

Bringing Democracy to the Forests

Developments in South
Africa's forestry policy
and legislation

Lael Bethlehem



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About this report: This report is one of a series prepared as part of a collaborative research project on instruments for sustainable private sector forestry in South Africa. The reports in this series are listed below.

Instruments for sustainable private sector forestry, South Africa – report series

Overview and synthesis

- Mayers, J., Evans, J. and Foy, T. 2001. *Raising the stakes: impacts of privatisation, certification and partnerships in South African forestry*. This report draws on all the studies below and widespread consultation in South Africa. It analyses the impacts to date of privatisation, certification, outgrower schemes and company-community partnerships and presents conclusions and a set of options and next steps for all the main stakeholder groups.

Redistribution of opportunities and assets in forestry

- Khosa, M. 2000. *Forestry contracting in South Africa*. This study of trends in outsourcing and contracting in the South African forest industry seeks to deepen understanding of the national context within which contracting is an increasing practice, and examines possible options for outsourcing.
- Heyl, L., von Maltitz, G., Evans, J. and Segoale, R. 2000. *Issues and opportunities for small-scale sawmilling in South Africa: an Eastern Cape case study*. This report describes the scale, structure and market niche of the small sawmilling subsector, with a focus on the Eastern Cape Province.
- Horn, J. 2000. *The role of small-scale sawmilling in household and community livelihoods: case studies in the Eastern Cape*. This study focuses on the livelihoods of small-scale sawmillers in the Eastern Cape, using a case study approach.
- Bethlehem, L. 2001. *Bringing democracy to the forests: developments in South Africa's forestry policy and legislation*. This paper describes the policy and legislative changes in the forest sector, and sets recent initiatives in the context of a drive towards sustainable and equitable forest management.

Forest certification in South Africa

- Frost, B., Mayers, J. and Roberts, S. 2002. *Growing credibility: impact of certification on forests and people in South Africa*. This is an overview of all the certification studies with additional supply chain analysis.
- Scott, D. 2000. *Environmental aspects of the forest management certification process*. This report by a member of FSC certification audit teams examines the audit inspection instrument and provides commentary on how it is used.
- Clarke, J. 2000. *Social and environmental aspects of the forest management certification process: a discussion of social assessment components in South Africa*. This report, drawing on audit experience, tackles the ability of FSC certification and the certification process to improve the wellbeing of workers and communities dependent on plantations.
- Hamman, J. 2000. *Forestry certification: social aspects*. Also by a member of FSC inspection teams, this report analyses the composition and focus of the audit teams and highlights issues which can compromise the positive impact of certification.
- Dunne, N 2000. *The Impact of Environmental Certification on the South African Forest Products Supply Chain*. This study traces the route of FSC certified timber from mill to market, seeking to understand the impact of certification on traders and retailers in South Africa and the UK.
- von Maltitz, G. 2000. *The impacts of the ISO 14000 management system on sustainable forest management in South Africa*. This is a study focussing on one company's decision to adopt ISO accreditation, comparing the impacts of the ISO system with those of FSC certification.

- Crawford Cousins, C. 2000. *The impacts of stakeholder consultation in the FSC certification process on sustainable forest management in South Africa*. Focussing on the Stakeholder consultation process within FSC certification, this report highlights key assumptions about the efficacy of consultation.

