Reconciling Land Restitution and Conservation: Challenges Facing the Implementation of Land Restitution in the Dukuduku Forest, KwaZulu-Natal.

by

Ruvimbo Gonyora

206522295

Bachelor of Social Science (Honours) in Policy and Development Studies (University of KwaZulu-Natal)

Supervisor: Dr Anne Stanton

Submitted in partial fulfilment of the requirements for the degree of Master of Social Science (Policy and Development Studies), in the Faculty of Humanities, Development and Social Science at the University of KwaZulu-Natal, Pietermaritzburg.

2010

ABSTRACT

In order to have a fuller understanding of the policy implementation challenges facing land restitution in conservation areas, this research identifies and analyses the perspectives in the literature on policy implementation. The study explains how the land restitution programme emerged as a policy solution to the legacy of a deep historical racial divide regarding land ownership in South Africa. However, it explores the implication of this on the conservation of the environment. The study shows that reconciling land restitution on conservation areas is a complex process, owing, partially to two different and conflicting policies namely the, Restitution of Land Rights Act (Act 22 of 1994) and the National Forest Act (Act 84 of 1998).

The researcher has explored the policy implementation challenges encountered in reconciling land restitution in the Dukuduku forest located within the Greater St Lucia Wetland Park which has official World Heritage Site status situated in northern KwaZulu-Natal. The study should show how the ongoing conflict between Department of Water Affairs and Forestry, the Department of Environmental Affairs and Tourism and the occupants of Dukuduku forest revolves around issues of land ownership pertaining Dukuduku forest, a forest which is one of the few indigenous forests left in South Africa.

It concludes that policy implementation is a complex process, especially when two divergent policy objectives Restitution of Land Rights Act (Act 22 of 1994) and the National Forest Act (Act 84 of 1998) and are sought. A formulated conceptual framework for the study, public policy analysis and policy implementation models will be discussed to provide a clear perspective on policy implementation.

ACKNOWLEDGEMENTS

Firstly, I would like thank God, for giving me divine strength and wisdom, and directing me through the course of my studies.

This thesis would not have been written without the help of countless generous, helpful people:

To my Supervisor, Dr Anne Stanton. I thank you, for your inspiration, invaluable guidance, and patience. Always ready and willing to help and provide me with information at all times necessary.

To my parents, I appreciate your unconditional support and deeply thank you for being my pillar of strength. For the constant encouragement to further my studies.

To Advancement For Rural Development (AFRA), thank you for providing me with documents and valuable information that made this research possible.

Lastly, University of KwaZulu-Natal for awarding me the Archbishop Dennis E. Hurley Scholarship.

DECLARATION

I, Ruvimbo Gonyora declare that this dissertation is my own unaided work. All citations, references and borrowed ideas have been duly acknowledged. It is being submitted for the degree of Master of Social Science (Policy and Development Studies) in the Faculty of Humanities, Development and Social Sciences, University of KwaZulu-Natal, Pietermaritzburg, South Africa. None of the present work has been submitted previously for any degree or examination in any other University.

DEDICATION

I dedicate this piece of work to my parents, my role models, Mr and Mrs Gonyora, the brains behind my success and for having brought me up so well. To my Mother, no fitting words can express my gratitude for all the amazing hard work you have done for me. To my Father, for encouraging me to further my studies and as well as a perfect example of what an academic is.

To my brothers and sister for the encouragement and support.

I sincerely thank you
Ruvimbo Gonyora

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CHAPTER ONE

INTRODUCTION

1.1 Background

The establishment of a democratically elected government in South Africa in 1994 marked the end of a regime that once segregated access to land based on race. De Villiers (1999:8) explains that in South Africa, control of land was to become the backbone of grand apartheid. White domination had serious consequences with regards to land ownership especially for those Africans that were in the immediate vicinity of large concentrations of white people. The geographical segregation and the repression of land rights was evident in how black people were forcibly removed by the apartheid government where many Black people lost land tenure rights to the minority of white farmers.

The Department of Rural Development and Land Reform (previously called the Department of Land Affairs) identifies social, political and environmental issues as vital issues in the implementation of land reform programmes as government aims to redress the injustices of marginalised groups, boost land productivity and eradicate poverty in rural areas through agriculture. De Villiers (1999:7) states that access to land and land ownership rights has for many years been the key for empowering and disempowering people. The Constitution of South Africa, (Act 108 of 1996) mandates government to ensure equitable land distribution among South Africans, thereby tasking government to address the injustices and consequences of the 1913 Land Act.

Black people were not only dispossessed of their land ownership rights because of racially discriminating legislation such as the Natives Land Act (Act 27 of 1913). Many people were also removed from land in order to maintain biodiversity in South Africa. South Africa occupies 2% of the world's surface area, yet it contains a large number of valuable biodiversity which contribute to our human well-being and the economy. (Mketeni, 2010: 11). South Africa is highly commended for preserving its natural heritage; however the work done on conservation has come at a high cost. Khan (1992:5) explains that in the government's pursuit of conserving its natural resources, the creation of most environmentally protected areas has resulted in the displacement of communities living in or relying on the resources available in these protected areas. In a bid to protect biodiversity, conservation authorities demarcated nature conservation areas and removed communities from such land in the name of conservation.

One of the biggest challenges facing conservation authorities in South Africa today is the national government's introduction of a land reform programme. As a result of land reform policies, such as the Restitution of Land Rights Act (Act 22 of 1994), communities are now legally entitled to reclaim land.

The case study for this research focuses on the Dukuduku forest, located in KwaZulu-Natal. This study will show that land claims on protected areas, such as those on the Dukuduku indigenous forest, are controversial and both conservation authorities and displaced people are equally as important. Forests are a valuable environmental asset of South Africa. Cowling (2002: 20) argues that when it comes to the richness of genera and families of trees, South African forests are between three and seven times richer in tree species than other forested areas of the Southern Hemisphere. Grundy and Wynberg (2001: 10) state that the

recent land restitution process has meant that many of the Forest Reserves are contested by local communities, and future ownership and management of these areas is yet to be resolved.

Du Plessis (2006) explains that where the settlement of land restitution beneficiaries takes place irrespective of environmental governance and environmental principles, the environmental human right of current as well as future generations may be at stake. The reason for this is that not only land, but also biodiversity, soil, minerals, water, vegetation and other natural resources are involved when land is assigned to beneficiaries.

Kepe *et al* (2003) warn that the most important issue is ensuring that people, whose land rights were removed because of apartheid policies and sometimes by the creation of conservation areas, do not become victims of ideological battles.

Naguran (2002) asserts that the establishment of parks and reserves meant that many black people were denied opportunities to gain access to grazing, water, hunting, medicinal plants, firewood, and thatching grass. Denying people access to natural resources has always been a contentious political issue, where many displaced people feel that the well-being of wildlife is regarded by government as being more important than the well-being of people (Fuggle and Rabie 1983:6). The challenge now is to simultaneously prevent the loss of biodiversity while redressing the injustices of past land removals.

1.2 Aims and Objectives

This study is an analysis of public policy and policy implementation. It seeks to understand the policy implementation challenges facing land restitution in areas which are designated as

protected conservation areas. This study aims to explore and analyse the literature on public policy and policy implementation in order to identify some of the factors that influence or shape the implementation of policy. It will then identify and analyse pertinent issues of the implementation of the land restitution process in the Dukuduku indigenous forest.

1.3 Research Methodology

The study is an empirical study in which the researcher explored and used existing data from literature, government documents, legislation as well as documents and report published by the Association For Rural Advancement (AFRA). An investigation of the literature on public policy analysis, and policy implementation was undertaken, looking at the arguments presented by authors such as Parsons (1995), Barrett and Fudge (1981), Matland (1995) , Hill & Hupe (2002). Information on land reform, land restitution and the conservation of indigenous forests were sourced from government documents, as well as legislation such as The Restitution of Land Acts (Act 22 of 1994) and The National Forest Act (Act 84 of 1998). Material on the case study: The Land restitution process in the Dukuduku forest, was obtained from Land Claims court transcripts, the AFRA Resource Centre and conservation reports from various authors.

1.4 Structure of the Research Report

This Report is divided into five chapters. Chapter One outlines an introduction, the aims and objectives that the study seeks to achieve. Chapter Two provides a conceptual framework of policy implementation based on an examination of the literature on the public policy-making process and policy implementation.

Chapter Three of the study explores land reform policy in South Africa, the history of land dispossessions and conservation-led dispossessions, as well as the discriminatory legislation affecting land ownership that was entrenched by the apartheid government. This chapter also investigates post-apartheid policies aimed at redressing the past injustices associated with forced removals aimed at returning land ownership rights to those previously dispossessed.

Chapter Four presents a case study of the implementation of conservation and land restitution policies in the Dukuduku forest, located on the eastern seaboard of KwaZulu-Natal (South Africa). This chapter provides a descriptive background of the Dukuduku Forest, highlighting the challenges facing the then Department of Water Affairs and Forestry (DWAF) as well as the then Department of Tourism and Environmental Affairs (DEAT) in their implementation of conservation policies in the Dukuduku forest. The case study will be used to explore and examine the complexities experienced in the implementation process with regards to land restitution in the Dukuduku Forest.

Chapter Five concludes the study and provides a reflection and analysis of policy implementation pertaining to the case study on land restitution in the Dukuduku Forest. In this chapter, the researcher critically reflects on the challenges facing policy implementation in general, as well as those related to land restitution and conservation.

CHAPTER TWO

POLICY IMPLEMENTATION: A CONCEPTUAL FRAMEWORK

This chapter provides an overview of the literature on public policy with more particular reference to policy implementation in order to establish the conceptual framework upon which this study is based. Different definitions of public policy are explored to provide a better understanding of what public policy entails. In addition, this chapter will also examine models and approaches of policy implementation in order to establish a conceptual framework. By analysing the literature on the various models and approaches to policy implementation, the researcher aims to provide a framework for analysis in order to explore the underlying implementation challenges facing the land restitution programme in the Dukuduku forest.

2.1 Public Policy

Policy has been defined by Barrett and Fudge (1981) as a set of goals, objectives or principles that are designed to achieve proposed outcomes or results. A policy provides a framework for a course of action in achieving goals and objectives. Barrett and Fudge (1981: v) suggest that the term "public policy" may be defined as the implicit or explicit intentions of government and the expression of those intentions entailing specific patterns of activity or action by governmental agencies. Public policy enables and guides government on how to take action in order to achieve the societal goals. They further explain that public policy provides the framework within which agencies of government operate to control, regulate or promote certain facets of society in the interest of national defence, law and order, economic

and financial management, social welfare and the like. (Barrett and Fudge 1981: V).

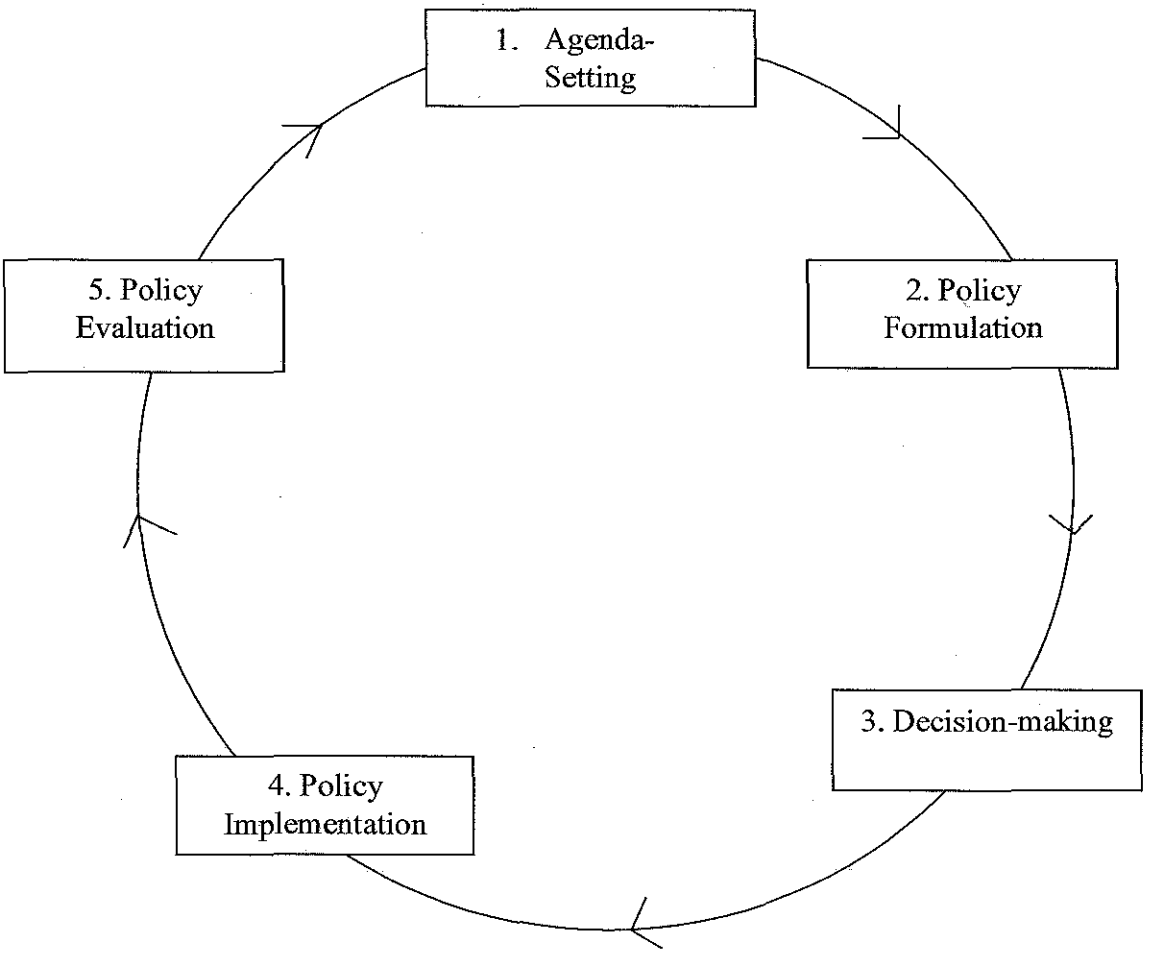
Although public policy is aimed at achieving societal goals, not all societal goals are achieved or resolved and this, as a result, points to the limitations of public policies. Hanekom (1991: 17) states that in practice, any public policy can only realize goals or resolve problems to a certain extent. Resolving a problem in a specific area may result in the aggravation of conditions in another.

