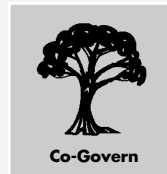


## Land and resources in a transfrontier setting: The case of the Maloti-Drakensberg Transfrontier Conservation and Development Project



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Amongst the many initiatives in legislative and policy change affecting land and common property resource management in southern Africa today, transfrontier conservation areas (TFCAs) seem particularly prominent because of their massive scale, huge political and donor support and the many (rural) livelihoods they are likely to affect. In general, TFCAs are large conservation and development areas across international borders that involve different land-use options such as biodiversity and cultural heritage conservation, range management and community-based natural resource management areas. These different land-use options also make for different legal and practical ownership arrangements in one TFCA, such as private, state-owned or common property management. This policy brief examines issues of legislative and policy change affecting land management and common property resource management brought forth by one specific TFCA: the Maloti-Drakensberg Transfrontier Conservation and Development Area between Lesotho and South Africa.

### Introduction

It is often stated that nature knows no boundaries. But in Africa, the internationally recognised boundaries as we now know them are – more often than not – alien to people as well. Borders, after all, were imposed by European colonisers to reflect European interests and not those of African peoples. Or for that matter: that of Africa's nature, as many boundaries neither show much respect for the integrity of ecosystems. This fact of imposed borders obviously also had implications for many traditional land tenure and common property natural resources management systems. Large areas that were once administered according to a certain system of land management suddenly found themselves torn in two, with both sides taking different directions. From there, land tenure regimes around border areas further developed into the complex and often overlapping and competing structures that we frequently see now. That this situation is conducive to neither conservation of nature, nor the development of local people on both sides of the border that often depend on their surrounding land and resources for their livelihoods, is easily recognised. But what to do about it is not always so clear. The recent hype in southern Africa around cross border co-operation for conservation and development through so-called transfrontier conservation areas (TFCAs) might provide opportunities to address these issues. TFCAs offer opportunities for nations to discuss and possibly even harmonise their land management regimes in order to smoothen and clarify the current complex land practices surrounding borders and so stimulate both conservation of nature and the enhancement of rural livelihoods. In fact, this is often one of their explicit aims. This policy brief seeks to give an overview of the issues involved in this process. It does so by focusing on recent developments in one specific TFCA: the Maloti-Drakensberg Transfrontier Conservation

and Development Area between Lesotho and South Africa. Firstly, however, it is important to shortly discuss the context of TFCAs in southern Africa more generally.

### TFCAs in southern Africa

TFCAs are large conservation areas that straddle the borders of two or more countries, and are commonly managed by those countries. Besides conservation and harmonisation of land-use planning and legislation, they also aim at helping local people in and bordering the areas develop, and promoting peace between nations through international co-operation. For this reason, they have also been termed 'peace parks'. Transfrontier conservation *areas* are different from transfrontier conservation *parks*. The latter adheres only to one type of land-use, while an *area* combines multiple types of land-use. A TFCA thus also harbours a myriad different tenure systems such as various forms of private, state-owned or common property management regimes, while a transfrontier park often consists of adjoining protected areas.

In southern Africa, over 20 prospective TFCAs have been identified, but only six of these show serious signs of progress (Amerom & Büscher 2005). All six involve South Africa, since it is the state with most capacity to take on the many complexities inherent in developing a TFCA. Amongst these are the Kgalagadi Transfrontier Park between Botswana and South Africa, the Ai Ais-Richtersveld TFCA between Namibia and South Africa and, what is considered the flagship 'peace park', the Great Limpopo TFCA between Mozambique, Zimbabwe and South Africa. However, in terms of common property resources and different management systems, the Maloti-Drakensberg Transfrontier Conservation and Development Project (MDTP) is one of the most challenging and interesting TFCAs in the region.

## The MDTP

The MDTP is the culmination of a decades-old desire to protect the rich biological diversity, cultural heritage and watersheds of the Maloti and Drakensberg mountains in an integrated manner. But the project area, ranging from the (Greater) Golden Gate Highlands National Park in the north via the Mokhotlong Range Management Area and the uKhahlamba-Drakensberg to Qacha's Nek and Ongeluksnek in the south, is home to almost two million people as well. The project explicitly wishes to also help make a positive difference in the livelihoods of these people. After all, it is not a transfrontier conservation project, but a transfrontier conservation *and development* project. Much of the MDTP area is under some form of common property regime. Other land-uses and tenure systems include formal protected areas, privately-owned commercial farms, range management areas and settlements such as villages and cities.