Outgrower schemes and community-company partnerships

- Zingel, J. 2000. *Between the woods and the water: tree outgrower schemes in KwaZulu-Natal - the policy and legislative environment for outgrowing at the regional level*. This report discusses the environment surrounding trends in outgrower development, both past and future.
- Cairns, R. 2000. *Outgrower timber schemes in KwaZulu-Natal: do they build sustainable rural livelihoods and what interventions should be made?* Focussing on case studies of outgrower households, this examines the role played by schemes in rural livelihoods.
- Ojwang, A. 2000. *Community-company Partnerships in forestry in South Africa: an examination of trends*. This is a broad overview of types of partnerships in Southern Africa, with comparisons between forestry and other sectors.
- Andrew, M., Fabricius, C. and Timmermans, H. 2000. *An overview of private sector community partnerships in forestry and other natural resources in Eastern Cape*. Focussing at a provincial level, this report captures partnership trends in the Eastern Cape, drawing on five case studies.
- Sisitka, L. 2000. *Private sector community forestry partnerships in the Eastern Cape: the Lambazi case study*. This case study examines the relationships between stakeholders and actors in a corporate-initiated scheme
- Cocks, M., Matsiliza, B. and Fabricius, C. 2000. *Private sector community forestry partnerships in the Eastern Cape: the Longweni woodlot case study*. This report examines community preferences and options for the use of a woodlot in the context of opportunities provided in the forest restructuring process.
- Sisitka, L. 2000. *Private sector community forestry partnerships in the Eastern Cape: the Umzimkulu case study*. This is a study of a corporate-community joint venture project in a part of the province that has good afforestation potential.
- Cocks, M., Matsiliza, B. and Fabricius, C. 2000. *Private sector community forestry partnerships in the Eastern Cape: the Manubi woodlot case study*. This study examines issues around partnerships and joint forest management around a state-conserved indigenous forest
- Ham, C. 2000. *The importance of woodlots to local communities, small scale entrepreneurs and indigenous forest conservation*. Comparing issues and opportunities arising around two woodlots, this study highlights the relative importance of government-planted woodlots to different community interest groups.

Copies of the CD containing the above reports can be obtained from:

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Introduction

South Africa's first democratic elections in 1994 swept a new government into power which, for the first time, enjoyed the support of the majority of citizens. That government has initiated an ambitious programme of change in all sectors of South Africa's economy and society. One of the areas affected by changes in policy, governance and legislation is the forestry sector. At the time of writing, late 2000, these changes have begun to bear fruit, although the process of change has been more complex and difficult than it first appeared. This article reviews some of those changes and looks to the future.

South Africa is home to some 1.5 million hectares of timber plantations, made up of pine, gum and wattle species. The plantations have been established over the last 120 years and now support large sawmilling and paper industries. The plantations are exotic and have generally been planted in areas that were formerly grassland or fynbos and very few plantations have replaced indigenous forest. In fact South Africa is a semi arid country and has always been relatively poor in forest cover, particularly closed canopy indigenous forest. There are currently some 400 000 hectares of closed canopy indigenous forest, mostly in coastal and mountain areas, representing less than half of one percent of the country's land cover. In addition there are woodland areas which are generally managed as part of nature reserves or in some areas, form part of communal land holdings.

Essentially there have been three major changes in forestry policy since 1994. These are:

- New national forestry legislation involving greater regulatory powers for Government
- Greater emphasis on the management of indigenous forest reserves
- A move to lease Government's commercial plantation forests to private investors

These three related moves can be summed in a Government philosophy which goes roughly as follows: In the past Government has concentrated on the management of commercial plantation forests which supply timber to industry. There is no longer good reason to spend resources in this area since this is a commercial function that can be fulfilled by the private sector in most areas. Government should therefore seek to lease the plantations to private companies on a long term basis and play a regulatory role in relation to these forests rather than a management role. If the management of the plantation forests can be placed in private hands then Government's resources can be directed to forestry regulation and to the management of the country's remaining indigenous forests. These latter two areas – regulation and indigenous forest management – can be seen as core public sector functions in the long term.

This represents new thinking about the role of the state in forestry and has led to major initiatives in the fields of restructuring of the commercial plantations, forest legislation and indigenous forests management. Each of these will now be examined in turn. The commercial plantations will receive most of our attention since this has been the main project of Government and it has consequences for many other aspects of forestry in South Africa.

