

KEY ISSUE PAPER FOR A POLICY ON TRANSFERS OF STATE OWNED INDUSTRIAL PLANTATIONS

1. PURPOSE

In line with the draft “Proposal for a draft policy process”, the purpose of this key issue paper is to provide background and recommendations on key policy and process issues relating to the transfer of industrial plantations. Once the key recommendations have been either accepted or rejected a final, concise policy statement will be drafted.

2. INTRODUCTION AND POLICY CONTEXT

2.1 Management of the resource

Due to the historical legacies of the past, the state-owned industrial plantation resources of the South African Government are being managed under two very different dispensations.

- **SAFCOL:** Those assets that were located in the former RSA (approximately 390 000 ha) were managed by the National Department of Forestry until 1993 when they were corporatised into a state-owned entity called SAFCOL. SAFCOL, as with all other state-owned enterprises, is an asset for which the Department of Public Enterprises (DPE) is responsible. The scale of plantations tends to be larger than in the homelands, and management standards, site selection, and silvicultural standards are generally high. The quality of the plantation resource and the processing facilities (5 sawmills) can be said to be more or less on par with best practice in South Africa.
- **DWAF:** Those forest assets (approximately 150 000 ha) that were located within the boundaries of one of the several so-called “homelands” were managed by

their respective homeland administrations until 1994. Following the 1994 elections and the creation of the Government of National Unity (GNU), the homelands, along with their respective forest resources, were reincorporated into South Africa. They have since become the responsibility of the National Department of Water Affairs and Forestry (DWAF). The quality of the resource in the homelands is quite variable, ranging from excellent to very poor depending on whether the plantations were planted on suitable sites, were well-managed from a silvicultural and managerial perspective and were subject to conflict over land rights with local communities. Since 1994 DWAF has transferred about half of these forests (see below) but management performance on the balance has been poor. The assets have generally deteriorated as reflected by the increased backlogs in routine silvicultural operations. The one sawmill has also been poorly managed and operates at about one third capacity.

2.2 The Forest policy context

The White Paper on Sustainable Forest Development (1996) presents a clear and explicit policy towards the restructuring or privatisation of industrial plantations. The key references which provide a context in which this policy is constructed are provided below:

SAFCOL forests (P21): The White Paper clearly anticipates the restructuring or privatisation of SAFCOL and states:

Restructuring or privatisation of these holdings will be treated in line with overall government policy, in consultation with all interested parties.

The White Paper goes on to state the following (P28):

The future of the State-owned forest industry (and this refers also to the forests of the former homelands) will be determined with reference to Government policy on restructuring of public enterprises.

Former homeland forests (P28) (both industrial plantations and community woodlots): The White Paper states that Government does not intend to remain in the management of industrial forestry and goes on to provide the following objectives for these assets:

- *Incorporate these fully into the Department and ensure the management of the resources is based on a sound footing*
- *Dispose of the industrial forests and community woodlots and forests in the most beneficial way, after proper and full consultation*
- *Ensure that these resources are managed for the benefit of local communities while satisfying national interests*
- *Pursue a course which would benefit current employees while maintaining efficiency.*

Four key factors have consistently underscored this restructuring policy objective:

- recognition that it is more appropriate for the private sector to perform an essentially commercial function;
- recognition that the State's historical role distorted of round-wood prices through the long-term timber supply contracts which contributed to inefficiencies in the sawmilling sector;
- Recognition that the state's ownership of industrial forests potentially conflicts with its wider national regulatory and policy obligations; and
- The desire to reduce the financial burden of running industrial forestry operations (particularly those of the former "homelands") on the state.

2.3 Legislative Mandates

Taking its lead from the White Paper and the Constitution, the National Forest Act (NFA) of 1998 provided a broad definition for State Forest land and created the enabling legal framework for the transfer of management of State Forest land to other agencies. The NFA places upon the Minister of Water Affairs and Forestry the mandate to set, monitor and report on forest policy, and to create regulatory instruments for promoting and enforcing sustainable forestry. DWAF is developing its capacity to take on these new responsibilities and is seeking to transfer operational management to specialist agencies that are best able to carry out this function.

The NFA provides the following range of instruments to enable the transfer of rights and responsibilities relating to the management of State Forests:

- Chapter 4 Part 2 provides for the transfer of rights in State forests by way of licenses, servitudes, lease agreements and agreements to sell forest produce
- Chapter 4 Part 3 allows communities to enter into agreements with the Minister for the management of State Forest in terms of the Community Forestry Agreement
- Chapter 6 allows for the minister assign or delegate a broad range of his or her powers to other organs of State or persons who are not organs of State. Through the delegation or assignment of such powers other agencies can be enabled to manage State Forest land.

2.4. The wider context of restructuring

Restructuring the FHA forests will not occur in isolation. Many other policies and processes and pieces of legislation are in place which will impact on the restructuring of industrial plantations. These include:

- Land reform;
- Labour legislation and wider restructuring of the Public Service, in particular PSCBC Resolution 7 of 2002 which deals with excess labour and re-deployment;
- The principles of Reconstruction and Development Programme (RDP) (1994) and Growth Employment and Redistribution (GEAR) (1996)
- Current national, provincial and local Government initiatives for growth and development, such as the Spatial Development Initiatives (SDIs) and IDPs;
- Current Government policies concerning the restructuring of State Enterprises and in particular the restructuring of SAFCOL; and
- Current forestry development initiatives including new afforestation, woodlot devolution, enterprise development, Participatory Forest Management (PFM) and provision of fuelwood.

3. PROGRESS TO DATE

3.1 Short overview of the process to date

The restructuring process commenced in the late 1980s when Government implemented a process which led to the creation of the State-owned enterprise

SAFCOL. However the actual process of transferring plantations from Government to the private sector only commenced in 1998 when the Department of Public Enterprises appointed transaction advisors to initiate a disposal process for SAFCOL. At the same time an Options Study was commissioned on behalf of DWAF to develop options for disposal of the former “homelands” forests. In early 1999 the Inter-Ministerial Cabinet Committee (*date ref.?*) made the following announcement:

- Suitable linkages would be made between the restructuring of DWAF and restructuring of SAFCOL forests. This led directly to the decision to incorporate certain DWAF plantations into SAFCOL;
- State forest land would be leased and not sold;
- The SAFCOL and DWAF assets would be offered as seven separate packages; and
- DWAF workers would be offered three choices, namely voluntary severance (VSP), voluntary transfer (with a transfer package) or re-deployment.