Colebatch (2005: 23) identifies two dimensions of public policies: a vertical dimension and a horizontal dimension. The vertical dimension views public policy as being hierarchical and centralized. According to this dimension policy practices are concentrated at the top and diffused down to lower level staff. Colebatch (2005:23) explains that the vertical dimension sees policy as a rule: it is concerned with the transmission downwards of authorized decisions. The horizontal dimension differs from the vertical dimension in that decision making becomes decentralized, involving the participation of different policy participants interacting and making policy decisions. The horizontal dimension sees policy in terms of the structuring of action. It is concerned with relationships among policy participants in different organization outside the line of hierarchical authority. (Colebatch, 2005: 23).

The policy making process is often described and analysed as a sequence of stages in the development and pursuit of policy goals. Colebatch (2005: 50) for example, describes that the policy process begins with thought, moving through action and ending with the solution. As such, the policy process is often depicted as involving different stages (depicted as a policy cycle) that are undertaken in a sequential order to achieve intended policy goals. The policy cycle is an analytical framework adopted by some to examine the policy-making process. It

is also referred to as a stagist approach to policy analysis and has been promoted by some policy-analysts as a framework for examining how the policy process takes place. Howlett and Ramesh (1995: 9) state that one of the most popular means of simplifying public policy making has been to disaggregate the process into a series of discrete stages and sub-stages, such as those depicted in Figure 2.1

Figure 2.1: Policy Cycle



Source: Adapted from Howlett and Ramesh (1995:11).

The policy cycle begins once a policy problem is identified and officially recognised. This is the agenda-setting stage refers to the process when decision makers identify and acknowledge the need to address a specific problem affecting society. In other words, an identified problem receives the attention of government and gains agenda status. Howlett and Ramesh (1995:11) explain that agenda-setting refers to the process by which problems come to the attention of governments. An analysis of the policy agenda-setting process aims to explain why certain issues are addressed through policy actions while others are not. Kingdon (1995: 3) argues that the agenda-setting process narrows the set of conceivable subjects to a specific set, which then becomes the focus of attention.

The second stage of the policy cycle is concerned with policy formulation. According to Howlett and Ramesh (1995:11) this entails identifying alternative proposals, responses or solutions to the policy problem identified. During this stage of the policy-making process, policy-makers consider alternative policy proposals moving towards a decision. Hanekom (1991:52) explains that the second stage of the policy-making process devotes attention to the problem by authorising action, that is, by developing a proposed course of action.

The third stage of the policy cycle is the decision-making stage. Howlett and Ramesh (1995:11) explain that decision-making refers to the process by which governments adopt a particular course of action or non-action. This is the stage during which government decides which policy proposal they deem best suited for addressing the problem on the policy agenda.

The fourth stage is the policy implementation stage. This is when the policy decisions reached in the decision-making stage are translated into action. During this stage, the policy objectives, intentions and the requisite course of action are put into effect. Hanekom (1991:

55) explains that policy implementation is a practical activity involving the proper alternative to a legally specified course of action over time, and is not in the first instance concerned with inquiring into the nature of problems. Anderson (1975:5) makes an important distinction that governments may choose not choose to act. This, he argues, is as much a policy decision as a decision that specifies a detailed course of action.

The final stage in the policy cycle model, according to Howlett and Ramesh (1995: 11) is the policy evaluation stage. During this stage, the implementation of the programmes or policies is being evaluated. Programmes and policies are examined and analysed in order to determine whether or not implementation has been effective, whether or not it has reached the intended goals, or whether it has succeeded or failed to address the problem(s) identified at the beginning of the policy-making cycle. Howlett and Ramesh (1995:11) state that policy evaluation refers to the process by which the results of policies are monitored by both state and societal actors, the result of which may lead to a re-conceptualisation of policy problems and solutions. They argue that a policy problem is not necessarily resolved at the "last stage" and that the policy may be re-visited, adjusted, amended or extended leading to the policy cycle commencing again. Colebatch (2005:49) stresses that these stages are often presented not as a linear process, but as circular, suggesting that there is a natural progression from one stage to the next.

The stagist approach to analysing the policy-making process has been criticised by analysts such as John (1998), who argue that the stages in the policy cycle do not occur in a specific sequence as implied by the policy cycle model. John (1998: 36) argues "that the stages idea confuses more than it illuminates." There are no neat divisions between the different stages of activities. Decision-making, for example, takes place throughout the policy cycle, since

policy actors are constantly taking decisions throughout the policy making process.

2.2 Policy Implementation

Policy implementation is a critical element of public policy. Barret and Fudge (1981: 11) explain that tt refers to the action(s) emanating from a formulated policy. It also refers to public officials carrying out specific activities in order to reach the policy objectives. Different definitions have been formulated to define and further describe what policy implementation is. Implementation is regarded as putting policy into practice, enacted by relevant actors, carrying forward activities in order to reach objectives. Jenkins (cited in Parsons 1995: 461) states that a study of implementation is a study of change: how change occurs, and possibly how it may be induced. It is also a study of the micro-structure of political-life: how organisations outside and inside the political system conduct their affairs and interact with one another; what motivates them to act in the way they do; and what might motivates them to act differently.

Policy implementation has also been described as the activity of executing tasks in order to reach the desired policy objectives. Barrett and Fudge (1981:11) explain that it is about taking action on policy decisions by managing and co-ordinating the implementation activities. Barrett and Fudge (1981:11) state that implementation is the process of successive refinement and translation of policy into specific procedures and tasks directed at putting policy intentions into effect. Barrett and Fudge (1981:12) argue that it is essential to look at policy implementation not solely in terms of putting action into effect, but also in terms of observing what actually happens or gets done as well as seeking to understand how and why.

In most cases there is a tendency to treat policy implementation as a clear and uncontroversial

process, but various factors affect the implementation process which may result in unwanted policy outcomes. Barrett and Fudge (1981: 3) argue that government either seems to be able to put its policy into effect as intended, or finds that its interventions and actions have unexpected or counter-productive outcomes which may create new problems. They further explain that blame for ineffectiveness of government interventions tends to be directed either at those responsible for policy-making for constantly producing the "wrong" policy, or at the implementing agencies for being, apparently, unable or unwilling to act. (Barrett and Fudge, 1981: 3).

Hill and Hupe (2002: 161) argue that a standard reaction to policy results perceived as disappointing is to blame implementers of that policy, to blame the people that implement if policies fail or results are dismal. Barrett and Fudge (1981:14) explain that in public policy terms, it is known that government often makes public policies without considering whether the capacity necessary for implementation exists.

Policy implementation failure has led to some scholars suggesting specific criteria or actions necessary if policy implementation is to succeed. Barrett and Fudge (1981:13) for example, identify the following four factors they deem necessary for policy implementation:

1. Knowing what needs to be done.
2. Having the necessary resources.
3. Having the ability to marshal and control these resources to achieve the desired end.
4. If others are to carry out the tasks, communicating what is wanted and controlling their performance.

Barrett and Fudge (1981) argue that what is of importance is clarity. Clarity on what is to be

executed, as well as clarity on the respective roles and responsibilities of individuals and/or organisations. Clarity, they argue, helps eliminate any ambiguity during the implementation process. Barrett and Fudge (1981) emphasise the importance of having clear communication channels if successful implementation is to be carried forward, in the sense that all actors involved in the process should clearly articulate with each other the implementation activities. They argue that a lack of co-ordination often tends to be equated with a lack of, or inadequate communication. The assumption is that if intentions are spelled out clearly, and the right organisational channels are established for the transmission of policy to those responsible for its implementation, then the policy will successfully be put into effect. (Barrett and Fudge 1981:15).

2.3 Models and Approaches to Policy Implementation

Various scholars have different perspectives of how policy implementation occurs, and what policy implementation approach should be adopted. For example, Pressman and Wildasky (1973), Gunn (1978), Hood (1974) propose a top-down model of policy implementation. Lipsky (1980) and Elmore (1978) identify an alternative, bottom-up model of policy implementation while others such as Sabatier (1986), Barrett and Fudge (1981), Bardach (1977), and Matland (1995) identify a more mixed model of policy implementation.

2.3.1 The Top-Down Model of Policy Implementation

The top-down model regards implementation as a process whereby top or senior government officials take control and enforce policy. Gunn (1978) and Hood (1976) (cited in Parsons 1995: 464) explain that in order for the top-down model of policy implementation to succeed,

goals have to be clearly defined and understood; resources must be made available; the chain of command must be capable of assembling and controlling resources; and the system must be able to communicate effectively and control those individual and organisations involved in the performance tasks. The top-down model (or sometimes referred to as the rational control model) requires certain elements as vital if implementation is to succeed. These elements involve a hierarchical structure of decision-making were decisions are made by top management and delegated down to lower-level employees. Pressman and Wildavsky (cited in Parsons 1995: 466) state that the top-down model is imbued with ideas that implementation is about getting people to do what they are told, and keeping control over a sequence of stages. That it is about the development of a programme of control which minimises conflict and deviation from the goals set by the initial 'policy hypothesis'.

Gunn (cited in Parsons 1995: 466) proposes a framework that, if met, will ensure the successful implementation of a policy programme:

1. Circumstances external to the implementing agency do not impose crippling constraints.
2. Adequate time and sufficient resources are made available to the programme.
3. Not only are there no constraints in terms of overall resources, but also at each stage in the implementation process the required combination of resources is actually available.
4. The policy to be implemented is based on a valid theory of cause and effect.
5. The relationship between cause and effect is direct and there are few, if any, intervening links.
6. There is a single implementation agency which need not depend upon other agencies for success. If other agencies must be involved; the dependency relationships are minimal in number and importance.
7. There is complete understanding of, and agreement upon the objectives to be achieved;

and these conditions persist throughout the implementation process.

8. In moving towards agreed objectives, it is possible to specify in complete detail and perfect sequence, the tasks to be performed by each participant.
9. There is perfect communication among, and coordination of, the various elements or agencies involved in the programme.
10. Those in authority can demand and obtain perfect obedience.

Supporters of this model recognise that this approach is prescriptive and that it demands that rules from senior officials are adhered to. However the prescriptive nature of such a top-down or rational control model has been criticized by other theorists for failing to recognise the impact other actors have on implementation. Especially the people responsible for implementation and the roles these people undertake when executing the implementation process.

2.3.2 The Bottom-Up Model of Policy Implementation

In contrast to the top-down model, the bottom-up model of policy implementation stresses the need and extent to which the public should participate in policy implementation. According to Parsons (1995: 467) bottom-up critics argue that implementation is "not a process in which x necessarily follows y in a chain of causation". Unlike the top-down model, the bottom-up model recognises the importance and relevance of the different actors from top management to lower-level operational employees, and the impact they have on policy outcomes. Parsons (1995: 467) argues that the top-down model is greatly criticised for not taking into account the role of other actors and the different levels in the implementation process. Parsons (1995: 467) argues that the top-down approach places too much emphasis upon the definition of

goals by the top, and ignores the role of the implementers on the ground.

The bottom-up model proposes a more participatory implementation process, where all actors' input is encouraged and deemed relevant. The bottom-up model posits that there needs to be a consensus between the different stakeholders before a policy is implemented or the likelihood of that policy failing is high.

One key scholar that has greatly influenced the bottom-up model is Lipsky. Lipsky (1980: 3) identifies and refers to policy implementers as street-level bureaucrats. These are the public officials or bureaucrats that actually implement government policy. Lipsky (1980: 3) states that street-level bureaucrats interact directly with citizens in the course of their jobs, and have substantial discretion in the execution of their work, and therefore are meaningful contributors to how policy is implemented and whether or not policy outcomes are achieved.

Advocates of the bottom-up model stress the relationship and behaviour of implementers when carrying out policy activities. According to Lipsky (1980) lower-level employees (or street-level implementers) perform and execute implementation tasks. They will therefore possess discretion and some autonomy in the way they will carry out the tasks assigned. Parsons (1995: 470) announces that effective implementation is a condition which can be built up from the knowledge and experience of those in the frontline of service delivery. Unlike the top-down model, lower level employees have substantial autonomy to decide and exercise their discretion when implementing and delivering a policy as they are in a position to make and pass judgements.

Parsons (1995: 471) suggests that both the top-down and bottom-up models of policy

implementation tend to over-simplify the sheer complexity of implementation. Policy implementation, he argues, is affected by the interaction; negotiation and bargaining of policy actors between those that make decisions and those that control the resources, where power and dependence are fused together gradually creating a policy.

2.4 Alternative Perspectives of Policy Implementation

Parsons (1995) suggests that policy implementation can also be analysed from a different set of perspectives. For example, he argues that implementation is a political game; it is also an evolutionary process; and it is affected by policy types as well as by the nature of inter-organisational relations. These will now be briefly discussed.

2.4.1 Policy Implementation as a Political Game

Parsons (1995) regards implementation as a political game in the sense that implementers have different agendas, with their own goals and objectives. Conflict among actors is bound to occur where some actors are perceived as aiming to maximise their power and influence. Policy implementation is a result of negotiations and bargaining owing to various actors taking part in implementation.

Bardach (cited in Barrett and Fudge 1981:23) states that implementers are not passive agents on the receiving end of policy, but are semi-autonomous groups actively pursuing their own goals and objectives, that is, they are engaged in self-interested behaviour. In other words, actors play political games to win as much control as possible so as to achieve their own

goals and objectives. Parsons (1995: 470) argues that when conflict and bargaining take place around shared goals, implementation can be effective when groups resolve their differences and put policy into action.

Bardach's (1980) argument is similar. According to him, actors play political games by bargaining and persuading others to further their aims. Bardach (cited in Barrett and Fudge 1981:23) explains that political games relate to the administrative processes and procedures usually employed to gain compliance, or to promote activity among implementation agencies, and the way in which both policy-makers and implementers attempt to "play the system" to their own advantage. It is also a means for implementers to gain control over decisions and activities undertaken.

A defining characteristic of implementation as a political game is the exercise of power. This often results in winners and loser in the sense that the more powerful and influential actors will gain at the expense of other actors. Lebow (1996:15) explains that people, organisations and states bargain because they want something someone else has or controls. To get it they offer something in return. The more powerful groups (or "winners", will aim to impose their will or power over those less powerful (or "losers"). Pfeiffer (1992: 16) notes that when we use power ourselves, we see it as a good force and wish we had more. When others use it against us, particularly when it is used to thwart our goals or ambitions, we see it as malevolent.