Strengthening forest regulation – the National Forests Act of 1998

It became clear after 1994 that the Forest Act of 1984 was woefully inadequate in light of new conditions and did not create the tools for the state to regulate forestry in a coherent manner. The White Paper of 1996 proposed new legislation to take the place of the old Act. The new legislation was accordingly prepared and debated and was passed by Parliament in September of 1998. The main features of the legislation are as follows:

- The Act sets out a set of principles according to which all forest, private and public must be managed. These principles apply to both indigenous forests ('natural forests' as defined in the Act) as well as plantations. The notion of sustainability is at the heart of these principles.
- ◆ Having established a set of principles, the Act goes on to define a system of Sustainable Forest Management. This includes the introduction, over a period of time, of a set of criteria, indicators and standards of sustainable forest management which will eventually apply to all operators. These standards will be debated and negotiated with a wide variety of stakeholders and will be introduced gradually.
- ◆ The Act establishes basic ground rules regarding the protection of natural forests. This is based on the stipulation that trees and other resources in natural forests may not be cut down or removed without a license from Government or permission from the Minister. The same would apply to developments in forest areas which would destroy any part of a forest. The only exception to this is for communities who live near to a particular forest and who have the right to remove dead wood and minor forest produce for domestic purposes.
- ◆ Like forest legislation in some other countries, the Act then goes on to protect public access to state forests including those leased out to the private sector. Access for recreational, cultural and spiritual purposes is protected although forest managers have the right to define the rules and limitations in which this may occur.
- ◆ The Act makes special provisions for the role of communities and establishes mechanisms by which Government and communities can work together in the management of a particular forest. This includes the provision for Community Forestry Agreements in which the rights and responsibilities of both parties can be formally agreed.
- ◆ Governance is an important concern throughout the Act and among other things the Act establishes the National Forests Advisory Council which advises the Minister on all aspects of forestry policy and which plays a role in developing regulations to the legislation.

This legislation will be implemented in phases. Government's clear overall intention is to provide a system of regulation and facilitation that ensure that South Africa's forests are managed sustainably and that, wherever possible, communities can be brought into the management process.

Strengthening the management of South Africa's indigenous forests

One of the consequences of the state's intensive involvement in plantation forestry has been that financial and human resources tended to be concentrated in this sector and consequently less time and energy has been available for the management of the country's remaining indigenous or natural forests. Over the last 30 years the management of many of these areas have declined especially in parts of the country that were managed by the homeland governments. Some areas, such as the Knysna forest complex in the southern Cape have been intensively managed. Knysna is an internationally acclaimed example of how to harvest indigenous forests on a limited and sustainable basis. But other areas comparable in size and stature to the Knysna complex have been neglected and are now under tremendous pressure. In some parts of the country forest areas have been destroyed although these tend to be smaller and more isolated patches of forest.

Over the last few years the Department of Water Affairs and Forestry has renewed its commitment to the management of all indigenous areas including those falling under the direct control of other agencies whether these be private operators, nature reserves or other government agencies. Consequently the Department has embarked on a process which includes the following major elements:

- Establishing a reliable national database of all natural forests and ensuring that each area is properly surveyed, mapped and described.
- Ensuring that there is a management plan for each forest unit including those managed by provincial government.
- Shifting resources to neglected areas especially the natural forests of the former homelands
- Where appropriate, working with surrounding communities to ensure that the forest is sustainably utilised and to prevent over-exploitation
- Exploring ways to utilise some the forests more intensively such as through tourism ventures via public-private partnerships.

It will be some time before these programmes begin to bear fruit but already the evidence of a more vigorous approach to management and planning can be seen. Over the next few years the challenge will be to consolidate the management of these forests and to involve both the private sector and the communities in ensuring that these are ecologically and economically viable areas.