This announcement was followed by a process of Government due diligence and packaging of assets by the transaction advisory team. In May 1999 DPE released an Invitation to Offer (ITO) for seven packages of forestry assets, which incorporated all the SAFCOL plantations and some DWAF plantations. The basis for the tender was a sale of 75% of the shares by Government in a series of seven subsidiary companies of SAFCOL. Bidders were required to ensure that a minimum of 10% of the shareholding would be by black economic empowerment partners. Government indicated that the remaining 25% shares would be unbundled via a 10% shareholding to the National Empowerment fund, 9% to Employee Share Ownership Programmes (ESOPs) and the remaining 6% would be held by Government via SAFCOL for a period of five years.

Bidders could bid for one package, all the packages or any combination of packages. Those DWAF plantations included in the SAFCOL packages became known as DWAF Category A, the remaining industrial plantations became known as DWAF Category B and the community woodlots became known as DWAF Category C. The names and sizes of the original seven forestry packages are provided in Table 1.

Table 1: Size of original forestry packages

Package	DWAF area (ha)	SAFCOL area (ha)	Total area (ha)
Northern Province	9,530	18,097	27,627
Mpumalanga	27,991	143,325	171,316
KwaZulu-Natal	0	39,661	39,661
Eastern Cape North	53,484	24,228	77,712
Eastern Cape South	7,295	18,043	25,338
Western Cape	0	24,749	24,749
Southern Cape	0	118,373	118,373
TOTAL	98,300	386,476	484,776

The reason why the term “restructuring”, as opposed to “privatisation”, became used is because it captures the sense that the process was not simply about the sale of assets to the highest bidder. This process sought to reposition the state within the forest sector, and attempted to achieve wide range of White Paper public policy objectives, over and above the simple disposal of forest assets. These public policy objectives were reflected in the sale objectives provided to bidders in the MTO as follows:

- To promote the development of a sustainable forestry sector
- To enhance competition;
- To facilitate investment;
- To encourage the development of downstream wood processing capability;
- To promote sustainable rural development and job creation;
- To promote the participation of previously disadvantaged;
- To promote sustainable and secure employment, human resource development and affirmative action;
- To advance meaningful black empowerment; and
- To obtain the maximum price for the Sale Assets consistent with the attainment of the above sale objectives.

Government recognised that some of these objectives could potentially conflict with each other. Successful restructuring would require the identification of acceptable trade offs between these objectives. Absent from the sale objectives, but reflected in the White Paper are recognition of land rights and issues of environmental management with particular reference to water.

Following the launch of the tender process in May 1999 a conventional tender process was rolled out resulting in preferred bidders being announced in December 1999 on four of the seven packages; KwaZulu-Natal, Eastern Cape North, Eastern Cape South and Southern Cape.

In mid 2000 the Southern Cape bidder (Thesens/IDC Consortium) withdrew due to material negotiation issues including the purchase of another sawmill, retrenchments, environmental issues and bid price. Bid negotiations with Amathola Timber Holdings on the Eastern Cape South package were put on hold pending resolution of disputes over existing long-term timber supply contracts with consortium members Rance and Lentz. In September 2000 Government announced that the Southern and Western Cape packages would be withdrawn pending investigation into the viability of the area for forestry. Mpumalanga and Northern province would be re-offered as a single package which became known as Komatiland (***It is likely that there was a Cabinet decision at this point – we have no record***).

During 2001 the Komatiland package was taken through a second tender process and a preferred bidder Zama Resources was identified. Zama Resources was an entirely black-owned consortium of forestry interests. In August 2001 the Eastern Cape North package negotiations were completed with Singisi Forest Products, and in October the KwaZulu-Natal package negotiations were completed with the Siyaqhubeka consortium. In November 2001 all remaining DWAF category A assets were transferred into the Komatiland and Eastern Cape South SAFCOL subsidiaries pending further transfer to private sector bidders.

During 2002 the transaction process for Komatiland collapsed amidst allegations of misconduct by Government officials in DPE. The Director: Restructuring in DPE resigned as a direct result. In May a new combined package for the Southern and Western cape, now known as “Mountains to Oceans” or “MTO” was released. This package reflected the fact that 48,000 ha of forestry land would not be re-planted when harvested but would convert to alternative land uses, predominantly nature conservation. The Eastern Cape South negotiations were also recommenced and the package was re-named Amathola. In November 2002 DWAF released an advertisement calling for expressions of interest for its category B plantations.

In 2003 the Komatiland transaction was re-launched for the third time and six short-listed bidders have been identified. DWAF have been requested by DLA and Ingonyama Trust to put their tender process on hold for Category B plantations pending community consultations prior to the release of tender documentation. Negotiations proceed with MTO and Amathola packages. DWAF are currently in discussions with local Traditional Authorities who are being assisted by KZN Trade and Investment, through the Ingonyama Trust for the Mbazwana and Manzengwenya plantations. This is DWAF's largest Category B resource, which is comprised of 19,000 ha and a sawmill.

3.2 Has government achieved its policy objectives for industrial plantations?

There is little question that the policy framework for industrial plantations was clear and sound. There is a clear policy mandate for the state to withdraw from managing industrial plantations and a clear policy framework set for achieving a wide range of other policy objectives through the process.

In terms of bid evaluation it would appear that Government rarely had great difficulty in identifying preferred bidders due generally to the lack of bids (only twenty-one expressions of interest were received on all seven packages in the first round of the tender process). There were few situations therefore when the weighting of one bid criteria (policy) over another became the critical determining factor in selection of preferred bidders. The only situation where the bid price was not the determining criteria was in the selection of Zama Resources over reserve bidder Parhapur Cooling Towers for the Komatiland package. In this case the bids were very close and Zama was chosen on the basis of its high level of black economic empowerment.