2.4.2 Policy Implementation as an Evolutionary Process

Parsons (1995) also describes implementation as an evolutionary process. Barrett and Fudge (cited in Parsons 1995: 472) argue that implementation as evolution may be best understood

in terms of a policy-action continuum, in which interactive and negotiative processes take place over time, between those seeking to put policy into effect and those upon whom action depends. The policy-action continuum process illustrates how policy changes and is modified as actors negotiate, bargain and compromise. This model concentrates on policy actions seeking to understand what is going on, how and why actions take place. Emphasis is placed on whom action depends on and factors that affect the individuals and agencies' motivation and scope for action. Parsons (1995: 473) explains that the policy-action model shows that policy is not something that happens at the "front end of the policy process". Policy is something which "evolves" or "unfolds" as circumstances and contexts change, hence why it is regarded as an evolutionary process (Parsons, 1995: 473).

2.4.3 Policy Implementation and Policy Type

Parsons (1995) also identifies a significant relationship between implementation and policy type. He argues that the type of policy may have an impact on the policy implementation process. He cites Ripley and Franklin (1986) who identified three main types of policies: (i) distributive policy, (ii) protective regulatory policy and (iii) redistributive policy. They argue that each policy type relies on a style (or model) of policy implementation. Ripley and Franklin (cited in Parsons 1995: 481) suggest that relative difficulties of success in implementation is high where distributive polices are concerned, moderate in regulative policies and low in redistributive policies. As a result, distributive policies can be implemented using a bottom-up approach because conflict between implementers and beneficiaries is low, with no obvious losers. However, redistributive polices (such as affirmative action) are often implemented using a top-down approach and are identifiable by winners and losers. Redistributive policies may result in considerable conflict among groups

as governments are transferring wealth from one (or more) group(s) in society to other groups Ripley and Franklin (cited in Parsons 1995: 482). Protective regulatory policies (such as traffic laws) adopt a typical top-down approach since the objective is to gain universal compliance to regulation.

2.4.4 Policy Implementation and Inter-Organisational Analysis

Parsons argues that the manner in which organisations interact also influences how policy is implemented. He is in favour of undertaking an inter-organisational analysis in order to analyse how people within organisations behave. Barrett and Fudge (1981: 23) describe the interactions between agencies as a struggle for control or self-determination. This differs from the earlier conceptualisations where interactions are, by and large, seen as means of resolving conflict. Parsons (1995: 482) explains that if we accept that implementation is a process which involves a 'network' or multiplicity of organisations the question arises as to how organisations, interact with one another. In this respect, he identifies two approaches of inter-organisational analysis: (i) power and resource dependency and (ii) organisational exchange.

The power and resource dependency approach epitomises the interactions of powerful organisations with less powerful organisations, assessing power and resources between the organisations. Aldrich and Mindlin (cited in Parsons 1995: 483) explain that "if A cannot do without the resource mediated by B and is unable to obtain them elsewhere, A becomes dependent on B. B conversely acquires power over A". The argument is that less powerful and resource-based organisations will comply with the powerful in order to secure interests. Parsons (1995: 483) states that the interaction of organisations is a product of power

relationships in which organisations can induce other less powerful and more dependent organizations to interact with them.

The second approach is based on organisational exchange. The argument here is that organisations interact with one another so as to exchange what is to their mutual benefit Levine and White (cited in Parsons 1995: 483) argue that the defining characteristic of exchange between organisations is that it is voluntary interaction which is undertaken for the realisation of the goals and objectives of the participant. This approach recognises the need for voluntary inter-organisational interaction because policies are rarely implemented by single organisations. Parsons (1995:484) states that policy implementation involves a multiplicity of organisations of various kinds and at different government levels, for example: national and regional governments, private and voluntary organisations, business and communities themselves. Successful policy implementation depends on a predominantly co-operative relationship among these different stakeholders

2.4.5 The Ambiguity-Conflict Model of Policy Implementation

Matland (1995) presents the ambiguity-conflict model as an alternative model to the traditional top-down and bottom-up models of policy implementation. He argues that the inherent limitations of the top-down and bottom-up models of policy implementation have led to different scholars (such as Etzioni (1961), Elmore (1978), and Sabbatier 1986)) to consider 'hybrid models.' By this, he means that these scholars have attempted to present models that combine top-down and bottom-up perspectives of policy implementation.

While he agrees, for the most part, with their proposals for a mixed or hybrid model of policy

implementation, Matland (1995) synthesises the top-down and bottom-up models of policy implementation to "develop a model that explains when the two approaches are most appropriate, rather than to develop a model that combines both simultaneously." (Matland, 1995: 153). He calls this the ambiguity-conflict model.

The ambiguity-conflict model of policy implementation, he argues, is a model that aims to critically assess policy implementation in terms of the relationship between a policy's level of conflict and ambiguity. Matland (1995: 155) states that the ambiguity-conflict model is a "contingency model that attempts to provide a more comprehensive and coherent basis for understanding implementation." Matland (1995) claims that by studying a policy's level of conflict as well as its ambiguity, predictions can be made as to how the implementation process will unfold.

The existence of policy conflict, argues Matland (1995:156) is a factor that affects implementation. Conflict on policy goals as well as how the policy will be executed will further increase the tension among actors as some will see the policy as relevant while others disagree. If conflict exists and reaching a policy agreement is paramount, policy actors will need to resort to bargaining mechanisms. The bargaining process does not necessarily have to lead to an agreement on goals, but on an agreement on actions (or means).

Matland (1995:156) explains that policy conflict will exist when more than one organization sees a policy as directly relevant to its interests and when the organizations have incongruous views. "The intensity of conflict increases with an increase in incompatibility of concerns, and with an increase in the perceived stakes for each actor. The more important a decision is, the more aggressive behaviour will be.

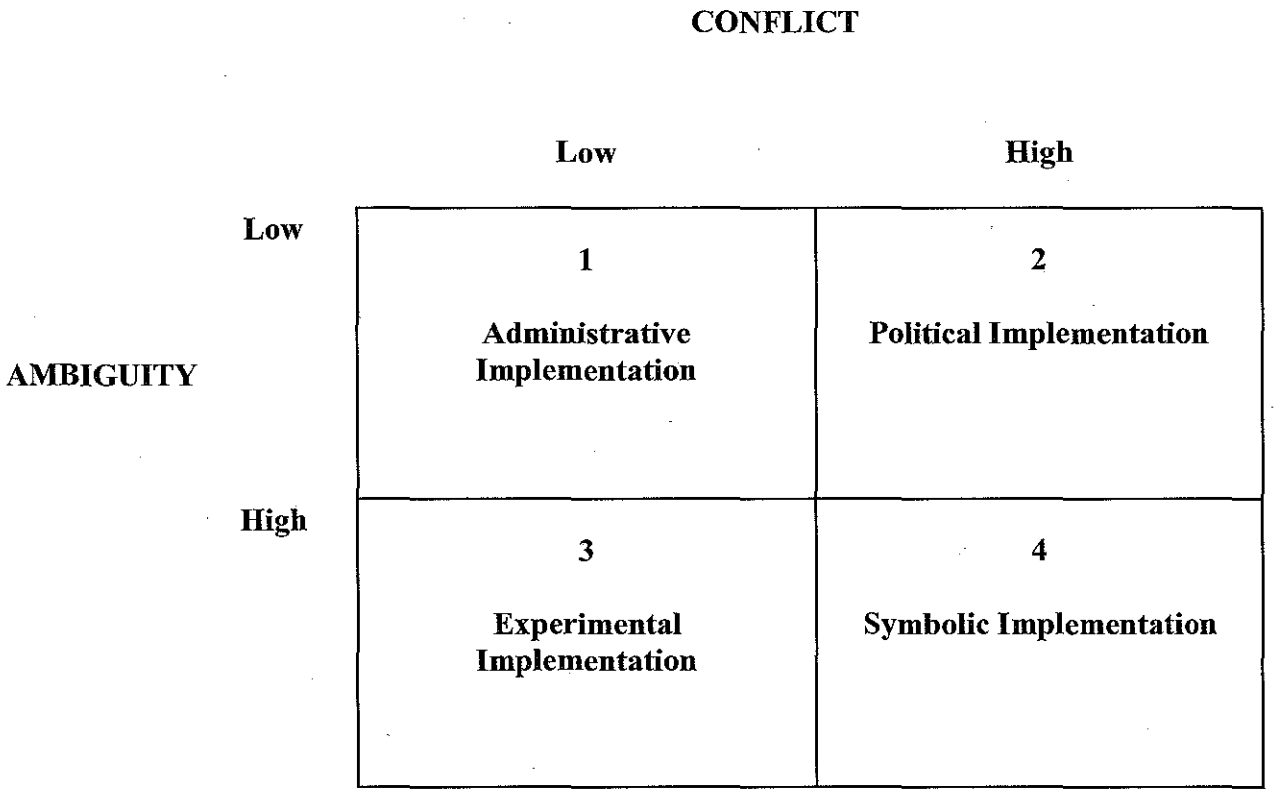
Matland (1995) argues that although conflict may arise some conflict is manipulable and can be controlled were actors can be influenced. However, some policy conflict cannot be controlled or reduced. Matland (1995:157) suggests that some policies are inevitably controversial and it is not possible to adjust them to avoid conflict. Often conflict is based on an incompatibility of values and it is not possible to placate the involved parties by providing resources or other side payments. This severely hinders policy implementation.

The second component of Matland's model is policy ambiguity. Matland (1995:157) stresses that "one implicit concern underlying this model is that ambiguity should not be seen as a flaw in policy." He states that policy ambiguity in implementation arises from a number of sources but can be characterized broadly as falling into two categories: ambiguity of goals and ambiguity of means. Matland (1995:157) stresses that ambiguity of goals (or policy ambiguity) can lead to misunderstanding and uncertainty and can contribute to implementation failure. Policy ambiguity of means is likely to occur if actors are uncertain about their roles and the actions required resulting in implementation failure as it is difficult for actors to execute implementation if they are not aware of the actions needed, nor of the tools required in the environment in which to execute means. Matland (1995:159) explains that policy ambiguity influences the ability of superiors to monitor activities, the likelihood that the policy is uniformly understood across the many implementation sites, the probability that local contextual factors play a significant role, and the degree to which relevant actors vary sharply across implementation sites.

Matland's ambiguity-conflict model consists of four perspectives as shown in Figure 2.2 below. Each perspective reflects the different permutations between conflict and ambiguity,

contends Matland, informs the nature of policy implementation (1995:156).

Figure 2.2: Ambiguity-Conflict Matrix: Policy Implementation Processes



Source: Matland (1995:160).

Quadrant 1: Low Policy Ambiguity and Low Policy Conflict

Matland refers to this quadrant as administrative decentralisation. In cases where policy ambiguity and conflict is low, the policy goals and means (or actions necessary) are clear and agreement on means or actions of implementation are acceptable. The outcomes of policy are determined by the availability of sufficient resources for the process. In other words, the desired outcome is virtually assured, on the condition that sufficient resources are appropriated for the program. Like the top-down model of policy implementation,

administrative implementation is similar in the sense that it recognizes that authority is centralised and remains at the top. Matland (1995:161) states that this authority has information, resources, and sanction capabilities to help enact the desired policy. Information flows from the top-down because decisions are regarded as legitimate. Matland (1995:163) explains that the implementation problems that arise under conditions of low ambiguity and low conflict are primarily technical or administrative.

Quadrant 2: Low Policy Ambiguity and High Policy Conflict:

Matland (1995:163) equates low policy ambiguity and high policy conflict with political decentralisation and that these are typical of political models of decision-making. This perspective refers to instances where, although there are clearly defined policy goals, there is high policy conflict among actors regarding its implementation. Matland (1995:163) states that "the central principle in political implementation is that implementation outcomes are decided by power. In some cases one actor or a coalition of actors have sufficient power to force their will on other participants."

In this perspective successful implementation is based on the notion that whoever possesses the most power has the means to bargain with other actors persuading them to comply. As some actors yield more power than others, the more powerful actors exert their power on the less powerful actors. Matland (1995:163) argues that for policies of this type, compliance is not automatically forthcoming.

Matland (1995:164) explains that some of the actors whose cooperation is required may disagree with the policy goals. Successful implementation then depends on either having

sufficient power to force one's will on the other participants or having sufficient resources to be able to bargain and negotiate an agreement on means. When an agreement is reached under such conditions, successful implementation translates into 'agreeing to disagree'. The objective is not to agree on the goals, but to agree on the actions that will be taken. Matland (1995: 164) explains that coercive mechanisms are most effective when the desired outcomes are easily monitored and the coercing principal controls a resource essential to the agent.

Matland (1995:165) argues that the description of the policy process proposed by the top-down models comes closest to capturing the essence of the implementation process in this quadrant. Policy implementation under such conditions are typically top-down and dependent on the exercise of strong political power.

Matland's (1995) argument as to why this quadrant is not bottom-up is based on the fact that policy is decided solely by central actors. These central actors also decide on the type of actions that will be taken to gain compliance. They enforce implementation and have the power to impose their policies on other actors. Matland (1995: 165) explains that the bottom-up approach where policy implementation is determined by the micro level, fails because it does not take into account the considerable forces and powers that can be brought to bear upon an issue when it is unambiguously and explicitly formulated.

Quadrant 3: High Policy Ambiguity and Low Policy Conflict

Matland refers to this quadrant as experimental implementation. Matland (1995:165) argues that "if a policy exhibits a high level of ambiguity and low level of conflict, outcomes will largely depend on which actors are active and most involved." The key principle of this type of implementation is that "contextual conditions dominate the process". This perspective

portrays how there is no predetermined manner on actions, as it recognizes how actors have different preferences and different degrees of participation. Matland (1995:164) states that the low level of conflict is likely to provide an arena for a large number of actors to participate and to accommodate those who have intense interests, or afford those with a substantial slack resources, an opportunity to mould policy significantly.

On the other hand, high policy ambiguity may be prevalent because of widespread participation of different actors, with wide-ranging policy goals and means that will be implemented differently from site to site, enabling experimental implementation. Matland (1995:167) argues that the goals of such policies are agreed upon and actors are given much discretion during their implementation.