The commercial plantations – restructuring the role of the state

Why it is in that late 2000 the South African Government owns and manages a third of the country's commercial forest plantations? These are after all plantations which grow timber for the purpose of selling this wood to private sector companies which in turn use the timber for sawmilling and related enterprises. The answer, as always, lies in our history. In the late 1880s, the Cape colonial government reached the conclusion that the colony was short of an important and strategic resource – timber. South Africa's natural forests are small, restricted to certain parts of the country and by then were already over-exploited. Later governments came to the same conclusion and it was not long before authorities throughout South Africa shared their concern about a shortage of timber. Not only was timber needed for construction and furniture but in addition the growing economy soon demanded timber for the mining, packaging and paper sectors. The timber shortage led the Cape colonial government and later that government of the Union of South Africa to embark on major tree planting programmes. It became clear that various parts of South Africa could support tree plantations and a Department of Forestry was established to grow both

hardwood and softwood species. Most of these plantations were established on grasslands rather than replacing indigenous forests. The same Department had the task of protecting the remaining indigenous forests and of ensuring that these were utilised sustainably.

It is fairly clear that the role of the public sector in almost any context, is to take responsibility for natural resources such as indigenous forests. By why did the public sector need to provide timber? If there was a market for timber, why could the private sector not meet the demand. The answer seems to lie in the particular challenges posed by forestry as an investment in the context of an infant economy as South Africa surely was in the first part of the century. Timber plantations are a long term business – in South Africa softwood species take up to 35 years to mature and therefore an initial investment will only produce a return after this period. For these 35 years the investment is subject to droughts, fires, pests and diseases. In addition to these problems there was a dearth of scientific knowledge about the growth rates of particular species and their processing prospects. The private sector was therefore nervous about investment in this sector. This seems a classic case of a market failure. The state's response was to step in to play a developmental role where the private sector could not. The state was, if you like, a developmental investor (an investor of the last resort?) in this sector as it was in many other sectors in the South African economy.

But as the century went by so the private sector began to take an interest in forestry. In fact, by the 1970s private companies had overtaken government in terms of ownership of forests. Private sector companies found that it was possible to run the plantations on a rotation basis that made steady profits. Some of the risks could now be covered in the insurance markets and scientific research had answered many of the earlier doubts about the viability of particular species.

Many in Government began to feel that the state's days in plantation forestry were numbered. In the late 1980s it was decided that Government should commercialise its forest assets by placing them in a company form as a state owned enterprise. This was done in 1992 when the state owned South African Forestry Company Limited (Safcol) was formed. Safcol had a mandate to run its operations in a fully commercial manner and to report a profit. It also had specific tasks such as moving away from the old system of evergreen supply contracts towards more modern commercial supply agreements which could be terminated within a reasonable period.

After the democratic election, a participatory forestry policy process put into place. The Government White Paper on Forestry which was published in 1996 following a participatory process, concluded among other things that the state should exit from plantation forestry over a period of time, taking account of differing conditions in different parts of the country. This should have been a fairly simple process given that Safcol was already running as a company which could simply be sold in the same way as other Government owned enterprises as soon as Government decided to do so. The commercialisation of Government's forestry assets was not however complete since the former homelands² had now been incorporated into the national

² The homelands or 'bantustans' were nominally independent states within South Africa set up by the Apartheid government. Essentially this was an attempt to separate parts of the country from South Africa itself so that black South Africans could be allocated to these 'independent states' and the rest of the country (the largest and wealthiest areas) could be designated as white South Africa. The rulers of these so called states were effectively answerable to the South African government. The policy was strongly resisted by black South Africans for many years and the homelands never received international recognition. Many of the homelands included extensive forest areas especially the

government. A number of the former homelands had their own commercial forest plantations doing very similar work to what was now being done by Safcol. These former homeland forests would now be managed by the Department of Water Affairs and Forestry. To complicate matters some of these former homeland forests were adjacent to Safcol forests but were managed by a separate authority with different management practices. It soon became clear that it would not be practical to bring private companies into Safcol if the adjacent areas continued to be managed by Government. This was especially important in areas such as the Eastern Cape Province where the viability of the forests as commercial enterprises depended on bringing the Safcol forests together with the adjacent former homeland areas.

