANP and the Minister.

## 28. **DUTIES OF SANP**

- 28.1 Without in any way detracting from the powers of the JMB, and the provisions of Section 12(1) of the National Parks Act, the SANP shall do all such things which are necessary for or incidental to or connected with the day-to-day conservation management of the business and affairs of the Makuleke Region. In particular and without limiting the generality of the foregoing the SANP shall, subject always to any specific or general instructions from the JMB and within those limits imposed in terms of Sections 12(2)(b) and Section 21 of the National Parks Act.
- 28.1.1 implement the policies and procedures laid down from time to time by the JMB;
- 28.1.2 ensure that the provisions of the Deed of Grant and Master Plan are complied with insofar as they relate to the Makuleke Region;
- 28.1.3 carry out and perform all such duties and exercise all such functions as may be permitted by law and as may be necessary or desirable for the proper conduct of the day-to-day business and affairs of the Makuleke Region; and
- 28.1.4 generally provide or procure the provision to the Makuleke Region of such advice and services as may be reasonably necessary for the proper conduct and management of the day-to-day business and affairs of the Makuleke Region.
- 28.2 Subject to the provisions of Section 12(1) of the National Parks Act the JMB may terminate the services of the SANP in terms of this clause 28 upon reasonable written notice to the SANP. Notwithstanding the aforementioned, such termination shall not limit the SANP's power to ensure that the management, control and maintenance of the Makuleke Region in terms of Section 12(2)(b) and Section 21 comply with the National Parks Act.

## 29. **EMPLOYMENT OF STAFF**

- 29.1 The JMB will assess its staffing requirements from time to time, including the employment of a secretariat and subject to budgetary considerations shall enter into the requisite employment contracts.
- 29.2 The parties shall procure that the employment policy and conditions of service of the JMB shall be in accordance with the Master Plan.

## 30. **TRANSFER OF SKILLS**

- 30.1 The parties record that it is their intention that the CPA shall become involved in the day-to-day conservation management of the Makuleke Region, with the intention that the Makuleke Region shall in time be staffed predominantly or entirely by members of the community. Accordingly, the JMB shall take reasonable steps to facilitate the transfer of skills to members of the community.

30.2 The JMB shall on an annual basis review the progress made in the preceding year in the transfer of skills to the CPA, and identify options and strategies for the forthcoming year to facilitate the transferring of skills to the CPA.

30.3 The CPA shall use its best endeavours to undertake suitable programmes within the community for the training of members of the community to be employed by the JMB. The JMB shall assess on an annual basis its needs and submit such assessments to the CPA. All costs incurred in this regard shall be borne by the CPA.

### 31. **CONSERVATION AND COMMERCE**

31.1 The Makuleke region is at all times to be utilised solely for the purposes of conservation, and associated commercial activities, in terms of the Deed of Grant.

31.2 Subject to clauses 31.3 and 31.4 the CPA shall have the right to conduct all commercial activities on the land, subject to the following:

31.2.1 ensuring as a member of the JMB that such development complies with the principles set out in the Master Plan;

31.2.2 developmental constraints and opportunities set out in the Master Plan are adhered to;

31.2.3 no activity contrary to the objectives of a contractual park in terms of the National Parks Act may be undertaken;

31.2.4 no formal human exclusion areas are created;

31.2.5 environmental constraints in respect of the land, in particular, but not limited to the following factors:

31.2.5.1 seasonal heat;

31.2.5.2 the semi-arid nature of the land and unreliable rainfall, which renders some plant communities fragile;

31.2.5.3 shallow top-soil in areas;

31.2.5.4 malaria endemic area, with some areas of specially high risk;

31.2.5.5 the presence of anthrax and other animal diseases;

31.2.5.6 distribution patterns of game;

31.2.5.7 flood plains and seasonal flooding;

31.2.5.8 the potential Ramsar status of certain areas;

31.2.5.9 constraints on the land created by vegetation, including the many red data species on the land, which impact upon wildlife management and potential use of such plants for medicinal purposes; and

31.2.5.10 topographical constraints;

31.2.6 in all regards the principles for wildlife management, as set out in the Master Plan are followed;

31.2.7 an environmental impact assessments as regulated by law is conducted with respect to any proposed development or change of use in the land and the approval of the competent authority as required by such law is obtained;

31.2.8 the parties take all steps necessary to harmonise development on both sides of the Levuvhu River, addressing the effect of any development and activities on one side of the river on the other side of the river; and

31.2.9 the tender process, as determined in terms of clause 32.

*[Portion of clause before first colon amended ito cl. 49.4 by para. 19.1 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

31.3 Subject to clauses 31.2 and 27.5 and the Master Plan, all permissible commercial activity in the Makuleke Region will be undertaken solely by the CPA or developers, partners or authorised persons as contemplated in clause 31.4, subject to the SANP having the following rights:

31.3.1 ensuring as a member of the JMB that such development complies with the principles set out in the Master Plan;

31.3.2 input into the environmental impact assessment process;

- 31.3.3 informal input;
- 31.3.4 ensuring all tender requirements are ostensibly fair and followed by the CPA;
- 31.3.5 ensuring that all and such commercial activity in the Makuleke Region complies with the terms of this agreement, the Master Plan and the Deed of Grant; and may recommend amendments to such developments insofar as they do not comply with all or any requirements.