Quadrant 4: High Policy Ambiguity and High Policy Conflict

This perspective represents conditions when there are high levels of policy ambiguity as well as high conflict among actors. This situation, argues Matland (1995:168) will result in symbolic policy implementation because the policy course is determined by the coalition of actors at the local level who control the available resources. Owing to the creation of coalitions in different sites, competition among coalitions looms as perspectives and interpretations of policy goals differ among separate coalitions.

As noticed, when policy ambiguity is high, high policy conflict levels are likely to be present in that coalitions at the micro level may misunderstand the policy goals, but yet are deeply involved in its implementation. As a result conflict tends to be resolved by coercive techniques and problem solving or persuasion has a minimal impact. Matland (1995:169)

states that any actor's influence is tied up with the strength of the coalition of which they are part off. "Symbolic implementation policies are conflictual, therefore they exhibit similarities to political implementation." (Matland 1995:1969).

However, while similar to the second quadrant, the fourth quadrant is based on competition: competition between the different coalitions at different sites with no single central authority having the autonomy or capacity to impose their will onto each of the coalitions. Each coalition has its own strength, its own site of implementation and conflict will remain as long as goal ambiguity and conflict remains high. Symbolic implementation is distinct from political implementation because the latter (Quadrant 2) is defined by clear central actors with substantial authority to exert power over actors. Matland (1995: 169) states that when policy conflict and policy ambiguity are high, the macro implementers who are so prominent in the top-down models see their power diminish. Policy ambiguity in symbolic implementation makes it difficult for the macro implementers to monitor activities, and it is much more difficult to structure actions at the local level.

2.5 Conclusion

This chapter has illustrated that policy implementation does not occur in a motionless environment, but that there are a number of factors that constantly impact on the policy-making and policy implementation process. Barrett and Fudge (1981: 25) explain that at any point during the policy process, it may not be clear whether policy is influencing implementation or whether implementation is influencing policy. Different scholars have made attempts at designing models to analyze the policy-making process, with some focusing on different 'stages'. This chapter presented the different models of those scholars who focus

on policy implementation studies, top-down model, bottom-up model, political game model, evolutionary process model, policy-type model, inter-organisational model and ambiguity-conflict model. Each of these scholars conclude that policy-making as a whole, including policy implementation, is not a clear-cut and straightforward process, and that any model of analysis must consider how various factors impact on how implementation occurs. In short, the literature on policy analysis does not present one specific model of analysis, or theory of policy-making but it provides a range of alternative policy analysis perspectives that contribute to an overall framework for analyzing policy.

The next chapter will present a descriptive analysis of land reform policy in South Africa with specific reference to land restitution. It will indicate its inherent conflicting mandate with the mandate of conservation policy.

CHAPTER THREE

LAND REFORM IN SOUTH AFRICA

This chapter provides an overview of land reform policy in South Africa, exploring the history of land dispossession as well as conservation-led land dispossession. Specifically it serves as an introductory chapter to the case-study which explores the land restitution process in the Dukuduku indigenous forest (located in the KwaZulu-Natal province). The policy framework for land reform is explored in order to contextualise land restitution in South Africa. This chapter identifies the objectives of the land restitution policy, as well as the challenges of reconciling land restitution and conservation. Reconciling land restitution and conservation is proving to be a complicated process for government, as it is torn between conservation and returning land back to those people who were forcibly removed because of Apartheid legislation.

3.1 Land Ownership and Removals (1913-1994)

In June 1913 the Union Parliament of the minority-led white government, passed the Natives Land Act (Act 27 of 1913). According to Platzky and Walker (1985:83) the Natives Land Act gave the government the power to prohibit Africans from buying land after June 19, 1913. The Natives Land Act included three major provisions:

1. It limited buying rights for the racial groups by prohibiting Africans from buying land outside of so-called "scheduled areas" and prohibiting whites from buying land in the scheduled zones of the country.
2. It identified the scheduled areas.

3. It established a Natives Land Commission to recommend additional land to be set aside for the exclusive use of Africans.

Platzky and Walker (1985: 83) explain that after the Natives Land Act had been passed, Africans were no longer allowed to buy land outside the proclaimed boundaries of the reserves. Nor were they allowed to rent such land in the future and in some cases led to people losing access to ancestral land.

Fienberg (1993) states that Afrikaners regarded the Central and Western part of the Transvaal as their property by right of conquest, distributing land to Whites without regard to previous African ownership. The settlement of the Afrikaners north of the Vaal River (in the Transvaal province) disrupted the Africans' way of life where new patterns and systems were developed.

The Natives Land Act restricted people from occupying or rent white-owned land, instead their rightful place, according to the Natives Land Act, was on reserved land that prohibited commercial farming. The results of the Natives Land Act and other racially discriminatory land settlement laws (such as Natives Urban Areas Act of 1923) enacted institutionalised segregation, widening the division between races.

The formal establishment of the Apartheid government in 1948 continued depriving Black South Africans of land. People who refused to relocate were labeled illegal squatters and faced jail sentences or had to pay fines. The Association for Rural Advancement[1] (1998: 5)

[1] The Association for Rural Advancement (AFRA) is an independent land rights NGO that aims to redress past injustices, to secure tenure for all, and to improve the quality of life and livelihoods of the rural poor.

states that a number of family heads appeared in court on numerous occasions and have faced heavy fines and prison sentences.

Platzky and Walker (1985: 67) state that the massive scale of removals and the suffering that had been imposed on millions of people was not incidental or accidental to the system of White domination that operated in South Africa. Land allocation was structured in a manner that maintained power amongst the white minority. In an attempt to create separate racial zones and ethnically defined homelands, the apartheid government geographically relocated millions of Black people, in both urban and rural areas through legislation such as the Group Areas Act (Act 41 of 1950). Africans were moved into Bantustans, Indians and Coloureds into their respective ethnic townships, at times forcibly relocating and depriving Black people of land (Platzky and Walker, 1985: 67).

3.2 The History of Conservation-led Land Dispossession in South Africa

It is important to recognise that the removal of land ownership rights and the dispossession of local people from land were not limited to racial laws and policies of the then minority-led White government, but access to land was also denied by authorities to promote and maintain biodiversity in South Africa. Kepe *et al* (2005:7) explains that the first officially protected areas in South Africa were proclaimed in the late 19th century, largely as a response to declining wildlife numbers and the extermination of game. Forced removals of people on land took place across South Africa, and legislation prohibited people from occupying biodiversity rich conservation land in order to protect and preserve such areas.

South Africa is ranked the third most biologically diverse country in the world based on an

index of species diversity and endemism, and is one of 12 mega-diverse countries which collectively contain more than two-thirds of global biodiversity (World Conservation Monitoring Centre, 1992). Brockington *et al* (2004: 10) describe that conservation means using natural resources in ways that ensure their availability for future generations. Protected areas are areas established to provide special protection of conservation from human interference. Conservation tends to be implemented by creating protected areas were human habitation is forbidden. The term 'protected area' is defined as an area of land and/or sea dedicated to the protection and maintenance of biological diversity and associated cultural resources, and managed through legal or other effective means. This definition applies equally to the marine and terrestrial environment which requires that there should be enabling policy and legislation for protected areas. (International Union for the Conservation of Natural, 1994:7).

Kepe *et al* (2005: 3) states that the creation of many protected areas around the world has often resulted in the alienation of indigenous populations from their land and its associated resources. Dispossessed people continue to struggle to gain access to protected land and natural resources as they are blamed for land misuse and degradation of the environment. Carter (1994) explains that the politics of parks and indigenous people has drawn on many contestations especially in areas considered as havens of unspoilt nature in different parts of the world. The same applies in South Africa.

Advocates of conservation saw it necessary to protect biodiversity rich areas to prevent environmental degradation by removing local people from such land and declaring these protected areas. (Fuggle and Rabie, 1983). To make way for conservation and the fulfillment of the white minority to enjoy the beauty of nature reserves, indigenous people

continued to be displaced of their land. Conservation-led land dispossession through the proclamation of protected areas, have had detrimental effects whereby divisive methods have been used to further displace people of their homes and land in the interest of conservation. As a result protected areas are still widely looked upon as playgrounds for the privileged elite, and hold little relevance for the majority of South Africa's people. (Kepe *et al* 2005: 7).

Fuggle and Rabie (1983:58) state that conservation-led dispossession in South Africa has long been a focus of rural political mobilisation, and the human violation of areas set aside for conservation has on occasion spurred the responsible conservation area managers to strong and sometimes controversial action.

Fuggle and Rabie (1983:15) state that the first major legislative protection of forests dates back to a Cape Statute of 1888. This Statute enabled state forests to be demarcated as formal protected areas in South Africa. Cooper and Swart (cited in Kepe, 2001:23) describe that with the passing of The Cape Forest Act (Act 28 of 1888), a large number of indigenous forests were demarcated. Access to indigenous forests was severely limited and the demarcation of forests saw the removal of communities from land they previously occupied to 'unproductive' areas allocated to them by the government.

Only a few traditional leaders had access to some forest land. For example, in the former homeland, Transkei, almost 100,000ha of indigenous forests is currently under protection but only about 30,000ha of less sensitive forests are designated as 'headmen's forests', where traditional local authorities in the villages have *de jure* control over them. (Kepe, 2001:23).

Conservation remains an important policy objective even in a post-apartheid dispensation.

Biodiversity conservation has emerged within the past two decades as one of the most important global challenges confronting national planners, world bodies, professionals and academics (Mbale *et al,* 2005). The global and national importance of South Africa's forests place a heavy responsibility on the South African government to ensure their long-term conservation. Berliner and Benn (2004) state that internationally, South African forests can also claim global importance. Despite sharing more affinities with Afro-tropical forests, their position relative to the Equator qualifies them as 'temperate forests'. Recent research has shown that South African forests have the highest biodiversity of any temperate forested region in the world.

Under its commitment to the Convention on Biodiversity Diversity (CBD), South Africa needs to increase the amount of land allocated to formal conservation from 6 percent to 10 percent. Considerable progress has been made in this respect, with over 457,000 hectares of land added since 1994- the greatest expansion in any comparable period in the country's history (DEAT, 2003).

3.3 Land Reform Policy in Post Apartheid South Africa

Land reform has always been regarded as a high priority by the African National Congress (ANC) and became official government policy once it came into power with the first democratic elections in 1994. In the early 1990s, under pressure from the ANC, a series of policies were enacted by the then Apartheid government which slowly began to repeal legislation that prohibited Black South Africans from owning and accessing land as part of the transition process from a White minority led government to a multiparty democratic state. The objectives of land reform policies were to distribute and redistribute land to all South

Africans; to extend security of tenure; to grant some form of interim protection of informal land occupation; and to set up the processes for future land reform. Table 3 below summarises these various policies.

Table 3.

Upgrading of Land Tenure Rights Act (Act 112 Of 1991)	Provides for the upgrading and conversion into ownership of certain rights granted in respect of land; for the transfer of tribal land in full ownership to tribes.
Distribution And Transfer of Certain State Land Act (Act 119 of 1993)	Regulates the distribution and transfer of certain land belonging to the State and designated by the Minister as land to be dealt with in accordance with the provisions of this Act.
Land Administration Act (Act 2 of 1995)	Provides for the delegation of powers and the assignment of the administration of laws regarding land matters to the provinces.
Development Facilitation Act (Act 67 of 1995)	Introduces extraordinary measures to facilitate and speed up the implementation of reconstruction and development programmes and projects in relation to land; and in so doing to lay down general principles governing land development throughout the Republic.
Communal Property Associations Act (Act 28 of 1996)	Enables communities to form juristic persons, to be known as communal property associations in order to acquire, hold and manage property on a basis agreed to by members of a community in terms of a written constitution.
Interim Protection of Informal Land Rights Act (Act 31 Of 1996)	Provides for the temporary protection of certain rights to and interests in land which are not otherwise adequately protected by law.
Extension of Security of Tenure Act (Act 62 Of 1997)	Provides for measures with State assistance to facilitate long-term security of land tenure, regulating the conditions of residence on certain land.

The enactment of a democratic Constitution in 1996 enshrined peoples' right to property (and by implication land). Sections 25(5), 25(7) and 25(8) of the Constitutional property clause address some of the components of land reform and determine that:

1 *The state must take reasonable legislative and other measures, within its available resources, to foster conditions that enable citizens to gain access to land on an equitable basis. (Section 25(5)).*
2 *A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress. (Section 25(8)).*
3 *No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from provisions of this section is in accordance with section 36(1). (Section 25(8)).*

The Constitution does not only provide for the right to land reform and equitable redress, but also to environmental protection. For example, Section 24 of the Constitution states that:

Everyone has the right -
(a) to an environment that is not harmful to their health or well-being;
(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;
(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

The constitutional rights to property as well as environmental protection can, however, are seen as contradictory. For example, it illustrates the inherent tension between the need to provide people with access to land as well as the need to protect the environment. This study will show that environmental protection and conservation policy objectives create a complex

and dynamic policy implementation problem in areas (such as those of the Dukuduku indigenous forest) where people demand a restitution of land rights.

3.4 The Restitution of Land Rights Act (Act 22 of 1994)

In 1994, the South African government passed The Restitution of Land Rights Act which initiated land reform by providing for the restitution of ownership and access to land rights to those dispossessed of land in terms of racially-based policies of the past. This land reform policy is the key legislative framework for land reform in South Africa and the Act provides for three programmes (i) land restitution; (ii) land redistribution; and (iii) land tenure reform.

(i) The land redistribution programme aims to provide the disadvantaged and the poor with land for housing and productive purposes. It is also designed to deal with the past injustices of land dispossession and aims to foster the equitable distribution of landownership, poverty reduction and economic growth.

(ii) The land restitution programme is designed to restore landownership or provide compensation to those who were dispossessed without adequate compensation by racially discriminatory practices after 1913.

(iii) The land tenure programme is designed to provide security to all persons and preventing land evictions. It provides for the legal recognition and the formalisation of communal land rights in rural areas; it also includes a legislated program to strengthen the rights of tenants on mainly white-owned farms.

