



**Traditional Authorities and Co-Management of Protected Areas  
in South Africa: The Case of Dwesa-Cwebe Nature Reserve in  
the Eastern Cape**

**Simphiwe Tsawu  
TSWSIM001**

**Supervisors: Professor L. Ntsebeza and Associate Professor F. Matose**

**Thesis presented for fulfilment of the Degree of  
DOCTOR OF PHILOSOPHY**

**In the Department of African Studies**

**UNIVERSITY OF CAPE TOWN**

**2022**

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

## **DECLARATION**

I declare that this is my own unaided and original work. Neither the substance nor any part of this thesis has been submitted in the past or is being submitted at any other university or institution. I know that plagiarism is wrong. Plagiarism is to use another's work and pretend that it is one's own. Each contribution to, and quotation in, this study from the work of other people has been attributed, and has been cited and referenced fully. I take full responsibility for the ideas expressed in this study.

Simphiwe Tsawu

## ABSTRACT

This thesis examines the role of traditional authorities in the post-land claim co-management of protected areas in the former Bantustans of South Africa, using the Dwesa-Cwebe Nature Reserve (DCNR) in the Eastern Cape as a case study. The DCNR was one of the first successful land claims involving a protected area under South Africa's post-1994 land restitution policies, and one of the earliest communities to create new landowner institutions under tenure reform policies.

Two theoretical debates – the critical and the supportive perspectives – provide the framework for this study and help in assessing how theorists viewed the role of traditional authorities in the context of protected area management in rural areas. I argue that traditional authorities should not be regarded as guests in their areas of control; instead, a nuanced understanding of their role in post-land claim co-management of protected areas such as Dwesa-Cwebe is required as they, in turn, are held accountable by communities that they “govern”. Such contexts require mechanisms that recognise both traditional authorities and elected representatives as equal partners in the post-land claim co-management of protected areas. The accommodation of traditional authorities is unavoidable because many inhabitants of former Bantustans continue to respect them. Furthermore, the state increasingly empowers them.

The people of Dwesa-Cwebe held their traditional authorities accountable for their former roles in land dispossession and in enforcing brutal state restrictions on access to the natural resources in the DCNR. This they did by excluding traditional leaders from the land claim process and the land tenure and management institutions – the Land Trust and Communal Property Associations. However, when problems arose with the Land Trust, traditional authorities stepped in and removed the Trust, effectively holding that body to account. During this process, the state came out clearly in support of traditional authorities. The thesis concludes that as long as traditional authorities are empowered by the state and enjoy popularity in rural communities such as Dwesa-Cwebe, their role in the co-management of protected areas will remain significant and necessary.

In examining and assessing the role that traditional authorities play in rural areas, particularly with regard to communal land in protected areas, I employed a qualitative approach. I mainly used a combination of semi-structured interviews, informal conversational interviews and participant observation to compile and gauge the views of people in the area, as well as official government documentation, minutes of meetings and a range of secondary sources.

## ACKNOWLEDGEMENTS

This thesis would not have been completed without the assistance of many people over the years. It is my wish to name all those who assisted me to complete it, but the list is too long.

I extend my gratitude to my two supervisors, Professor Lungisile Ntsebeza and Associate Professor Frank Matose, who guided and supported me, and always provided critical and constructive comments. Our weekly seminars, organised by the NRF Research Chair in Land Reform and Democracy in South Africa at the Centre for African Studies, helped me to conceptualise, develop and shape my study and enabled me to critically engage with the related literature. To Dr Clemence Rusenga, Mcebisi Kraai, Dr S. Ncube and Associate Professor Derick Fay, I express my appreciation for their assistance on this thesis. A/Professor Fay read some of my chapters and provided constructive comments.

I also thank all the participants in this research from Dwesa-Cwebe. Specifically, I thank the people from Cwebe, Hobeni, Elalini, Mpume and Ntubeni for their time and contribution to the study through their knowledge and experiences. My special thanks go to David Gongqose, Kuzile Juza, Mr Mhlayifani Templeton Mbola, Sithayi Bhunga, Mcedi Mhlanga, Mr Batshise “Dingatha” Mase, Chief Phathisile Fudumele, Chief Ndlumbini and Chief Jonginkosi Geya for engaging with me. I especially thank David Gongqose and his mother for allowing me to stay in their homestead while I was conducting my research. Chief Ndlumbini also provided me with a place to stay while I was conducting interviews in Mpume and Ntubeni Villages, for which I am very grateful. I greatly appreciated their hospitality and kindness. Without their co-operation, this study would not have been possible. The Dwesa-Cwebe people and their chiefs did not prevent me from attending community events, funerals, traditional ceremonies and traditional council meetings as a participant-observer and allowed me to make Dwesa-Cwebe my second home. While I worked for TRALSO, I developed a strong relationship with the people and local leaders of Dwesa-Cwebe.

I am very appreciative for the financial support I received from the NRF Research Chair in Land Reform and Democracy in South Africa. For further funding for this study, I thank the DARMA (Defragmenting Resource Management in Africa) project for financial support it provided to me through PLAAS at the University of the Western Cape, as well as the Responsive Forest Governance Initiative (RFGI) Project (funded through CODESRIA). Both of these sets of funding were arranged by Professor Matose, and I thank him immensely for his assistance in this regard. I also thank the

Department of Sociology at UCT for assisting me over the years. Without all this support, it would have been impossible for me to complete my doctoral research at the University of Cape Town.

I also thank my family for assisting me during this study. My endless appreciation and special thanks go to Ashanti Mguga, Hlumi Mguga, Siyamthanda Pulani, AneGugu Mcosana and Qhayiya Ntlontlo for their continued support, patience and understanding while I was away during my study period. I also thank Noma-Afrika Maseti for her support during these years of my PhD. I really appreciate their administrative support and their always wanting to help financially and emotionally during difficult times.

## **ACRONYMS & ABBREVIATIONS**

ANC	African National Congress
CC	Conservation Committee
CLARA	Communal Land Rights Act
CMC	Co-Management Committee
CPA	Communal Property Association
CRLR	Commission on the Restitution of Land Rights
DAFF	Department of Agriculture, Fisheries and Forestry
DCNR	Dwesa-Cwebe Nature Reserve
DEA	Department of Environmental Affairs
DEAET	Department of Economic Affairs, Environment and Tourism
DEAT	Department of Environmental Affairs and Tourism
DLA	Department of Land Affairs
ECNC	Eastern Cape Nature Conservation
ECDC	Eastern Cape Development Corporation
ECPB	Eastern Cape Parks Board
ECPTA	Eastern Cape Parks and Tourism Agency
JMC	Joint Management Committee
MOA	Memorandum of Agreement
NGO	Non-Governmental Organisation
RLCC	Regional Land Claims Commission
TLGFA	Traditional Leadership and Governance Framework Act
TRALSO	Transkei Land Service Organisation
VCC	Village Conservation Committee

# TABLE OF CONTENTS

<b>DECLARATION .....</b>	<b>ii</b>
<b>ABSTRACT .....</b>	<b>iii</b>
<b>ACKNOWLEDGEMENTS .....</b>	<b>iv</b>
<b>ACRONYMS &amp; ABBREVIATIONS.....</b>	<b>vi</b>
<b>TABLE OF CONTENTS .....</b>	<b>vii</b>
<b>LIST OF TABLES AND FIGURES .....</b>	<b>x</b>
<b>CHAPTER ONE Traditional authority and protected areas: Sketching the problem .....</b>	<b>1</b>
1.1. Introduction.....	1
1.2. Background .....	3
1.3. Statement of the problem.....	5
1.4. Research objective and questions.....	6
1.5. Significance of the study .....	7
1.6. Research design and methodology.....	8
1.7. Data analysis .....	17
1.8. Ethical considerations .....	17
1.9. Thesis structure and chapter outline.....	18
<b>CHAPTER TWO Traditional authorities in post-land claim co-management of protected areas: Theoretical perspectives .....</b>	<b>23</b>
2.1. Introduction.....	23
2.2. Two perspectives .....	24
2.3 Resurgence of the legitimacy of traditional authorities in contemporary South Africa.....	35
2.4 Theories of Democracy .....	40
2.5 Conclusion .....	47
<b>CHAPTER THREE Protected areas and traditional authorities in South Africa: A historical context .....</b>	<b>49</b>
3.1 Introduction.....	49
3.2 Protected areas and the role of traditional authorities in South Africa: late 1800s to 1910 .....	51
3.3 Protected areas and traditional authorities in rural areas: 1910 to 1940s.....	56
3.4 Apartheid, the establishment of nature reserves, and traditional authorities: 1948 to 1960s...	60
3.5 Protected areas and traditional authorities in the era of Bantustans: 1960s to 1980s.....	62
3.6 The era of transition: late 1980s to 1994.....	64
3.7 Conclusion .....	66
<b>CHAPTER FOUR The post-1994 South African Land Reform Programme and its impact on protected areas in the former Bantustans .....</b>	<b>68</b>