3.3 Measuring the success to date of the SAFCOL and Category A transactions

The only review of the success of the Category A and SAFCOL process against the stated sale objectives (policy objectives) was commissioned by DFID in September 2002. The study identified fourteen restructuring objectives (other than maximise bid price) from DPE's Strategy Framework, the White Paper, bid documents released to bidders, and other un-named sources. The key findings are summarised below. The study only considers the two transactions which have been completed to date, being the Eastern cape North and KwaZulu-Natal packages. A 0 to 4 scoring system was used based on 0 being totally unsuccessful and 4 being totally successful:

- The restructuring process is judged to be very successful (scoring 3 or 4) in bringing about the mobilization of private sector domestic finance, and private sector expertise and looks likely to result in significant investment in downstream

processing. Mondi have indicated that their intended R2 billion investment at their Richards Bay Pulp Mill was largely enabled through their participation in the Siyaqhubeka consortium. Hans Marensky have likewise indicated that through their shareholding in Singisi Forest products they are embarking on a restructuring and rationalisation of fibre and processing resources in the Eastern Cape which is likely to bring about sizeable investment in sawmilling capacity and a possible chip board plant. There is also a high likelihood that these new investments will bring increased access to globally competitive technology and expertise in South Africa.

- The process to date has been completely unsuccessful so far (scoring 0) in bringing about an increase in competition (in terms of new participants in the industry), and in attracting foreign direct investment.
- In terms of providing secure employment it is probably too early to tell. There was a moratorium on retrenchment agreed for three years. What happens after the three years will be the true measure of how secure the employment is. It is also difficult to assess the success of the process to date in terms of addressing skills development and affirmative action. A dedicated study into this issue would have to be done to measure performance against these criteria. There has been no economic empowerment of workers in terms of share ownership as yet as the Employee Share Ownership Programmes (ESOPs) have not yet been put in place.
- Encouraging partnerships with local communities is also difficult to assess at this stage and requires further investigation. Both Mondi and Hans Marensky are embarking on a strategy of developing local contractors. Mondi's incubator scheme has reserved a minimum of 20% of all contracting work to local contractors with a programme of support to enable them to be trained and purchase equipment. This scheme should be explored in more detail as a potential model. At the level of shareholding there are mixed impressions of how successful the Singisi and Siyaqhubeka experiences have been. Key frustrations experienced have included the process of setting up the community trusts, the delays in allocating rental income to land owners due to the land claims process, questions of funding of shares and

the timing of re-payments, especially in the early years when the assets are being rehabilitated and no dividends are being paid. A dedicated study into the shareholding experiences would be of value.

- Government has not yet allocated the further 10% shareholding for the communities from its residual 25% so there has been no further empowerment through that initiative as yet although there are processes in place to allocate these shares and the ESOPs. The key lesson emerging is that Government needs to look very carefully at the issue of funding of shares and the basis of entitlement. If communities and workers have to buy shares there is a risk that this may not be in their best interests economically if the enterprises do not generate meaningful dividends.
- Getting consensus on measuring success in terms of recognising land ownership, access and use rights the process would be difficult. Access and use rights provisions are provided for but the process did not adequately address the appropriate procedures laid down by DLA for the recognition of land ownership in terms of unsettled land claims. This presents a certain amount of risk in the Singisi transaction which has yet to be resolved. Important procedural lessons have been learned for subsequent transactions.
- The process scored either a 2 or 3 on the extent to which Government has reduced its financial exposure to State Enterprises. There are clearly a number of warranties in the leases (such as compensation for any loss of investment due to land reform), which Treasury would rather not see, but these are fundamental to the negotiations and Government has had to accept a degree of risk arising from uncertainty around land ownership. Government also scores a 3 in terms of separating its regulatory and ownership functions although these are already separated at the point at which the DWAF forests are transferred into SAFCOL. One area requiring further investigation is DPE's post-transfer monitoring role in terms of the various transfer agreements other than the lease. As DPE also remains a shareholder these functions have not been separated entirely.

3.4 Category B policy objectives

The key difference in the overall policy objectives for restructuring Category B plantations compared to category A and SAFCOL, has been the greater emphasis on encouraging small enterprise development and community participation in the Category B process (MANCO approval August 2002). The Category A and SAFCOL assets were packaged on a large scale to attract large scale investment, so the Category B plantations were “held back” and packaged with a view to encouraging the smaller investors and communities to participate. As no Category B plantations have yet been transferred there has been no delivery against any of the policy objectives on these plantations to date. Many procedural and policy lessons have however been learned from the Mbazwana and Manzengwenya experience which are reflected below.

4 POLICY ISSUES IDENTIFIED AND RECOMMENDATIONS FOR FUTURE RESTRUCTURING

4.1 Residual post-transfer responsibilities

Minimising the residual liabilities on the state has not been as explicit an objective within the transactions to date as it should have been, and Government has not always prepared itself to fulfil its post-transfer obligations. Certain residual post-transfer functions have been anticipated and capacity has been created to fulfil them. The establishment by DWAF of its sub-Directorate: Land Management to manage the leases is a case in point. Other post-transfer liabilities and responsibilities have been less carefully thought through. The institutional arrangements to oversee the sale of business agreements, business plan undertakings, shareholders agreements and SAFCOL’s medium to long term role as shareholder of 6% are not clearly understood in DWAF (or possibly DPE). DWAF has a seat on the board of SAFCOL which is one opportunity to gain a better understanding of these issues but DWAF currently does not take up this opportunity. Indeed the long term future of DPE as a Department is not clearly understood.

Recommendation: DWAF should engage DPE in the newly-convened policy forum to raise questions for clarity regarding all these post-transfer residual functions. Any function for which capacity is not in place should then be suitably analysed and capacity created in the appropriate Department.

Recommendation: DWAF should also consider carefully what “duty of care” responsibilities it may feel it has over and above its legal monitoring obligations. Of particular concern is what happens to workers after the leave the public service and (particularly with the smaller Category B and C plantations), what is the capacity of new managers to manage forests sustainably into the future. Communities, Municipalities and small enterprises may need technical or financial support. This role has not been adequately analysed within DWAF such that there is clarity regarding the staffing and budgetary requirements.

4.2 Constructing attractive and viable packages of assets

During the categorisation of DWAF A and B plantations the short term objective of creating an “attractive” package was sometimes prioritised over the wider long-term interests of the state in terms of minimising residual liabilities. Certain plantations were excluded from the category A list because they were unattractive, rather than because they were suitable for small enterprise development. This has meant that DWAF is left with certain “difficult” plantations which cannot be easily transferred as stand-alone businesses.