*[Portion of clause before first colon amended to cl. 49.4 by para. 19.2 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

- 31.4 For the purposes of clause 31.3, and subject to the tender procedure, the CPA is entitled to enter into agreements with developers of their choice, and engage with partners of their choice to undertake any commercial activity on the land, either through agreement or by means of a trust or a company of which the CPA is a beneficial owner; provided that the CPA may, subject to the tender procedure, authorise persons other than such developers or partners to conduct any commercial activity on the land.

*[Clause amended to cl. 49.4 by para. 19.3 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

## 32. **TENDER PROCEDURE**

- 32.1 The CPA, as part of its control of all commercial activities on the land, shall determine the tender procedure to be followed by developers or prospective partners wishing to tender for developments within the Makuleke Region.
- 32.2 In determining its tender procedures, the CPA undertakes to consult with the SANP and obtain input from the SANP with regard to the tender procedures.
- 32.3 Notwithstanding the aforementioned, the JMB (constituted by both the SANP and the CPA) shall be entitled to:
  - 32.3.1 study the draft tender requirements or criteria for any developers, as well as any draft agreements to be entered into between the JMB and any developers, to ensure that such documents comply with the terms and conditions of this agreement and the Master Plan; and may recommend changes to such draft tender requirements and/or agreements;
  - 32.3.2 monitor whether the tender procedures are fair and are followed. In this regard the JMB shall be given access to so much of the tender documents as is necessary for the JMB to make a determination; and
  - 32.3.3 monitor the developments within the Makuleke Region to ascertain whether such developments comply with this agreement and the Master Plan.

## 33. **UTILISATION RIGHTS**

In addition to the rights conferred in clause 31 the parties shall have the following rights in respect of the land:

- 33.1 The CPA and the community:
  - 33.1.1 access to the Makuleke Region as determined by the JMB from time to time;
  - 33.1.2 the right to establish a research facility;
  - 33.1.3 the right to establish a museum about the Makuleke people, and royal kraal, for future tourist, religious and cultural activities as determined by the JMB;
  - 33.1.4 the right to use the natural resources of the land (excluding minerals; but including sand, stone, rock, gravel, clay and soil for the purposes of building and other activities on the land, subject to the provisions of clause 11.1), as determined by the JMB in terms of the Master Plan from time to time and subject to clause 27.4.

33.2 All research proposals in respect of research to be conducted in the Makuleke Region are to be submitted to the JMB for approval, which approval shall not be unreasonably withheld, but may be subject to such conditions as the JMB in its sole discretion deems fit.

#### 34. **INCOME AND COSTS**

##### **Income**

34.1 All income received from permissible commercial activities undertaken in the Makuleke Region in terms of this agreement (excluding gate fees) shall accrue to the CPA, subject to clause 31.4. In the event of a dispute between the CPA and SANP as to what the CPA's income is or has been for any period, either of the parties may refer the matter to independent audit and the provisions of clauses 34.4.2, 34.4.3, 34.4.4 and 34.4.5 shall apply *mutatis mutandis*, subject to the proviso that all references to clause 34.4.1 shall be deemed to be references to this clause 34.1 and the independent auditor shall make a determination in terms of clause 34.4.4 as to the CPA's income for a specified period and not the operational management cost.

*[Clause amended to cl. 49.4 by para. 20 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

34.2 All gate fees charged for entrance to the Kruger National Park, via the Makuleke Region ("the Pafuri gate"), shall accrue to the SANP : Provided that the terms of this clause 34.2 may be reconsidered by the JMB from time to time. Notwithstanding the provisions of clause 27.3.9 the SANP shall, for the duration that the gate fees accrue to the SANP, be entitled to determine the gate fees payable in respect of the Pafuri gate : Provided that such gate fees may not exceed the gate fees applicable to any other gate for entrance to the Kruger National Park.

##### **Costs**

34.3 The actual costs incurred in the operational management of the Makuleke Region, which costs shall specifically exclude any costs in relation to overheads of the head office of the SANP or any other indirect costs of the SANP, but shall include the direct costs incurred in:

34.3.1 conservation management within the Makuleke Region;

34.3.2 the establishment and/or maintenance of infrastructure utilised solely in relation to the operational management of the Makuleke Region;

34.3.3 rehabilitation of the land where the SANP withdraws from existing infrastructure, which infrastructure is not required by the JMB; and

34.3.4 the administration of the JMB; and

shall be determined by the JMB upon information supplied by the CPA and the SANP. This operational management cost shall be borne by the SANP for an initial period of 5 (five) years from the commencement of this agreement, unless the CPA elects in its discretion to contribute thereto during that initial period. Upon termination of the initial 5 (five) year period, the CPA shall be liable for 50% (fifty percent) of the operational management cost of the Makuleke Region : Provided that, the CPA's contribution to the total operational management cost of the Makuleke Region shall not exceed 50% (fifty percent) of its net profit, unless the CPA at its own election decides otherwise.

#### 34.4

34.4.1 In the event that the JMB is, in terms of clause 25, unable to determine the operational management cost of the Makuleke Region in terms of clause 34.3, either party may refer the matter to deadlock resolution in terms of clause 38 : Provided that in the event that the matter is not resolved in terms of clause 38, the parties shall not be entitled to refer the matter to mediation, but either party may within 21 (twenty one) days of failing to resolve the dispute in terms of clause 38

declare a dispute in respect of the calculation of the operational management cost.