4.1	Introduction.....	68
4.2	Two important components of land reform in South Africa .....	70
4.3	The co-management of protected areas on communal land claims in South Africa .....	79
4.4	Traditional authorities in post-1994 South Africa .....	85
4.5	Traditional authorities from 2003 to the present .....	86
4.6	Impact of restoration of traditional authorities' power over land in former Bantustans .....	94
4.7	Conclusion .....	96
<b>CHAPTER FIVE Protected areas and traditional authorities in Dwesa-Cwebe from the 1800s to the present: Introducing the study site .....</b>		<b>99</b>
5.1	Introduction.....	99
5.2	The setting and social contexts: The study area .....	101
5.3	Changing role of traditional authorities in managing Dwesa-Cwebe natural resources: 1800s to the present .....	104
5.4	Conclusion .....	121
<b>CHAPTER SIX Reclaiming the Dwesa-Cwebe Nature Reserve: People's struggles and traditional authorities from the start of the transition from apartheid in South Africa in 1990 up to 2001 .....</b>		<b>124</b>
6.1	Introduction.....	124
6.2	Community struggles to reclaim access to lost land and access rights to natural resources in the nature reserve: 1990-1994 .....	126
6.3	Negotiations for return of land and access to resources in the nature reserve: 1995-1997 ....	132
6.4	Land claim process and establishment of tenure reform communal property institutions: 1997-2001 .....	137
6.5	Conclusion .....	142
<b>CHAPTER SEVEN DCNR reclaimed: Management arrangements and complexities: 2001-2009 .....</b>		<b>144</b>
7.1	Introduction.....	144
7.2	DCNR Settlement Agreement and traditional authorities: 2001-2004 .....	146
7.3	Collaborative management of DCNR, exclusion of traditional authorities .....	152
7.4	Declining influence of support organisations, challenge to the Communal Land Rights Bill by the Land Trust: 2002-2005 .....	160
7.5	The beginning of the fall of elected representatives?: 2006-2009 .....	164
7.6	Revisiting the legal empowerment of traditional authorities in South Africa .....	171
7.7	Conclusion .....	172
<b>CHAPTER EIGHT Resurgence of traditional authorities in DCNR, implications for management of the reserve: 2009-2017.....</b>		<b>174</b>
8.1	Introduction.....	174
8.2	Discontented traditional authorities exploit Land Trust's weakness .....	175

8.3	The resurgence of traditional authorities: Land Trust B formed.....	182
8.4	Creation of Land Trust C in 2011, impact on the management of DCNR .....	195
8.5	Establishment of new interim CPA (2013), reinvigorated traditional authorities .....	201
8.6	Conclusion .....	212
<b>CHAPTER NINE Re-thinking the role of traditional authorities in post-land claim co-management of protected areas.....</b>		<b>215</b>
9.1	Introduction.....	215
9.2	Summary of findings from the study .....	216
9.3	Emerging insights from this study .....	222
9.4	Contribution to scholarship .....	228
9.5	Limitations of the study .....	230
9.6	Overall conclusion .....	231
<b>REFERENCES .....</b>		<b>233</b>

## **LIST OF TABLES AND FIGURES**

Figure 4.1. Map of Dwesa-Cwebe and administrative areas (Sunder 2014: 61)	58
Table 4.1: Traditional authorities of the Dwesa-Cwebe villages	60

# **CHAPTER ONE**

## **Traditional authority and protected areas: Sketching the problem**

### **1.1. Introduction**

Existing institutions and administrative arrangements pose serious challenges for the co-management of protected areas, even as states and other actors seek to craft new ways of managing and protecting these resources. In this regard, this thesis examines the role of traditional authorities, which are prominent institutions on the African landscape, by focusing on the case of the Dwesa-Cwebe Nature Reserve (DCNR) in the Eastern Cape province of South Africa. The DCNR is located in an area most of which was formerly part of two Bantustans, territories that were reserved by various laws of the colonial and apartheid governments exclusively for residence by black people. Such areas were also “under the jurisdiction of traditional authorities” (Ntsebeza, 2006:13). This thesis focuses on the rural areas of the former Bantustans, which are often referred to as communal areas. Before the advent of democracy in South Africa in 1994, land in these areas had been formally controlled by the state, but the day-to-day administration of the land was left in the hands of traditional authorities, which, according to Ntsebeza (2002; 2006), were arms of the colonial and apartheid regimes. With the ushering in of the post-1994 democratic dispensation, the role of traditional authorities over the co-management of protected areas such as Dwesa-Cwebe Nature Reserve (DCNR) was not recognised (Fabricius, et al., 2001). Despite not being part of the co-management of protected areas, the state recognises the role of such authorities in local communities’ day-to-day lives, especially in land and customary affairs (Sunder, 2014).

Local communities that had been dispossessed during the colonial and apartheid periods were no longer able to access protected areas for natural resources, which, in turn, affected their livelihoods (Ramutsindela, 2003). This led to tensions between traditional authorities, the state, and local communities. In the post-1994 era, local communities’ struggles for access to protected areas were boosted by the initiation of the government’s land reform programme that included the right of dispossessed communities to reclaim their lost land (Cundill, et al., 2013). These developments resulted in management arrangements for protected areas that marginalised traditional authorities in favour of democratically-elected institutions. Despite their marginalisation in the co-management of protected areas, traditional authorities were recognised in the South African Constitution (RSA, 1993; 1996). Additionally, the Traditional Leadership and Governance Framework Act of 2003

(TLGFA), and the Communal Land Rights Act (CLARA) of 2004<sup>1</sup> increased the powers and roles of traditional authorities in the management of natural resources in communal areas (Ntsebeza, 2002; 2006; Jara, 2012). These contradictions in law and policy have resulted in tensions between democratically-elected institutions on the one hand, and unelected traditional authorities on the other, with the possibility of undermining the efficacy of management arrangements for protected areas (Kepe, 2008; Ngubane & Brooks, 2013). This study delves into the role of traditional authorities in post-land claim co-management of protected areas in South Africa's former Bantustans in general, and in the Dwesa-Cwebe Nature Reserve in particular, after the advent of democracy in South Africa.

A number of studies have examined the existence and roles of traditional authorities in democratic dispensations. One perspective argues against the recognition of a role for traditional authorities in the administration and communal affairs of communities under democracy (Maloka, 1995; Bank & Southall, 1996; Mamdani, 1996; Ntsebeza, 2002; 2006). Scholars who hold this view argue that traditional authorities should be side-lined and democratic institutions should be provided state support. Their critique is based on the fact that traditional authorities are comprised of unelected representatives, which makes them unaccountable to anyone. Emphasis is placed on the notion that traditional authorities are remnants of the past, undemocratic and unaccountable to local people, and therefore should have no role in democratic societies in Africa (Mamdani, 1996; Ntsebeza, 2006). Ntsebeza differs from Mamdani's standpoint of total exclusion by propounding qualified inclusion, that is, the election of traditional leaders to democratic institutions in order to make them directly accountable to the rural people they preside over, and to make them conform to democratic principles. One of the key scholars with whom this study engages, Ntsebeza argues that traditional authorities derive their authority from their power to control land and not from their popularity. He maintains that when this power is lost, their legitimacy becomes questionable. According to Ntsebeza (2006), traditional authorities consist of disruptive and corrupt leaders who use their power for self-interest rather than for the benefit of the people they represent. This study interrogates this criticism by focusing on protected areas.

A second perspective views the contribution of traditional authorities in a more positive light and challenges the first standpoint, arguing that because traditional authorities still exist, they have a role

---

<sup>1</sup> The Act was rescinded in 2010 by the Constitutional Court (SAFLII, 2010).

to play in a democratic dispensation (Keulder, 1998; Van Rouveroy van Nieuwaal & van Dijk, 1999; Englebert, 2002; Ray, 2004; Oomen, 2005; Sithole & Mbele, 2008; Williams, 2010; Logan, 2011; Charles, 2014). Those arguing this perspective postulate that traditional authorities can coexist with elected institutions. They stress that in many rural areas traditional authorities fulfil critical functions in controlling access to natural resources such as land, and in resolving disputes (Lutz & Linder, 2004; Charles, 2014; Kompi & Twala, 2014). They also suggest that such authorities provide stability in rural areas, intervene in conflicts and tensions among community members, and allocate land in rural areas (Williams, 2010). Some argue that traditional authorities are currently regaining their position in the management of natural resources whereas, in the past, they had been weakened and undermined (Nuesiri, 2012). This study examines how the coexistence of traditional authorities alongside democratically-elected institutions, which are given powers to co-manage protected areas, plays out. The next section provides a background to the study.

## **1.2. Background**

In South Africa, the establishment of protected areas by colonial governments led to the forcible removal of indigenous people from their customary lands (Kepe, Wynberg & Ellis, 2005). Historically, in the former Bantustans of South Africa, residents lost their land and were denied access to natural resources. Protected areas were established on this land by the colonial authorities, and, later, by successive apartheid governments (Ramutsindela, 2003; Fabricius et al., 2004; Kepe, Wynberg & Ellis, 2005; De Koning, 2010). I will expand on this history in Chapter Three. The Bantustans were initially referred to as “reserves” in the British colonies of the Cape and Natal in the nineteenth century, having been set aside for settlement of the native populations. When the Union of South Africa was established in 1910, reserves were also set up in other parts of South Africa, which, by then, comprised the two British colonies and the two Boer republics of Transvaal and the Orange Free State (Ntsebeza, 2006). In terms of the Natives Land Act of 1913, the size of land that was reserved for African occupation comprised a mere seven percent of the total land surface of South Africa. This was later increased to 13 percent under the Development Trust and Land Act No 18 of 1936 and the Native Trust and Land Act of 1936 (Ntsebeza, 2004:69).