Recommendation: Consider carefully in the packaging of category B and C plantations the trade-off between creating attractive and viable packages versus minimising the residual liabilities on the state. This trade-off becomes more and more difficult when moving from the A process through Bs to the Cs in terms of the size, condition and dispersal of plantations. An integrated approach to packaging B and C plantations may assist in this regard, rather than treating them as separate processes.

A separate experience, which illustrates the same point raised above, was the

construction of the MTO package. There were some worker villages which were perceived as problematic by SAFCOL management. SAFCOL wanted to use the restructuring process as an opportunity to sever themselves from responsibility from these areas. DPE took SAFCOL's advice in this matter and attempted to exclude these villages from the package with a view to transferring them back to DWAF or Provincial Department of Public Works, neither of which had the capacity or mandate to manage these villages. Only through some fairly adversarial negotiations has DWAF managed to avoid taking on this liability, one which is much better dealt with by the new manager of the plantations, even if they discount the bid price to take account of it.

Recommendation: Within a given package, seek to transfer as much of the risk and liabilities to the new manager as possible. The new manager will seek to negotiate around these issues but it may be in government's interest to prioritise this objective even if it means subsidising the new manager to cover these costs (see HR section below).

4.3 Treatment of indigenous forests associated with plantations

There are many areas of indigenous forest associated with all categories of plantation. In the Category A process a distinction was made between those patches of indigenous forest which were integrally associated with the plantation (called Conservation Areas or "CAs"), and those patches of indigenous forest which could be managed as stand-alone management units (called Primary Conservation Areas or "PCAs"). The CAs were to be included in the lease to be managed as part of the plantation estate, whilst the PCAs would be excluded from the leases and would either be managed by DWAF or by the new manager of the plantations by way of a side agreement to the lease.

There was not a problem with the idea outlined above but it was not implemented very effectively. Firstly, the distinction between CA and PCA was not done very sensibly. Too many areas were categorised as PCAs which should never have been. This added to the survey costs and created a patchwork of conservation and plantation management units. Secondly, there was no effective negotiation with the preferred bidders around

whether they would manage the areas by way of a side agreement. The negotiations are happening long after the transfers took place making it difficult for Government to negotiate from strong position. A further issue is that DWAF has moved away from its intentions to manage indigenous forests directly towards its preferred intention of transferring management to Provincial conservation agencies or other suitable bodies.

Recommendation: DWAF's preferred position will be that the future managers of the remaining industrial plantations should also take responsibility for as much of the associated indigenous forests as possible. Clearly there are some cases where this will not be possible, especially where communities and small enterprises become the new managers. In such cases DWAF will need to find alternative solutions but DWAF should enter into negotiations with the intention of transferring as much indigenous forest as is practical. The other key policy issue emerging from the indigenous forestry transfer strategy is the management objective of the indigenous forests. If there are particular forests which play a particularly important local economic or cultural role which requires a participatory management approach, then these forests may not be suitable to transfer to commercial forestry companies.

4.4 Land use conversion

Over and above the policy of forestry transfers, several packages namely the MTO (48,000 ha), KwaZulu-Natal (10,000 ha) and the Komatiland (10,000 ha) packages all contain an element of land use conversion from forestry to other land uses. These areas are significant. At a time when the industry is crying out for more land to expand the forest industry the Government has, through the restructuring process, identified approximately 68,000 ha plantation for conversion to other uses. (See Cabinet Memoranda No. 19, 20 and 21 of 2001). This figure does not yet take into account category B and C plantations, many of which are perceived as "non-viable".

The overarching concern around land use conversion is whether the full public costs and benefits have been taken into account over and above the private costs and benefits which are reflected in the Net Present Value (NPV) of the current

operations. It is becoming increasingly recognised within the international forest policy debate that plantations offer tangible public benefits including:

- Watershed protection and soil conservation;
- Employment;
- Infrastructure including roads, schools, clinics (often in remote rural locations);
- Aesthetic landscape values;
- Conservation values (by acting as buffers to neighboring conservation land); and
- Recreational values (hiking, camping, fishing, hunting).

In some countries (such as the UK) these public benefits have been valued to such an extent that the state has decided that it is in the public interest that the forests remain under public management and control. The emphasis of South Africa's public goods is likely to be more on local economic development opportunities and the impact on downstream processing, but Tokai and Cecelia on the Cape Peninsular offer examples of where the recreational values of a forest may outweigh their commercial values.

The issue of conversion presents certain particular policy and process questions which are summarised below with recommendations on how they should be addressed in future.

4.4.1 Transparency of decision-making

What social, environmental and economic data is required in order to facilitate a decision to convert land from plantations – was this information available when the relevant decisions were taken? It would seem not in some cases experienced to date. In other words the full public good values of a plantation had not been determined before the decision was taken to convert the land use. It would appear that decisions were made at a political level without adequate reflection on the key social and environmental issues at stake. A lack of research and poor communication between decision-makers and the staff responsible for implementation creates an impression that there is inadequate transparency in

decision-making.

Recommendation: An economic, environmental and social impact assessment should be routinely conducted whenever a land use conversion process is under consideration. The decision to convert should be based on a clear analysis of the private and public benefits of the plantation relative to its costs. Many plantations in many parts of the world are not commercially viable, but their public good benefits warrant Government intervention to see that the plantations are maintained for aesthetic, recreational or socio-economic reasons.

4.4.2 Managing the conversion

Land use conversion processes are long term. It may take many years for the plantations to be phased out and during that time the new land use should be phased in. It is a gradual transition rather than a single-point event. For this reason it is essential to establish a good working relationship with the current manager of the land and the receiving agent. Management systems have to be carefully integrated. Any disputes between different managing agents hampers the transfer process and exposes it to the risk that the cleared land remains “unmanaged” for long periods, which results in weed infestation and high fire risk. A second problem is that new economic development activities are not initiated during the transition thereby limiting the possibility for local employment levels to be maintained.

Recommendation: There needs to be high level consultation and agreement between different spheres of Government regarding how the land is to be converted, released and then managed into the future. Key issues which have caused problems in the Western cape and Mpumalanga are:

- The size of the budget for long term future management
- The availability of budget, and how that budget is transferred

- Who should be the future managing agent
- How can the current manager and future manager work together against a common conversion plan
- Best practice guidelines for effective conversion of land from plantations and restoration as conservation land use.

With the experience gained to date these issues should be able to be routinely resolved up-front before a conversion process is embarked upon. They do however require high-level political intervention, and this should be based upon well-researched and articulated positions from the relevant Departments.

