Public participation principle in the management of the Kruger National Park conservation area to include the peripheral communities

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SUMMARY OF THE EVALUATION

In commemorating this historic day, we do not forget those who had to surrender their local land to make it possible, often through forcible removal, nor those who for generations were denied access to their heritage except as poorly rewarded labour. We recall these threads in our history not to decry the foresight of those who established the park, nor to diminish our enjoyment of it. We do so rather to reaffirm our commitment that the rural communities in and around our parks should also benefit from our natural heritage, and find in it an opportunity for their development.¹

The Kruger National Park is a national park in the north of South Africa. The park itself was such proclaimed in 1898, and through the years expanded by incorporating surrounding land into the park. In this process many communities were evicted from the land that they have been living, with these communities being excluded from using the natural resources they rely on.

In order to address the past inequalities and the forcible removals, the restitution program aimed at land reform enabled certain communities to claim back the land that they were evicted from. Some communities got their land returned on the condition that it will be used for conservation purposes. Communities that did not lodge a claim, or did not comply with the requirements of restitution, still live on the periphery of the park where they were moved. These communities often live in extreme poverty and off government grants.

In terms of the South African Constitution, there should be legislative and other measures to “secure and ecologically sustainable development and use of natural resources while promoting justifiable economic and social development”. The focus of this study is on the public participation principle in the management of the Kruger National Park conservation area (natural resources) to include the peripheral communities (promoting justifiable economic and social development).

The principle is provided for in various legislation, most notably the National Environmental Management Act² (NEMA) and the National Environmental Management: Protected Area Act³ (NEM:PAA). While the former lays down the general principles that need to be adhere to in all environmental management in South Africa, the latter provides for certain specific mechanisms on how this can be done.

From a desktop study and literature analysis based on certain criteria, it seems that while some of these measures are followed, it does not necessarily involve the participation of the whole community, nor does it provide for meaningful participation. Our study also indicated that the

² 107 of 1998.
³ 57 of 2003.
experience is different for different communities. Land reform and traditional leadership institutions add complexities to the situation.

What became clear from the study is that lawyers are not adequately equipped with the skills to do an objective evaluation. A desktop study is also extremely useful to analyse existing knowledge and to draw together the information from different reports, but there are remaining gaps that can only be filled with qualitative fieldwork.

NATURAL RESOURCE GOVERNANCE ISSUE

The IUCN defines a protected area as

a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long term conservation of nature with associated ecosystem services and cultural values.

Protected areas include national parks, wilderness areas, community conserved areas and nature reserves, and are regarded as the core of biodiversity conservation while at the same time contributing to people’s livelihoods especially at local level. It is regarded as the core of efforts to conserving nature and the resources it provides us, such as food, water, medicine and protection from the impacts of natural disasters.\(^4\)

The Kruger National Park is such a protected area and covers around 20,000 km\(^2\) of land in the north of South Africa, bordering Mozambique and Zimbabwe. Many communities live in communal areas that border the park, alongside luxury private game reserves.\(^5\)

Proclaimed in 1898 as the Sabie Game Reserve by the president of the Tranvaal Republic, Paul Kruger, the proposed need for the park was to protect the animals of the Lowveld.\(^6\) The KNP comprise of six ecosystems that are home to 517 bird species, 1982 plants and 147 mammals, many endemic to the KNP or endangered. Its cultural heritage includes bushman rock painting and various archeological sites in the park.\(^7\) While only KNP staff lives inside the park, there are more than 2 million people living on the periphery. Most of the people on the boundary live in poverty and are heavily

\(^7\) R Tanner ‘Legitimacy and the use of natural resources in Kruger National Park South Africa’ (PhD thesis, University of Montana 2007) 12.
dependent on natural resources (such as wood) are increasingly exhausted outside the park.\(^8\)

During the establishment of the park and thereafter, various indigenous communities were removed from the land to make way for conservation. It was proclaimed a National Park in 1926 under the National Parks Act, and started operating as a National Park in 1927. The eviction of communities from the land leads to the restriction to access to the resources of the people’s livelihood that were now fenced of inside the park.\(^9\)

Being neighbors come with certain problems. Some of the problems mentioned by communities are losing livestock to lions that stray way from the park or whose cattle, when straying in the park, are killed. There are similar stories about crocodiles that relocated to villages and have eaten people. The restriction of access also means that the community cannot get fish or Mopani worms to eat, or timber and grass to build houses, from the park. In fact, community members often complain that when they fish illegally in the park, they are imprisoned or fined. The access to rare medicinal plants is likewise restricted.

SANParks, on the other hand, is concerned about the poaching of small animals by some community members, the collection of firewood and the indiscriminate fishing in the river that threatens endangered species. They acknowledge the challenges with regard to wild life and domestic animal interaction.\(^10\)

The land reform program in South Africa intensifies these management challenges. About 45% of the KNP is currently subject to land restitution claims, instituted by communities who lost a right in the land after 1913 due to racially discriminatory laws or practices.\(^11\) In many instances the state is only willing to restore the land to the communities if they engage with SANParks in drawing up co-management plans and promise to use the land for conservation. While many communities do not seem to take issue with this, the question of how conservation can be done while drawing benefits and alleviating poverty often arises.\(^12\) To ensure that such a process is successful,

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\(^9\) M Mkhacani ‘An analysis of the livelihoods of the Muyexe community located along the Kruger National Park in Limpopo province’ (MPhil dissertation, University of Johannesburg 2005) 29.