Under the apartheid regime, the reserves were referred to as Bantustans or homelands, with some granted “independence” from 1976. Residents in the Bantustans had rights of occupation only, and these were inferior to freehold land rights that were enjoyed by their counterparts in urban areas.

Before the advent of democracy in 1994, land in these areas was owned by the state, but the administration of the land was in the hands of state-appointed traditional authorities, which, according to Ntsebeza (2002; 2006), were an extended arm of the colonial and apartheid regimes. In the context of the governance of protected areas, however, traditional authorities were not recognised. Nevertheless, they were used by the state to enforce restrictions that prohibited local communities from using natural resources around protected areas.

Since the advent of democracy in 1994, the African National Congress (ANC)-dominated government introduced policies that extended democratic rights to all South Africans, including the right of citizens to choose their leaders. However, it remains unclear how these arrangements work in areas that are under the jurisdiction of traditional authorities, which are recognised by the South African Constitution and given increasing powers in law. In 1994, the Restitution of Land Rights Act 22 was passed to allow local communities to reclaim the land from which they had been forcefully removed since June 1913 by colonial and apartheid governments. As this thesis shows, the returned land is registered to land-holding entities, the Land Trusts, in which the communities are represented by members of their Communal Property Associations (CPAs), which are democratically elected. At the time that the Dwesa-Cwebe Nature Reserve was formally handed back to its residents, a Dwesa-Cwebe Land Trust was established and its members were elected. Since 2001, the DCNR has been, and continues to be, co-managed by the community- through their Land Trust and the Eastern Cape Parks and Tourism Agency (ECPTA), representing the state. Traditional authorities have not been assigned a legal role in the co-management of protected areas by the Restitution of Land Rights Act, and the Constitution is also silent on this issue.

While traditional authorities are marginalised in the management of protected areas, their existence is recognised by the Constitution and they are given natural resource management powers in law. These contradictions could result in power struggles between democratically-elected institutions on the one hand, and traditional authorities on the other, with the potential of undermining the functioning of co-management arrangements for protected areas. Thus, in light of these contradictions, this study seeks to examine the role of traditional authorities in post-land claim co-management of Dwesa-Cwebe Nature Reserve. The study looks to establish the place of traditional authorities – whether complementary or obstructive to democratic principles – and the role such authorities play in post-land claim co-management. It also seeks to establish what their powers are

over the protected area, and whether they command respect and acceptance in Dwesa-Cwebe communities.

### **1.3. Statement of the problem**

In this study, I explore the role that traditional authorities play in the post-land claim co-management of protected areas, particularly in contexts where there are new institutions that were established by the state to manage those restituted protected areas, such as Dwesa-Cwebe. The recognition of traditional authorities by democratic South Africa, despite their previous relationships with the apartheid government, sparked a rich debate in scholarship about transforming the place and role of traditional authorities in community affairs and local governance. However, these scholarly debates do not provide in-depth understanding on the connection between traditional authorities and protected areas in South Africa's rural areas, which has wider implications elsewhere in Africa about the role of such customary authorities in the post-colony. The involvement and role of traditional authorities in the democratic dispensation have received conflicting interpretations from scholars. Scholars such as Maloka (1995), Bank and Southall (1996), Mamdani (1996) and Ntsebeza (2006) argue that traditional authorities are disruptive to democracy, unaccountable, and unelected, and they should therefore not be given any role in democratic states across Africa. While this study recognises that traditional authorities are unelected, it provides empirical evidence to challenge the view that they are not accountable to communities, especially in restituted protected areas. One group of scholars argues that traditional authorities should be accommodated in a democratic era. They postulate that such authorities continue to be respected and accepted by their people, and can therefore coexist with elected institutions (Keulder, 1998; Van Rouveroy van Nieuwaal & van Dijk, 1999; Englebert, 2002; Ray, 2004; Oomen, 2005; Williams, 2010; Logan, 2011; Charles, 2014).

There are also studies focusing on resolved land claims in protected areas under jurisdiction of traditional authorities in the rural areas of KwaZulu-Natal, Eastern Cape and Limpopo (Mathis, 2007; Spierenburg, et al., 2007; Kepe, 1997; 2001; 2008; Robins & van der Waal, 2008; Ntshona, et al., 2010; Ngubane, 2012). These studies show how land claim processes in KwaZulu-Natal and Limpopo are used by traditional authorities to strengthen their position on claimed land under protected areas (Mathis, 2007; Robins & van der Waal, 2008; Ngubane, 2012). However, while these studies, especially Kepe's work on the Mkambati Nature Reserve, shed light on understanding the dynamics regarding co-management of protected areas where both traditional authorities and elected



institutions operate alongside each other, they do not provide a detailed analysis that focuses solely on the intersection between the role of traditional authorities and in the post-land claim co-management of protected areas, as my study does.

Traditional authorities continue to exercise power over communal land by virtue of the legitimacy accorded them in the Constitution and the legal instruments mentioned above. Simultaneously, democratically-elected institutions (Land Trusts, in terms of The Restitution of Land Rights Act 22 of 1994, and CPAs, in terms of the Communal Property Associations Act 28 of 1996) are legally-empowered to manage restored land. The Constitution and the Restitution of Land Rights Act do not specifically spell out roles for traditional authorities in co-management of protected areas that were returned to previously-dispossessed communities in the former Bantustans. This has led to fighting between traditional authorities and local communities (to whom the land has been restored), with often-detrimental results (Kepe, 2008; Chapters Six and Seven of this thesis). The debate over who or which institution is best placed to represent local communities, especially in the management of natural resources, stems from the government's ambivalence on whether to support democratic institutions or traditional authorities that have a history of involvement in local management of natural resources in communal areas.

The challenge for the state is to find a working arrangement or compromise that could involve both traditional authorities and democratically-elected local institutions. Both structures are recognised by the Constitution, which, inevitably, raises issues of power and division of authority. The unresolved role of traditional authorities at national level creates expectations and uncertainty at local level, with potentially serious implications for the co-management of protected areas such as Dwesa-Cwebe. These actions have often turned out to be detrimental to the communities and their development, such as in the case of Dwesa-Cwebe. These are the challenges with which this study engages, and about which it seeks to provide insights from scholarly, policy and practical resources. The objectives of the study are presented in the next section.

#### **1.4. Research objective and questions**

The objective of this study is to investigate the role that traditional authorities play in the post-land claim co-management of protected areas in the rural areas of South Africa's former Bantustans in general, and Dwesa-Cwebe Nature Reserve in particular, after the advent of democracy in South Africa. The following research questions guided the study in meeting its research objectives:

1. What is the current role of traditional authorities in post-land claim co-management of protected areas in South Africa?
2. By what means, and with what consequences in local communities, if any, are traditional authorities in Dwesa-Cwebe asserting their influence and control over co-management of DCNR?
3. What are the implications of these roles for protected areas on restored land in rural areas and more broadly?

### **1.5. Significance of the study**

There has been limited focus on the role of traditional authorities in the post-land claim co-management of protected areas management of protected areas in the rural areas of South Africa. It is important, therefore, to focus on and understand this role. This study seeks to inform policy-makers and other stakeholders about community dynamics and challenges that need to be addressed in order to improve collaborative management of protected areas in rural areas, especially in a context where new and representative institutions are being established outside existing traditional authorities. The findings of this study can contribute positively to a better understanding by all stakeholders working with the people of Dwesa-Cwebe, including the Department of Rural Development and Land Reform, the Amathole District Municipality, the Eastern Cape Parks and Tourism Agency, community structures and traditional authorities. The study also makes contributions at the conceptual and empirical levels.

At a conceptual level, it seeks to address current debates about the role of traditional authorities in a democratic dispensation in the former Bantustans of the Eastern Cape, in particular, and, more broadly, in South Africa. The study enhances these debates by examining the place of traditional authorities, and investigating whether they could play a positive role in the co-management of protected areas. At an empirical level, this study engages the views of scholars who position traditional authorities as being able to coexist with democratically-elected institutions in spite of critics' perception of traditional authorities as unelected and undemocratic (Keulder, 1998; Oomen, 2005; Robins & van der Waal, 2008; Williams, 2010; Logan, 2011; Charles, 2014). The study thus seeks to challenge the position that traditional authorities should be eradicated and be allowed no role in the contemporary era (Mamdani, 1996; Ntsebeza, 2006). The broad significance of this study

is that the nuanced role played by traditional authorities in Dwesa-Cwebe demonstrates that traditional authorities, together with elected institutions, can play an important role in the post-land claim co-management of protected areas.