4.4.3 Stakeholder management / communication

The key stakeholders which tend to be negatively affected by land use conversion processes are the workers employed in the plantation activities and the companies who support the plantation operations or who are involved in downstream processing. Local Government structures are also key stakeholders as are land owners, who may be Traditional Authorities or land claimants.

These are the stakeholders who feel the direct impact of land use conversion and who need to be brought on board with the reasoning behind the decision and the process of implementation.

Recommendation: These stakeholders should be consulted as part of the initial cost benefit analysis. There should also be a dedicated communication strategy which keeps them informed. The difficulty of managing this issue is compounded if the implementing officers from the relevant departments do not themselves fully understand the rationale for the conversion (this links to the point made above regarding transparency of decision-making).

Recommendation: Where a Category B or C plantation is considered as “non-viable” for plantation purposes and therefore suitable for land use conversion it will be especially important to value the public good benefits. Many of these plantations are not viable due to mismanagement and fire damage. It may not make pure economic sense to rehabilitate them, therefore they may be considered for conversion. However, if their public good values can be determined in terms of the employment they create and opportunities for downstream enterprise development then the State may decide that it is in the public interest to rehabilitate the forest and only transfer management to the private sector in the future. It will be essential to engage underlying land-owners in such cases to ensure that the benefits of alternative land uses are also taken into consideration. One critical issue to consider in this regard is the issue of how plantation management and rehabilitation should be conducted in the meantime. DWAF’s management performance has been poor and innovative management models need to be tested to avoid further asset deterioration.

4.5 Institutional strengthening

From experience it is evident that DWAF needs a more explicit skills retention and development strategy within the restructuring process. Such a strategy would assist DWAF to explicitly address its post transfer capacity requirements. With a clear understanding of its future skills requirements DWAF could identify in advance appropriately skilled staff to retain to perform these functions. In the past key individuals with scarce skills have transferred with the assets to new employers leaving DWAF under-capacitated.

One further benefit of such a strategy would be to assist management staff in career pathing thereby increasing morale during the period of interim management. DWAF is currently experiencing deteriorating morale, much of which may be attributed to uncertainty amongst managers and their staff, due to the restructuring process. DWAF is in fact developing a number of new competencies in parallel to the transfer of assets so competent staff should be encouraged to consider their options in the light of a clear vision for the institutional shape and structure of the forestry function in Government.

5 PROCESS MANAGEMENT LESSONS LEARNED AND RECOMMENDATIONS FOR FUTURE RESTRUCTURING

5.1 Human Resources Management

The experience gained and lessons learned regarding human resources administration are captured in a separate report called “Management of Human Resources In A Restructuring Process: Lessons Learned From The Restructuring Of The Ex-Homeland Forests” August 200. These recommendations still stand are captured as follows:

- A detailed procedural plan for the Human Resources administrative process should be drawn up at the beginning of any restructuring process, with clear indications of the time frames, roles and responsibilities and budgets. The details of what needs to be contained in such a plan are addressed later in this report.
- There should be a dedicated communication strategy in place to deal with Human Resources administration issues. The procedures should be communicated to and understood by all key role players before the process begins, with the roles of different authorising parties carefully delineated.
- An effective information management system (for both electronic and hard copy information) needs to be put in place. This system should include an agreed document flow system between different offices.
- The necessary capacity to implement the Human Resources administration processes must be in place. Capacity needs to be dealt with in terms of numbers of staff, staff skills and expertise, access to computer equipment and information systems, and management and supervision of staff.

- Ongoing poor administrative practices (such as the failure to capture leave records) needs to be identified and addressed as part of the restructuring process to assist with the ongoing management of the Department and any future restructuring.
- Strategic planning and decision-making capacity needs to be in place so that line-function managers can engage with Human Resources technicians around issues of policy, procedure, time frames and budgets.
- A culture of innovative problem solving needs to be created to avoid the situation where problems become institutionalised and are perceived as “too big to solve”.
- A culture of “learning by doing” needs to be created to avoid a situation where restructuring is perceived as separate from routine Human resource administration and inexperienced staff miss out on the opportunity to learn from the process.

5.2 Social Plan

A more comprehensive reflection of the Social Plan experience is provided for in a “lessons learned document” but the key findings are as follows:

Scope and timing: The scope of the Social Plan needs to be clearly developed and agreed between all affected parties involved in implementation. Elements which are likely to be included are counseling (financial and psychological), technical and business skills training and aftercare. These need to be planned and delivered as an integrated programme rather than as a series of unconnected activities. All services should be provided whilst the workers are still in service but as close to their date of termination as possible.

Suitability of training: Technical training should be matched to the skills and interests of workers and to the opportunities available locally. If however, the participants are low skilled, relatively old, and living in rural areas it may not realistic

to think always in terms of re-employment or formal enterprise development. In such cases the Social Plan should be able to support individuals with their preferred survivalist strategy, which might involve a number of activities occurring seasonally and or simultaneously, some of which may be subsistence, others which may involve some financial trade.

Aftercare: It is difficult for one employer in one sector to deliver effective aftercare. More can be achieved if regions are looked at as a whole and sectors work together. All future Social Plan activities in Government are likely to be conducted within the framework of implementation for Resolution 7 of 2002 of the PSCBC. In this case DWAF will be one of many Departments participating in a Social Plans. It is recommended that responsibility for an overall Public Service Social Plan should be taken by DPSA and or Department of Labour. Experience has shown that DWAF alone can only ever make a limited impact whereas if government resources were centralized a major impact could be achieved in terms of job creation and local economic development and this would have more chance of being maintained over a longer period.

Record Keeping: accurate attendance records need to be maintained and linked to authorisation procedures for invoice payment. The point of authorisation of payment should also be as close to the point where training took place as possible (decentralisation) as information gets lost as it moves up the organisation to Pretoria.

Communication: There needs to be a clear communication strategy in place which seeks to communicate the objectives of the social plan, the content, who pays, timing, and roles and responsibilities for managers and staff. This message needs to be communicated in time for managers to allocate staff and other resources to assist in the delivery of the Plan.

Project management and technical expertise: The delivery of the social plan is a complex exercise requiring sound logistical and technical expertise to oversee the effective delivery of services. There needs to be a clear project management structure with a clear mandate and simple lines of reporting.