- 34.4.2 The parties undertake to refer the matter to an independent auditor agreed upon between the parties within 10 (ten) business days of a dispute being declared in terms of clause 34.4.1, and in the event of failure to agree upon an independent auditor within 5 (five) business days of the dispute being declared, the matter shall be referred to an independent auditor as determined by the President of the South African Institute of Chartered Accountants or its successor-in-title.
- 34.4.3 The independent auditor shall have the power to decide upon the procedure which he will follow in determining the dispute.
- 34.4.4 The independent auditor shall in making his determination as to the amount of the operational management cost act as an expert and not an arbitrator, and his decision shall be final and binding upon the parties.
- 34.4.5 The cost of the independent auditor shall be borne equally between the CPA and SANP, unless otherwise agreed in writing.

34.5 All costs relating to the establishment and maintenance of infrastructure providing solely for commercial activities of the CPA shall be borne by the CPA.

34.6 Subject to clauses 34.3 and 34.5, all costs relating to the establishment and/or maintenance of infrastructure utilised for both commercial activities and the operational management of the Makuleke Region shall be borne by the parties in such proportions as the JMB may determine, whose decision shall be final and binding upon the parties, subject to the proviso that in the event that the JMB is unable to determine the cost proportions that the provisions of clause 34.4 shall apply *mutatis mutandis*.

## 35. **INFRASTRUCTURE**

35.1 For so long as the SANP manages the Makuleke Region in terms of clause 28 it shall be entitled to use and enjoy the infrastructure situated on the land as may be necessary for the SANP to conduct its conservation management obligations in terms of clause 28, thereafter such use and enjoyment shall be subject to agreement between the parties.

35.2 Access by the JMB or the CPA to SANP infrastructure south of the Levuvhu river shall be subject to agreement between the parties.

## 36. **FREEDOM OF MOVEMENT**

36.1 The parties agree that, subject to zonation set out in the Master Plan, there shall be complete uninhibited freedom of movement of wildlife and tourists between the Makuleke Region and the remainder of the Kruger National Park. Notwithstanding the aforementioned, as access between the Makuleke Region and the remainder of the Kruger National Park shall be uninhibited:

36.1.1 the JMB will be consulted with regard to the entry requirements of the Kruger National Park at the Pafuri gate; and

36.1.2 the SANP shall, until agreed otherwise, control access to the Makuleke Region at the Pafuri gate.

36.2 All tourists entering the Makuleke Region shall be limited in their access to the Makuleke Region to roads and other areas designated for their use by the JMB and to the commercial activities developed by the CPA, or as determined by the JMB.

36.3 Mutual traversing rights between the Makuleke Region and the remainder of the Kruger National Park, shall be subject to agreement between the CPA and the SANP.

## 37. **BREACH OF CHAPTER 2**

Should either party ("the defaulting party") commit a breach of any of the provisions of Chapter 2 in such a manner as to cause such a fundamental breach of the relationship between these parties that it is not practically possible to remedy the breach, either at all or in a manner which could reasonably restore the relationship, the other party ("the aggrieved party") shall be entitled to refer the matter to mediation in terms of clause 43, and should the matter not be resolved through mediation to request the Minister to exclude the Makuleke Region in terms of clause 23.

### 38. **DEADLOCK**

- 38.1 In the event that the parties to the JMB are unable to reach consensus on any issue, which issue has been discussed at not less than two meetings of the JMB and has not been or is unlikely to be resolved by them, either party ("the initiating party") shall give written notice in writing of that matter ("the deadlock issue") to the other party. The notice shall fully describe the deadlock issue and the resolution which the initiating party requires.
- 38.2 Within 15 (fifteen) business days of the notice referred to in clause 38.1 being delivered, the chief executive officers of each of the CPA and SANP shall meet at a mutually convenient date, time and place to discuss the deadlock issue ("the discussion meeting").
- 38.3 In the event that the deadlock issue is resolved at the discussion meeting, the fact and detail shall be recorded in writing and a resolution shall be passed accepting such resolution at the immediately succeeding JMB meeting and no further procedure in terms of this clause 38 shall take place.
- 38.4 In the event that no discussion meeting is arranged within this period, or that the discussion meeting is not attended by both the chief executive officers of the CPA and the SANP, or that the discussion issue is not adequately resolved at the discussion meeting, either party shall be entitled to refer the matter to mediation in terms of clause 43.
- 38.5 The description "the deadlock issue" shall not prevent more than one issue being dealt with in terms of this clause 38 at the same time.
- 38.6 Nothing contained in this clause 38 shall be construed to mean that the parties to the JMB may refer an issue outside of the ambit of the JMB's powers in terms of this agreement to deadlock in terms of this clause 38.

### 39. **RESIDUAL POWERS OF THE SANP**

- 39.1 The parties agree that for the duration of this Chapter, and for so long as the land forms part of a national park in terms of Section 2B(1)(b) of the National Parks Act, that the SANP has a residual obligation to ensure that conservation management of the land takes place in terms of the provisions of the National Parks Act.
- 39.2 Accordingly, should the JMB fail to fulfil its obligations in respect of the conservation management of the land in terms of this agreement then the SANP shall be entitled to give written notice that such failure has occurred, and in such notice shall set out fully its reasons therefor.
- 39.3 Upon receipt of written notice in terms of clause 39.2, the CPA may within 21 (twenty one) business days:
- 39.3.1 give the SANP written notice of its denial of the SANP's allegation, setting out its reasons for such denial in full; or
  - 39.3.2 admit or concur with the SANP's allegation.
- 39.4 In the event that the CPA admits or concurs with the SANP's allegation, or fails to respond to the SANP's written notice in terms of clause 39.2, the SANP shall be deemed to be

authorised to exercise its residual power in respect of the conservation management of the land.