### **1.6. Research design and methodology**

This study utilises a qualitative approach, specifically a case study, using several methods of data collection. According to Denzin and Lincoln (1994), “Qualitative researchers study things in their natural settings, attempting to make sense of, or interpret, phenomena in terms of the meanings people bring to them.” In this way, a qualitative approach is important as it assisted this study in its attempt to examine the role of traditional authorities in the post-land claim co-management of protected areas that are in rural areas in the former Bantustans of South Africa. It helped to understand the dynamics at play in the context where new, elected institutions such as the CPA and Land Trust were created to manage natural resources in protected areas, while chiefs had historically been regarded as managers of all natural resources in rural areas. The qualitative method reveals and highlights differences and variety within a range of human experiences in areas studied (Murray, 2002 cited in Rusenga, 2017). It is useful in capturing the views of people regarding their feelings and experiences (Wisker, 2007). Moreover, as a case study, this thesis also employed the following methods: a review of secondary material, including academic, government and NGO publications; archival research; in-depth interviews; conversations; and participant observation.

I collected initial information on the Dwesa-Cwebe communities for a Master’s thesis during April and September 2011. In addition, I maintained contact with the people of Dwesa-Cwebe and visited whenever an important meeting was held. I had already become familiar with the area and the people through my work there between 2006 and 2008, when I was employed by the Transkei Land Service Organisation (TRALSO), a land rights’ NGO based in Mthatha, Eastern Cape. Due to the amount of data I had collected, my Master’s project was upgraded to a PhD project in 2015. In addition, since my previous research visits, new dynamics had come into play between chiefs, elected resource-governance institutions and local residents with regard to the co-management of protected areas. These new power dynamics could only be unpacked through qualitative research methodologies. Qualitative methods allowed me to interact with real people and institutions through interviews and participation observation to understand the new forces at work in Dwesa-Cwebe. During a visit from April to August 2017, I reconnected with local people, with CPA members and members of the three

successive Land Trusts. I also have good contacts with traditional authorities in the area, and with the local Ward Committee. It was easy for me to visit the area again in June and August 2018. Although state officials were hesitant to talk to me, local people and their local governance institutions were willing to engage with me about their situation.

### **1.6.1. *The choice of case study***

While trying to examine the role of traditional authorities in the context of the post-land claim co-management of protected areas where a co-management agreement had been signed between the community Land Trust and the state conservation agency, I employed the case study approach. I examined The Dwesa-Cwebe Nature Reserve, situated in the Wild Coast area of the former Transkei Bantustan in the Eastern Cape, as a case study. The case study approach was selected because it can help the researcher understand a complex issue and can extend experience or add strength to what is already known through previous research. Sarantokos (1998) says that a case study “involves studying individual cases, often in their natural environment...”. Lunenberg and Irby (2008, cited in Ncapayi, 2013) concur, stating that case studies “are specific explorations” of a variety of situations, including individuals and communities.

Stake (1994) argues that case study researchers seek out both what is common and what is particular about the case, but the end result presents something unique. The case study approach allowed me to examine empirically what the role of traditional authorities in the post-land claim co-management of protected areas is in a context where new institutions, such as CPAs and a Land Trust, were put in place above the chiefs. “The case study method enables the researcher to interrogate the relationship between the general (theoretical) and the specific (empirical)” (Mafeje, 1981; Mkhize 2012 cited by Rusenga, 2017:7). The strength of the case study research method is its ability to discover a variety of social, cultural, and political factors potentially related to the phenomenon of interest that may not be known in advance (Bhattacharjee, 2012).

The reason for using Dwesa-Cwebe as a case study is that the history of the area shows that it has been governed by traditional authorities since pre-colonial times, and while these authorities had been responsible for natural resources management over an extended period, their role in this regard had been obscured subsequent to the creation of the DCNR (Fay, et al., 2002b). Dwesa-Cwebe is

useful also because it makes three important contributions to the literature on chiefs in the democratic era in South Africa.

First, for local people this study is important because it provides an opportunity for people's voices to be heard in areas where their legal rights to access natural resources are threatened by the state management authorities and chiefs. Despite the fact that people look to traditional authorities for social cohesion, Dwesa-Cwebe people found themselves overwhelmed by resurgent traditional authorities that attempt to take control of the benefits of the protected resources over which the people had struggled to regain control. Over the past few years, a complex process of community politics in relation to the control over co-management of protected areas has unfolded, and continues to do so in Dwesa-Cwebe. Moreover, selecting Dwesa-Cwebe was helpful for me at a personal level. I am known by local people and their local institutions, such as the Land Trust, CPAs and traditional authorities. It was thus easy for me to obtain a place to stay in the area while I was collecting data. It was also easy to conduct the study and no introduction to the area was needed. People were free to talk to me. However, an explanation of the study was always given to residents during community meetings. I selected four out of the seven communities, namely Cwebe, Hobeni, Mpume and Ntubeni, in which to undertake my research. I selected these villages because there has been ongoing vigorous inter- and intra-community dissension and power struggles regarding the co-management of natural resources within the protected reserve. In these villages, chiefs were accused of having received bribes for the unlawful extension of a lease without community approval. In addition, these villages were selected because their traditional authorities had had conflicting relations with the elected members of the Land Trust and CPAs serving in the management committee of the protected area. They also often blocked the Trust and CPAs from reporting back to the communities.

#### **1.6.2. *Selection of respondents***

The purposive sampling method, in which the researcher chooses the sample with a purpose in mind, was used to select the respondents and the key informants (Trochim, 2001). The purposive and snowball sampling methods, as some individuals suggested who the next individual the researcher could talk to, were used in this study. Purposive sampling is a method in which the researcher depends on subjective or background knowledge when selecting participants (Neuman, 2006). In the context of this research, key informants who have specialised knowledge of interests and concerns in the wider social setting were selected. Mr David Gonqgoshe, Khuzile Juze and Mr Mhlayifani

Templeton Mbola were my key informants. They are familiar with Dwesa-Cwebe because of their active participation in the affairs of the area, and they played an important role during the community struggle for the right to access natural resources in the 1990s. After the settlement of the land claim in 2001, Khuzile Juze and Mr Mhlayifani Templeton Mbola were elected members of the Land Trust that owns, manages and controls natural resources in the conservation area on behalf of the community (Fay & Palmer, 2000). They were also chosen purposively (as a non-probability sample) because of their involvement in the struggle for land and access to protected areas. The key informants were approached then enquired about this study and agreed to take part in this study, this gave me to use these first key informants as intermediaries to access more who familiar with Dwesa-Cwebe within the community. The next paragraph gives more detail.

Mr David Gongqoshe is a fisherman who had been arrested for fishing inside the nature reserve by ECPTA rangers in 2012 (see Sunder, 2014). He was a voice for the fishermen in the area. He provided me a place to stay while I was conducting interviews in the area. Mr Mhlayifani Templeton Mbola was the first chairperson of the original Land Trust. Around 2007, Mr Mhlayifani Mbola challenged Chief Vulinqaba Ndlumbini's decision to allocate community land to strangers without the consent of the Trust (see Chapter Six). He also opposed the passing of the Communal Land Rights Act of 2003 that was going to restore the powers of unelected traditional authorities over land in rural areas while CPAs and Land Trusts were already in place. Both men were willing to provide information about the role of chiefs in the area and to suggest additional people to be interviewed. They also helped me to reconstruct conditions that had existed in the area (Neuman, 2006). Mr Kuzile Juza was also an elected member of the original Land Trust.

These key informants referred me to other villagers who they deemed well-informed about Dwesa-Cwebe, but hard to find. For instance, through them I was able to interview elderly people who know the history of Dwesa-Cwebe. Certain members of institutions that operate at the local level and certain role players in the Dwesa-Cwebe post-settlement process were selected and interviewed for the study. These included members of the seven CPAs<sup>2</sup> around Dwesa-Cwebe (eight persons), Land Trust members of all three successive trusts (10 persons), Co-management Committee members (five persons), former and current ECPTA managers (four persons), officials of the Land Reform and

---

<sup>2</sup> During the lodging of the land claim and the negotiation process, the villages were organised into seven CPAs in terms of the Communal Property Association Act (No. 28 of 1996). The 14 members of the land trust were subsequently elected from the CPAs.

Rural Development Department at provincial level (four persons), officials of Mbhashe local and Amathole District Municipalities (managers, mayor and local councillors) (two persons). Ten (10) government officials were interviewed. All chiefs involved in the ongoing disputes were interviewed (four persons), as well as fifty (50) ordinary community members such as grass collectors, fishers, timber harvesters, craft-makers and traditional healers, so that all axes of social differentiation were incorporated into the generation of data. Five sub-headmen were also interviewed.

I was told by residents that sub-headmen, not chiefs, were responsible for the allocation of land. These sub-headmen are respected in the area because of the role they had played during land struggles in the 1990s. Three representatives, Mcebisi Kraai, André Terblanche and Simbongile Kamtshe from TRALSO, who had been assisting and representing communities in land settlement cases for many years, were also selected for interviews. They are known in Dwesa-Cwebe because of their involvement in the Dwesa-Cwebe land struggle since before the claim was lodged, during negotiations and after settlement of the claim, covering the period from 1992 to 2011.