It was therefore decided that the offer to private investors would include both Safcol and some of the former homeland areas. Other parts of the former homelands would be leased later in a separate process. The process covered 330 000 hectares of planted forest with a total land area of almost 500 000 hectares. This appears to be the largest single bloc of state forests ever offered to the private sector in any country. Other countries have tended to offer a series of smaller blocs over a longer period of time. The South African offer did however stipulate that investors could bid for the entire asset or any one of seven smaller areas which ranged from 18 000 hectares of planted land to 130 000 hectares. The idea behind this was that if there are no successful bids for any of these smaller areas then these could continue be held by the state and offered later or a phased approach could be adopted.

Land and labour

Two major issues had to be resolved before the sale process could take place. The first was land – what form of tenure would apply, what would the rights of adjacent communities be, and what implications would this have for the regulatory control that would apply after the sales. The second key issue was the treatment of employees and in particular the effect of transferring workers to new employers.

Land

Early in the process Government decided to lease out the areas rather than sell the land. There are two main reasons for this. The first is that the lease gives Government powers to regulate certain aspects of the management of the plantations even after they are in the hands of the private investors. These aspects include rights of community access and use, environmental management and changes of land use. The second reason is so that matters of land tenure and land claims can be properly managed within the policies of Government as a whole.

The land claims process is particularly important. Under apartheid millions of South Africans were forcibly removed from land as a result of racial discrimination. Land from which communities were removed was often converted to agricultural, conservation or forestry or committed to infrastructural projects. After 1994, Government passed legislation allowing communities or individuals to register land claims if they believed that they had lost land as a result of racial discrimination. Land claims commissioners and a land claims court were then established to investigate the validity of claims and to negotiate a settlement with successful claimants. Where a claim is successful the state may offer either restitution of the land (return of the land to the claimant), alternative compensation in the form of a cash payment or an

Transkei which had large commercial and indigenous forests within its borders. In 1994 all the homelands were incorporated into South Africa and their administrations were merged with the unitary South African government.

alternative arrangement such as the payment of a rental over time. The latter two arrangements are particularly important in areas where the present land use contributes to economic or social infrastructure (dams or roads) or supports economic development (forestry, national parks, large scale agriculture or industry). If the parties cannot agree on a settlement, the Land Claims Court makes a ruling in terms of relevant legislation.

One of the key difficulties is that each claim, of which there are some 20 000, must be individually investigated and a ruling made on each case. In many cases there are overlapping claims with contesting groups claiming ownership of particular parcels of land. In these cases detailed historical research must be undertaken. As a result of these complications it has become clear that it will take many years for claims to be processed.

In light of that the various Ministers have agreed that in the case of the forestry sales, the land will be leased out even where land claims are present, as they are in some 40% of the area under discussion. Where successful land claims emerge, claimants will be offered title over the land on condition that the leases remain in place and that Government continue to act as the overall lessor. In exchange, the rentals paid by the forestry companies will be offered to the claimants. The rentals are market related and independently determined. They will escalate in line with inflation and will be independently reviewed every five years. In this way claimants will have access to a stream of risk free income in the place of access to the land. A similar arrangement will be made with groups who have similar land rights but who may not have had successful claims. In this way it is hoped that a balance can be struck between the interests of land claimants on the one hand and the need to attract long term, secure investment into rural areas via the forestry leasing process.

Labour

The amalgamation of the two parts of Government's forestry interests (the previous homeland areas and Safcol) requires that workers are transferred from the public service to the private sector (bidding companies) or the quasi private sector (Safcol). However, the public service which employs 3.5 times the number of workers per hectare as the private sector pays double the private sector/Safcol wage. In addition, the public service has a policy of no retrenchments whereas legislation allows retrenchments outside of public service, as long as certain procedures are followed.