3.5 The Land Restitution Process

The land restitution programme is primarily implemented through a land claims process for those people who were dispossessed of land because of the 1913 Natives Land Act. Kepe *et al* (2005: 6) explains that all land claims are lodged against the state, rather than against people or organisations currently owning the land.-

The Restitution of Land Rights Act provides for the establishment of and independent Commission on Restitution of Land Rights. This is commonly referred to as the Land Claims Commission (LCC). The LCC is a statutory body that protects the rights of people regarding land issues and processes land claims lodged with the Commission. The LCC is headed by a Land Claims Commissioner who is appointment by the Minister responsible for land affairs. It is therefore primarily guided by land reform policies (as opposed to conservation policies)

For land restitution to take place, a claim has to be lodged with the LLC. Once received, the Land Claims Commissioner gives notice of the claim to all stakeholders who have an interest in the matter. In terms of Section 10(1) of the Restitution of Land rights Act (Act no 22 of 1994)

> *any person or the representative of any community who is of the opinion that he or she or the community which he or she represents is entitled to claim restitution of a right in land.*

The Land Claims Commissioner has to verify the validity of the claim as well as identify the rightful claimants and beneficiaries. The land claim is gazetted, whereby public notice of the land claim is made by the LCC inviting public submissions. This notice is to be made public using media such as television or on radio, or by displaying notices in public places in the

vicinity of the land, and any other reasonable means to bring the claim to the notice of interested and affected people.

The Land Claims Commissioner must lodge the claim in question with the Minister responsible for land affairs, in this case the Minister of Rural Development and Land Reform, for ratification, and if necessary, assign the monetary value of the claim. At this point no further engagement between the LCC and claimants is allowed until the Commissioner is able to facilitate mediation and reach a decision. When a claim cannot be settled through mediation, the Commissioner prepares a comprehensive report, and refers the claim to the Land Claims Court for final determination. It is the task of the Land Claims Court to decide which form of restitution is appropriate and fair in each case, and should this require expropriation then the current owner is entitled to fair compensation. The mediation process is supposed to include all stakeholders including the claimants, land-owners and other interested parties before the Land Claims Commissioner can make a final decision.

Some challenges have been experienced during the land claims process because there are a multitude of stakeholders, each with their own interests and goals regarding the land in question. For example, the Land Claims Commissioner has been faced with problems identifying the rightful claimants and beneficiaries. In addition, a settlement is not always easily forthcoming. A claim is "settled " when all stakeholders agree, but in reality there are many landowners who are unwilling to sell. Some claimants do not want the land, but prefer compensation in monetary terms.

3.6 Reconciling Conservation with Land Restitution

According to AFRA News Report (2006: 12) access to land remains one of the country's most socially and politically sensitive issues. AFRA argues that the hunger for land and widespread abuse taking place on farms are not historical realities but continue to exist today. To this day, high levels of racial inequality in land ownership symbolise a much wider range of deprivations and oppressions that were experienced in the past and require ongoing redress. (AFRA News Report 2006: 12).

Kepe *et al* (2005:4) explain that since 1994, a large number of land restitution projects have been initiated which affect conservation areas. However, not all dispossessed land will be returned to people affected by removals because some of this land is demarcated as environmentally protected and under conservation and is therefore not "available" for redistribution.

Kepe et al (2005: 4) states that a major challenge for government is to reconcile land reform and biodiversity conservation policies in contested geographical areas. The implementation of Land Rights Act has impacted strongly on the environment and that over the years government has had the challenging task of compensating landowners for the redistribution of land to those dispossessed after 1913. Pressure has mounted on government to speed up restitution by reconciling land restitution on protected areas, at the same time protect nature reserves. Du Plessis (2006: 3) states that acceleration of the land restitution process may be at the cost of environmental sustainability, effective co-operative and environmental governance and in disregard of the possible risk that restitution processes persist without due regard to environmental rights protected by section.

According to Kepe *et al* (2005: 8), the Restitution of Land Rights Act requires that land claims in or adjacent to protected areas must take into account the intrinsic biodiversity value of the land, and that the land claims process must seek outcomes which will combine the objectives of restitution with the conservation and sustainable use of biodiversity. Restitution claims on protected areas require close attention in the manner in which claims on conservation areas are dealt with, to satisfy claimants as well as maintain conservation in South Africa. Kepe *et al* (2005: 14) state that what is needed is a serious rethink of approaches to reconciling land restitution and conservation, including flexible policies which may include alternative land uses other than ecotourism, and broader bioregional strategies for conservation that look beyond protected areas in terms of planning, conservation and economic development.

To date, the South African government continues attempts to redress past injustices through land reform so as to restore the land rights, ownership and improve the livelihoods of rural communities by redistributing land to the landless, farm workers, women, and others who were historically disadvantaged as a result of Apartheid land policies.

Kepe *et al* (2005:3) note that land claims in conservation areas tend to be complex, controversial and emotive. Some land claims lodged on conservation land is proving to be complex because it calls on government either to give people back their land or protect biodiversity as called for by the Constitution. It does not only it affect a multitude of stakeholders, but it often juxtaposes different government departments against one another. For example, the responsibility for overseeing the implementation of the land reform programme is located with the Minister responsible for land affairs whereas the responsibility

for overseeing the implementation of conservation policies resides with the Minister responsible for environmental affairs, and those pertaining to indigenous forests with the Minister for forestry. Each of these Ministers and their respective government departments has their own specific policy mandates that may contradict those of another ministry. The case study will show that in the case of land restitution in the Dukuduku forest, the mandates of the Department of Land Affairs is in stark contrast with that of the Department of Environmental Affairs and Tourism (now the Department of Environmental Affairs) and the Department of Water Affairs and Forestry (now the Department of Agriculture, Fisheries and Forestry).

3.7 Conclusion

This chapter has provided a brief overview of conservation-led land dispossessions in South Africa, which alienated indigenous people of their land, removing their rights to land-use and ownership. The need for land reform as well as the objectives of conservation has their respective merits. Ntsebeza (1999: 9) claims that their successful resolution is critically important for stability, democracy and development in South Africa.

Kepe *et al* (2005: 15) explain that addressing the immediate and long term needs of the poor, whilst simultaneously conserving the country's biodiversity is no easy task, requiring both the creativity and above all commitment of all players to compromise where necessary and 'get it right'. This study traces the implementation dynamics in the land restitution process in the Dukuduku forest and considers whether one can conclude that, in the end, they 'got it right.'

The next chapter will present a descriptive analysis of the implementation of conservation policies and subsequent land restitution processes in the Dukuduku Forest (KwaZulu-Natal). This will serve as a case study to illustrate the process of implementation as well as the various policy implementation challenges associated with reconciling land restitution with conservation.

CHAPTER FOUR

CASE STUDY : LAND REFORM IN THE DUKUDUKU FOREST

4.1 Introduction

The issue of land reform in conservation areas is complex for a number of reasons. As discussed earlier in this dissertation, conservation has often resulted in the forced removals of local communities. The ANC led government has undertaken an extensive programme of land reform that includes reinstating land rights to previously displaced communities. However, some of these land reform initiatives affect environmentally sensitive land or conflict with conservation policy, such as that of indigenous (or natural) forests. The case study that will be presented in this chapter is a descriptive analysis of the implementation of conservation policies aimed at conserving the indigenous Dukuduku forest located in Northern KwaZulu-Natal which was contested once the Restitution of Land Rights Act bestowed upon the Dukuduku community a rightful claim to the forest.

This chapter will show that the state of indigenous forests in South Africa is precarious because it is an ever increasing limited natural resource. The land restitution process in the Dukuduku forest has proven to be highly controversial, partly because it involves different governmental departments each with their own respective policy mandates. In 2010, many of the national government departments were reorganised and portfolios were moved to different departments. The change, merging and reshuffling of certain national government departments is, to some extent, indicative of a shift of national priorities and emphasises the core objectives of the newly constituted departments. For example, the Department of Land

Affairs is now called Department of Rural Development and Land Reform. The implication is that rural development and land reform have become the priority area in matters of land. The newly placed emphasis on rural development insinuates that rural development is the primary objective of land reform and land restitution - which may imply a prioritisation above conserving indigenous forests. This chapter will argue, that these type of issues, make the implementation of land restitution in a conservation area a conflictual and complex process.

4.2 The State of Indigenous Forests in South Africa

The history of forest reserves is one of struggles between competing stakeholder groups. Throughout South Africa there is a history of people being excluded and expropriated from indigenous forests, which has resulted in the alienation of people from their land rights. Under various policies and statutes, the state has exerted its power to control the preservation of indigenous forests. The isolation of people from indigenous forests is recognizable in many parts of South Africa's forests, in the interest of conserving indigenous forests.

Fuggle and Rabie (1983:15) state that the first major legislative protection of forests dates back to a Cape Statute of 1888. This Statute enabled state forests to be demarcated as formal protected areas in South Africa. Cooper and Swart (cited in Kepe, 2001: 23) describe that with the passing of the Cape Forest Act (Act 28 of 1888), a large number of indigenous forests were demarcated. Access to indigenous forests was severely limited and the demarcation of forests saw the removal of communities from the forest areas which they previously occupied to 'unproductive' areas allocated to them by the government.

The Department of Water Affairs and Forestry (DWAF) (replaced in 2010 by the Department of Agriculture, Forestry and Fisheries (DAFF) distinguishes between three types of forests namely: (i) indigenous or natural forests; (ii) plantations; and (iii) woodlands or savannas.

According to the National Forest Act (Act no 84 of 1998):

(xx) Natural forests means a group of indigenous trees-

(a) whose crowns are largely contiguous; or

(b) which have been declared by the Minister to be a natural forest under section 7(2) of the Act.

(xxiii) Plantations means a group of trees cultivated for exploitation of the wood, bark, leaves or essential oils in the trees;

(xxxix) Woodland means a group of indigenous trees which are not a natural forest, but whose crowns cover more than five per cent of the area bounded by trees forming the perimeter of the group.

Table 4.1

Forest Type	Area (hectares)	% land area of SA
Indigenous/ Natural Forests	0,5 million	0,5
Woodlands/ Savannas	42 million	35
Plantations	1,2 million	1,1

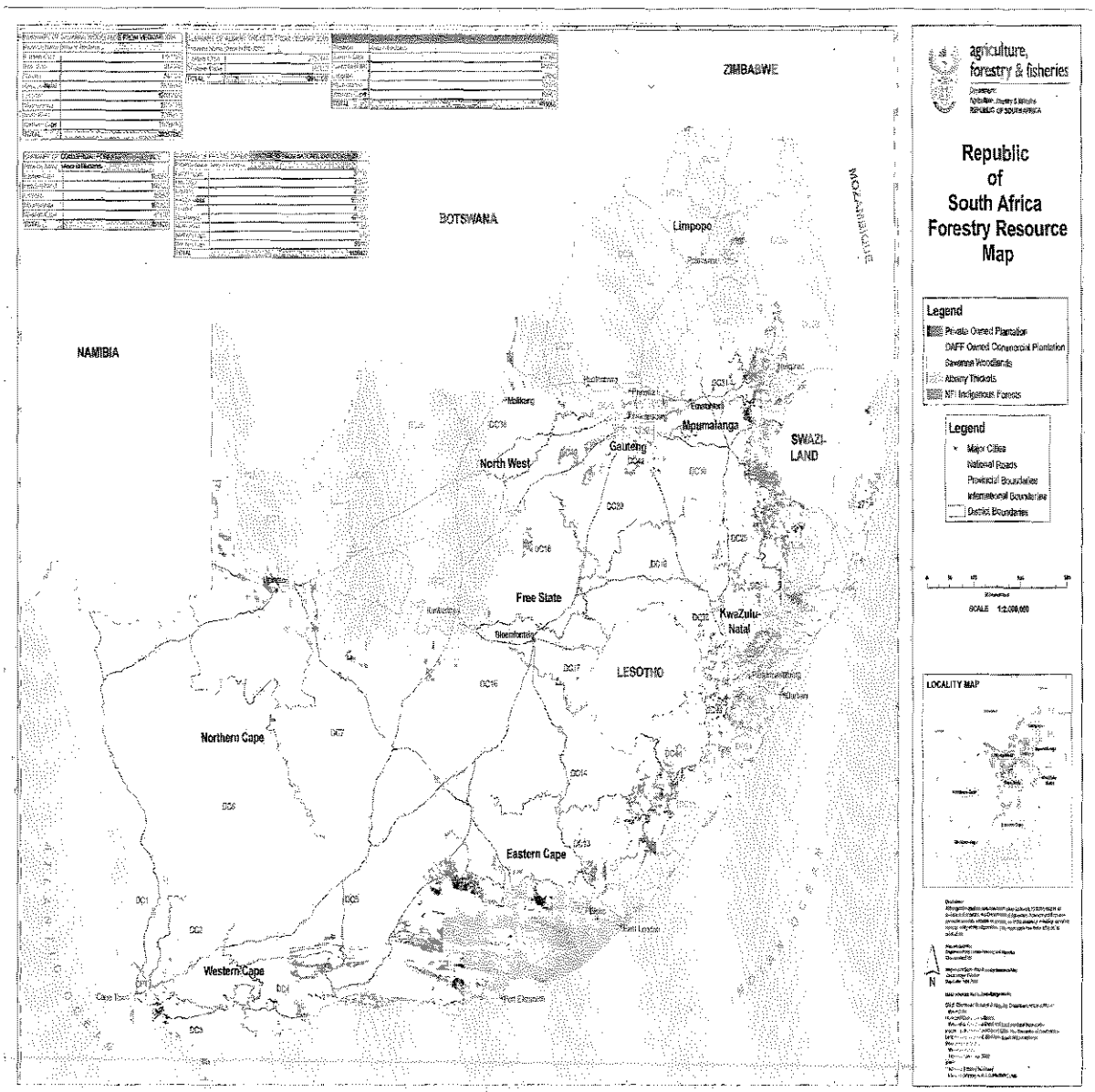
Source: The State of the Forest Report (2005)

Forestry includes all activities linked to indigenous, woodlands and plantations forests. Barrow *et al* (2002) state that in South Africa all indigenous forests are deemed protected irrespective of where they are. The importance of conserving forest biodiversity in South Africa is widely recognised. Macdonald (1989) estimates that approximately 42.5% of the forest biome in South Africa has already been altered because of human use and argues that identifying priority areas for forest conservation throughout South Africa is an issue of immediate concern.