\(^10\) M Mkhacani ‘An analysis of the livelihoods of the Muyexe community located along the Kruger National Park in Limpopo province’ (MPhil dissertation, University of Johannesburg 2005) 40.


participation from communities in the management of the park becomes crucial.

In 1994 the National Parks Board established the Social Ecology Unity as a belated acknowledgement that the South African communities are the custodians of national parks, and that successful nature conservation can only be achieved if local communities have access to parks and are fully involved in the decision-making process of the parks.\textsuperscript{13}

Legislation was promulgated a few years later to give effect to co-management of parks. The National Environment Management: Protected Areas Act No 57 of 2003 (NEM: PAA) requires South African National Parks to draw up management plans for all national parks after consulting stakeholders. This management plan must inform management at all levels, streamline procedures, provide guidance for budget expenditure, build accountability into the management of the parks and provide for capacity building and future thinking.\textsuperscript{14} The drawing up of a conservation plan is envisioned to be consultative, by adhering to the five principles of good governance identified at the 5\textsuperscript{th} World Park Congress, which include legitimacy and voice (participation), direction (human development and taking into account historical, cultural and social complexities) en accountability (to the public and institutional stakeholders).\textsuperscript{15}

SANParks core mandate is the conservation and management of biodiversity through National Parks. It proposes to do so through a people centered approach that includes a focus on cultural heritage and the promotion of nature-based tourism, as well as socio-economic development programs. It recognizes its duty to engage stakeholders in the decision-making process, and proposes to do so in line with legislation and guiding principles. The policy also recognizes that this is an ongoing process.

The focus of this project is on the effectiveness of public participation of the communities in and surrounding the KNP in South African. In order to do this it is necessary to explain what is understood by “public participation”, and to identify elements of the principle that can be measured.

THE LEGAL PRINCIPLE BEING EVALUATED

PUBLIC PARTICIPATION

Public participation can be defined as the effective and full involvement of all social actors in socio-political decision-making processes that potentially

\textsuperscript{13} National Parks Board 1995 p 31.
\textsuperscript{14} SANParks Management Plan Policy Framework (2006)
\textsuperscript{15} SANParks Management Plan Policy Framework (2006)
affect the communities in which they live and work.\textsuperscript{16} Although public participation may be manifested in diverse ways such as democratic accountability, direct participation and the availability of judicial review, it has been argued that public participation which predominantly relies on access to information is necessary to assert \textit{inter alia} a person’s right to live in an environment that is adequate to human health and well-being.\textsuperscript{17} Public participation in sustainable tourism has also been coined as “local control”. Local control in this context means

To engage and empower local communities in planning and decision making about the management and future development of tourism in their area, in consultation with other stakeholders.\textsuperscript{18}


Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

To give guidance for the implementation of this principle, the Bali-guidelines\textsuperscript{19} were developed to help with the development of national legislation on access to information, public participation and access to justice. A discussion of the relevant guidelines is necessary, as this is the base on which we have developed our methodology. The guidelines are divided into three sections: access to information, public participation and access to justice.

The “access to information” guidelines make it clear that people are entitled to affordable, effective and timely access to environmental information even without having to prove a legal or other interest.\textsuperscript{20} The guidelines place specific requirements on the content of this information,\textsuperscript{21} and states are

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\textsuperscript{17} J Ebbesson “Public Participation” in D Bodansky, J Brunnée and E Hey (eds) \textit{The Oxford handbook of International Environmental Law} (Oxford University Press 2007).
\textsuperscript{18} UNWTO 2007 Sustainable tourism indicators and destination management 72.
\textsuperscript{19} UNEP ‘Guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters’ SS.XI15 (Washington DC 26 February 2010)
\textsuperscript{20} Guideline 1.
\textsuperscript{21} Guideline 2.
\end{flushleft}
encouraged to provide means for and encourage effective capacity-building to facilitate access to environmental information.\textsuperscript{22}

As far as “public participation” is concerned, the State should ensure “early and effective public participation”\textsuperscript{23} where the members of the public are informed of their opportunities to participate early in the decision-making process. Such participation must be made in a transparent and consultative manner, where the members of the public are given adequate opportunity to express their views.\textsuperscript{24} The information must be relevant for decision-making, objective, understandable, timely and effective.\textsuperscript{25} The comments of the public must be taken into account,\textsuperscript{26} and when policy is formulated or legally binding rules developed, the public must also have a stake.\textsuperscript{27} For the public to participate meaningfully, capacity-building and environmental education and awareness is desired.\textsuperscript{28}

As far as “access to justice” is concerned, states should ensure that when access to information is refused, there is recourse to law,\textsuperscript{29} and that the public can challenge substantive or procedural issues with regard to a decision, act or omission relating to public participation in decision-making.\textsuperscript{30} This access to justice should not be prohibitively expensive,\textsuperscript{31} with the state providing a proper framework for adequate and effective remedies that includes compensation and restitution.\textsuperscript{32} States should also encourage the development of alternative dispute resolution mechanisms where appropriate.\textsuperscript{33}

On the African continent, the African Commission on Human and People’s Rights\textsuperscript{34} reiterated that participation should be considered as effective participation,\textsuperscript{35} mere notice of an impending project as a \textit{fait accompli} will not be regarded as effective participation as the affected community did not have