Government reached an agreement with the trade unions that:

- The Department of Water Affairs and Forestry and the unions would jointly determine an 'industry average' number of jobs for those plantations that were to be merged with Safcol. Workers would then be given the opportunity to volunteer to transfer into one of these jobs.
- Those workers who transferred would do so on the basis of Safcol wages and conditions. Transfer workers would be paid a 'transfer package' which would be equal to the difference between the DWAF package and the Safcol package for three years. This would be paid as an up-front amount and would take account of differences in all conditions of service.
- Safcol would be audited to ensure that its conditions of service complied with all aspects of labour legislation.
- Those who did not transfer would either be re-deployed to other forest work (such as in the indigenous forest reserves) or could opt for a Voluntary Severance Package (VSP).

- Any worker who opted for a VSP would be entitled to join a social plan programme which would be set up and jointly managed by the Department and trade union representatives. This would offer training for alternative livelihoods.
- Any workers who had not been given the opportunity to join a pension fund in the past (for example, ex-Transkei workers) would benefit from a government wide agreement to back-pay pension contributions. As was later agreed at the Public Service Co-ordinating Bargaining Council, DWAF's commercial forestry workers would be the first to benefit from this.

The implementation of this agreement has not been without its complications and the final transfers have, at the time of writing, not yet taken place. What is clear however is that all sides have accepted a framework which tries to balance the interests of workers with the investment requirements.

Outcomes of the bidding process

The Invitation to Offer which set out Government's conditions of sale as well as the lease was published in May 1999 and bids were received in late 1999. In September 2000, the following outcomes of the bidding process were announced:

- Government had agreed to sell the Eastern Cape North package to Singisi Forest Products, a consortium comprising a private South African sawmilling company (Hans Merensky) and the communities living around the forests. The forests have been organised into trusts which have a shareholding in bidding consortium. In addition, an allocation of shares will be made available to employees.
- Government had agreed to sell the KwaZulu-Natal package to the Siyaqubeka group, a consortium comprising a private South African forestry company, Mondi Limited, and a black empowerment partner, I.L. forestry. An allocation of shares will also be made available to employees. However, Government and the bidders had agreed that the plantations covering an area of 10 000 hectares (one third of the package), would be removed within five years to make way for nature conservation through the expansion of a nearby national park. All parties agreed that plantation forestry was not an appropriate long term land use in this area despite the fact that the area had received international environmental certification from the FSC.
- A bidding company, Amathole Timbers had been named as a preferred bidder for the Eastern Cape South package. Government intended to sell to this entity subject to the settling of certain outstanding debts.

These sales are still to be finalised and will also depend on the approval of South Africa's competition authorities.

In addition it was announced that:

- Government had decided to amalgamate two of the remaining packages, Northern Province and Mpumalanga and had shortlisted three bidders to participate in a sales process in 2001. The three shortlisted companies are GMO Renewable Resources of the USA, Pahapur of India and the African Forest Consortium of South Africa.
- Government had decided to phase out plantation forestry in much of the Western Cape and southern Cape areas. This will involve phasing out plantation forests on 45 000 hectares in favour of other land uses. These are areas in which the plantations have been found to be commercially and/or

environmentally unsustainable. The areas that remain after these conversions have been completed will be consolidated and leased out over time.

Three main trends emerge from these decisions. Firstly, that progress has been made in bringing black empowerment groups into the ownership of plantation forests and that in at least one case, adjacent communities had become significant shareholders. Secondly that plantations are to be removed in cases where their commercial or environmental sustainability is questionable and where other land uses are felt to be more beneficial. Thirdly that while deals had been closed with national investors, further work was needed to bring international investors to the table. Government hopes that the conclusion of the large Northern Province/Mpumalanga package (140 000 hectares) will bring an international investor to the table.

Conclusion

Democracy has brought major policy changes to the forest sector in South Africa. Some of these changes are a break from the past and the changes of the last few years represent a major restructuring of government's role in this sector. Time will tell whether these changes are able to deliver the sustainable, vital forest sector envisaged by government policy. It is clear that the restructuring process in particular has required a process of balancing different interests while keeping an eye on sustainability. Processes over the next few years will tell whether the balancing act can deliver a sustainable sector which provides jobs, investment and a more representative ownership structure.