- 39.5 In the event that the CPA denies the SANP's allegation and/or claims, the parties agree to refer the issue to deadlock in terms of clause 38, and failing resolution thereof either party may refer the issue to mediation in terms of clause 43.
- 39.6 Notwithstanding any exercise of the SANP's residual powers in terms of this clause 39, the parties agree that in respect of any powers of the JMB unrelated to conservation management, that the JMB's powers in respect thereof shall remain unhindered.
- 39.7 After the SANP exercises its residual powers in terms of this clause 39, the CPA may, if it is of the opinion that the JMB shall be able to recommence its obligations in respect of the conservation management of the land, give notice of its opinion to the SANP, setting out fully the reasons for its opinion, and requesting the restoration of the SANP's residual powers in respect of the conservation management of the land to the JMB.
- 39.8 If within 21 (twenty one) business days of the CPA's notice the SANP fails to deny or refute the CPA's opinion in writing, together with its reason therefore, the powers of the JMB in respect of the conservation management of the land taken over by the SANP in terms of this clause 39 shall be restored to the JMB.
- 39.9 In the event that the SANP denies or refutes the CPA's opinion, the provisions of clause 39.5 shall apply *mutatis mutandis*.

#### 40. **TERMINATION OF CHAPTER 2**

In the event of the exclusion of the Makuleke Region from the Kruger National Park as a contractual park, for any reason whatsoever, the provisions of this Chapter shall cease to be of any further force or effect. Notwithstanding the aforementioned, the SANP may continue to serve in an advisory capacity to the CPA regarding the future use of the land.

## **CHAPTER 3 - GENERAL**

#### 41. **ASSIGNMENT OF RIGHTS AND OBLIGATIONS**

- 41.1 In terms of Section 238 of the Constitution of the Republic of South Africa, 1996, any executive organ of State, being a party to this agreement may assign any of its rights or obligations under this agreement to any other executive organ of State; provided that:
- 41.1.1 the right ceded or obligation delegated constitutes a power or function that is to be performed in terms of legislation by the organ of State being a party to this agreement; and
- 41.1.2 such assignment is consistent with the legislation in terms of which the power is exercised or the function performed.
- [Portion of clause before colon amended ito cl. 49.4 by para. 21 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*
- 41.2 The CPA shall, subject to the provisions of clauses 11, 12 and 14, be entitled to exercise full rights of ownership over the land, and accordingly may sell, alienate or otherwise dispose of, or hypothecate or otherwise encumber the land; provided that:
- 41.2.1 in the event that the CPA wishes to sell, alienate or otherwise dispose of or transfer the land it shall first offer the land to the SANP in terms of the Deed of Grant and clause 12 of this agreement;
- 41.2.2 in the event that the CPA wishes to mortgage or otherwise encumber the land it shall:

- 41.2.2.1 notify the SANP in writing of its intentions prior to entering into such arrangement of pledge, mortgage or encumbrance;
- 41.2.2.2 give the SANP a reasonable opportunity to discuss such intended encumbrance with the CPA; and
- 41.2.2.3 advise any third party taking mortgage of the land, or otherwise encumber the land, of the terms and conditions of this agreement and the Deed of Grant; and obtain such third party's written undertaking to:
  - 41.2.2.3.1 abide by the terms and conditions of this agreement, in toto, in the event that such third party acquires a real right over the land; and
  - 41.2.2.3.2 provide the SANP with a right of first refusal to purchase the land in the event that such third party wishes to sell, alienate or otherwise dispose of or transfer the land, on the same terms and conditions as set out in clause 12 hereof.

41.3 Save as provided for in this agreement, and in particular this clause 41, and save as may otherwise be agreed in writing by or on behalf of the affected parties to this agreement, no party shall be entitled to cede, assign or otherwise make over, transfer or alienate any of its rights or obligations in terms of this agreement to any third party whatsoever.

#### 42. **BREACH**

Should any party ("the defaulting party") commit a breach of any of the provisions of this agreement, excluding Chapter 2 hereof, then the other party ("the aggrieved party") shall be entitled to require the defaulting party to remedy the breach upon 21 (twenty one) business days' written notice to do so. If the defaulting party fails to comply with such notice, the aggrieved party shall be entitled to claim immediate performance by the defaulting party of all of the defaulting party's obligations, without prejudice to the aggrieved party's right to claim damages.

#### 43. **MEDIATION**

43.1 In the event of:

- 43.1.1 a dispute between SANP and the CPA, which the SANP and the CPA fail to resolve in terms of clauses 37 or 38; or
- 43.1.2 any other dispute between any of the other parties to this agreement; any party to the dispute may refer the matter to mediation.

43.2 If the parties to the dispute are unable to agree upon a suitable mediator to mediate the dispute within 10 (ten) business days after mediation has been requested, the mediator shall be nominated by the National Director of the Independent Mediation Service of South Africa ("IMSSA").

43.3 The dispute shall be mediated in accordance with the mediation procedures of IMSSA and the costs of the mediation shall be borne equally by the parties to the dispute, unless otherwise agreed.

43.4 In the event of the parties being unable to resolve the dispute through mediation, the mediator shall issue a letter to the parties to the dispute by hand, by post or by fax to the address or facsimile number nominated by such parties in clause 47, and in this letter shall record:

- 43.4.1 that mediation has failed; and
- 43.4.2 the issue in dispute as agreed between the parties to the dispute, and should the parties to the dispute fail to agree such issue, then the mediator shall record whether the issue in dispute is, in his opinion, primarily an accounting matter, or a legal matter or any other matter and the parties shall be bound by this opinion.