Monitoring and evaluation (M&E): Despite reasonable efforts by DWAF to review the Social Plan and its impact, the quality of monitoring and evaluation and feedback has been extremely poor. M&E systems need to be put in place from the outset. This could be managed as a contract which is run in parallel to the delivery of other services.

5.3 Re-deployment

The following key lessons have been learned:

- There needs to be clear policy in place to deal with standards of housing and other facilities for Government workers.
- There needs to be policy in place which covers the transportation of workers on both a daily basis and in terms of re-deployment requirements generally, and this should be tied closely to a clear policy and schedule for the payment of allowances for such things as resettlement and camping and so on.
- Adequate budgeting should be in place to cover these costs and effective procurement procedures to minimise delays.
- There needs to be an effective medium to longer-term strategy for those workers being re-deployed which looks at skills and training needs and the long term interests of workers. A concept such as the social plan could be put in place for re-deployees so that they are placed in a position where they could effectively compete for vacant posts which might arise. This was never part of the re-deployment dialogue between Government and Labour and both parties should consider this in future.

Many of these issues have been provided for within the framework of PSCBC Resolution 7 of 2002.

5.4 Negotiations with organised labour

It may be argued that the most difficult aspect of the restructuring process for DWAF's former homeland plantations has been negotiations with organized labour. These negotiations have been drawn out, difficult to manage and have resulted in a great many delays in the process and significant frustration and stress for management staff involved. Any future restructuring process would benefit greatly from any improvements to the process of engagement with organized labour.

Recommendations:

Manage the negotiation process for forestry as part of the wider process of negotiation for DWAF as a whole. Forestry negotiations have been managed in isolation in the past. Whilst this enabled forestry to move forward at times it also isolated forestry from the wider restructuring processes going on in the department;

The Forestry Restructuring and Transformation Committee (FRTC) set up for forestry should be institutionalized as a sub-committee of the Departmental Task Team (DTT) rather than as a stand-alone decision-making body; and

DWAF should mobilize a team of expert negotiators to take the process of negotiation forward. Forestry staff should not be expected to negotiate directly with senior Union officials. Forestry staff may work with Union representatives within technical task teams but all negotiations should be handled by mandated Departmental "negotiators".

5.5 Roles and responsibilities relating to the disposal of SAFCOL (Governance)

The Department responsible for the disposal of SAFCOL is Department of Public Enterprises (DPE). When dealing with the disposal of any State Enterprise DPE are required to make submissions to Cabinet for approval around all key decisions. The transaction timetables are therefore designed to be aligned to the annual Cabinet cycle. All decisions taken to date should be recorded within Cabinet minutes.

The role of DWAF (as the line-function Ministry responsible for the forestry portfolio) should be to provide policy and technical support to DPE. This should be at both a strategic level and a more routine operational level. The role of the SAFCOL Board should be to govern the ongoing operations of SAFCOL and provide technical support and information to the transaction advisers. SAFCOL themselves should not be seen to be “driving” the transaction because there may be potential conflicts of interest between the interests of management and the wider national interest in the restructuring of a State Enterprise.

The experience however from the interactions with DPE and SAFCOL to date are that these relative roles and responsibilities have become very blurred at times. There have been three key problems on the part of Government, which have resulted in a lack of oversight, delays in the process and mistrust between Departments:

- A lack of leadership capacity within DPE to drive the restructuring;
- A lack of integration within DPE between the dealing with the “transaction” activities and the post-transaction roles and responsibilities; and
- A lack of continuity on the part of DWAF to constantly engage in the process at various levels which are required to influence and support the process.

The Chief Director: Forestry in DWAF, who was appointed in mid 1999 was dedicated to the process and ensured a strong DWAF leadership role from that point until her resignation in May 2002. Since that time DWAF has been through an internal restructuring process which has resulted in a breakdown of clarity as to who should engage with DPE and at what level. There is still a lack of clarity between the roles of the Chief Director Policy and Regulation and the Chief Director: National Transfers.

DPE on the other hand have lacked a dedicated official who was responsible for the restructuring of Forestry until the recent appointment of a Director: Forestry within

DPE in July 2003 (four years after the process was started). It was in order to address this vacuum that the UK Department for international Development (DFID) offered to fund the appointment of a dedicated Project Manager for forestry within DPE. This individual was in place between January 2001 and April 2003. Whilst the project management and oversight capacities of DPE were greatly improved by this support there were two over-arching criticisms which could be made of this appointment:

- There continued to be a lack of integration between the transaction processes (which tend to be driven by relatively short-term objectives) and the post-transaction responsibilities (which have more medium to longer-term implications). The project manager was also the transaction adviser and was solely concerned with the transaction phase. Many of DWAF's policy concerns are of a more long-term nature and relate to the post-transaction phase, which the project manager was less concerned with.
- The DPE project-manager was said to be acting in a line function post in DPE but due to the fact that the appointment was not aligned to Government processes there was always a lack of certainty regarding whether the individual was a DPE official or a consultant working for DPE. DPE therefore continued to lack a "face" in the process and which was a frustration to DWAF, especially when key strategic policy objectives were in conflict with short-term transaction objectives as they were from time to time.

Throughout the process it could be said that the SAFCOL Board and management have been in a difficult position. Due to the capacity gaps and turnover of Government officials, SAFCOL have from time to time found themselves performing roles which strictly speaking put them in a position where there a conflict of interest could arise in the process. This may include paying for transaction advisory services, leading on the Western Cape Conversion process, participating in negotiations and generally keeping processes going.

Recommendations:

The completion of the SAFCOL restructuring process is far from over and could be an ongoing responsibility for Government for several more years to come. The key issue for DWAF is to determine where responsibility lies for engaging in these processes. There are clearly both policy issues and issues of a more “administrative” transfer nature to deal with. Both the Chief Directorates of Forest Policy and Regulation and National Transfers will need to be involved. The following set of recommendations is made:

- The Chief Directorate Forest Policy and Regulations take the lead on engaging in the interdepartmental Forest Policy committee which has been convened by DPE. The agenda of this committee should be influenced in such a way that it deals with policy issues and not transaction issues per se.
- The Chief Directorate National Transfers take the lead in engaging in the Transaction Technical committee convened by DPE.
- An internal DWAF co-ordinating structure is convened for providing regular internal feedback between officials on the various ongoing processes at hand.