### **1.6.3. *Data collection***

As already stated, this study employed both primary and secondary sources for the collection of data. Data was collected from primary sources using key-informant interviews, in-depth interviews, participant observation and informal conversations. Secondary data were generated through the review of relevant documents. The researcher did not use archival sources in this study. However, the researcher relied on rich history books and TRALSO historical data about Dwesa-Cwebe.

### **1.6.4. *Interviews***

The study employed semi-structured interviews guided by questions designed to function as triggers that would encourage respondents to talk (Creswell, 2011). “Qualitative interviewing involves an interaction between interviewer and participant and unstructured and open-ended questions are intended to get detailed information from participants” (Creswell, 2011). This approach provides an opportunity for the researcher to hear the participants’ views. This approach provides an opportunity for the researcher to hear the participants’ views. I conducted semi-structured interviews with a total number of 50 men and women in Dwesa-Cwebe, aged between 30 and 80 years. The interviews were briefly conducted in 2012, when I was still doing the Masters project, and the bulk of interviews for the PhD project were from April to June 2015, June to September 2017 and June to August 2018.

However, the core of the data I used for this PhD project was collected in 2012 and supplemented with data from later stages, as shown above. As indicated earlier, Mr David Gonqgoshe, Khuzile Juze and Mr Mhlayifani Templeton Mbola were the key informants around whom other interviews were anchored.

I requested local people, women and men, to provide information in order to gain an understanding of their perceptions of the role played by chiefs and various institutions – such as the land trusts, CPAs and sub-headmen – in natural resource management in the area, especially on protected areas. These interviews were aimed at understanding the significance of natural resources to the communities, their involvement in the post-land claim co-management of DCNR, the roles of elected bodies and traditional authorities, and their general perceptions of elected bodies and chiefs. Four sub-headmen were also interviewed, to understand their views about the status of the co-management and the role of chiefs and headmen in post-land claim co-management of the protected area, as they are the “eyes and ears” of the chiefs at local level. It was important that women also be interviewed to understand their positions with regard to the role of chiefs in natural resource management, and to understand their feelings about chiefs and other institutions. The perceptions of local people of the different institutions demonstrated the legitimacy of the institutions (acceptability) and their effectiveness in natural resource management in protected areas.

Semi-structured interviews with traditional authorities were conducted to elicit information from them regarding resource governance from a historical perspective. Further, traditional authorities were asked for their impressions about the current context and the effect of change on the role of traditional authorities, particularly with regard to natural resource management. This information provided me with an entry point for interrogating the role played by traditional authorities in the control over, and post-land claim co-management of, protected area resources, both in the historical and current contexts.

I also interviewed community leaders who had sought assistance from the ANC and TRALSO in the 1990s with regard to their land claims. I was assisted in identifying these respondents by Mcebisi Kraai, a former TRALSO Land Restitution Officer who had assisted Dwesa-Cwebe communities to recover their land. Community members and their leaders who observed events as they were unfolding in their areas were interviewed in order to understand their perceptions of the role historically played, and currently being played, by traditional authorities in the post-land claim co-



management of DCNR. Apart from the community members and local institutions mentioned above, I also interviewed current and former officials of TRALSO who have a long history of working with the Dwesa-Cwebe communities and local leaders. These officials were interviewed in order to obtain an insight into the history of Dwesa-Cwebe and the role of traditional authorities and their relationships with local people, CPAs and Land Trusts in the area.

Four government officials were interviewed. Interviews with government officials focused on understanding the government's position regarding the role of chiefs in the DCNR's post-land claim co-management. These interviews also provided an understanding of the various institutional arrangements affecting DCNR co-management roles of various institutions. Interviews with government officials helped to triangulate information obtained from other respondents (such as community members, traditional authorities and councillors) regarding the role of traditional authorities in post-land claim co-management of protected areas. I also interviewed a councillor from Hobeni in order to understand how he viewed the role of chiefs in this regard while elected CPAs are in place to jointly manage the DCNR as required by the Settlement Agreement concluded in 2001.

The councillor was asked about his perception of the role played by chiefs in the area since the settlement of the land claim in 2001. Interviews with councillors were also planned to generate information about the role of elected institutions in the resource governance of the protected area. At village level, I used my mother tongue, isiXhosa, as it is the language spoken in the area, to conduct interviews. This encouraged people to express themselves more freely than if they had been forced to respond in another language. Interviews were audio-recorded and hand-written notes, which were later transcribed and translated, were taken in situations where respondents felt uncomfortable about being recorded. These interviews were conducted in order to understand the role of chiefs in post-land claim co-management of DCNR and their attempt to assert control over resources and local people.

#### **1.6.5. *Informal conversational interviews and participant observation***

The study used a combination of informal conversational interviews and participant observation in order to gather the stories behind people's experiences in Dwesa-Cwebe with regard to the role of traditional authorities in post-land claim co-management of protected areas, and how people interact with their local institutions, such as chiefs, CPAs, land trust, and sub-headmen. To enhance the

relationship with the people, I spent much of my time attending community meetings, co-management meetings and social gatherings. This assisted me in gaining information through informal conversations and participant observation that I might not otherwise have collected during formal interviews (Kvale, 1996:5). Data were also collected through participant observation, where the researcher is involved in the daily life of the people being studied. The researcher does this by establishing relationships with the people in the study area, participating in what they do and talking to them about the events that have been observed.

In 2006, 2007, 2010, 2011, 2012, 2017 and 2018, I observed and attended numerous workshops and meetings between stakeholders in the Dwesa-Cwebe settlement process. In 2018, I observed two meetings, traditional ceremonies in Cwebe, Hobeni, Ntubeni and Mpume, including preparations for initiation rituals, ritual beer-drinking, and funerals of community members. Observations were made about how people interacted with their local institutions, including chiefs, and lived their day-to-day lives. I noticed that, while I was conducting interviews, no co-management meetings were conducted. I was told that co-management meetings would only take place when the new CPA was elected. The election was delayed by the local people and traditional authorities prevented the CPA from functioning.

During the field work within the Dwesa-Cwebe community, I initially resided in Mpume at Chief Vulinqaba Ndlumbini's homestead (on the Dwesa side); later in Hobeni village (on the Cwebe side) on a fisherman's homestead. This did not create any conflict of interest during the period of interviews, as confidentiality was always applied. I was thus enabled to do participant observation and could observe political and community dynamics and complexities with regard to resource management around the protected area where local people's democratic rights through elected institutions are threatened by traditional authorities. I also observed how traditional authorities attempted to assert control over collaborative management arrangements of a nature reserve, and how the local communities reacted to this as they attempted to assert their democratic and legally-established rights. Observations were recorded in a field notebook. This observation helped me to understand complex dynamics at play in a situation where legally-established community rights, state-designed democratic procedures and local people are threatened by non-elected traditional authorities.

My stay at the homesteads of people (e.i. Chief Ndlumbini) involved in the fights over control of protected areas affected people's perceptions of me in different ways. My stay at Chief Vulinqaba Ndlumbini's place, in particular, made some interviewees reluctant to respond to questions related to traditional authorities. Some interviewees, especially those from Dwesa, were afraid to answer questions connected to the role of traditional authorities and their involvement in the removal of democratically-elected leaders in the CPA and the Land Trust. I noticed that these people were fearful that I might disclose their names and what they said about the chiefs to the chiefs, based on where I lived. However, I explained to them that, as I was bound by the University of Cape Town's code of ethics, I would never disclose their names to anyone whom I interviewed, including the chiefs.

#### **1.6.6. *Primary sources***

I consulted various primary source documents. These included reports; the Settlement Agreement; other official documents relating to the traditional authorities, land claims and reserve management plans; reports of NGOs; government publications (e.g., Acts and policy documents); and newspaper clippings. Records kept by TRALSO, The Village Planner and various headmen of the area were particularly useful with regard to the role played, and being played, by traditional authorities.

#### **1.6.7. *Secondary sources***

A rich body of literature exists on the histories and governance of natural resources within the Dwesa-Cwebe communities, specifically André Terblanche and Mcebisi Kraai (1996), Palmer, et al. (2002), Fay, et al. (2002a; 2002b), and Fay (2003). I used these studies in order to understand the history of Dwesa-Cwebe. These have been helpful as I traced the role of chiefs, especially in terms of resource governance in protected areas. These sources were consulted in order to provide historical information about Dwesa-Cwebe and its people, and how they interacted with their chiefs with regard to the management of natural resources. I also wanted to understand the role of traditional authorities in the co-management of protected areas and how this had changed over time (see Chapter Three).

Other secondary sources consulted were books, journal articles, seminar papers, other academic publications and various online resources. Academic publications were important in understanding the debates about the management of protected areas and the role of chiefs from the colonial period

to the democratic era. Government reports and publications provided information about the position of the state on the role of chiefs on the co-management of newly-acquired protected areas through the land reform programme in Dwesa-Cwebe and South Africa more generally.

