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Land claims and the pursuit of co-management on four protected areas in South Africa

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ABSTRACT

Successful land claims on protected areas by previously disenfranchised communities often result in co-management agreements between claimant communities and state conservation agencies. South Africa, in particular, has pursued co-management as the desired outcome of land claims on its protected areas. We review four cases of co-management on protected areas in South Africa, and reflect on the appropriateness of the pursuit of co-management as the preferred outcome of land claims. Despite promises of pro-poor, democratically informed management, the practical experience of co-management has seen the continuation of the status quo in terms of conservation, with very few material benefits for claimant communities and limited sharing of responsibilities and decision-making functions. The findings underscore two deep challenges facing co-management in cases of land claims worldwide. First, during land claims negotiations in cases involving protected areas, the state cannot be expected to represent the best interests of its citizens (the land claimants), while simultaneously seeking to meet national and international obligations for protected area coverage. Second, the concept of democratic co-management may sit uncomfortably beside the realities of managing loss-making protected areas with ever-shrinking conservation budgets. Where co-management agreements have already been signed, ensuring that new landowners do indeed have a say in management should form the driving focus for co-management practice going forward.

Introduction

Co-management has occupied centre stage in natural resource management thinking and practice since the 1990s. Throughout these decades, and across several countries, the approach has often been associated with land claims by previously disenfranchised communities on protected areas (e.g. Berkes, 1994; Hill and Press, 1994; Kepe, 2008; Reid et al., 2004; Tofa, 2007). Caught in the predicament of needing to redress past injustices, while at the same time respond to national and international obligations to maintain, and indeed expand, protected areas, co-management became seen by many countries as the answer to their conservation and development challenges.

The roots of co-management's wide-ranging appeal can be found in parallel global discourses that began to dominate international and national policy in the 1980s and 1990s, and which remain dominant to this day (see Mansuri and Rao, 2004 for a review). During the 1980s, growing democratic and development discourses argued for greater civic participation in decision making (Chambers, 1994), and for rights-based approaches that empowered the poor and put access to resources at the centre of tackling poverty (Sen, 1981, 1999). Simultaneously, theoretical developments in the field of economics, which had comfortably accepted as incontrovertible truth Hardin's postulation of the Tragedy of the Commons (1968) for two decades, were beginning to shift towards the idea that community-based bodies could effectively manage common pool resources under certain conditions (Ostrom, 1990). These developments occurred against the backdrop of growing dissatisfaction with centralised command and control of natural resource management (Holling and Meffe, 1996), referred to in other circles as fortress conservation (Adams and Hulme, 2001), which was giving way in ecology to approaches that emphasised stakeholder engagement and learning based approaches such as adaptive management (Lee, 1993; Walters and Holling, 1990). Rights-based development discourses became ever more associated with conservation discourses when first the World Conservation Strategy (1980) and then the Bruntland Commission (1987) highlighted the link between poverty and conservation and called for synergy between conservation and development. The Rio Earth Summit in 1992 concretised the notion of community involvement in natural resource management at a global policy

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level. Decentralised or participatory decision making is perhaps one of the most important pillars that informs, shapes, influences and directs co-management design.

From the milieu of these subtle shifts, some political and ideological, some theoretical – very few of them emerging out of practice – a co-management narrative began to emerge and gain currency. This narrative was based on the idea that collaborative forms of management would help solve open access dilemmas by creating local controls over resource use; that it would be pro-poor and therefore reduce poverty; that it would promote democratic principles; and that it would help solve many of the inadequacies of centralised decision making (Blaikie, 2006). Co-management became understood as an arrangement of joint decision making between the state and local communities (Berkes, 1994), where these actors negotiate, define and guarantee equitable sharing of the management functions, entitlements and responsibilities for a given territory or set of natural resources (Borrini-Feyerabend et al., 2000). Co-management is thus distinguished from other forms of participatory natural resource management by the presence of power sharing and partnerships (Carlsson and Berkes, 2005). Such power sharing arrangements take many forms, and this variation is often depicted along a continuum (e.g. Pretty et al., 1994; Fabricius et al., 2007). At the one extreme of the continuum are arrangements in which there is consultation with local communities but where full control remains in the domain of the state agency. At the other end of the continuum, are arrangements in which full control is invested in local communities and there is very little contribution by state agencies. Power sharing arrangements at either end of this continuum, and everywhere in between, are referred to as 'co-management'. Experience has shown however that co-management arrangements tend to be complex, involving many more stakeholders than just the state and local communities (Carlsson and Berkes, 2005). Critically, experience has shown that co-management is not an end point in itself, but is rather a process that involves ongoing institution building, trust building, problem solving, knowledge generation and learning (Berkes, 2009).