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\textsuperscript{22} Guideline 7.  \\
\textsuperscript{23} Guideline 8.  \\
\textsuperscript{24} Guideline 9.  \\
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\textsuperscript{26} Guideline 11.  \\
\textsuperscript{27} Guideline 12.  \\
\textsuperscript{28} Guideline 13.  \\
\textsuperscript{29} Guideline 15.  \\
\textsuperscript{30} Guideline 16.  \\
\textsuperscript{31} Guideline 20.  \\
\textsuperscript{32} Guideline 21.  \\
\textsuperscript{33} Guideline 26.  \\
\textsuperscript{34} Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya, African Commission on Human and People’s rights 4 February 2010. When the Endorois community was deprived of their ancestral land to make way for a game reserve and ruby mining, they objected. One of the grounds of their objection was the fact that they do not have a right to participate in the management of their ancestral land.  \\
\textsuperscript{35} Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya, African Commission on Human and People’s rights 4 February 2010 par 281.
\end{flushleft}
the opportunity to influence the outcome. The Commission notes that an equal bargaining position is a requirement of effective participation. Literacy and understanding of the project at hand are key-ingredients to providing an equal bargaining position. The Commission provides further important guidance to be taken into account in applying the principle of public participation explaining that:

[t]his duty requires the State to both accept and disseminate information, and entails constant communication between the parties. These consultations must be in good faith, through culturally appropriate procedures and with the objective of reaching an agreement. [own emphasis]

In South Africa the right to public participation therefore has on the one hand a clear element of participatory democracy, in that people must be involved in the creation of legislation and policy. This entails more than merely allowing people to participate, and requires that the state must facilitate public participation by “road shows, regional workshops, radio programs and publications aimed at educating and informing the public about ways to influence Parliament”.

The South African Constitution proclaims that South Africa is a democratic state with a "multi-party system of democratic government, to ensure accountability, responsiveness and openness". The Constitution itself also contains various mechanisms in the National and Provincial government to enable citizens to participate in law making. Linked to this are general outreach programs that seek to educate and mobilize rural people to take part in the legislative process. This is an important right to have at the creation of legislation, but our focus is on community participation during the implementation of environmental legislation that deals with the management of resources.

Various legislative measures capture the public participation principle. In terms of section 2(4)(f) of the National Environmental Management Act (NEMA), an act that provides the overarching framework for environmental management in South Africa “participation of all interested and affected

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39 Doctors for Life International v Speaker of the National Assembly 2006 (12) BCLR 1399 (CC)
40 Please see annex at the back of the document.
41 107 of 1998.
parties in environmental governance must be promoted”. This includes the opportunity to develop the understanding and acquiring the skills and capacity “for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured”. Section 2(4)(g) of NEMA makes specific reference to the inclusion of traditional knowledge.

Legislation also recognizes that that biodiversity governance is not restricted to the sustainable use of the biological diversity, but also includes fair and equitable sharing of benefits that arises from the conservation and utilization of the resources. With this in mind, the co-management and benefit sharing of biological diversity management becomes important. Communities must be given the opportunity to participate in the management of biological diversity, with specific focus on enabling the relatively disempowered.42

Based on the general introduction to the principle of public participation one can expect the public participation principle to 1) enhance access to information that is necessary for effective participation, 2) mean early and effective participation by all people who are affected by the decisions, and 3) include effective access to justice and administrative proceedings.

Point 1 requires the information to be available, objective, up to date, timely and effective to enable in a language that is accessible to all levels of governance. This refers not only to information that the community have access to enable them to participate in law or decision making, but also on the duty of the law and policy makers to make the information accessible and understandable. This will also entail making using of the local knowledge of the communities to inform them before they make decisions, such as knowledge on weather patterns or plant use.

Point 2 specifically focuses on enabling disempowered people and marginalized communities to share the benefits arising from conservation by including them in planning and decision-making in conservation that affects communities. It refers to the participation in management of the resources, in that the community members must be consulted when decisions are made. These decisions, for example, can destruct the biodiversity on which their livelihoods depend, or exclude them from biodiversity (when fences are put up or when they are fined for using resources).

Point 3 refers to access to justice. This access to justice is not restricted to courts, but refers to the duty on states to ensure that when access to information is refused, communities have recourse to law. This access is either courts or independent bodies.

These points provide the basis for the methodological inquiry discussed below.

42 This is contained in various legislation, especially s 42 NEM: PAA. See the legal register attached at the end of the document.
THE METHOD OF EVALUATION

At present moment we only have a desktop study, making use of existing literature and studies on the topic, since much have been written on the setting up and management of these areas, mainly from a sociological, political science and environmental management perspective. These studies, to a great extent, help to gain insights on how things “pan out in practice”, which enables us to draw conclusions on the effectiveness of the public participation principle as referred to above.

In addition to this various policy documents and treaties, as well as management plans were consulted to provide a framework for understanding what some of the parties, especially those formally in charge of governance, view the extent of public participation to be.

By using the Bali-guidelines, we devised a matrix in which to measure the elements identified above.

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<th>Area</th>
<th>Public participation in the management of the Great Limpopo Transfrontier Conservation Area (to include peripheral rural communities): South Africa</th>
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<tr>
<td></td>
<td>Access to information</td>
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<td></td>
<td>Available</td>
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<td>X community</td>
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<td>Fait accompli</td>
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This matrix identifies certain elements that can be measured. First, under access to information, the focus is on available, objective, updated, timely and effective information. The information can either be present, not present, or, to use the Endrois terminology, *fait accompli*, which means that it is present, but only to satisfy the requirement of being there rather than to actively encourage participation.

Public participation is divided between capacity building, and the process itself. Under capacity building the focus is on environmental education and
awareness raising. The process itself is required to be transparent, consultative, an opportunity to express views, and the assurance the comments are taken into account.