The institutional set-up of the project is very complex, with many different agencies being involved. In South Africa, the project area stretches over three provinces – KwaZulu-Natal, the Free State and the Eastern Cape – all of which have governmental conservation agencies involved as official 'implementing agencies'. However, KwaZulu-Natal's Ezemvelo KZN Wildlife is the overall lead agency in the project, and is a parastatal rather than a provincial government department. The national Department of Environmental Affairs and Tourism has a supervisory and intermediary role (it is the official recipient of the initiative's funding from the Global Environment Facility through the World Bank) and South African National Parks is also an implementing agency, as it is responsible for the (Greater) Golden Gate National Park. In Lesotho, the project is housed nationally, in the Ministry of Tourism, Environment and Culture. Other important institutions are the ministries of Forestry, Local Government and Agriculture and local government structures. District Steering Committees were established in each affected district. On both sides of the border, various people from these agencies make up the two national Project Coordination Committees, which in turn make up the Bilateral Steering Committee, the highest authority within the project which was established by a memorandum of understanding between South Africa and Lesotho on 11 June 2001. To aid implementation, both countries have an independent 'Project Coordination Unit' (PCU), to facilitate and support the implementing agencies.

According to its founding documents, the MDTP has two overarching objectives: 1) to conserve globally significant biodiversity and 2) to contribute to community development through nature-based tourism. This is being implemented through eight project components: a) project management and transfrontier co-operation, b) conservation planning, c) protected area planning, d) conservation management in protected areas, e) conservation management in community conservation areas, f) community involvement, g) sustainable livelihoods and h) institutional development. In reality, of course, the implementation of the MDTP is not as clear-cut as these components suggest, especially not in the light of the institutional complexity described above. So far, the project has focused mainly on community outreach and involvement and linking the project to reforms in local governance on the Lesotho side, while the South African side has mainly

emphasised the systematic bioregional conservation and development planning processes and entrenching this into the relevant conservation and implementing agencies (MDTP 2004). However, on both sides, relevant policy developments that will impact on management systems and common property resources have been happening to which we now turn.

## Lesotho

In Lesotho, several important policy developments have been initiated or taken place under the MDTP. Possibly the most important of these is the transformation of range management areas (RMAs) into managed resource association areas. Introduced in the 1980s, RMAs were designated rangeland areas that were managed according to a system whereby grazing was controlled and regulated by a grazing association (GA). People could become a member of the GA of a specific RMA and so get rights to graze their livestock in the area. The whole concept of RMAs was geared towards livestock grazing and trying to do something about the pervasive problem of overgrazing in a land where almost all land is common property under the ultimate authority of the king.

The RMA system did not prove to be very successful, mostly because many people did not adhere to RMA rules. However, the MDTP is currently attempting to revive the system by transforming and broadening the RMA concept into managed resource associations (MRAs). MRAs do not solely focus on grazing and livestock, but also on biodiversity conservation, the main goal of the MDTP. Like the grazing associations, MRAs are basically associations of natural resource users who try to regulate access to and use of all natural resources in a particular area, with the aim of ensuring their sustainable use. Currently, the MDTP officially focuses on three MRA areas – one in each district where the MDTP is active: Botha Bothe, Mokhotlong and Qacha's Nek – and tries to support several others wherever it can.

Besides overcoming the problems that inhibited success of the previous RMAs and GAs, there are two more important contextual developments that will affect the MRAs and determine their success. The first to be discussed here is the introduction of local government in the country. The second deals with the drafting of a new Nature Conservation Bill.

The current local government system in Lesotho is based on the Local Government Act of 1997. It provides for 128 community councils as the lowest government level, district councils for each of the 10 districts and one Municipal Council for the capital Maseru. The community councils (CCs) consist of one elected councillor from each of the nine to 15 electoral divisions (villages) they encompass. After much delay, the community councillors were finally elected on 30 April 2005 and sworn in on 17 June 2005. These newly elected councils have a mandate to provide government services for their area and assist the national government in governing and regulating the country. CCs also have a mandate to work on the issue of environment and natural resources, which used to be the exclusive domain of chiefs. Thus, they will have to work together with the managed resource associations in developing policy for, and regulating access and use of MRA areas. As all of these structures are still in a nascent stage, many questions remain unanswered.