This growing level of practical experience with co-management has meant that the narrative of co-management has not gone unquestioned. There has been widespread criticism that in practice co-management tends to gloss over the institutional complexities posed by common pool resources, and, in Africa at least, historical legacies of dispossession and state intervention into natural resource management (Adams and Hulme, 2001; Ainslie, 1999; Campbell et al., 2001). Reflecting on experiences in New Zealand, Brockington et al. (2008: 110) offer deeper criticism in cases of land claims: "*Co-management. . .can be a means by which states empower marginalized and disadvantaged groups. But it is also a means by which state control is extended and confirmed. It can restore relations to country and to lands indigenous people value, but rarely on terms they determine*".

Despite these criticisms, the co-management narrative has found a ready audience in, particularly, post-apartheid South Africa, and gained a strong foothold in South African policy development immediately following the turn to democracy in 1994. The pursuit of co-management in the country is nowhere more evident than in the way in which South Africa's land redistribution programme has unfolded in the context of land claims on protected areas.

Land redistribution and co-management in South Africa

State sponsored forced removals of people from their land go back to the 1600s in South Africa, but became part of formal state policy during the Apartheid era (Walker et al., 2010). In many cases, forced removals occurred on land considered important for conservation, and large numbers of people were forced to give way for the creation of protected areas (Curruthers, 1989; Mabunda et al., 2003). With the arrival of democracy in 1994, land restitution became seen as a means for redressing these, and other, past injustices, while at the same time improving tenure security, contributing to land redistribution more generally and supporting rural development. Land restitution thus became part of a broader programme for national redress, reconciliation, and reconstruction (Walker et al., 2010). The Restitution of Land Rights Act (22 of 1994) was the first law passed by the first democratically elected government of South Africa (Hall, 2010). The institutions created by this Act were based on lessons learned in Canada, Australia and New Zealand, where similar post-colonial land restitution processes had been followed. All claims were expected to be settled by 2011, and although the state failed to meet this deadline, it is pushing hard to conclude all land claims as quickly as possible (Hall, 2010). Most of the outstanding claims are for contentious tracts of largely rural land, which include a large number of protected areas.

Successful land claimants can choose from a number of options for settlement of a claim: restoration of the original property, provision of alternative land, financial compensation, or a combination of these three. For land claims on protected areas the legislation also makes provision for the possibility, in exceptional circumstances, of legal de-proclamation of protected area status in order that successful claimants can return to their restored land and manage it as they wish. In practice, and through trials in court, it has become clear, however, that while claimants have an enforceable right to restitution (in the form of, for example, the provision of alternative land or financial compensation), they do not have an enforceable right to restoration of their original property (Hall, 2010). This has become particularly obvious in the case of land claims on protected areas where the outcomes of claims have overwhelmingly featured the restoration of the land to the claimants, based on an agreement that claimants *will not reoccupy the land*. This trend can be traced to a Memorandum of Agreement (MoA) that was signed in 2007 between national ministers, which stated that protected areas under land claim *will remain under conservation in perpetuity as a non-negotiable element of the settlement of claims*. The MoA further stipulated that co-management *must* take place in cases where claimants opt for restoration of the land. This therefore excluded, or at least reduced the scope for, other possible management outcomes such as lease agreements between the state and new landowners.

As of July 2010, there were 139 protected areas with land claims either lodged against them or settled throughout the country, and in roughly 90% of these cases the claimants have opted for restoration of the land as their preferred settlement option (Department of Rural Development and land Reform, 2010). This constitutes roughly a third of all protected areas in the country and, when considered in conjunction with the Memorandum of Agreement, and the urgency with which the state is currently attempting to finalise all outstanding claims, this means that a third of the country's conservation estate is likely to be under co-management in the next five years.

However, to date a review of multiple cases of co-management following land claims on protected areas has not been conducted. This is a significant gap given that this management approach is likely to become the cornerstone of protected area management in South Africa in the very near future. As a step towards opening up a frank conversation about this situation, we review documented cases of co-management after successful land claims on protected areas in South Africa, and reflect on the appropriateness of the State's pursuit of co-management as the preferred outcome.

Case studies and analytical approach

We use four well-documented cases of co-management of protected areas following successful land claims by surrounding