#### 44. **ARBITRATION**

- 44.1 In the event of parties to a dispute being unable to resolve a dispute by means of mediation, such dispute shall be submitted and decided by arbitration.
- 44.2 Such arbitration shall be held subject to the provisions of this clause:-
- 44.2.1 at Johannesburg;
  - 44.2.2 informally;
  - 44.2.3 as expeditiously as possible;
  - 44.2.4 otherwise in accordance with the provisions of the Arbitration Act no. 42 of 1965, as amended;
- it being the intention that if possible it shall be held and concluded within 21 (twenty-one) business days after it has been demanded.
- 44.3 The parties to the dispute shall agree on the question that the arbitrator will be asked to decide during the arbitration ("the terms of reference") within 5 (five) business days after the arbitration has been demanded, or such longer period as such parties may agree in writing.
- 44.4 The arbitrator shall be an independent person agreed upon between the parties.
- 44.5 If the parties to the dispute cannot agree upon a particular arbitrator in terms of clause 44.4 within 5 (five) business days after the arbitration is demanded, and the issue in dispute (as determined in terms of clause 43.4.2) is:
- 44.5.1 primarily an accounting or legal matter, any party to the dispute may approach the President of the Law Society of the Transvaal (or its successor-in-title) ("the President") to nominate the arbitrator. The President shall, after consultation with the parties to the dispute, and within 5 (five) business days after the matter is referred to him, or as soon as possible thereafter, nominate an experienced arbitrator which, where the issue in dispute is:
    - 44.5.1.1 primarily an accounting matter, shall be an independent chartered accountant of not less than 10 (ten) years standing; or
    - 44.5.1.2 primarily a legal matter, shall be a practising advocate or attorney with no less than 10 (ten) years standing;
  - 44.5.2 any other matter, any party to the dispute may approach the National Director ("the Director") of IMSSA (or its successor-in-title) to nominate the arbitrator. The Director shall, after consultation with the parties to the dispute, and within 5 (five) business days after the matter is referred to him, or as soon as possible thereafter, nominate an experienced arbitrator who shall be an independent person with the necessary skills and experience, and who need not be a practising advocate or attorney.
- 44.6 The costs of the arbitration shall be borne equally between the parties to the dispute, unless otherwise agreed.
- 44.7 The arbitrator shall have the power, in addition to the powers conferred on him by the Arbitration Act, 42 of 1965, to:
- 44.7.1 decide what the terms of reference are, if the parties to the dispute have not reached agreement in this regard in terms of clause 44.3;
  - 44.7.2 decide upon the procedure which he will follow at the hearing of this matter;
  - 44.7.3 join any other person on such conditions as he deems fit, provided that such person agrees in writing to be joined and to be bound by the provisions of this clause 44;
  - 44.7.4 make an order consolidating the disputes pending in separate proceedings where he deems such consolidation to be expedient and just;
  - 44.7.5 admit any evidence which he considers cogent and relevant to the matter being heard by him, whether or not such evidence would be admissible in a court of law;
  - 44.7.6 subject to any legal objection, examine any witnesses called by the parties to the dispute, on any matter relevant to the dispute;

- 44.7.7 make such enquiries as he considers necessary or expedient provided that he shall inform the parties to the dispute of all matters ascertained as the result of such enquiries, and in any other manner necessary act in an inquisitorial fashion;
- 44.7.8 rely on his own expert knowledge or experience in any relevant field;
- 44.7.9 propose to the parties to the dispute compromise settlements or agreements in disposal of the whole or portion of the issues at stake and give effect in his award to any settlements or agreements reached between the parties to the dispute;
- 44.7.10 notwithstanding the provisions of clause 44.6, on application by any one of the parties to the dispute, make an award as to costs which he deems appropriate in the event of non-appearance or late-appearance of a party at the arbitration proceedings, or in the event of the cancellation, postponement or adjournment thereof,  
provided that the rules of natural justice shall at all times be observed.
- 44.8 The arbitrator in making any decision in respect of a dispute shall have regard for the provisions of this agreement and in particular the provisions of clause 3 hereof.
- 44.9 Should any party to a dispute require a formal record of oral evidence at the arbitration, it may make application to the arbitrator who may direct the manner and extent to which the proceedings shall be recorded. In the absence thereof, the arbitration shall not be recorded in any formal manner, and the notes which the arbitrator or the parties to the dispute take during the proceedings shall not constitute a formal recording of the proceedings.
- 44.10 The arbitrator shall deliver his award within 21 (twenty one) business days after the conclusion of the hearing, or the submission of the last document to the arbitrator in the event that there is no hearing.
- 44.11 The parties to the dispute agree that the award shall be delivered to them by the arbitrator by post or fax to any of the addresses or facsimile number nominated by the parties in clause 47.
- 44.12 The parties to the dispute irrevocably agree that the decision in these arbitration proceedings:-
- 44.12.1 shall be binding on them;
- 44.12.2 shall be carried into effect;
- 44.12.3 may be made an order of any Court of competent jurisdiction.
- 44.13 Notwithstanding the provisions of this clause 44, should an arbitration award:
- 44.13.1 relate to the question of whether or not a decision of the SANP falls within the ambit of Section 12(1) of the National Parks Act, the SANP shall be entitled to approach a court of competent jurisdiction for a declarator order on the matter, if it is of the opinion that adhering to the arbitrator's award would unlawfully interfere with its statutory obligations; or
- 44.13.2 relate to the statutory obligations of any party to this agreement, such party shall be entitled to approach a court of competent jurisdiction for a declarator order on the matter, if it is of the opinion that adhering to the arbitrator's award would unlawfully interfere with its statutory obligations.