Amongst the issues outstanding are the finalisation of the MRA constitutions, the role of both CCs and MRAs vis-à-vis traditional authorities and each other, and the issue of boundaries. Several MRAs do not fit neatly into one CC and will have to clarify their relations with multiple CCs. Besides dealing with the problems that plagued their predecessors, the success of the new MRA concept will depend on whether these issues can be sorted out.

The second important variable that will likely influence the success of the MRA concept in practice is the drafting of the new Nature Conservation Bill, which is being done with support of the MDTP. Current legislation in Lesotho dealing with nature conservation and natural resources is fragmented and often contradictory. The most important aim of the newly proposed Nature Conservation Bill is to bring about legal clarity by repealing many previous related Acts and bringing together the most important measures relating to conservation and natural resources management in one comprehensive legal framework. A draft copy of the proposed new law (MDTP 2005) reveals the most important policy developments. Firstly, a new 'nature conservation division' will be established on a national level to discuss matters related to biodiversity conservation and protected areas. This division will function as a practical 'service' and supersede all previous institutional arrangements such as the Board of Trustees under the National Parks Act of 1975 and the 'administrative and management structures established by the Lesotho Highlands Development Authority'. Assisted by an advisory board with a fairly wide membership, this division centralises nature conservation policy where it was rather fragmented before. A second interesting feature is that the Bill provides for various categories of protected areas or nature reserves to be established. These include 'special nature reserves, national parks, nature reserves (including wilderness areas) and protected environments; historical monuments and relics; specified mountainous and hilly areas, and specified river, river banks, lake, lake shore and wetlands'. Related to specific environmental or biodiversity threats and opportunities, the Minister for Tourism, Environment and Culture now has a wide array of options available for designating certain areas as 'special' or protected. This could have major effects on the currently prevailing commonage land management system in Lesotho, but it remains to be seen what will happen in practice.

## **South Africa**

The situation regarding the MDTP in South Africa is markedly different. First, not all land in the MDTP area is common property. There are also protected areas, commercial farms and towns in the designated area. Secondly, as described above, the institutional set-up in South Africa is rather different with the project being based at the provincial rather than the national level, and the fact that a multitude of stakeholders are involved across different levels. Thirdly, the MDTP in South Africa did not have to contend with the legal vacuum that characterised Lesotho since a very progressive and well-developed legal framework regarding conservation and natural resource management was already in place. This meant South Africa could focus on implementation. Rather than focusing on policy developments, this policy brief will highlight the most important developments of the project

likely to have an effect on land management and commonage systems in the MDTP area. It is important to mention that several of the elements mentioned below apply to the entire MDTP project on both sides of the border.

South Africa's approach to project implementation focuses first and foremost on the overall bioregional planning process and trying to integrate this into the work of its implementing agencies. In doing so, the authorities have successfully argued for a larger planning domain, since the current MDTP project area does not accurately reflect the ecological bioregion. In developing the bioregional planning process, MDTP South Africa has embarked on extensive data gathering to provide different layers of data to feed into the overall plan. These layers include ecological, social, cultural, tourism and economic information. Most of the other project activities are directly linked with the overall bioregional planning process, although South Africa also tries to achieve more practical on-the-ground results and community involvement through various pilot projects, ranging from ecological and socio-economic assessment projects to tourism and community conservation projects. Possibly the main project components linking in with bioregional planning to have an effect on land management systems are the processes for biodiversity management in and outside protected areas, payment for ecological services, the security strategy, and the tourism strategy.

The South African MDTP area comprises several established protected areas (PAs) including the famous uKhahlamba-Drakensberg Park World Heritage Site, Ongeluksnek Nature Reserve and Golden Gate Highlands National Park. The MDTP, together with the responsible implementing agencies and through a consultative process with other interested and affected stakeholders, is busy updating the management plans for the various PAs to get them up to highest international standard. This means the development of two integrated planning documents (the Integrated Management Plan and the Conceptual Development Plan) and two operational planning documents (the Strategic Management Plan and the Business Plan) for each PA. Besides the management of PAs, the MDTP also focuses on management outside PAs, as this is where much of the important biodiversity can be found. Hence, the project is trying to work with municipalities, local communities, farmers and other stakeholders to align their planning and management so that they take the bigger bioregional picture and important biodiversity into account. Taken together, it is hoped that improved management within and outside PAs will further clarify land management and land management planning, especially as it relates to biodiversity.