Lastly, as far as access to justice is concerned, the focus is on access to courts or independent bodies.

It should be noted that when looking at the problem it is recognized that there are possibly multiple agencies involved in the management of the park: international agencies, national government, the Department of Environmental Affairs, SANParks and communities. As far as the stakeholders are concerned, it is communities, landowners, and the wider community. From the outset it should also be made clear that these communities are complex entities in themselves, with different agencies and stakeholders that are constantly changing.43

SANParks has a stakeholder participation in developing park management plans. Here the stakeholders are identified as being local communities, non-governmental organizations, special interest groups, business partners, private landowners and local government representatives. Additional community leaders that are not involved in the Park Forum can take part in the planning workshops. For stakeholders to take part in management the stakeholders must register, and it is required that the stakeholders attend workshop and meetings. Since 1 June 2012 SANParks implements a 1% community levy on all reservations. Although hailed as a great initiative, a local municipal councilor claims very little participatory involvement from the communities were required so far to determine how this will be spent.44

On the peripheral area land tenure is mostly based on communal tenure (boundaries inherited from the apartheid homelands), where on ground level the traditional leaders are still responsible for allocating land to the members of the community. In this sense they wield authority. Some of the reports note that are a few traditional leaders that strictly control the collection of firewood and carefully allocate the grazing rights of cattle owners, something that has an obvious positive impact on biodiversity governance. From the interviews conducted by Malan45 it seems that people on community level have more faith in traditional leaders to manage biodiversity in a sustainable manner, than politically elected officials.

There are various communities that are familiar in the region, and the main focus will be on these communities’ experience as contained in literature. Some of the communities’ situations are briefly sketched to place the


44 Suzie Malan ‘Improved decision-making processes for the transfrontier conservation areas of South Africa’ (PhD, University of British Columbia 2015) 65.

45 Suzie Malan ‘Improved decision-making processes for the transfrontier conservation areas of South Africa’ (PhD, University of British Columbia 2015) 62.
discussion in context.

The Makuleke, were awarded their land in terms of the land restitution process, in the park (the Pafuri triangle). The land in the Pafuri triangle is important for conservation purposes: 75% of the KNP’s biodiversity is found on the land, and it lies in centre of the transfrontier conservation area between Zimbabwe, Mozambique and South Africa. The community was forcibly removed from the land in 1969, and the land was incorporated into the park. The Makuleke won their restitution case on the basis of an agreement that the land will be transferred to their CPA and used as eco-tourism, while the community will not live on the land (although they are now owners), and instead will remain in the area where they were relocated in 1969. The conditions attached to the restitution of the land means that the Makuleke community can only use the land for conservation purposes for the next ninety-nine years. The community also entered into a contractual national park agreement with SANParks, to be managed by a Joint Management Board consisting of three community representatives and three SANParks representatives.

The second community, the Mnisi community, is a good example of the complexity within communities as far as management of land is concerned. The Mnisi Tribal Authority is situated at the Manyeleti Game Reserve that borders the KNP. The Tribal Authority signed an agreement that the communities will form part of the ecotourism management initiative and will thus directly benefit from the commercialization of the game reserve. Many of the communities that fall under the Mnisi Tribal Authority sees the game reserve area as potential grazing, cultivating and wood collection area, and sees the wildlife as limited use and in conflict with the domestic animals.

The Dixie community, instituted a land claim on land adjacent to the Manyeleti reserve. The Dixie community claims that they do not fall under the Mnisi Tribal Authority (the Tribal Authority thinks otherwise) and do not recognise the local chief Mnisi as their chief. Despite this controversy, Chief Mnisi

49 Mamolotje Charles Eric Mametja ‘Local community participation in tourism in the case of the Manyeleti Game Reserve, Limpopo Province and South Africa’ (M Inst Agrar dissertation, University of Pretoria 2006) 43.
51 Aninka Claassens & Moray Hathorn ‘Stealing restitution and selling land allocations: Dixie, Mayaeyane and Makuleke’ in Aninka Claassens and Ben Cousins Land, power & custom (UCT press 2008) 320. This history is fairly complex, and the chapter in this book lays it in detail.
negotiated deals with investors in anticipation of the restitution award. This has fairly complex consequences for public participation by the communities that will be discussed below.

The Makuya Nature Reserve, bordering the northern part of the Kruger close to the Makuleke community, was “donated” to the Venda government (a homeland during apartheid) in 1987. The fence between the reserve and the KNP was dropped. There are three communities that live on the border of the reserve. Before the land was donated to be a nature reserve, it was used for grazing, collecting thatching grass and medicinal plants, hunting and fishing. The park is managed by a Forum that consists of provincial government officials, informally the KNP and a commercial division of the provincial tourism and parks department and three communities. The communities can each send 10 members to the Forum. The election of these 10 members are left to the communities.

It is the experience of the communities as documented in previous studies that will be considered.

Ideally the desktop study should be supplemented with our own, specific, qualitative research in the form of open-ended interviews focusing on the above communities, and specific interviews with various stakeholders in order to find out how money is allocated and how decisions are made. In this sense the desktop study serves as a meta-review in order to determine the specific problems that need focusing on. To this end this study provides a platform to draw up questionnaires to send to the relevant spheres of government, community leaders (where possible), park officials and NGOs that work in the region. Site visits will be helpful to collaborate the questionnaire data and to understand the community experience. With the university ethical clearance process being cumbersome and due to the time constrained, this was not possible before the deadline of this report.