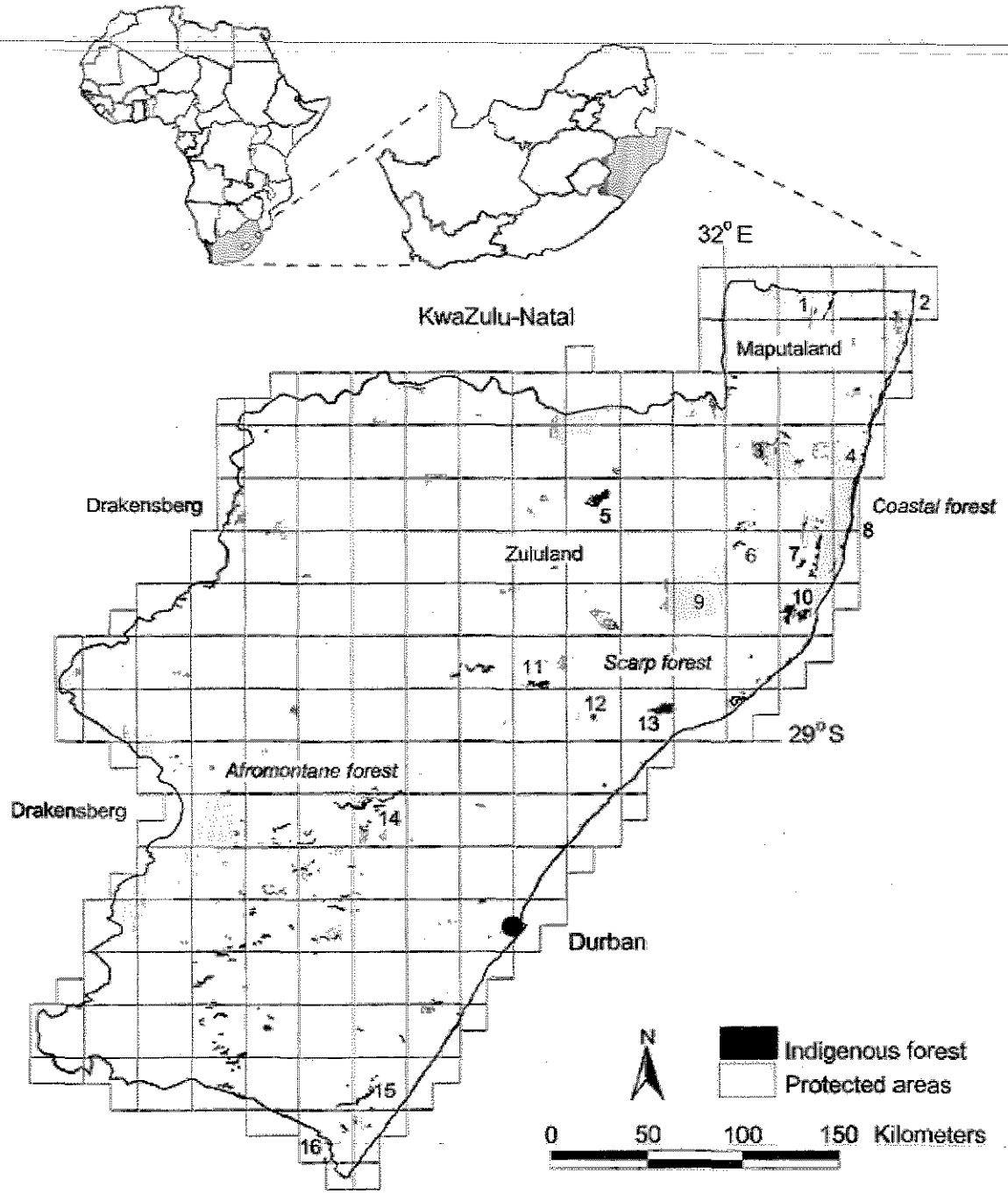
The largest proportion of indigenous forests are owned by public authorities. According to The State of the Forest Report (2005), a total of 190,775ha (52.8%) of indigenous forests have some form of protection in South Africa. National government is the custodian of 38% of these forests, whereas provincial conservation authorities protect approximately 13%. The remaining indigenous forests are in privately-owned nature reserves.

Map 4.1 is a map of the forestry resources of South Africa and illustrates the different types of forests and their location across South Africa and shows that indigenous forests are sparse (Only 495,666ha of land in South Africa is indigenous forest). It also shows that most indigenous forests are located in the Eastern Cape province and in KwaZulu-Natal. Map 4.2 illustrates the indigenous forests and protected areas in KwaZulu-Natal.

Map 4.1: Forestry Resource Map of South Africa



Map 4.2: Indigenous Forests and Protected Areas in KwaZulu-Natal



Source: Eeley et al (2000)

The distribution of indigenous forests and existing protected areas in KwaZulu-Natal Province, South Africa. Important forests and reserves mentioned in the text are labelled: (1) Tembe/Ndumu, (2) Kosi Bay, (3) Mkuzi, (4) Sodwana, (5) Ngome, (6) Hluhluwe, (7) western Shores, (8) Cape Vidal/St Marys Hill, (9) Umfolozi, (10) Dukuduku, (11) Nkandla, (12) Dhlinza, (13) Ongoye, (14) Karkloof, (15) Oribi Gorge, (16) Umtamvuna.

4.3 The Policy Framework

Forestry in South Africa is regulated primarily through The National Forest Act (Act 84 of 1998). This Act grants the national minister for forestry the authority to oversee and manage all aspects of forestry. The national minister for forestry also has the authority to delegate authority to respective provincial authorities responsible for forestry.

According to the National Forest Act (Act 84 of 1998, Section 7-10)

7. (1) ***No person may cut, disturb, damage or destroy any indigenous, living tree, in or remove or receive any such tree from, a natural forest except in terms of -***
   (a) a licence issued under subsection (4) or section 23; or
   (b) an exemption from the provisions of this subsection published by the minister in the Gazette on the advice of the Council
8. (1) *The Minister may—*
   (a) declare a State forest or a part of it;
   (b) purchase or expropriate land under section 49 and declare it: or
   (c) at the request or with the consent of the registered owner of land outside a State forest, declare it, as a specially protected area in one of the following categories:
      (i) A forest nature reserve;
      (ii) a forest wilderness area; or
      (iii) any other type of protected area which is recognised in international law or practice.
8. (2) *The Minister may declare such an area only if he or she is of the opinion that it is not already adequately protected in terms of other legislation.*
10.(1) *No person may cut, disturb, damage or destroy any forest produce in, or remove or receive any forest produce from, a protected area*

The above illustrates the authority granted to the minister responsible for forestry and his/her power to declare an area protected thereby removing access to this land and its *produce.*

However, the Restitution of Land Rights Act (Act no 22 of 1994) delegates significant powers and functions to the minister responsible for land reform and authorizes the minister to grant individuals or communities access to land from which they were removed as a result of the implementation of the Natives Land Act (1993).

The Restitution of Land Rights Act (Act no 22 of 1994) declares that:

2. (1) *A person shall be entitled to enforce restitution of a right in land if-*

(a) he or she is a person or community contemplated in section 121(2) of the Constitution or a direct descendant of such a person; and

(b) the claim for such restitution is lodged within three years after a date fixed by the Minister by notice in the Gazette.

2. (3) *The date contemplated in section 121(2)(a) of the Constitution is 19 June 1913.*

The Restitution of Land Rights Act and the National Forest Act are both explicit in their respective mandates. The divergent authority delegated to the respective ministers responsible for forestry and land reform indicates two distinctly different policy mandates. The minister responsible for forestry must demarcate and manage indigenous forests, whereas the minister responsible for land reform must return land ownership rights to those individuals or communities removed or dispossessed from the land (post 1913). In other words, while the minister responsible for forestry may demarcate protected forest areas, the minister responsible for land reform may return access to land to people, which could include land demarcated as protected areas.

Although there has been some successful land claims on conservation areas, it has not been an easy process for government and denying people access to land, such as indigenous forests, in the interest of conservation remains a long-term conflict about access to land and

natural resources, (Algotsson, 2005). Karumbidza (2006) states that KwaZulu-Natal has the second largest number of land claims after Mpumalanga and many of these claims are lodged against forests and conservation areas. Countrywide there are 103 claims in respect of forests and conservation, distributed as follows:

Table 4.2: Remaining Land Claims of Forests and Conservation Areas[1]

Province	**Remaining Land Claims on Forests and Conservation Areas**
Mpumalanga	46
KwaZulu-Natal	27
Limpopo Province	8
Western Cape	6
Eastern Cape	5
North West Province	4
Northern Cape	4
Free State	3
Gauteng	0
Total Land Claims	**103**

The finalisation of the remaining land claims may prove difficult as the respective government ministries will argue either in favour of conservation or in favour of land restitution. The Restitution of Land Rights Act does identify a set of criteria which must be applied during the land claims process. In terms of Section 11(1d) of the Restitution of Land Rights Act.

[1] This figure was provided by the Minister of Land Affairs in an internal question paper

no order has been made by the Court in terms of Section 35 in respect of rights relating to that land, he or she shall cause notice of the claim to be published in the Gazette and shall take steps to make it known in the district in which the land in question is situated.

This section indicates that people do not have automatic rights to a particular area, but that the Land Claims Commission must seek to redistribute land in manner that serves the interests of people as well as the larger need for conservation. This, in many cases, means that compromises will need to be made between the respective parties. In contesting restitution rights, land ownership rights are possibly the single most important determinant of stakeholder identity and power. What is of importance in reconciling land restitution on conservation areas is the way the interests of stakeholders are negotiated; whether certain stakeholders are marginalised, and others strengthened; to what extent government supports the interests of the community.

4.4 Intergovernmental Relations

It is argued here that the intergovernmental nature of land restitution in conservation areas plays a significant role. According to the Constitution, government institutions should not be in conflict with one another. However, the study has already pointed to the inherent conflict between conservation and land restitution.

Section 41 of the Constitution of South Africa (Act 108 of 1996) states that:

1. All spheres of government and all organs of state within each sphere must
    a. preserve the peace, national a unity and the indivisibility of the Republic;
    b. secure the well-being of the people of the Republic;
    c. provide effective, transparent, accountable and coherent government for the

Republic as a whole;

d. be loyal to the Constitution, the Republic and its people;
e. respect the constitutional status, institutions, powers and function of government in the other spheres;
f. not assume any power or function except those conferred on them in terms of the Constitution;
g. *exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and*
h. co-operate with one another in mutual trust and good faith by
    i. fostering friendly relations;
    ii. *assisting and supporting one another;*
    iii. informing one another of, and consulting one another on, matters of common interest;
    iv co-ordinating their actions and legislation with one another;
    v adhering to agreed procedures; and
    vi avoiding legal proceedings against one another.

With regards to land claims on indigenous forests, the most significant government departments are: The Department of Environmental Affairs (previously the Department of Environmental Affairs and Tourism), the Department of Agriculture, Forestry and Fisheries (previously the Department of Water Affairs and Forestry), and The Department of Rural Development and Land Reform (previously known as the Department of Land Affairs). Each of these government departments are stakeholders with specific mandates regarding land restitution in indigenous forest areas.

The Department of Agriculture, Forestry and Fisheries (DAFF) is the lead department for forestry, and is responsible for implementing legislation that governs the management and protection of forests, including indigenous forests. The Department of Environmental Affairs

(DEA) is the lead government agent of protecting environmental stability in South Africa. Mketeni (2010) describes that the DEA's mandate is to create a balance between conservation and socio-imperatives; conserve biodiversity, its components, processes and functions and mitigate threats; ensure fair, equitable and sustainable use of natural resources; build a sound scientific base for the effective management of natural resources; ensure compliance and enforcement of biodiversity laws and contribute to global sustainable development agenda.

According to the Restitution of Land Act, the Department of Rural Development and Land Reform (DRDLR) must ensure that the land reform objectives of land redistribution, land restitution, and land tenure reform as stipulated in the Restitution of Land Rights Act are met. It is clear that the different government stakeholders have different mandates but according to Chapter 3 of the Constitution institutions of the state have to cooperate with one another. This means that, in the spirit of cooperative governance, a consensus should be reached regarding the need for land restitution as well as the need for conservation. The chapter will now consider the dynamics experienced with the implementation of conservation and land restitution policies in the Dukuduku indigenous forest and critically analyses the manner in which conservation was implemented in the forest by DWAF and DEAT. It also considers the policy dynamics involved in the Dukuduku communities' success in gaining right of access in an area that is environmentally unique and an integral part of the country's conservation objective.

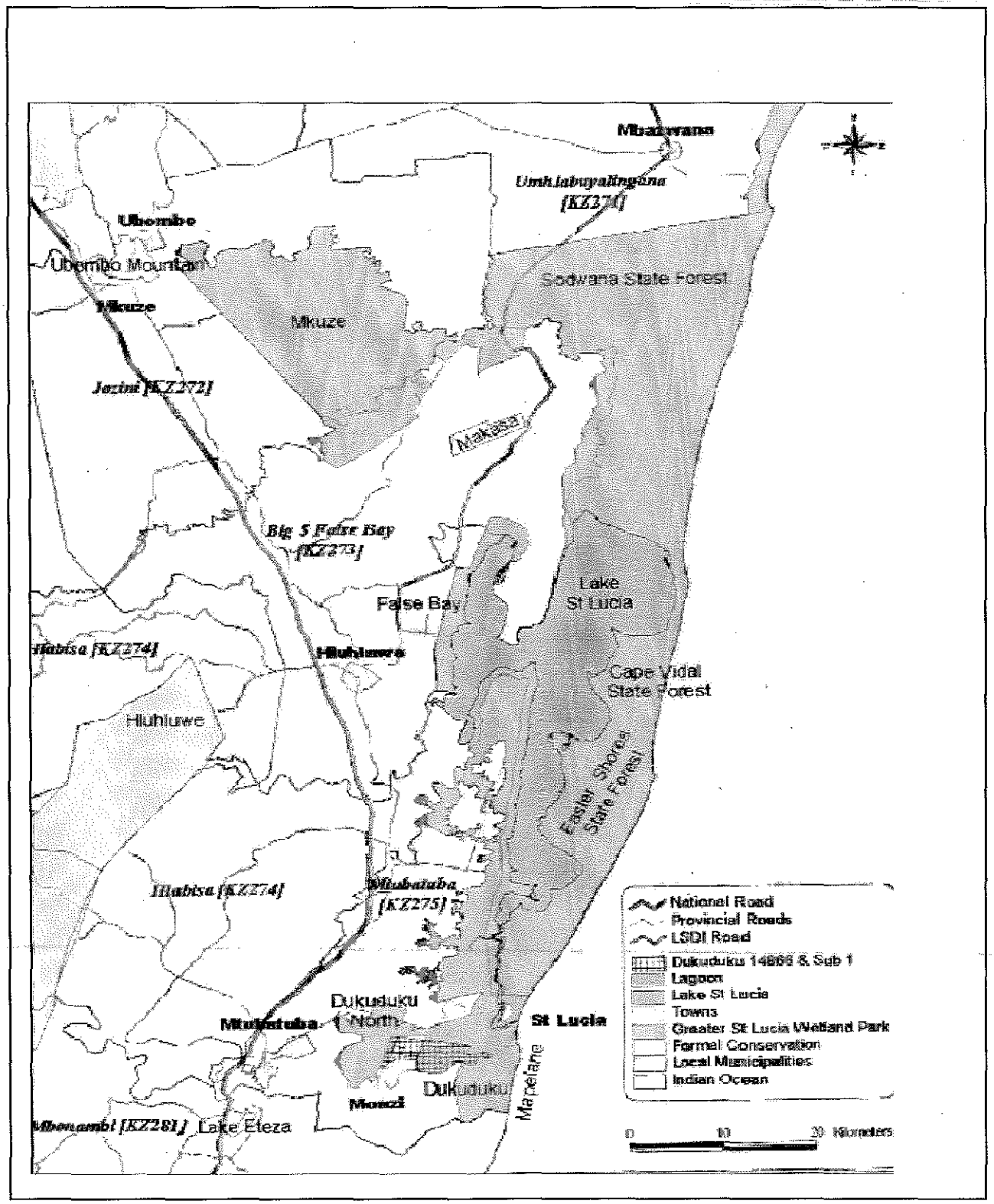
4.5 The Implementation of Conservation and Land Restitution Policies in the Dukuduku Forest.