5.6 Communication

The forestry transfer process has from time to time been criticised for not being well enough communicated to key stakeholders. This is not unusual criticism for such a complex change process. The criticism however is reasonably justified, and should be taken in a constructive light in order to develop best practice procedures for the process going forward. The following lessons have been learned in the process and should be reflected in future communication strategies:

Developing a communication strategy: A dedicated communication strategy was developed in 2001 to support the transfer process. Developing the communication strategy was a useful exercise which required project staff to undertake a stakeholder analysis whereby different stakeholders’ interests, abilities to influence the process and capacity to engage were analysed. Essentially the communication strategy identified three threads which needed to be managed simultaneously:

- Internal communication with workers and their representatives regarding human resources restructuring;
- External communication with communities and applicable Government structures who deal with land rights and ownership; and
- External communication with bidders with regard to managing the tender process.

Implementing the communication strategy: Developing the communication strategy was the easy part. Implementing it proved more difficult. A number of problems were encountered which should be reflected on for the future:

- Due to unforeseen delays in the process it was difficult to roll out an implementation plan according to a pre-agreed timetable. The timetable for transfers is one of the most critical pieces of information to communicate but one over which DWAF had relatively little control. Communication in such a “stop-start” environment is extremely difficult. The communication process was often awaiting the signing of key agreements and communication had to “wait” until such an agreement was signed. Many months would pass before the agreement was signed, during which time key stakeholders remain uninformed.
- Much genuine communication takes place within the core business of negotiating a transfer process in a fair, transparent and accountable manner. For many managers it was felt that communication was being adequately addressed and for them it was not obvious why a dedicated communication strategy was needed.
- A dedicated service provider was appointed to manage the communications exercise however the service provider turned out to be incompetent. This experience resulted in the decision to manage the communications requirements of the process in-house. As a result of the capacity constraints in-house the communications activities have once again become ad-hoc in nature rather than as part of a clear over-arching strategy.

Recommendation: The Chief Directorate: Communications need to guide the office of

National Transfers on the development and implementation of a communication strategy. The strategy needs to take account of the nature of the process and provide for flexibility in rollout. Communication with key stakeholders, especially workers and affected communities, should be routine regardless of whether key milestones targets or agreements have been reached.

5.7 Capacity for ongoing management of the resource

It was never DWAF's intention to manage the commercial plantations in the long-term. From the earliest Options Study the recommendation to Government was to transfer the management of plantations as soon as possible. Unfortunately, the transfer process has proved itself to be more complicated than anticipated and as a result DWAF is still managing the Category B and C plantations, eight years after they were first transferred. Under DWAF management the assets are deteriorating rapidly. The overriding problem is a lack of management capacity from the plantation level right through to National Office. This results in the following secondary problems:

- Low morale and poor performance by workers at all levels
- Poor fire protection measures resulting in extensive fire damage
- Poor financial management.

In addition there are contractual disputes over long-term timber supply contracts which take up a significant proportion of senior management time and managers have to contend with onerous public service procurement procedures which are not designed for managing commercial operations.

Recommendation: The longer the assets remain under the direct management of DWAF the more they will deteriorate. Many have already been so badly fire damaged they cannot be easily taken over by a private company, let alone an emerging one. It is therefore recommended that the management be contracted out

to the private sector. The various contracting out options should be explored and the most appropriate mechanism implemented without delay.

5.8 Institutional capacity and Use of donor resources

The UK Department for International Development (DFID) has provided funding to DWAF in support of the transfer process since the end of 1998, when the process commenced. DFID and DWAF both under-estimated the complexity of the process and the time it would take. DFID justified their earlier interventions on the basis that by supporting DWAF to withdraw from managing plantations DWAF would be freed up to develop its policy making, regulating and support functions. This justification still stands however DFID's own policy shift is calling for project interventions to be more explicitly poverty-focussed.

The earliest intervention was seen as a discrete three-year project during which time the transfer process would be completed. As a result funding was provided to cover all aspects of the process. DWAF created three posts on their establishment and have been able to effectively manage the exercise, but DWAF never budgeted for the operational costs of the transfer process itself. The current phase of DFID support includes support to the transfer process but on the basis that funding will be withdrawn over three years and DWAF will create the capacity to complete the process in-house.

The disadvantage of a donor-sponsored process is that it has not been institutionalised in DWAF in the way that it needed to be. Much of the cost of the process to date has involved bringing in outside consultants to perform functions which strictly speaking DWAF could do itself. Administering human resources is a case in point.

Recommendation:

DWAF need to create the capacity to deliver the process without reliance on donor support. This essentially involves the following:

- Develop business processes for the transfers;
- Determine and agree the appropriate roles and functions for the National Office Forestry Directorates and the clusters;
- Determine the skills requirements to deliver the transfer processes;
- Develop the budgetary requirements for the process and secure budget within the MTEF;
- Determine which skills need to be developed in-house and which may be contracted out;
- Create the necessary posts on the appropriate establishments at national and cluster level;
- Appoint staff and train them accordingly; and
- Develop operational project plans and supporting guidelines for the clusters.

5.9 Lease issues

5.9.1 Background and introduction: Leasing the state's commercial forestry land

In recognition of underlying land rights on the Category A / SAFCOL transactions it was agreed between the relevant departments that forested land would not be sold but would rather be leased to forestry companies. The intention was that the land would remain state property until such time as it is restored to successful land claimants, or to communities who acquire rights in terms of land reform (tenure upgrade and restitution) projects. The remainder of the land will remain in state hands under the jurisdiction of the Department of Public Works.

Where land is restored to claimant communities, the condition of settlement will be that government will seek to lease the land back and sublease it to the commercial forestry companies, with the view to retaining the forestry activities on the land. Communities around forests will retain use and access rights to the plantations in terms of the National Forests Act.

In line with these decisions, a leasing system was devised to take into account the

needs of both displaced communities and commercial forestry. Thus a main lease agreement and a head lease agreement were structured for this purpose.

- **Main lease agreement:** The main lease agreement is a lease contract between government (who owns the state forests) and a business entity that takes over the business of forestry on the land.
- **Head lease agreement:** The head lease is between DWAF, on behalf of the government, and a successful land claimant community on whose land there is a commercial forestry lease.