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HOW EFFECTIVE IS THE LAW?
POINT 1: ACCESS TO INFORMATION

Available

In general, when a community wish to run a business on or co-management of the land that is restituted, the regional land claims commissioner that deals with the claim will often inform them of the options. There seems to be a lack of feasibility studies and management plans to help the communities make informed decisions about the best land use option for the land that will be restituted.\textsuperscript{55}

The Welverdiend community that lives in the vicinity of the Mnisi tribal authority area receives advice from the Wits Rural Facility (A facility of the Witwatersrand University) and the Southern Africa Wildlife College. Some of the Welverdiend community members attend the South African Wildlife College where they complete courses in community-based ecotourism, conservation management, environmental education and tour guiding.\textsuperscript{56}

Objective

Since it is often the regional land claims commissioner that advises a community on the possibilities of the land, it is perceived that the communities do not receive objective information for effective participation. The commissioners are often biased to restoring the land, and may therefore gloss over the challenges of such ventures.\textsuperscript{57}

The Makuleke community, when their land was restored, was given the right to make sustainable use of the land, including hunting. The community also received exclusive commercial rights to the land to exercise independently from SANParks, with SANParks only able to object based on environmental concerns. The community subsequently established a luxury lodge and a profitable hunting camp on the land, which provided beneficial to the community. The community, however, in 2009 signed an unfavourable agreement with another safari operator. This contract not only binds the community for 45 years, it also seems to be drafted particularly favourable to the safari operator that need not maintain certain profit levels, and without an exit clause for the community. A representative of the community is quoted as saying “[the companies] have been in business for a long-time, they are negotiating with communities who have very little experience".\textsuperscript{58} This seems to indicate that the communities do not have access to objective information to participate meaningfully, which leave them vulnerable.

\textsuperscript{55} De Koning MAI Analysis of a comdel designed for land restitution in protected areas in South Africa (2010) PhD, UNISA 25.
\textsuperscript{56} Mamela MCE Local community participation in tourism in the case of the Manyeleti Game Reserve, Limpopo Province and South Africa (2006) M Inst Agrar, University of Pretoria 71.
\textsuperscript{57} De Koning 25.
Up to date

In general little is mentioned about whether the information is up to date. There is evidence that at the Makuya National Park, the Makuya Park Forum gathers on a regular basis to discuss management issues. Guest lecturers are invited to give presentations on specific topics with the aim of strengthening the involvement of the community members in co-management by giving them information on environmental importance of the protected areas.\(^59\)

Timely

Little evidence was found on whether the information is timely or not. A field study, which specifically addresses this issue, would be useful here.

Effective

As mentioned under “up to date”, the Makuya Park Forum conducts meetings with representatives. These representatives are tasked with sharing the information they gather at these forums with their fellow community members. This includes information on possible employment opportunities. This does not happen often, and it transpired that many community members are not even aware of the Forum.\(^60\) Those who do know about the existence, seem disillusioned by the process because the information is lacking and the benefits are not tangible, if at all.\(^61\)

POINT 2: PUBLIC PARTICIPATION

Capacity building

Environmental education

In the early 1990s the Department of Land Affairs and a German development agency (Deutsche Gesellschaft für Zuzammentarbeit GTZ) introduced Transform (Training and Support for Resource Management) Project. This project aimed at informing and supporting the Mukulele community in launching an ecotourism project. While this is a positive move, SANParks later became part of the steering committee of Transform, which enabled SANParks to gain control over projects that affects them.\(^62\)

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The Welverdiend community that lives in the vicinity of the Mnisi tribal area attends the Southern Africa Wildlife College in the area, and some members also attended two international conferences on tourism and parks.63

KNP hosts events during school holidays to educate the children about nature conservation issues. The park also hosts “clean up” days to educate the children on pollution and the effect of pollution on the environment.64

It therefore seems that in some communities there is an attempt to environmental education.

**Awareness raising**

While many traditional leaders are invited to attend conferences on transfrontier parks and management of protected areas, the communities see no evidence of benefit sharing of natural resources use, and in general it remains unclear how the conservation would impact the local level.65 One study shows that only 19% of certain frontline communities are aware of community-based tourism meetings or conferences.66 These communities are also not encouraged to participate by the provincial government, and some of the tourism stakeholders in government admitted that they did not even know who the frontline communities were.67

On a positive note there seems to be many NGOs and donors who seem to, in the case of the Makuleke, provide training on the local governance options in terms of legislation that will ensure democratic decision-making and inclusion of especially women. There are also NGOs, donors and government agencies that do capacity building in the community to ensure that the money generated from the operations on the land goes into the community in the forms of roads, schools and clinics, or agricultural irrigation projects.68

**Public participation process**

**Transparent**

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During negotiations about the possible use of the Makulele restituted land, the GtZ-transform held secret meetings with SANParks on how to resolve the land claim. This eventually lead to a break down in the Makulele’s trust in GtZ, leading Makulele to exclude GtZ from the land claim process. The Makulele community also felt that SANParks influenced the commercial decisions regarding the park without their knowledge. When commercial deal are involved with private companies, there seems to be less transparency.

Consultative

From a public participation point of view the current uncertainty about who wields authority in traditional communities makes consulting a particular representative problematic. In terms of the Traditional Leadership and Governance Framework Act the traditional leaders who were recognised as such before apartheid remains traditional leaders until otherwise decided. This resulted in many chiefs appointed by the apartheid government as chiefs, who were accountable to the government and not the people, remaining chiefs. This despite the fact that on the ground (in terms of living customary law), the person might not be accepted as the leader. This often results in communities not regarding themselves as part of the dominant community (the Makuleke and the Dixie, for instance), but as a separate community that have separate autonomy over the resources. When consulting communities, organisations on the state often only approach the dominant community’s leader, which does not necessarily represent the view of the community.