4.5.1 Background

Dukuduku (which means "*the forest you can disappear in*") is an indigenous forest located in the northern part of KwaZulu-Natal (See Map 4.3). Cho and Debba (2001) explain that the Dukuduku indigenous forest is one of the largest remaining stretches of coastal lowland forest in Southern Africa. The forest is comprised of about 6,500 ha of indigenous coastal forest. Only 10% of the original indigenous coastal lowland forest remains intact in South Africa, and 40% is located in the Dukuduku forest. The forest is situated at the gateway of the Greater St Lucia Wetland Park (GSLWP) which is a World Heritage Site, conserving and protecting many rare and special trees, plants, birds and animals. AFRA (2003) states that within this remaining portion of natural forest habitat there are apparently a recorded 12 species of endangered birds and 3 endangered plant and animal species. It is the only place in the world where the Gaboon viper is found.

According to the Dukuduku Dossier (2009), a world heritage site is an area that holds outstanding universal value and is therefore considered worthy of protection. AFRA (2004) explains that these sites differ from National Heritage Sites in that they are *internationally* recognized as sites of Natural and Cultural significance. On the 4th of December 1999, the Dukuduku forest was declared a heritage site in terms of the World Heritage Convention Act (Act 49 of 1999.). It is unquestionable that this area holds significant environmental value.

Map 4.3: The location of the Dukuduku Forest



Source: AFRA Special Report (2003:19).

The Dukuduku Forest has always been an issue of conflict between the government of the day and the community residing in the forest. AFRA's 2003 Special Report explains that the occupation of Dukuduku Forest can be traced back to the 1700s - probably even earlier based on oral history. AFRA (2003) contends that the Dukuduku forest has never been a forest free of occupation, and argues that claim that it has been uninhabited or unoccupied for a long period of time are spurious. AFRA states that descendants of original inhabitants from the 1700s and newer groups of people who arrived in the area in the 1980s have always occupied the land and used the natural resources of the Dukuduku forest. Despite its protected status, there is an estimated 12,000 to 30,000 individuals residing illegally in the Dukuduku forest. (Cho and Debba, 2001).

The eviction of people residing in the Dukuduku forest has taken place on numerous occasions but with little success. AFRA (2003) states that the categorisation of land in Zululand as "crown" land (meaning land belonging to the then British colonizers) resulted in indigenous people becoming "squatters" on their own land.

The Dukuduku Forest was declared a protected area in the early 1950s and conserved more than 6,000 ha of coastal lowland forest. The Illegal Squatting Act of 1951 and the Forestry Act of 1984 enacted by the apartheid government, refused any occupation in the forest. During the 1970s, local communities claiming their rights to the land simply moved into the Dukuduku Forest, clearing parts for homes and subsistence farming. These activities intensified and by the mid 1990s, an open and fierce conflict commenced with conservationists and government (Algotsson, 2005). On 16 July 1990, the Matubatuba magistrate's court found seven of the estimated 1,500 occupants of the forest guilty of illegally occupying land in the Dukuduku forest. The occupants were sentenced to 12 months

imprisonment or a R1,000 fine – suspended for five years, and were given a month to leave the area (Karumbidza, 2006).

However, the most noteworthy eviction of people occupying land in the Dukuduku forest was when it was demarcated as a nationally protected indigenous forest in 1999. The relocation of people living in the Dukuduku forest has taken place on numerous occasions but, despite removals, many people continue to return and occupy land in the Dukuduku forest. The reasons for their return vary. Some believe the land lies idle. For example, one of the accused at the July 16 1990 court case, an elderly induna, Velaphi Dube, stated that: "[i]n 1973 we were chased out, our huts burned, our cattle chased away. We decided to come back because we were hungry and the government is not using the land..." (Witness, 27 July 1990). For others it is a natural resource on which their livelihoods depend. People residing in the forest vicinity had been removed by department officials under a court order in 1973, yet by 1987 they were coming back with their cattle and belongings.

Another forest dweller told journalists what had attracted him to the forest, leaving his low-paying job with the timber industry. "There are economic benefits to living in the forests. No rates are payable, dwellers receive a plot of land to develop at will, and people live off trees of the forest, which can be used as firewood, building material or shaped into crafts to sell to tourists on their way to St. Lucia" (Daily News, 26 August 1998).

The majority of forest areas in South Africa are located in rural areas where forestry plays an essential role in the creation of economic activities and is therefore positioned as a potential key player in rural poverty alleviation (Karumbidza, 2006). Communities within these remote areas are characterised by high levels of poverty and limited livelihood opportunities

whereby prior to 1913, they had access to these lands. Shackleton (2004) explains that approximately 44% of the South African population lives in rural areas. These areas are often found to be underdeveloped in terms of infrastructure, government services and job opportunities.

To the south and south west of Khula Village, and between Khula Village and Monzi, a community of some 10,000 persons occupy the Dukuduku Forest where they provide a livelihood for themselves in the form of subsistence farming and the manufacture of crafts, essentially in the form of wood carving using the indigenous trees. (Mtubatuba IDP report, section 4.3). The Dukuduku community sustains itself through the use of the natural resources available in the forest. The natural resources of the forest are a key component of their livelihoods on which they rely. For example, it provides land for grazing their cattle, cultivation of crops, thatch, firewood, building materials, water and plants (which are used for medicinal purposes). (AFRA, 2003). Schools have been built in the forest and a mobile clinic even services the area. Some occupants hold jobs, which brings in some revenue, while others draw incomes from pensions and grants.

Lewis *et al (*2003) describe that it is well recognised that forests and forest products add to the well-being and at times the very survival of millions of rural poor throughout the world. Displaced communities have suffered in many ways: from the loss of their original land and the improvements they had made on that land, to disruption of traditional life and family disintegration. (Karumbidza, 2006).

AFRA acknowledges that the Dukuduku forest is an environmentally sensitive area and that the Dukuduku community may indeed be threatening the intrinsic nature of the forest. Over

the years, the then DEAT and DWAF have continuously tried to remove people from the forest – predominantly using forceful measures, but even these have not failed to stop people from returning and occupying land in the forest.

The situation between Dukuduku forest dwellers and the government has always been tense, volatile and often violent. Residents in the forest have always argued that the land in the forest is ancestral land and rightfully theirs. The decision made by the then Minister of Water Affairs and Forestry (Mr Kader Asmal) to evict and relocate the Dukuduku residents only, further provoked the Dukuduku residents (AFRA Research Report , 2002: 12).

The view expressed by the DWAF and the DEAT has always been that the residents in the Dukuduku forest reside in the forest illegally and had no tenure rights. Despite ongoing conflict between the government and the Dukuduku community, the DWAF and the DEAT did not renege on this view.

Negotiations allegedly took place between the Dukuduku community and government. However, claims were later made that the DWAF consulted with traditional leaders only AFRA Research Report (2002:13). In 1998 an 'agreement' was reached between the DWAF and traditional leaders. The agreement stipulated that Dukuduku residents occupying the forest were to relocate to an area purchased by the Department of Land Affairs. In terms of this so-called agreement, forest occupants would move to land near Monzi, thereby "saving" the forest from human occupation and ending the use of its natural resources. Despite the 1998 agreement, large number of families chose to continue to reside in the forest (AFRA Research Report , 2002:13).

On the 6th of December 1998, the Dukuduku Declaration was signed between the Minister of Water Affairs and Forestry; the MEC for Traditional and Environmental Affairs of KwaZulu-Natal Province; and the leaders of the Dukuduku Community.

The Dukuduku Declaration was presented by the DWAF as a consensual agreement reached between government and the Dukuduku community.

Table 4.3 Dukuduku Declaration

1. GUIDING PRINCIPLES
1.1 The needs of the community of Dukuduku must be met.
1.2 It is illegal to destroy an indigenous forest. It is therefore not possible for communities to continue living in the forest.
1.3 Alternative land will be found for the communities. Proper services must be provided so that communities' needs are accommodated.
1.4 It is illegal to sell plots on state land. Anyone found to be doing this will be dealt with in terms of the law.
1.5 Anyone who is currently in the forest but who is in the country illegally will be dealt with in terms of law and national policy.
2. PROCEDURE FOR RESOLUTION
2.1 The South African National Defence Force (SANDF) together with the South African Police Service (SAPS) be asked to patrol the area to prevent further people from moving into the area and to protect those who are in the area.
2.2 Private land near the forest will be valued by the Department of Land Affairs and arrangements will be made to purchase that land.
2.3 Facilitators will be appointed to register all those living in the forest so that their needs can be understood and they can prepare for moving to the alternative land.
2.4 The provincial and local governments together with the Lubombo Spatial Development Initiative will begin the process of establishing a settlement on the private land. The community will then move to the settlement.

3. THE FUTURE OF THE FOREST

3.1 The National Forests Act 1998 mandates the Minister to enter into agreements with communities for the joint management of state forests. This will be the basis on which the future of the Dukuduku forest will be managed once the communities have relocated.

3.2 The community will have rights of access to Dukuduku, as well as the utilisation of resources such as collection of firewood, medicinal plants and for cultural purposes.

4. FURTHER WORK

The parties agree to continue to work together for the benefit of the community as well as the forest

Source: Dukuduku Research Report (2002:13)

During a press statement announcing the Dukuduku Declaration in December 1998, the then Minister of Water Affairs and Forestry, Kader Asmal, is quoted as saying: *"We cannot allow any more illegal squatting"*. Nyanga Ngubane, (a member of the Executive Council for KwaZulu-Natal's Traditional and Environmental Affairs), added that: *"not a single one of them owns the land – if they did, we would have approached the problem in a different way."* (AFRA Special Report, 2003: 3). By having no legitimate land rights to the forest, occupants of the forests were labelled illegal squatters by the DWAF. For now, conservation policies triumphed.

4.5.2 The Dukuduku Land Restitution Claim

However, the passing of the Restitution Act in 1994 has provided the 'illegal squatters' of the Dukuduku forest a chance to officially claim access to the land. With help from AFRA, the Dukuduku community lodged a land claim with the Land Claims Commission in December 1998. This introduced a new stakeholder in the case, namely the then Department of Land Affairs (now called Department of Rural Development and Land Reform) with the mandate

to restore land rights to those previously dispossessed - a mandate in contrast with that of the DEA's and the DAFF's conservation mandate.

The Land Claims Commission had to ascertain the validity of the Dukuduku community's land claim as well as the beneficiaries. As pointed out earlier in this paper, one of the legal requirements of the LCC is to mediate among different stakeholders in order to reach a consensus. However, consensus could not be reached between the Dukuduku community, the DWAF and the DEAT. The Regional Land Claims Commissioner dismissed the Dukuduku community's claim citing that it was a vexatious claim. (AFRA Annual Report, 2003-2004).

Unhappy with the manner in which the Regional and Claims Commissioner came to a decision, the community took the Land Claims Commission (LCC) to the Land Claims Court, requesting the latter to invalidate the LCC decision. (AFRA Annual Report, 2003-2004).

The DWAF and the DEAT presented arguments in favour of removing people from the Dukuduku forest. The DWAF (now DAFF) has always been responsible for managing the Dukuduku forest, and their primary mandate as a management body of the forest is to preserve the forest. Kahn (1992) states that the DWAF emerged as a leading governmental proponent of environmental justice. As an advocate of environmental justice, the DWAF's objective was the same as that of the DEAT - to relocate the residents of the Dukuduku forest to a settlement outside the forest in order to protect this indigenous forest. (AFRA Annual Report, 2003-2004).

The DWAF's submission to the Land Claims Court argued that the occupants of the Dukuduku Forest should be removed and relocated to an area where municipal services could be provided. DWAF tried to convince the Land Claims Court that the occupants of the forest have no access to basic service delivery and lack basic sanitation facilities, nor is there any potable water supply within the informal settlements. Residents rely primarily on natural streams and boreholes. The DWAF explained that the local municipality has to deliver water by tank as an emergency supply in order to combat frequent cholera epidemics in the community. The DEAT (now the DEA) stated that the Dukuduku forest area is part of a larger ecological system and emphasized that the forest is one of the last remaining coastal natural forest and vegetation areas. The DEAT also argued that the forest is under threat of extinction if occupants continue to reside in the Dukuduku forest. (AFRA Annual Report, 2003-2004).

The DEA is responsible for the conservation of the Greater St Lucia Wetland Park (declared a World Heritage Site in December 1999) in which the Dukuduku forest is situated. The Dukuduku Forest is a mixed, subtropical climax environment. The DEAT has found that as communities clear land, subtropical plants species endemic to Dukuduku forest are becoming extinct. The DEAT was even more adamant to conserve the forest with the proclamation of the St. Lucia World Heritage Site. (AFRA Annual Report, 2003-2004).