#### 45. **INTERDICTIONARY RELIEF**

Notwithstanding anything to the contrary contained in this agreement, no provision of this agreement shall be construed as prohibiting the rights of any party to approach a court of competent jurisdiction for the purposes of any interdictory or interim relief: Provided that such relief may only be sought on an urgent basis : Provided that the requirements for urgency are met.

46. **DEED OF GRANT**

46.1 The provisions of this agreement, read as a whole, shall be read as giving content to the conditions of title contained in the Deed of Grant; and for the purposes of interpreting such conditions of title, the provisions of this agreement shall be considered and given effect to.

46.2 Without detracting from the generality of clause 46.1, the parties agree to abide the provisions of this agreement in relation to any dispute pertaining to the conditions of title contained in the Deed of Grant.

47. **ADDRESSES**

47.1 Each party chooses the address set out opposite its name below as its address at which all notices, legal processes and other communications must be delivered for the purposes of this agreement.

47.1.1 **CPA**

Physical Address: Makuleke Tribal Authority Office, Ntlhaveni, Saselamani, 0928

Postal Address: P O Box 415, Saselamani, 0928

Telefax : (015) 851-1026

47.1.2 **SANP:**

Physical Address: 643 Leyds Street Muckleneuk, 0002

Postal Address: P O Box 787, Pretoria, 0001

Telefax : (012) 343-0155

47.1.3 **MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM:**

Physical Address: Fedsure Building, 315 Pretorius Street, Pretoria, 0002

Postal Address: Private Bag X447, Pretoria, 0001

Telefax: (012) 322-6287

47.1.4 **MINISTER OF PUBLIC WORKS:**

Physical Address: Room 632, Central Government Offices, Cor. Vermeulen and Bosman Streets, Pretoria, 0001

Postal Address: Private Bag X890, Pretoria, 0001

Telefax: (012) 328-3776

47.1.5 **MINISTER OF LAND AFFAIRS:**

Physical Address: 184 Jacob Mare, Pretoria, 0002

Postal Address: Private Bag X844, Pretoria, 0001

Telefax: (021) 45-6550

47.1.6 **MINISTER OF MINERALS AND ENERGY:**

Physical Address: 234 Visagie Street, Sinodale Centre, Pretoria, 0001

Postal Address: Private Bag X59, Pretoria, 0001

Telefax: (012) 322-8695

47.1.7 **MINISTER OF AGRICULTURE:**

Physical Address: 184 Jacob Mare, Pretoria, 0002

Postal Address: Private Bag X844, Pretoria, 0001

Telefax: (021) 45-6550

47.1.8 **MINISTER OF DEFENCE:**

Physical Address: Nossob Street, Erasmusrand, 0181

Postal Address: Private Bag X414, Pretoria, 0001

Telefax: (012) 347-0118

**47.1.9 MEMBER OF THE EXECUTIVE COUNCIL FOR AGRICULTURE, LAND AND ENVIRONMENT, NORTHERN PROVINCE:**

Physical Address: 69 Biccard Street, Pietersburg, 0699

Postal Address: Private Bag X9487, Pietersburg, 0700

Telefax: (015) 295-7046

47.2 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.

47.3 Any party may by written notice to the other party change its chosen address to another physical and/or postal address and/or telefax number, provided that the change shall become effective on the 10th (tenth) business day after the receipt of the notice by the addressee, or such later date as may be set out in such notice.

47.4 Any notice to a party contained in a correctly addressed envelope; and

47.4.1 sent by prepaid registered post to it at its chosen address; or

47.4.2 delivered by hand to a responsible person during ordinary business hours at its chosen address;

shall be deemed to have been received in the case of clause 47.4.1, on the seventh business day after posting (unless the contrary is proved) and, in the case of clause 47.4.2 on the day of delivery.

47.5 Any notice by telefax to a party at its telefax number shall be deemed, unless the contrary is proved, to have been received within 2 (two) hours of transmission where it is transmitted during normal business hours or within 12 (twelve) hours of the first business day after it is transmitted where it is transmitted outside those business hours.

**48. MUTUAL SUPPORT**

48.1 The parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this agreement.

48.2 Until such time as this agreement comes into full force and effect in terms of clause 4, the parties undertake to do all such things to perform all such acts and to take all such steps, *mutatis mutandis*, upon the terms and conditions of this agreement.

**49. GENERAL**

49.1 This document contains the entire agreement between the parties in regard to the subject matter thereof.

49.2 No party shall have any claim or right of action arising from any undertaking representation or warranty not included in this document.

49.3 No failure by a party to enforce any provision of this agreement shall constitute a waiver of such provision or affect in any way a party's right to require the performance of such provision at any time in the future, nor shall a waiver of a subsequent breach nullify the effectiveness of the provision itself.

49.4 No agreement to vary, add to or cancel this agreement shall be of any force and effect unless reduced to writing and signed by or on behalf of the affected parties to this

agreement, and then such variation, addition or cancellation shall be effective only in such specific instance and for the purpose and to the extent of which it is made or given.

49.5 As and when the parties initial any schedule or annexure and append it to this agreement, such schedule or annexure shall then be deemed to be incorporated into this agreement.