During a workshop in 2005 on the management of the area as part of the Greater Limpopo Transfrontier Conservation Area (GLTCA), a representative from the Makuleke community expressed concern that the communities are merely regarded as subjects. He expressed concerns that merely placing a representative on the joint management board of the GLTFCA, does not amount to community representation as it can lead to elite dominance. A similar situation happened in the Bennde Mutale community, where a discussion with the chiefs was regarded as being adequate consultation, while the community felt that it should have been consulted separately.

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71 For a discussion on this in the context of the Makuleke see Steven Robins and Kees van der Waal “Model Tribes” and iconic conservationists? The Makuleke restitution case in Kruger National Park’ (2008) Development and Change 39(1) 53.


Adequate opportunity to express views

As mentioned above, the Dixie community is formally placed under the Mnisi Traditional Authority although the Dixie has no traditional relationship with the chief nor regard themselves as part of the Mnisi Traditional Authority. Without consulting the community, chief Mnisi signed away development rights over a part of the property to private developers. The same authority then concluded a contract with a private company for the development of a luxury lodge, a deal that will see the Dixie community losing some of their grazing land and access to the river. When discussions were held about the development of the lodge, the leader of the Dixie community requested to speak. He was barred from doing so, and when he spoke out against the lodge, he was arrested and detained by members of the South African Police Services who attended the meeting on invitation from the provincial government.

What should also be mentioned is that when members of the Dixie community tried to speak to community members to inform them what is going on, the tribal authority applied for an interdict to prevent them from “telling lies” and to prevent the members from meeting with communities. The perception is that the tribal authority receives government support in its endeavours. It therefore seems that some members of the community get adequate opportunity to express their views, but that this might not be applicable to all the members of the community.

Comments taken into account

As far as the Makuleke community is concerned, it would appear that community comments are not always taken into account. The situation where SANParks became part of the Transform steering committee, alluded to above, is evidence of this. When SANParks came on board, the GtZ’s funding shifted from Ecotourism to other development projects, with a strong emphasis on developing a buffer zone on the Makuleke land. A buffer zone

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75 Mamolotje Charles Eric Mametja ‘Local community participation in tourism in the case of the Manyeleti Game Reserve, Limpopo Province and South Africa’ (M Inst Agrar dissertation, University of Pretoria 2006) 68.
77 Aninka Claassens & Moray Hathorn ‘Stealing restitution and selling land allocations: Dixie, Mayaeyane and Makuleke’ in Aninka Claassens and Ben Cousins Land, power & custom (UCT press 2008) 322. The community thereafter contacted the Legal Resources Centre, a public interest law clinic that provides free legal services, to help. Through the lawyers they learned that an agreement was signed with a private company. The deal collapsed with the investors suing the Mnisi Tribal Authority for damages arising from the breach of agreement.
78 Aninka Claassens & Moray Hathorn ‘Stealing restitution and selling land allocations: Dixie, Mayaeyane and Makuleke’ in Aninka Claassens and Ben Cousins Land, power & custom (UCT press 2008) 327.
limits the Makuleke use of land. Despite the community rejecting the idea of a buffer zone, its calls were rejected.\footnote{Marja Spierenburg, Conrad Steenkamp and Harry Wels ‘Resistance of local communities against marginalization in the Great Limpopo Transfrontier Conservation Area’ (2006) Focal – European Journal of Anthropology 18, 23.}

This constant sidestepping frustrates the members of the Makuleke leadership, and places the community under the impression that they are not treated as landlords, but rather as a neighbouring community. Public participation is therefore mostly regarded as rhetoric, rather than something that actually happens.\footnote{Steven Robins and Kees van der Waal “Model Tribes” and iconic conservationists? The Makuleke restitution case in Kruger National Park’ (2008) Development and Change 39(1) 53, 67.}

**POINT 3: ACCESS TO JUSTICE**

**Courts**

Access to justice in South Africa is very expensive, so communities that want to enforce their rights through the courts must approach public interest law clinics such as the Legal Resources Centre (in the Dixie case).

A recent case\footnote{Company Secretary of Arcelormittal South Africa v Vaal Environmental Justice Alliance [2014] ZASCA 184.} in South Africa opened the door for communities to request access to information (especially held by companies) about environmental matters that effects the community. This can be done in terms of the Promotion of Access to Information Act\footnote{2 of 2000.} and NEMA.\footnote{107 of 1998.}

**Independent body**

There is no independent body to resolve issues of lack of public participation in conservation matters.
RECOMMENDATIONS: IMPROVING THE EFFECTIVENESS OF THE LAW

With the restitution process opened again and many of the restitution claims on the KNP not settled, this issue of community participation in conservation of the KNP area will come under the spotlight again. The focus of the People and Parks programme of SANParks is on co-management, access and benefit sharing, and community public-private partnership (cPPPP) models that hope to balance biodiversity conservation in the parks, with increased local economic development and poverty alleviation. When communities become owner of the land through restitution, their participation in the conservation becomes essential.\textsuperscript{84}

Malan’s studies reveal that for environmental governance in the area to be successful, inter alia extensive socio-economic surveys are needed before community conservation projects are embarked on; that excellent leadership combined with well established institutions are needed; that education and capacity building will lead to more success. The failures of environmental governance relevant to the public participation principle on the other hand seems to be limited capacity of governments that leads to instability and weak governance; intra-community and inter-community conflicts and distrust; the assumption that economic benefits will necessarily translate into improved wildlife management; and that everyone in the community wants market based development.\textsuperscript{85}

From Malan’s study it also transpired that in many communities individuals played a key role that either lead to successful ventures, or to failures because of personal interests. In many successful ventures facilitators drove the processes by arranging and facilitating workshops and participatory meetings that lead to the community developing a positive attitude to the projects. Her observations were that the more that people were involved in the processes (either facilitated by NGOs or government), the better. What was clear from this is that if the community’s well being was looked after, the ecosystem health was better.