### **1.7. Data analysis**

Immediately after I had transcribed the interviews, which had been recorded in isiXhosa, I embarked on a process of manually analysing the data. I was able to listen to the interviews again to recall the names of the persons I had interviewed. Creswell (2011:190) defines qualitative data analysis as a process in which the researcher continually reflects on collected data, toward deriving an interpretation of the data's larger meaning. Creswell further indicates that, in qualitative research, data collection and data analysis are conducted concurrently (2011:183). I organised and classified data provided by interviewees into patterns and themes from the perspective of the respondents (Creswell, 2011), and I then tried to understand and explain themes. I repeatedly reviewed data and recorded any emerging ideas. A narrative approach will capture participants' stories (Creswell, 2011), which will "construct the identities and locate" the interviewees "in what is happening around them" (Neuman, 2006:474 cited by Ncapayi, 2013). Narrative analysis was used to capture and reflect the "quality of lived experience" of the people of Dwesa-Cwebe.

### **1.8. Ethical considerations**

Such a study that focuses on conflict sites raises some ethical issues, which include those below.

First, although I am known in the area of study through my previous work with TRALSO, consultations with the Dwesa-Cwebe villagers were undertaken to inform them of the imminent study. As pointed out earlier, villagers had been notified about this study in the community meetings that I had attended. In addition, respondents had been informed in detail about the purpose of my study and it was explained how the findings would be used and disseminated. Before each interview, a short explanation was given and permission sought to conduct the interview. Furthermore, I was explicitly permitted by the respondents to use a tape recorder to record the interviews.

Second, I explained to each respondent that it was their right to remain anonymous if they so wished. While some respondents requested anonymity, others did not. Some agreed to be cited in the thesis with their real names. However, I maintained strict confidentiality in this study. During the interaction with respondents, I made full disclosure of my interests in the study. I also explained that

the study was for academic purposes and would make a contribution to the debates about the role of chiefs in a democratic era in Africa, through the case in Dwesa-Cwebe. Additionally, the identity of interviewees has not been compromised, since some respondents were not comfortable to answer questions about traditional authorities. Although different views emerged during the interview about the role of chiefs, people were not comfortable to talk about them. The University of Cape Town's code of ethics was observed in its entirety.

## **1.9. Thesis structure and chapter outline**

**Chapter One**, this chapter, is the introductory chapter. I have defined the problem of the study and the research question being addressed. The significance and contribution of the study were presented. I also discussed the methodology, ethics review and the chapter outline.

**Chapter Two** provides the theoretical framework for the study. It deals with debates about the possible role for traditional authorities in post-colonial African democracy, especially in the post-land claim co-management of protected areas in South Africa. Some studies perceive traditional authorities as corrupt, unelected, unaccountable and disrupters of democracy, and their authors argue that chiefs should not be given any role in development affairs in African democracies. Others argue that traditional authorities continue to influence peoples' lives in rural areas and, therefore, should play an important role in a democratic era. They stress that these authorities continue to involve themselves in the resource management in their areas, even while elected institutions are in place. In some areas, such authorities have even subjected themselves to democratic processes to the extent that they have been elected into the co-management structures that manage protected areas in provinces such as KwaZulu-Natal and Limpopo (Mathis, 2007; Spierenburg, et al., 2007; Robins & van der Waal, 2008; Ngubane, 2012). Against this background, the chapter engages with theories of democracy, as a way to bring these diverse debates or scholars in conversation, if not into some agreement about democracy. This chapter asserts that, given the strong arguments presented by both schools of thought, it would appear that protected areas in rural areas cannot be successfully co-managed without consideration being given to the involvement of traditional authorities.

**Chapter Three** focuses on the history of protected areas and the role of traditional authorities during the colonial and apartheid eras in South Africa up to 1994. The chapter explores how the establishment of protected areas changed over time, as did the role of traditional authorities over natural resource management in rural areas. It also shows how these protected areas negatively

affected local people's livelihoods. In this chapter, I raise the point that, while some traditional authorities resisted the creation of protected areas, which eroded their role in natural resource management, they went on to enforce state restrictions that prevented local people's access to protected areas such as DCNR. This shows that while the state under various governments excluded traditional authorities from the management of protected areas, they could not manage these protected areas without traditional leaders' co-operation and support. They co-opted traditional authorities and forced them, through their indirect rule strategy, to advance governments' aims regarding the management of protected areas. It is established in this chapter that traditional authorities have always been involved in the management of protected areas, even if they were sometimes used by oppressive regimes to enforce state restrictions that prohibited rural communities' access to such protected areas. It also demonstrates that traditional authorities collaborated with successive oppressive South African governments when they removed black communities to make way for the creation of protected areas. It argues that the implementation of state restrictions that denied local communities access to natural resources in protected areas shaped rural people's perceptions of protected areas and conservation, and have contributed to the negative portrayal of traditional authorities as collaborators with the apartheid regime who sold land without regard for local needs – even after democracy in 1994. It also shows how this history impacted on the role of traditional authorities in post-apartheid South Africa.

**Chapter Four** deals with the post-apartheid era (1994-2018), focusing on the restitution of protected areas, land tenure reform, collaborative management and the role of traditional authorities. It shows how land restitution in the context of protected areas attempted to allow formerly-dispossessed communities to regain their land and manage their natural resources that had been denied them with the creation of protected areas. It also discusses how protected areas are managed in South Africa and its implications for the role of traditional authorities. The chapter discusses a contradiction and confusion that have been caused by the democratic state, which removed the power of traditional authorities in the management of natural resources around protected areas through legislating elected institutions, and then reinstated that power alongside those institutions. I interrogate the effects of these actions. The chapter argues that the restoration of traditional authorities' power over land administration in rural communities undermines, and will continue to undermine, the authority of CPAs and Land Trusts in rural areas. It also argues that the continued legal extension of the power of traditional authorities and the unresolved question of their roles and powers in land administration in

rural areas by the state will have some negative implications for the co-management of protected areas in areas such as Dwesa-Cwebe.

**Chapter Five** is the first of four chapters devoted to the case study of Dwesa-Cwebe Nature Reserve. The case study provides a platform for the grounding of historical and political issues dealt with in Chapters Two and Three. It presents the history of the people of Dwesa-Cwebe in relation to their interaction with natural resources and the role of traditional authorities prior to the annexation of the region by the colonial regime, covering the period from the 1870s to the present. It shows how colonial and apartheid protected areas led to the dispossession of the land of Dwesa-Cwebe residents, how it impacted on their livelihoods, and the role of traditional authorities in the management of natural resources. It also discusses the position of traditional authorities before and after the creation of what is now the Dwesa-Cwebe Nature Reserve.

**Chapter Six** highlights the struggles of the people of Dwesa and Cwebe against traditional authorities to regain access to resources from 1990 up to 2001. It sheds light on the dynamics of struggles for resources and community politics around the Dwesa-Cwebe land claim. The chapter also explores the role played by social movements such as TRALSO in the Dwesa-Cwebe's land struggles up to the return of the dispossessed land and the protected area to its rightful owners. It discusses that the community struggles for access to protected areas were largely led by community leaders, not traditional authorities. During the early 1990s, these community leaders were not necessarily elected, but emerged out of struggles for land. It is further shown that, throughout the struggle for access to the protected area, residents and their local leaders did not have confidence in traditional authorities. This was because of the role that traditional authorities, had played during the removal of local communities by the Transkei government. The chapter also shows that, despite this history, traditional authorities tactically supported the process of CPA registration across the seven villages of Dwesa-Cwebe, while they were regarded as unimportant leaders during the establishment of democratic community institutions by community members.

**Chapter Seven** covers the period from 2001 to 2009, discussing the post-restitution dynamics at Dwesa-Cwebe Nature Reserve and their complexities. It also discusses the settlement arrangements put in place for the Dwesa-Cwebe Nature Reserve. The conditions of the settlement negotiated and reached are also discussed and explored. The aim of the chapter is to show the challenges around co-management, and how that generated resentment towards elected representatives. The chapter

indicates that, after a period of long-term engagement with the Dwesa-Cwebe leadership, in 2001 the state “transferred” ownership rights to the people of Dwesa-Cwebe, and a Settlement Agreement was crafted. The agreement “transferred” the ownership rights to the people of Dwesa-Cwebe, through their democratically-elected institutions. As they became owners of the land, the Dwesa-Cwebe residents were given the right of access to the Dwesa-Cwebe protected area. Traditional authorities, who were despised by community leaders during the struggles for the reclamation of the DCNR, were not given any role in the ownership and co-management of the nature reserve and communal land. The chapter discusses how the collapse of civil society structures such as TRALSO, and the loss of community trust in elected institutions – largely because of their perceived failure or inability to deliver on the demands and needs of the people as set out in the Settlement Agreement, provided an opportunity for traditional authorities to become involved in the post-land claim co-management of a protected area in Dwesa-Cwebe. These traditional authorities had, until then, taken a backseat in matters related to these protected areas. This suggests that while some people still respect the traditional authorities, they do not want to compromise on democratic, fair and transparent governance. I explain in this chapter how traditional authorities continue to lack authority over the collaborative management arrangements of the DCNR where the state is directly involved, thus highlighting the difficulties of co-management. This is despite the fact that traditional authorities are held accountable by people.