*[Clause 49.5 inserted into cl. 49.4 by para. 22 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

## 50. **COSTS**

All costs incurred in the drafting of this agreement shall be borne by the SANP. The Department of Land Affairs has agreed, in this particular case, to reimburse them with half of these costs subject to Treasury approval.

## 51. **GOVERNING LAW**

The entire provisions of this agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa. Furthermore the parties hereto hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the Witwatersrand Local Division of the High Court of South Africa in regard to all matters arising from this agreement.

## 52. **AUTHORITY**

In terms of the Restitution of Land Rights Act, 1994 the Minister of Land Affairs is empowered to bind the State to give effect to the terms and conditions of this agreement. The State is accordingly bound by the Minister of Land Affairs upon the terms and conditions of this agreement. Any of the Ministers or MEC referred to in clause 1, or his delegate, who sign this agreement hereby acknowledges that by signing this agreement:

52.1 such Minister or MEC is aware of and agrees to the terms of this agreement; and

52.2 it is aware of and acknowledges that the State (including such Minister, or MEC) is so bound and to give effect to the State's obligations concluded in terms of this agreement by the Minister of Land Affairs which require under any Statute, Regulation or law that such Minister or MEC undertakes any particular act or function.

THUS DONE AND SIGNED AT Ntlhaveni on this the 30th day of May 1998.

For and on behalf of

**THE COMMUNITY**

*Signed*

Name: **PHAHLELA JUTAS MAGAKULA**

Capacity: *Makuleke Community's Land Claims Committee Representative*

Who warrants his authority hereto

*[Name of party amended into cl. 49.4 by para. 23 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

THUS DONE AND SIGNED AT Ntlhaveni on this the 30th day of May 1998.

For and on behalf of

**SOUTH AFRICAN NATIONAL PARKS**

*Signed*

Name: *Mavuso Msimang*

Capacity: *Chief Executive Officer*

Who warrants his authority hereto

THUS DONE AND SIGNED AT Ntlhaveni on this the 30th day of May 1998.

For and on behalf of

**MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM**

*Signed*

Name: *S A Gerber*

Capacity: *Acting Director General*

Who warrants his authority hereto

THUS DONE AND SIGNED AT Ntlhaveni on this the 30th day of May 1998.

For and on behalf of

**MINISTER OF PUBLIC WORKS**

Signed

Name: Eileen E N Nkosi Shandu

Capacity: Deputy Minister of Public Works

Who warrants his authority hereto

THUS DONE AND SIGNED AT Ntlhaveni on this the 30th day of May 1998.

For and on behalf of

**MINISTER OF LAND AFFAIRS**

Signed

Name: Derek Hanekom

Capacity: Minister

Who warrants his authority hereto

THUS DONE AND SIGNED AT Ntlhaveni on this the 30th day of May 1998.

For and on behalf of

**MINISTER OF MINERALS AND ENERGY** Signed

Name: Susan Shabangu

Capacity: Deputy Minister

Who warrants his authority hereto

THUS DONE AND SIGNED AT Ntlhaveni on this the 30th day of May 1998.

For and on behalf of

**MINISTER OF AGRICULTURE**

Signed

Name: Derek Hanekom

Capacity: Minister

Who warrants his authority hereto

THUS DONE AND SIGNED AT Ntlhaveni on this the 30th day of May 1998.

For and on behalf of

**MINISTER OF DEFENCE**

Signed

Name: P D Steyn

Capacity: Secretary of Defence

Who warrants his authority hereto

THUS DONE AND SIGNED AT Ntlhaveni on this the 30th day of May 1998.

For and on behalf of

MEMBER OF THE EXECUTIVE COUNCIL FOR AGRICULTURE, LAND AND ENVIRONMENT, NORTHERN PROVINCE

Signed

Name: Tshenuwani Simon Farisani

Capacity: MEC: Agriculture, Land & Environment

Who warrants his authority hereto

## **CONDITIONS OF TITLE FOR TRANSFER OF STATE LAND TO MAKULEKE COMMUNAL PROPERTY ASSOCIATION**

*[Schedule 3 amended to cl. 49.4 by para. 25 of the written agreement between all the parties, signed in counterparts between 11 and 15 December 1998]*