Effective decision-making will allow for broad participation of stakeholders, including local communities, in order to harmonize the differences and to understand the different perceptions to biodiversity management is therefore essential.\textsuperscript{86} What is important to keep in mind is that the focus of engagement should not only be on decisions for monetary gain, but that biodiversity governance also largely revolves around ethical questions, and in South Africa requires a specific focus on equity to ensure that communities that were previously excluded from formal conservation, be formally included. In the context of transfrontier conservation areas specifically, focus should not be lost on the local when the regional and global players seem to clinch the deals.

\textsuperscript{84} Maria Adriana Imelda De Koning ‘Analysis of a model designed for land restitution in protected areas in South Africa’ (D Phil thesis, University of South Africa 2010) 2.

\textsuperscript{85} Suzie Malan ‘Improved decision-making processes for the transfrontier conservation areas of South Africa’ (PhD, University of British Columbia 2015) 51.

\textsuperscript{86} Suzie Malan ‘Improved decision-making processes for the transfrontier conservation areas of South Africa’ (PhD, University of British Columbia 2015) 111.
Management by participation is best when the authority is distributed across multiple institutions and not concentrated in one institution. This means the management of the KNP and surrounding areas is a complex system that needs a management style that mimics its complexity, such as adaptive co-management where management takes place on a trial and error basis, across horizontal (communities in different situations but the same governance issue) and vertical institutions (from the state to the community). Ideally such a process should start at the community, with as much community participation as possible and with only as much government regulation as necessary (subsidiarity principle). Through trial and error the management system will evolve and errors will be fed back into the system to be improved on.\(^8\)

How will this best be achieved? While it seems that when information is made available (especially during the restitution process when the Land Claims Commissioners and lawyers are still involved), the information is not always objective. The Land Claims Commissioner (in cases of restitution), might paint an unrealistic picture to the community to ensure that the land is restored, while private companies might present information to ensure that a deal will be clenched. In none of these cases there are specific legislative protection to ensure that the communities can make effective decisions.

It seems from the evaluation that most communities lack efficient environmental education that will enable them to participate meaningfully. More can also be done in terms of awareness raising. The Welverdiend community in this regard seem to benefit from the proximity of a University centre and the Wildlife College.

The public participation process is often transparent when public bodies are involved, but less so when private companies are involved. While it is consultative to some extent, some community members expressed concerns that it is only the elite or a certain portion of the community that is consulted. This is problematic, especially in light of the intra community conflicts over who wields authority in a particular community. In this regard, attention should be paid to the broader traditional leadership disputes happening in South Africa. Some communities also feels that they are not taken serious as owners of the land, and that the consultation with them might be more of a fait accompli than anything else. Laws that lay down specific guidelines on how the communities should be consulted, and who the authoritative person is (and how this person is elected) can help. In this sense it would be useful to refer to other legislation that deals with this, such as the Traditional Leadership and Governance Framework Act or the rules of the Communal Property Associations.

LESSONS LEARNED IN APPLYING THE EVALUATION METHOD

The problems with a desktop study are the following:

It is difficult to get a real sense of what the communities’ perceptions are. With limited access to distribute information, one is reliant on the interpretation of other researchers that conducted interviews and field studies. While this is helpful, their focus might have been on something different.

The literature is also often distributed over many disciplines, each with their own jargon that must be understood before the content of the document can be fully understood.

The studies on the benefits for the community mostly focus on protection by ecotourism. There seems to be a lack on studies on other land uses in these areas, and the public participation in these areas. This requires integrated studies on human - livestock - wildlife approach.

On the empirical front, the research that was conducted by Suzi Malan was very useful. Her unpublished PhD focused on governance, and not on public participation specifically, but from the interviews conducted and the comments of officials and people around the park, it was possible to get an idea of the main issues that the communities and park officials are faced with. The data was qualitative.