**Chapter Eight** covers the period from 2009 to 2017 and discusses the resurgence of traditional authorities in Dwesa-Cwebe Nature Reserve. It examines how the political muscle that traditional authorities had enjoyed after several pieces of legislation that were passed in their favour, as discussed in Chapter Six, led to their resurgence. At the same time, the chapter shows that the weakness of TRALSO, as a result of the reduction in the government support that they had previously enjoyed, added to the resurgence of traditional authorities. It demonstrates that, in this period, traditional authorities openly challenged the Land Trust, exploiting the weakness of that body as it was losing support from villagers who had initially supported it. However, from early 2010, and particularly after the original Land Trust lost its popularity, traditional authorities re-emerged and created their land trust to replace the Dwesa-Cwebe Land Trust that was created in 1997 and 1998. The chapter shows how traditional authorities, supported by frustrated community members, removed elected members of the original Land Trust from office by holding them accountable for perceived corruption and mismanagement of the nature reserve. This chapter also shows how the



state, through the Department of Rural Development and Land Reform, undermined elected members of the land trust and started working with traditional authorities in its attempt to bring stability to Dwesa-Cwebe. It also shows that the DCNR is managed by an interim CPA committee working closely with traditional authorities, despite the fact that it is currently not functioning.

**Chapter Nine** discusses the overall findings of the study. It summarises the arguments presented in the thesis, drawing the link between the literature and the empirical evidence. It picks up on the main findings emerging from the study and discusses the insights that emerge in relation to traditional authorities and post-land claim co-management of protected areas. The chapter further explains the contribution of the study to debates around the role of traditional authorities in post-land claim co-management of protected areas. This contribution highlights the problem of reconciling the roles of traditional authorities with that of democratically-elected institutions in the post-land claim co-management of protected areas. It also discusses the limitations of the study. The chapter ends with suggestions for further research, before sketching the overall conclusion of the study: that traditional authorities cannot simply be regarded as guests in their areas of control; instead, a nuanced understanding of their role in the post-land claim co-management of protected areas, such as Dwesa-Cwebe, is required, as they, in turn, are held accountable by communities that they “govern”.

## **CHAPTER TWO**

### **Traditional authorities in post-land claim co-management of protected areas: Theoretical perspectives**

#### **2.1. Introduction**

This chapter reviews theoretical debates surrounding the role of traditional authorities. While these debates are concerned with the position of traditional authorities in general, they provide fertile ground for contemplating the role of these authorities in the context of the post-land claim co-management of protected areas in rural areas, such as the one in that this study focuses on.

The leading debates related to this issue are those centred around democracy and democratic principles. Mamdani (1996) is probably the most influential writer in these debates through his analysis of traditional authorities in Africa. He argues that traditional authorities are not democratic because they had been co-opted by colonial governments (as well as apartheid governments in South Africa) and should, therefore, be abolished. Another view within the school of thought that regards traditional authorities as undemocratic nevertheless rejects abolition in favour of democratisation. A leading proponent of this standpoint is South African academic Ntsebeza (2002; 2006). Instead of abolition, he argues, traditional authorities should be retained, but, if they want to play political roles and be involved in community-led development projects, they must subject themselves to the same processes as other leaders in democracies: elections. By being elected, they will be seen to be accountable to those who they lead, and risk not being re-elected if they are not (Ntsebeza, 2006). Other pro-exclusion scholars are Bank and Southall (1996) and Weiner and Levin (1991), and those who support qualified inclusion include Nuesiri (2014) and Maloka (1995).

In the opposite corner is a plethora of optimists who tender positive contributions regarding the role of traditional authorities. I now turn to a more in-depth exposition of these scholars' theories and ideas. This chapter broadly argues that, notwithstanding the views that traditional authorities are either complementary or obstructive to democratic principles and practices, the accommodation of such authorities and the acknowledgment that they have a role in the post-land claim co-management of protected areas is unavoidable. The next section deals with the critical analysis of the argument about the inclusion of traditional authorities, followed by the opposing views that favour inclusion.

## **2.2. Two perspectives**

### **2.2.1. *Critical perspective on the role of traditional authorities in the democratic era***

Mamdani's thesis focuses on the colonial strategy of "divide-and-rule", which separated urban citizens and rural subjects. He asserts that this strategy was enforced through the entrenchment of ethnicity, on the one hand, and forcible division between town and rural areas, on the other. He demonstrates that the African was "containerised", not as a native or indigenous African, but as a "tribesperson". Colonial powers manipulated "tradition" and "custom" to justify indirect rule on the basis that such rule was an indigenous form of social organisation, Mamdani argues, saying that these identities were reinforced and used to manage rural Africans. Furthermore, he asserts that the colonial project of "ethnic pluralism" and urban-rural divide was entrenched through excessive force, which created a system of rule that was both despotic and highly decentralised (Mamdani, 1996:22-4).

As Ntsebeza (2002:13) pointed out, "Mamdani maintains that the 'chief' was cardinal in the colonial project, especially in the local state, the Native Authority." The colonial government, Mamdani (1996:18) continues, co-opted traditional authorities such as chiefs into its administration and transformed them into its agents of indirect rule in rural areas. This made traditional authorities upwardly accountable to the colonial state, at the same time distancing them from their rural communities. Mamdani reveals that these traditional authorities were then used to facilitate and strengthen the indirect rule that was adopted by colonial powers in Africa. He asserts that it was in the name of indirect rule that traditional authorities were provided vast and unprecedented powers over tax collection from their subjects, and the allocation of natural resources such as land (Mamdani, 1996). He describes this concentration of power in the chiefs as a "clenched fist" (1996:23). According to Mamdani, these chiefs, unelected but appointed by the colonial state, were protected by that state from any external threat. They had no term of office and remained in these positions for as long as they enjoyed the confidence of their superiors (Mamdani, 1996:53 cited in Ntsebeza, 2002:6).

The heart of Mamdani's argument is that, across Africa, traditional authorities were created and used as instruments by colonial governments, and the South African apartheid government, to strengthen their rule and policies. Mamdani portrays chieftaincy as a system devoid of any authentic indigenous values, which was forcefully imposed on rural subjects. He, therefore, radically proposes that

democracy in African rural areas will only be nourished when traditional authorities are completely dismantled by post-colonial states, including South Africa. Building democracy in Africa, Mamdani argues, requires the “dismantling of the bifurcated state” (with its urban-rural divide), overcoming the tribalisation of rural citizens, and ending the subjugation of rural people to the “clenched fist” rule of chiefs (Mamdani, 1996).

Mamdani suggests that this will entail “an endeavour to link the urban and rural – and thereby a series of related binary opposites such as rights and custom, representation and participation, centralisation and decentralisation, civil society and community in ways that have yet to be done” (1996:34). He strongly argues for the disempowerment of traditional authorities and the democratisation of rural areas, suggesting that the continued existence of traditional authorities in the democratic era will continue to be an obstruction to this democratisation. Mamdani’s argument posits that there will be no democracy in rural areas unless the institution of traditional leadership is completely “dismantled”, or at least restricted to mere ceremonial functions.

While this study agrees with the argument put forward by Mamdani that traditional authorities indirectly enforced policies of colonial and apartheid governments, it disputes the view that traditional authorities must be abolished in a democracy. As shown later, traditional authorities evolve over time and cannot be judged by the role they had played under colonial and apartheid regimes. As demonstrated by the experience of Dwesa-Cwebe Nature Reserve, these traditional authorities continue to be accepted and respected by people. Currently, some community members who have problems with the state regarding access to natural resources have begun seeking solutions from traditional authorities. Chapter Eight shows how traditional authorities, supported by some community members, have held accountable elected members in the Land Trust who had been implicated in mismanagement of community funds, and had them removed. Traditional authorities subsequently earned legitimacy and popularity among rural villagers. This demonstrates the nuanced role of traditional authorities in rural areas around protected areas, a role that was ignored by Mamdani, who depicted traditional authorities as undemocratic remnants of colonial governments (Mamdani, 1996).

Ntsebeza (2002; 2006) disagreed with Mamdani’s recommendation. In his PhD thesis (2002) and his book *Democracy Compromised: Chiefs and the politics of the land in South Africa* (2006), Ntsebeza explores traditional authorities and their relation to land in the context of democracy using the case

of Xhalanga, Eastern Cape. Ntsebeza (2002; 2006) interrogates two questions: the first relates to the survival of traditional authorities into the post-colonial and post-apartheid eras, and the second concerns how these authorities obtain their authority and legitimacy. Ntsebeza questions how, despite their despotic role as an extension of the apartheid state, traditional authorities not only received Constitutional recognition in South Africa, but have been granted unprecedented powers over rural governance in South Africa's democracy. He then asks how they derive their authority and legitimacy. He investigates the legitimacy of traditional authorities through the tensions and implications that resulted from the South African Constitution (1996) and both the Traditional Leadership and Governance Framework and the Communal Land Rights Act.

Ntsebeza is critical of the recognition of the institution of traditional leadership by the 1993 Interim Constitution as well as the 1996 Constitution. According to him, there is a contradiction in that both Constitutions and the subsequent legislation advocate a form of democracy that is based on the liberal principle of representation at all levels of government, on democracy, representation and accountability, while, simultaneously, recognising a hereditary institution of traditional leadership for rural residents (2002:ix). He sees a tension in the Constitution advocating for people to be ruled by elected representatives whilst allowing a portion of South Africans, in the former Bantustans, to be ruled by unelected traditional authorities (Ntsebeza, 2006). Central to the concept of liberal democracy, he insists, is the people's right to choose their leaders. He looks at both participatory and representative forms of democracy to argue that both are crucial principles of democratic decentralisation (2006:36).