However, the Land Claims Commission Court judge disregarded these arguments. Instead, he was highly critical of the way the claim was dismissed by the LCC and in May 2003 instructed the latter to validate the claim. (AFRA Annual Report, 2003-2004). Five years after the LCC's made its first verdict in favour of conservation, the LCC (as instructed by the Land Claims Court) overturned its initial decision in favour of land restitution.

4.6 Conclusion

The objective of this chapter was to analyse the divergent objectives of conservation policies with those of land restitution. This chapter presented a descriptive analysis of the unsuccessful attempts made by the DWAF and the DEAT to enforce policies protecting the Dukuduku indigenous policies from human occupation despite its legal mandate emanating from the National Forest Act. On the contrary, Land Claims Commission's ruling favoured the Dukuduku community who were granted access to the forest based on the premises of the Restitution of Land Rights Act.

This chapter has served as a case study to illustrate the various policy implementation challenges associated with reconciling land restitution with conservation. Ramutsindela (2002:16) states that the politics of parks in South Africa is far from being resolved and complicated by very slow land reform process, conflicting interests among different government departments, contradictory policy guidelines. This seems to have been the case in Dukuduku. It remains to be seen whether DAFF and DEA will seek measures to remove the community currently residing in the Dukuduku forest. Based on the literature on policy implementation, in situations where conflicting ideals remains high, policy implementation is not clear-cut. The next chapter will analyse the different issues at play in the Dukuduku case study within the context of policy implementation.

CHAPTER FIVE

ANALYSIS AND CONCLUSION

The purpose of this study was to explore the underlying policy implementation challenges facing policy decisions with conflicting objectives. In this particular study, the conflicting calls for conservation and land restitution in the Dukuduku Forest were explored. John (1998: 27) explains that while the implementation of a public policy appears to be a neutral and straightforward mechanism to translate intentions into reality, it is in fact a complex matrix of public, quasi-public and private decision-making bodies, all of which are involved in the policy process exercising their authority and protecting their interests and values.

The case study of conservation and land restitution in the Dukuduku forest is but one example of the struggle between, on the one hand, conservation and the demand for access to land, on the other. The tensions between government and the Dukuduku community have persisted for several decades both during the apartheid regime, as well as during South Africa's existing form of democratic rule. It is not a political or racial conflict between citizens and government (as experienced during apartheid), but rather one resulting from the twofold need for land restitution and conservation.

The case study has illustrated that reconciling land restitution with conservation has proven to be a challenging process in the Dukuduku forest, as the stakeholders have different and divergent interests. Authors such as Barrett and Fudge (1981) argue that in most cases there is a tendency to treat policy implementation as a clear and uncontroversial process, but the case study has highlighted that there are various factors that affect the implementation process which may result in delayed implementation or unwanted policy outcomes.

For example, Parsons (1995) identifies a significant relationship between implementation and policy type. He argues that the type of policy may have an impact on the policy implementation process. Land restitution in South Africa is a redistributive policy which entails transferring land back to the people removed from land after 1913; or by compensation in the form of money for the land lost. Some of the common implementation challenges facing redistributive policies are that this policy type results in 'winners' and 'losers' and yields a relative amount of conflict .

Parsons (1995) warns that redistributive policies often result in considerable conflict among groups as resources are transferred from one (or more) group(s) in society to other groups. In the Dukuduku case study, the decision by the Land Claims Court to override the Land Claims Commissioner's decision, resulted in the DAFF and the DEA losing control over the Dukuduku indigenous forest while the community has gained legal access rights to the forest and its natural resources.

Barrett and Fudge (1981) argue that clarity is an important aspect of policy implementation. Clarity on what is to be executed, as well as on the respective roles and responsibilities of individuals and/or organisations. Clarity, they argue, helps eliminate any ambiguity during the implementation process. This is achieved through proper communication. A problem identified in the Dukuduku case study was the lack of communication between the Dukuduku community, the DWAF and the DEAT. These government departments failed to enter into meaningful discussions with the Dukuduku community in order to consider suitable alternatives to living in the forest. The top-down nature of the policy-making processes as well as the policy implementation processes may have contributed to the community's outright disregard of the DWAF and the DEAT prohibition of access to the forest, resulting

in the ongoing utilisation of scarce forest resources.

The literature on policy implementation shows that compliance to policy decisions is easier if those directly affected by the policy decisions are consulted, fully informed and involved in the decision-making process. Especially when policies are politically sensitive, divisive or will lead to real or perceived losses. Barrett and Fudge (1981: 15) suggest that when decision-makers are unable to communicate their policy intentions and objectives, or when their policy objectives are not clearly defined, they may face difficulties in obtaining compliance. The Dukuduku Research Report (2002) validates the claims that communication was weak. According to the Report, people living in the Dududuku forest were not consulted when the DLA decided to purchase alternative land outside of the forest where the Dukuduku residents were meant to relocate to land with formal housing and basic service delivery infrastructure. Neither were they informed about the eco-tourism opportunities that would be forthcoming through the establishment of the greater St.Lucia World Heritage Site. As a result, the only message conveyed to the Dukuduku community was that government wanted the communities out of the forest.

The DWAF and the DEAT did not make any significant efforts to share information or educate the Dukuduku community about the importance and significance of this indigenous forest and why it is necessary to protect the area. This is evident in one of the comments made by a community member who did not understand why they could not reside in the forest since land was lying idle anyway. Owing to the lack of consultation and clear communication, the Dukuduku community was predominantly uninformed of what the potential alternatives were. This led to policy ambiguity and conflict resulting in a hostile relationship between government and the Dukuduku community.

Perhaps, if these government departments would have explained the environmental sensitivity of the Dukuduku forest and offered viable alternatives to residing in the forest, then the Dukuduku community, ambiguity and conflict could have been reduced.

Although one cannot conclusively state this, one could posit that the Dukuduku community would have been more agreeable to live outside of the forest if the relationship between the DWAF, the DEAT and the local community was one of trust and cooperation. As per Colebatch's (2005:23) description of the vertical dimension of policy, policy-making and implementation in the Dukuduku case was hierarchical and centralised. Policy was seen as rule: it was concerned with the transmission downwards of authorised decisions. On the contrary, Colebatch (2005: 23) states that the horizontal dimension sees policy in terms of the structuring of action. It is concerned with relationships among policy participants in different organisation outside the line of hierarchical authority. If in the case of Dukuduku, it was based on the horizontal dimension of policy, decision-making would have been more decentralised, involving the participation of different policy participants and making joint policy decisions.

The DWAF and the DEAT approach to policy-making and policy implementation regarding access and the inhabitation of the Dukuduku Forest has always been top-down. The Dukuduku community complained that the DWAF and DEAT enforced policy unilaterally. Pressman and Wildavsky (cited in Parsons 1995: 466) state that the top-down model is imbued with ideas that implementation is about getting people to do what they are told, and keeping control over a sequence of stages. However, Lispky (1980), a bottom-up theorist, argues that using a top-down model to policy-making is bound to invoke implementation

challenges. Parsons (1995) indicated that policies that are decided upon and implemented in a top-down manner (regardless of whether the policies have merit) often result in discontent among those affected by the policy which very likely will lead to policy failure. Lipsky (1980) argues that a bottom-up approach to policy making and implementation is a more representative, inclusive and sustainable strategy for making and implementing policy.

The Dukuduku case study has illustrated that a top-down approach to policy-making and policy implementation can indeed lead to policy failure and unwanted policy outcomes. The bottom-up model proposes that there needs to be a consensus between the different stakeholders before a policy is implemented or the likelihood of that policy failing is high. Perhaps if the DWAF and the DEAT had applied a bottom-up model of decision-making and implementation, they could have convinced the Dukuduku community to relocate to their proposed formal housing settlement, where residents would receive access to basic services.

The DWAFs attempts at trying to force/entice the community out of the forest into a formal housing settlement, ostensibly to save the forest, is an example of the exercise of political power. Parsons (1995) would define this as implementation as a political game, whereby different stakeholders aim to maximise their power and influence. Barrett and Fudge (1981:23) point out that political games played relate to the administrative processes and procedures usually employed to gain compliance, or to promote activity among implementing agencies, and the way in which both policy-makers and implementers attempt to play the system to their own advantage.

During the establishment of the Greater St Lucia Park, the DEAT offered Black Economic Empowerment (BEE) concessions for the development of tourism lodges in the park. This

decision increased the tension between the DEAT and the Dukuduku community because private industries forced communities to evacuate the forest in the interest of tourism and conservation. (Del Grande, 2008).

There was no evidence in the Dukuduku case study of any significant bargaining or negotiations between the different stakeholders. What remains unclear in the case study is the relationship between the traditional leaders and their communities. The communities claim that DWAF or DEAT never consulted them. However, the Indunas (or traditional leaders) were the official community representatives and were the key participants in the discussions with government. Indunas are powerful individuals in these communities. They allocate sites and fields to community members within the Dukuduku forest. According to (AFRA, 2003), the Dukuduku traditional leaders were the main individuals that negotiated with government stakeholders and signed the Dukuduku Declaration. However, Matland (1995) notes that bargaining between stakeholders does not necessarily lead to a resolution of conflict. This was the case at the Dukuduku. The Dukuduku Special Report claims that the traditional leaders who entered into the agreement did not represent the interests of the community. Some of the residents accused the traditional leaders of promoting their own agenda, while ignoring the interests of the residents. The Report claims that "the state has disregarded its own land laws and policy frameworks by negotiating and consulting with untested and traditional leaders rather than the individual occupiers who hold the legal rights." (Dukuduku Special Report, 2003).

The case study illustrates that there were a wide range of critical stakeholders involved namely, the Dukuduku community, the DWAF, the DEAT, the DLA, the Land Claims

Commission, and the Land Claims Court, each with their own interests, mandates and objectives regarding the Dukuduku forest. According to Parsons (1995), an inter-organisational analysis of the manner in which the different stakeholders interact contributes to a better understanding of how policy is implemented. In the case of the Dukuduku forest, interactions between stakeholders have always been hostile and antagonistic. Matland (1995: 156) explains that policy conflict will exist when more than one organisation sees a policy as directly relevant to its interests and when the organisations have incongruous views.

The DWAF and the DEAT have always outright rejected the community's right to access to the Dukuduku forest because of the forest's unique biodiversity. The Dukuduku Research Report (2002) states that the DWAF and the DEAT focused their efforts exclusively on the conservation of the Dukuduku forest. They argued that a World Heritage Site is no place for human habitation; that occupants of the forest are thoughtlessly destroying a pristine environment and eco-system; and that the occupants have no understanding of the sensitivity of the environment in which they live.

The DWAF and the DEAT exercised their authority in a powerful and domineering manner, creating a hostile relationship with the Dukuduku community. The DWAF's authority as the government department responsible for indigenous forests enshrined the department with the legal authority to enforce its policy stance. In fact, the DWAF extended its power through its security company, The Sharks, who allegedly harassed residents, shot at them and arrested residents on allegations of trespassing and destroying the environment. (AFRA Research Report, 2002).

This study has shown that a defining feature of the Dukuduku case study was its high levels

of policy conflict. Mataland's analysis of how conflict and ambiguity shape policy implementation is worth exploring. The Dukuduku case study resembles a policy situation characterized by high policy ambiguity and high policy conflict. This is notable, for example, in the inherent contradictory objectives of The National Forest Act (which is to provide for the protection of indigenous forests) and the objectives of The Restitution of Land Act (which is to provide for the return of land rights to those previously dispossessed. Each of the Acts carries forward its own crucial and merited objectives yet come into conflict when the policy of land restitution in a conservation area is implemented.

As the matter currently stands in the Dukuduku forest, DAFF is still in a bid to conserve the forest and continues to support the argument that residents should be relocated elsewhere in order to preserve the forest from extinction. Olsen (cited in Matland 1995:168) states that symbolic policies play an important role in confirming new goals, in reaffirming a commitment to old goals, or in emphasising important values and principles. DAFF's efforts to conserve the forest still persist as the Dukuduku forest is one of a few indigenous forests left in the country. Perhaps with the reconfiguration of the DWAF, the DEAT and DLA, the newly constituted DAFF and the DEA may seek to find alternative ways to protect the forest. Matland (1995:156) explains that some policies are inevitably controversial and it is not possible to adjust them to avoid conflict. Often conflict is based on an incompatibility of values and it is not possible to placate the involved parties by providing resources or side payments.

Matland (1995: 163) argues that "the central principle in political implementation is that implementation outcomes are decided by power: In some cases one actor or a coalition of

actors have sufficient power to force their will on other participants. The Land Claims Court had the final authority and power to decide on who should have land ownership rights of the Dukuduku forest.

Legislative authority was granted to the Land Claims Court, whereby the LCC granted the Dukuduku occupants with land ownerships rights, in which a top-down policy implementation approach was applied in the Dukuduku forest solution. Matland (1995) argues this quadrant is not bottom-up, in the sense that, policy is decided solely by central actors, the central actor in this case, the Land Claims Court, decide on the type of actions that will be taken to gain compliance. Matland (1995: 165) explains that the description of the policy process proposed by the top-down models comes closest to capturing the essence of the implementation process in this quadrant.

The literature on public policy noted that although public policy is aimed at achieving societal goals, not all goals will be achieved or resolved. As Hanekom (1991: 17) pointed out, in practice, any public policy can only realize goals or resolve problems to a certain extent. The case study on Dukuduku has illustrated that resolving a problem in a specific area (i.e land restitution) may result in the aggravation of conditions in another (degradation of biodiversity).

To conclude, Jenkins (cited in Parsons 1995: 461) states that a study of implementation is a study of change, how change occurs, and possibly how it may be induced. It is also a study of the micro-structure of political-life: how organisations outside and inside the political system conduct their affairs and interact with one another; what motivates them to act in the way they do; and what might motivate them to act differently. This paper has shown that

policy implementation is not an easy and predictable process and is indeed influenced by a multitude of factors. This study concurs with Parsons (1995) that there is not one specific model of policy analysis or theory of policy-making. There are, however, a range of alternative policy analysis perspectives that contribute to an overall framework for analyzing policy and contribute to a better understanding of the policy dynamics evident throughout the policy-making process, including that of policy implementation.

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