Due to time and institutional constraints it was unfortunately not possible to develop the methodology further. We have not excluded the possibility, and would in fact find it useful to do a qualitative study (interviews with community leaders and members, as well as park and government officials) on their view of public participation in these areas.
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<thead>
<tr>
<th>Document</th>
<th>Relevant section/s</th>
<th>Text</th>
<th>Important elements for public participation principle</th>
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<tbody>
<tr>
<td><em>South Africa</em></td>
<td>24</td>
<td>Section 24 provides that: Everyone has the right: (a) to an environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that- (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development</td>
<td>The inclusion of this in the Bill of Rights means that environmental rights are human rights. What is particularly important in this context is that legislative measure must ensure ecologically sustainable development and use of natural resources in such a way that economic and social development is promoted.</td>
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<td><strong>2(4)(f)</strong></td>
<td>The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured. This provision places an obligation on organs of state to ensure that public participation is achieved through prior capacity building exercises are done. This means that these organs should ensure that participation by persons such as local communities that may be affected by such projects should be equipped to participate. The Act recognises that participation of such persons should be equitable and effective if such steps are followed prior to participation. Also, it calls for the participation of vulnerable persons making it mandatory to ensure that they too manage to participate.</td>
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<td><strong>2(4)(g)</strong></td>
<td>Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognizing all forms of knowledge, including traditional and ordinary knowledge. This provision places an obligation on relevant organs of state to ensure their decisions are influenced by the inputs of the public. It also specifically recognises the need to take into account traditional knowledge from rural communities as well ordinary knowledge from persons such as those from civil society.</td>
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<td>Section</td>
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<td>2(4)(q)</td>
<td>The vital role of women and youth in environmental management and development must be recognised and their full participation therein must be promoted</td>
<td>The Act adds the element of gender and youth to the principle of public participation and places an obligation on the state to facilitate such participation.</td>
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<tr>
<td>23(2)</td>
<td>General objectives of integrated environmental management to include:</td>
<td>This provision recognises the need for public participation to be incorporated into environmental impact assessments, socio-economic assessments done prior to a project.</td>
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<td>(a) promote the integration of the principles of environmental management set out in section 2 into the making of all decisions which may have a significant effect on the environment; (b) identify, predict and evaluate the actual and potential impact on the environment, socio-economic conditions and cultural heritage, the risks and consequences and alternatives and options for mitigation of activities, with a view to minimising negative impacts, maximising benefits, and promoting compliance with the principles of environmental management set</td>
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<tr>
<td>Act</td>
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| The National Environmental Management: Protected Area Act 57 of 2003 | 33 | (1) The Minister or the MEC must –
(a) publish the intention to issue a notice contemplated in section 31 or 32, in the Gazette and in at least two national newspapers distributed in the area in which the affected area is situated; and
(b) if it is proposed to declare any private land as a protected environment, send a copy of the proposed notice by registered post to the last known postal address of each owner of land within the area to be declared, and inform in an appropriate manner any other person whose rights in such land may materially and adversely be affected by such declaration.
(2) The publication contemplated in subsection (1) must
(a) invite members of the public and the person referred to in subsection (1)(b), if applicable, to submit to the Minister or MEC written representations on or objections to the proposed notice within 60 days from the date of publication in the Gazette; and
(b) contain sufficient information to enable members of the public to submit meaningful representations or objections, and must include a clear indication of the area that will be affected by the declaration.
(3) The Minister or MEC may in appropriate circumstances allow any interested person to present oral representations or objections to the Minister or the MEC, or to a person designated by the Minister or MEC, but such representations or objections must be allowed where the proposed notice will affect the rights or interests of a local community
(4) The Minister or MEC must give due consideration to all representations or objections received or presented before publishing the relevant notice.
| The Local Government: Municipal Structures Act 117 of 1998 | 72(3) | The object of a ward committee is to enhance participatory democracy in local government

This provision sets out the procedure to be followed for public participation for a proposed declaration of a protected area. The public here includes (1) the general members of the public (2) affected private land owners - in which case - in addition to publication of the proposal a registered mail must be sent to the owner of such land and any other right holders to that land and (3) interested persons on behalf of affected local communities - although some degree of discretion is accorded to the Minister to allow such participation. In any of these instances, participation should be in writing and received by the Minister/MEC within a specified period. The process also places an obligation on the Minister/MEC to provide details of the proposal that enables the public to make informed contributions. Another important element is the provision in this section for objections by the public.

The provision simply recognises the basis upon which the public should participate in the decision-making processes at municipal level.
(1) Traditional authorities that traditionally observe a system of customary law in the area of a municipality, may participate through their leaders, identified in terms of subsection (2), in the proceedings of the council of that municipality, and those traditional leaders must be allowed to attend and participate in any meeting of the council.

(2) (a) The MEC for local government in a province, in accordance with Schedule 6 and by notice in the Provincial Gazette, must identify the traditional leaders who in terms of subsection (1) may participate in the proceedings of a municipal council.

(b) The number of traditional leaders that may participate in the proceedings of a municipal council may not exceed 20 per cent of the total number of councillors in that council, but if the council has fewer than 10 councillors, only one traditional leader may so participate.

(c) If the number of traditional leaders identified in a municipality's area of jurisdiction, exceeds 20 per cent of the total number of councillors the MEC for local government in the province may determine a system for the rotation of those traditional leaders.

(3) Before a municipal council takes a decision on any matter directly affecting the area of a traditional authority, the council must give the leader of that authority the opportunity to express a view on that matter.

(4) The MEC for local government in a province, after consulting the provincial House of Traditional Leaders, may by notice in the Provincial Gazette -

(a) regulate the participation of traditional leaders in the proceedings of a municipal council; and

(b) prescribe a role for traditional leaders in the affairs of a municipality.

(a) When participating in the proceedings of a municipal council a traditional leader is subject to the appropriate provisions of the Code of Conduct set out in Schedule 1 of the Local Government: Municipal

(b) (i) A traditional leader who participates in the proceedings of a municipal council is entitled to the payment of out of pocket expenses in respect of such participation.

(ii) A municipal council must determine the criteria for, and calculation of, the out of pocket expenses referred to in subparagraph (i).

(iii) Out of pocket expenses referred to in subparagraph (i) must be paid from the council of a municipality, within the municipality’s financial and administrative capacity and having regard to practical considerations, has the duty to

(c) encourage the involvement of the local community

(d) strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner;

(e) consult the local community about

(i) the level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider; and

(ii) the available options for service delivery.