Following discussions with DLA it is anticipated that this will not be the model for implementation for most Category B or C plantations. Instead, the land-owning communities will be given the option of whether they wish to enter into this lease agreement or whether they would rather take over the asset which is attached to the land. The condition to such transfer would be that the community would need to demonstrate that they have the technical competence to manage the plantations sustainably for forestry purposes. In order to do this it is expected that most communities would need to contract in management support or possibly enter into a joint venture with an established private sector company.

5.9.2 Forestry restructuring co-ordinated with the Land Reform Programme

The state acknowledged that there are significant numbers of land claims on SAFCOL and DWAF-managed land and informal tenure rights. Given the size of land involved and the number of claims lodged at the Land Claims Commission, it was agreed with the relevant Departments that it would not be possible to resolve these rights and claims in time for the transfer to private companies. The parties agreed therefore that the land reform processes would be completed after the lease agreements with private companies had been put in place. Every attempt however was made to ensure that the transaction agreements, (in particular the leases) was structured in such a way that the rights of land owners would be protected. The lease model was agreed with Department

of Land Affairs, acknowledging however, that if a particular claimant community felt that the land should be restored without the lease then they would have the right to appeal to the Land Claims Court. The State would oppose such applications however the Court would be free to rule on such a case according to its merits.

This issue remains a residual risk to the State for the Category A /SAFCOL transactions which should not be the case with the Category B plantations.

5.9.3 Inter-Departmental co-operation

Section 27 of the NFA establishes the legal authority for DWAF to lease state forest land. The Minister's decision to lease state forest land is however, dependent on the consent he/she must obtain from:

- The Minister of Public Works in regard to land held by the State for domestic line functionary purposes;
- The Minister for Land Affairs in respect of land he/she holds in trust for communities; and
- The Ingonyama Trust Board regarding land held in trust by the Ingonyama.

Experience has demonstrated that the greatest risk areas relate to land which falls under the jurisdiction of either the Department of Land Affairs or the Ingonyama Trust. In both cases, these entities hold land in Trust for communities. Both entities are keenly aware of their obligations to these communities to make sure the land is not alienated through the forestry restructuring process and that the communities get maximum benefit from the process.

DWAF's ability to transact with land on which it conducts forestry must therefore go beyond mere consent to securing absolute buy-in and support from DLA and Ingonyama Trust. It is not enough to agree a once-off legal framework at a national level. Restructuring initiatives must provide for ongoing interaction so that these other agencies effectively become development partners in the process. This was not well

understood at the beginning of the Category A process and as a result tensions have built up, especially within DLA amongst staff who have not “bought-in” to the forestry restructuring model but who are obliged to “sell-it” to communities. Through the setting up of a co-ordinating structures led by DWAF sub-directorate: Land Management many of these relationship issues have been addressed successfully.

In recognition of this issue (and on the advice of the sub-directorate: Land Management) the restructuring of Category B plantations has taken much more of a “partnership” approach with DLA from the outset.

5.9.4 Development role for DWAF and DLA

Government's Land Reform Programme aims to extent security of tenure to people living under insecure tenure circumstances through:

- Land redistribution;
- Land tenure reform; and
- Land restitution.

Tenure security ultimately comprises of legal, economic and social security in respect of land. Achieving all three in a balanced combination requires a developmental approach. DWAF in this context aims to enhance the land's economic value for the owner. DLA is responsible for establishing land owners' legal tenure security. Combined, the two department's objectives must increase the social security of the affected land owners through initiatives for sustainable forestry management, forestry enterprise development and integrated rural development.

To date, DWAF has defined a purely regulatory role for itself in terms of the administration of lease agreements. However, through transferring ownership of state owned forestry land to communities, DWAF is compelled to maximise the development opportunities for the land owners. DWAF therefore needs to integrate its Land Management functions with its PFM, enterprise development and other related

strategies.

5.9.5 Procedures for approving the leases.

As referred to above the NFA provides that the Minister's decision to lease state forest land is subject to consent from the Minister of Public Works, the Minister for Land Affairs and the Ingonyama Trust Board (where applicable). These procedures have been well understood by the lawyers to the transactions to date. However, there are additional legal considerations, which have not adequately been attended to:

- Before concluding any lease agreement the Minister must also obtain the approval of the agreement by the State Law Advisor in so far as the agreement establishes legal obligations for the State.
- The Minister must also obtain the input of the Minister of Finance in regard to provisions of the PFMA: firstly in respect of any financial liability stemming from the terms of the agreement against the National Revenue Fund (section 70) and secondly approval of the rental rate and matters pertaining to it.
- Leases of more than 9 years and 11 months require registration against the affected properties' title deeds. To comply with this the lessor must be able to provide the lessee with the title deeds of the properties affected by the lease agreement. DWAF therefore needs to have finalised the description of the lease areas prior to the conclusion of the lease.
- The NFA does not provide for the Minister to lease private land for forestry purposes. Land that has been restored to a land claimant becomes private land. This matter requires further deliberation involving the Ministry for Public Works in order to enable the Minister for Water Affairs and Forestry to lease private land for line functionary purposes.

5.9.6 Negotiations

Given the complicated nature of the legal relationship that would be established DWAF should aim to standardise its lease agreements as far as possible, in terms of content as well as process, in order to streamline their administration.

To achieve consistency and accuracy in the outcome of lease negotiations in respect of both types of leases, DWAF will have to work in close collaboration with the State Law Advisor during the lease negotiations. DWAF's own internal legal services and support must back up the State Law Advisor. The negotiation team should also include representatives from the respective line functionary units in the Department that will be responsible for the administration of the lease.

It is the intention with regard to most category B transfers that lease agreements will not be required. Instead the operating company on the land would enter into a direct relationship with the landowner. Whilst this arrangement may represent a facilitation challenge in the short-term, it removes the State from any lease management obligations in the long-term.

5.9.7 Lease administration.

The primary responsibility for DWAF once the lease agreements have been concluded, is to monitor the leases and take corrective measures where necessary. Five main categories for lease administration are identified:

- Sustainable forestry management (monitor operational activities);
- Land use management (ensure sustainable use of all areas within the lease);
- Asset management (equipment and infrastructure);
- Financial Management; and
- Ongoing community and stakeholder liaison.

Risk management forms an ongoing and cross cutting activity in terms of which the

Department strives to avoid circumstances that could threaten the continuance of the lease agreement.