Another strategy of the MDTP in South Africa is to explore the concept of payment for ecological services. The whole MDTP bioregion is rich in various ecological assets that are of great (economic) importance. The most obvious of these is water: many great southern African rivers have their origins in the Maloti-Drakensberg Mountains, amongst them the Senqu or Orange and the uThukela rivers. The MDTP now wants to see whether a more straightforward economic price tag can be put on the use of this water and its conservation. Local communities are critical according to the MDTP: their livelihoods will be affected by certain conservation measures, and they should therefore be compensated. This way of thinking, especially in policy circles, is still relatively new, but

it is one way the MDTP is trying to make sure that taking care of natural resources comes with economic rewards.

As is stated above, the MDTP is a transfrontier conservation *and* development project. And the way that the project is trying to achieve this link is through increased tourism to the area. Although Lesotho is equally involved, MDTP South Africa has especially been driving the strategy of branding the whole region under one concept, so as to increase recognition of the area and to make sure tourists spread out over the entire region. This could possibly have an impact on land use and management as more and more actors will (most likely) jump on the tourist bandwagon and try to adjust land use and tenure to suit the needs of tourists. It is clear that this will not always be beneficial to biodiversity conservation and that is why the MDTP tries to guide tourism development in such a way that it is both conducive to biodiversity goals, as well as benefiting local people.

Critical in all of this is making sure that the area is a safe and secure environment. At the moment, transfrontier crime is still rampant, especially related to dagga trafficking and livestock theft. The MDTP has recognised that it can reach none of its goals without security, so a strategy involving the security structures has been initiated by South Africa and is being implemented by both countries.

In conclusion, how does MDTP South Africa impact on land management and commonage systems? Many aspects of the project relate to planning and strategising and will – if carried out as planned – only have an effect on land management and commonage in the (near) future. However, several of the other developments have made a difference already. Firstly, protected area planning and management has led to the start of a process that should lead to the proclamation of a nature reserve around the town of Matatiele in the first half of next year. Secondly, the introduction of community conservation areas are changing the way commonage systems operate in the area. Thirdly, getting different important actors, such as local communities, farmers, NGOs and government departments to sit together and reach a common vision for the area might better align various land-uses and tenure systems with each other, instead of making this a matter of government-led enforcement.

### **Conclusion: Opportunities for transfrontier policy alignment?**

At the time of writing, the Maloti-Drakensberg Transfrontier Conservation and Development Project is exactly half way through its planned lifespan. Thus, most of the developments described above are still very much in progress and subject to change. However, from the above stock-taking exercise, some conclusions can be drawn regarding land management and commonage development in the MDTP, especially with relation to cross-border policy alignment.

Discussions on legal and policy alignment have taken place between Lesotho and South Africa, but this is a complex issue. South African law in this field is already quite established, and it might be tempting to draft Lesotho law around South African examples. However, the result may not be appropriate for Lesotho, and it may undermine that country's sovereignty. Lesotho has always fervently defended its identity as an independent state, and for that reason alone it will not want to copy the South African legal framework.

Secondly, what is happening on the ground in terms of transfrontier alignment? Very little. In fact, many within the project do not call the MDTP a TFCA but a 'project with transboundary elements'. One such element which is actively being pursued is the linkage between uKhahlamba-Drakensberg Park World Heritage Site and Sehlabathebe National Park in Lesotho.

Thirdly, several strategic issues are being explored that could have policy consequences for both countries: namely, the tourism master plan, payment for ecological services and the security components of the project, and of course the overall bioregional planning.

In conclusion, there has been no direct progress with respect to major transfrontier policy alignment. The MTDP project will have direct impact on land management and commonage systems, but the fact that it has prioritised long-term planning means that major direct impacts can only be expected to emerge over a period of time. The project is laying a basis for future land management and commonage systems in the area, and it will be necessary to review progress from time to time to ensure that it is staying on track.

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