- 1 Subject to the reservation of mineral rights in favour of the Republic of South Africa on the following terms and conditions:
  - 1.1 no mining and/or prospecting activities (as defined in the Minerals Act 50 of 1991) may take place in, on or under the land, save as provided in this schedule. Notwithstanding the aforementioned, but subject to the provisions of the Minerals Act, 1991, the excavation of sand, stone, rock, gravel, clay and soil by:
    - 1.1.1 the CPA for the purposes of building and other commercial activities;
    - 1.1.2 the JMB for the purposes of fulfilling its conservation management obligations in terms of the agreement; or
    - 1.1.3 the SANP for the purposes of fulfilling its obligations in terms of the agreement or the National Parks Act,shall not be prohibited : Provided that:
    - a). prior to any such activities being undertaken, an environmental impact assessment as may be required by law must be conducted and the undertaking of such activities must be approved by the competent authority in terms of such law; and
    - b). such activities are not in contravention of the Master Plan at the time that such activities are to be undertaken.
  - 1.2 In the event that the Republic of South Africa should wish to divest itself of the mineral rights in the land:
    - 1.2.1 the Republic of South Africa must first offer the mineral rights in the land to the CPA at a fair and reasonable price;
    - 1.2.2 the CPA shall be afforded a period of 90 (ninety) business days to consider the Republic of South Africa's offer and give its written acceptance of such offer;
    - 1.2.3 should the CPA not accept the Republic of South Africa's offer within 90 (ninety) business days, the Republic of South Africa may offer the mineral rights in the land to a bona fide third party at a price that is not less, and on conditions which are not more favourable to such third party than those at which the CPA was entitled to purchase the mineral rights: Provided that, as a condition to such sale the third party undertakes to compensate the CPA in respect of any loss of surface rights as a result of any mining or prospecting activities.
  - 1.3 In the event that the Republic of South Africa applies to a court of competent jurisdiction or other competent authority to amend, overturn, remove or expropriate the condition referred to in Condition 1.1, the Republic of South Africa agrees that:
    - 1.3.1 it shall consult with the CPA prior to making any such application;
    - 1.3.2 it shall procure that the CPA shall be given a bona fide and reasonable opportunity to participate with either the Republic of South Africa or any third party in the prospecting (as defined in the Minerals Act 50 of 1991) and/or mining (as defined in the Minerals Act 50 of 1991) of minerals in, on or under the land; and
    - 1.3.3 notwithstanding the provisions of this clause 1.3, the CPA and/or the SANP may in its/their sole discretion oppose any such application by the Republic of South Africa or any other interested third party, on any grounds it/they deem/s fit.
  - 1.4 Notwithstanding the provisions of clause 1.3, the Minister of Minerals and Energy undertakes that in the event that the condition referred to in clause 1.1 is overturned, amended, removed or expropriated in such a manner as to allow prospecting or mining to take place on the land, that he shall not grant any person permission to prospect or authorisation to mine the land if:

- 1.4.1 an environmental impact assessment as may be required by law has not been conducted or the approval by the competent authority in terms of such law has not been obtained; or
  - 1.4.2 in the opinion of the Minister of Minerals and Energy, after consultation with the Minister of Environmental Affairs and Tourism such activity is not in the greater interest of the land than as an area of conservation; or
  - 1.4.3 the person to whom the permission or authorisation is to be granted does not undertake to compensate the CPA in respect of any loss of surface rights to the land as a result of mining and/or prospecting activities.
- 2 Subject further to the following conditions:
- 2.1 no part of the land may be used for residential purposes insofar as such purposes would conflict with the land being maintained and utilised as an area of conservation and associated commercial activities;
  - 2.2 no part of the land may be used for agricultural purposes;
  - 2.3 the land is to be utilised and maintained solely for the purpose of conservation and associated commercial activities;
  - 2.4 no development of whatsoever nature may be made on the land prior to an environmental impact assessment as may be required by law being undertaken and the approval of the competent authority in terms of such law being obtained in respect of such development.
  - 2.5 the CPA may not sell or otherwise dispose of, alienate or transfer any of the land to any person, other than a person or body controlled by or beneficially owned by the CPA, without first offering the land to the SANP. Should the SANP not accept the CPA's offer within 45 (forty five) business days the CPA may, during a period of 180 (one hundred and eighty) business days after expiry of the 45 business day period, sell and transfer the land to a bona fide third party at no less than the price at and on conditions which are not more favourable to the purchaser than those at which the SANP was entitled to purchase the land.

### 3 DEFINITIONS

For the purposes of Conditions 1 and 2 above the following terms and expressions shall have the following meanings:

- "the agreement" the Settlement Agreement entered into between the CPA, SANP, the Minister of Environmental Affairs and Tourism, the Minister of Public Works, the Minister of Land Affairs, the Minister of Minerals and Energy, the Minister of Agriculture, the Minister of Defence and the Member of the Executive Council for Agriculture, Land and Environment, Northern Province on 30 May 1998 (as subsequently amended or may be amended by agreement between the affected parties), in respect of a land claim submitted to the Commissioner on Restitution of Land Rights, in terms of the Restitution of Land Rights Act, 1994 as amended;
- "associated commercial activities" subject to the provisions of the agreement, all activities, which are capable of being conducted on the land and are of an income producing or commercial nature; and which shall include but not necessarily be limited to eco-tourism; provided that such activities:
- 1. do not cause the material permanent or semi-permanent destruction of renewable or non-renewable resources within the Makuleke Region other than as permitted in terms of the agreement; and
  - 2. have been approved by the competent authority after an environmental impact assessment as may be required by law, where such

- approval is required in terms of clause 11.1.5 of the agreement; and
3. do not contravene the Deed of Grant; and
  4. do not contravene the provisions of the agreement, and in particular clause 31 thereof; and
  5. do not impact upon the conservation status of the land, except insofar as such activities may be regarded as sustainable use of the land without permanent or semi-permanent degradation of the land; and
  6. do not contravene the Master Plan as defined within the agreement; and
  7. are to be associated with the conservation of the land;
- "business day" every day of the week excluding Saturdays, Sundays and official public holidays of the Republic of South Africa;
- "conservation" the conservation and study of wild animals, flora and fauna and objects of geological, archaeological, historical, ethnological and other interests in such a manner as the land shall be retained in its natural state, as far as may be practical and for the benefit of enjoyment of the community and visitors;
- "CPA" the Makuleke Communal Property Association (Registration Number . . . . .), registered in terms of Section 8 of the Communal Property Association Act, 1996 as amended, or its successor-in-title;
- "JMB" the Joint Management Board established in terms of clause 25 of the agreement;
- "the Master Plan" the Master Plan as determined in terms of the agreement;