Based on these two principles that define democracy in South Africa, Ntsebeza argues that traditional authorities are undemocratic. According to him, these unelected authorities do not pass the test of representative democracy, which gives people the opportunity to choose a candidate to represent their interests. "[I]t is precisely this right upon which democratic decentralization and indeed the South African Constitution are based," he writes (2004:79). Arguing from within a political and developmental context, Ntsebeza asserts that, if traditional authorities want to play a role in political and developmental matters, they must subject themselves to the will of the people, which is what democracy is about (Ntsebeza, 2006:35). However, Ntsebeza argues against the dismantling of traditional authorities in a democratic era by postulating that they 'can bring to the post-colonial democracy the participatory elements in decision making that traditional systems are

renowned about,’ (Ntsebeza 2006: 35). In this manner that he argues for a new form of democracy that would combine the participatory elements of pre-colonial indigenous institutions and the representative aspects of liberal democracy. In his view, this form of democracy will eliminate the division between citizenship (urban) and subjects (rural areas) that Mamdani so articulately associated with colonialism (Ntsebeza, 2006). This approach is appealing in its unambiguous clarity. However, the reality is more nuanced, as will be seen in Chapters Six, Seven and Eight.

Drawing on Mamdani’s analysis, Ntsebeza (2002; 2006) contends that traditional authorities, which once resisted colonial rule, were incorporated into the colonial and, later, apartheid administrations, and given uncontested powers at local level to make recommendations regarding the allocation of land. He asserts that the powers that these authorities possessed during the colonial and apartheid eras forced local communities, whether they liked it or not, to cooperate with traditional authorities; if they did not, they would stand little chance of obtaining land (2002; 2006). Based on this assertion, Ntsebeza argues that, since the advent of colonialism, traditional authorities were able to exist because of the support of the state, not because they were liked by the people (2002; 2006). The overall argument in his book is that traditional authorities have always derived their authority from being involved in the control of land – for which, in many ways, they became unaccountable since colonialism – rather than from their popularity or the support of the rural people (2006). When traditional authorities lost this control over land in communal areas in the reserves, he argues, their power and legitimacy became questionable.

As mentioned earlier, Ntsebeza’s key position is that the participatory and representative elements of democracy are vital in the post-colonial democratic transition. He argues that “in this regard, the way in which traditional authorities could play a public, political role would be for them to abandon their hereditary status and subject themselves to the process of election by their people” (2002:26-27). This because “the accommodation of the role of unelected and unaccountable traditional authorities in democratic political and development systems is inconsistent and contradictory, and such an arrangement compromises the democratisation of rural governance in South Africa” (2006:15-16). As shown above, in his argument, Ntsebeza placed great weight on elections as the defining element of democracy. However, democracy is a complex concept since it has different meanings for different people. It does not fit neatly into a single definition as it comprises of many aspects,

including elections, practically broad guarantees of basic civil rights such as freedom of speech, association, and assembly (Fayemi, 2009).

Nuesiri (2012) holds a similar view in that he argues that for traditional authorities to play a role in the post-colonial democratic transition, they should first relinquish their hereditary status and allow their people to vote for their own representatives. According to Nuesiri, this will ensure that “the chief has to be accountable to all residents of voting age, men, women, youths, autochthones and allochthones” (2012:48). “[T]he idea is for the scheme to be democratic and inclusive,” he argues (Nuesiri, 2012:48). Chiefs who fail to be accountable may be deposed through a recall election. However, Nuesiri proposes that in such an arrangement “the chief once voted in, holds the office for life, unless there is a clamour for a recall election from the population group served by the chief” (Nuesiri, 2012:48).

For their part, Bank and Southall (1996) contend that democracy in post-colonial Africa would be compromised if traditional authorities were allowed an active role in politics. They are critical about the capacity of traditional authorities in political administration. Bank and Southall’s views are based on the negative role that traditional authorities had played under the apartheid regime, through which they had discredited themselves in the eyes of many South Africans. They assert that traditional authorities in the Bantustans had been corrupt and unaccountable. In addition, and similar to Ntsebeza, they argue that there is a conflict between the patriarchal values of traditional leadership and the gender equality that is enshrined in the Constitution. Despite the recognition of the role of traditional authorities by some South African laws, Bank and Southall (1996:408, 425-427) insist that traditional authorities not be allowed a role in matters of state.

Weiner and Levin (1991) and Maloka (1995) (both cited by Jara, 2011) concur that traditional authorities had acted as profoundly undemocratic leaders and had been granted highly repressive powers by apartheid legislation; thus, they argue, these authorities have no place in the post-apartheid state. Maloka insists that traditional authorities should be restricted to playing advisory and ceremonial roles in elected local government institutions (Maloka, 1995). Moreover, he calls on “progressive forces” to co-ordinate a “clear political campaign” to “reduce the material basis for the legitimacy of chieftaincy” (Maloka, 1995:39). Ribot argues that traditional authority is not democratic, where democracy is viewed as the ability of people to hold their representatives to account, and the ability of representatives to make discretionary decisions responding to the

expressed needs of the people that are represented (Ribot, 2003; 2011). According to Ribot, allocating powers to traditional authorities or non-representative authorities can strengthen these unaccountable authorities at the expense of elected representatives, slowing democratic transition (Ribot, 1996 cited in Ribot, 2003). It can also compromise democracy by taking resources away from evolving democratic institutions while helping to entrench the very non-democratic institutions that democratic reforms aim to replace (Ribot, 2003). Ribot (2007) adds, transferring more power on traditional authorities, is detrimental to the legitimacy of local democratic institutions, which led to a fragmentation of authority at the local level as well as an enclosure and diminishing of the public domain, which he defines as the domain of democratic public decision-making. He implies that when representative local government exists, the empowering of traditional authorities undermines the function and, ultimately, the legitimacy of the new democratic local authorities (Ribot, 2001:45).

Agreeing with Mamdani, Sithole (2000:62) argues, “[T]he colonial state demoted chiefs from political leaders of their communities to policemen who are bent on serving the interests of the colonial master and this undermined their credibility and efficacy in the eyes of their people.” Traditional authorities are the products of colonialism, he asserts, both in orientation and inclination, because they are upwardly accountable to the state and not downwardly to rural communities. Therefore, these authorities are undemocratic (Sithole, 2000:63).

The critics (Maloka, 1995; Bank & Southall, 1996; Mamdani, 1996) treat traditional authorities as a uniform, homogenous category. According to their views, all traditional authorities are implicated in the violence and extraction of the colonial and apartheid eras and should, therefore, be excluded from participating in the new democratic dispensation. They regard traditional authorities as corrupt leaders who use their power for self-interest rather than for the good of the people. The picture they paint is of corrupt, despotic chiefs operating as agents of the state; they therefore reject any notion of accommodating traditional authorities in a modern democracy. The exception is Ntsebeza, who asserts that traditional authorities may be accommodated if they subject themselves to democratic elections for the political and administrative institutions to which people’s representatives are elected.

While this study concurs with the assertion that traditional authorities collaborated with oppressive governments, it differs with the call for them to be abolished and denied a role in a democracy. The argument presented in this thesis is that traditional authorities can play a key role in democratic



dispensations in countries such as South Africa because, as I show, traditional authorities are not static and their behaviour changes over time. This study also concurs with Ntsebeza that traditional authorities continue to survive because of government support. However, it disputes the notion that their power over rural people is derived only from their control over the allocation of land to the people. This is certainly not the case in Dwesa-Cwebe Nature Reserve. As illustrated in Chapters Six, Seven and Eight, traditional authorities remain central in the lives of Dwesa-Cwebe people, even though they have no control over protected areas. I also show that democratically-elected members of the Land Trust were accused of not being accountable to local residents, a fact that contradicts Ntsebeza's and Nuesiri's argument that election of traditional authorities (or anyone) in the management of natural resources necessarily makes it possible for rural people to hold them accountable when they are implicated in corrupt activities or are incompetent.

If the proposal of critics such as Mamdani, for the "abolition" of traditional authorities or the democratisation of rural areas in a manner that does not accommodate any role for traditional authorities, is implemented, traditional authorities would have no role in the context of protected area co-management except through elected institutions. Moreover, the critics suggest that the implications of involving traditional authorities in the co-management of protected areas would lead to conflicts between elected institutions and traditional authorities, as each institution attempts to dominate the other. They further suggest that traditional authorities would undermine the role of elected institutions over the co-management of protected areas in rural areas. However, consideration of the specific conditions connected to DCNR challenges the theoretical assumption that traditional authorities are unaccountable to their people in rural areas. For example, these critics do not acknowledge that, in certain rural areas where protected areas were successfully returned to the people, the traditional authorities are accountable to local people. In addition, the fact that these traditional authorities are regaining their power over land and management of resources in rural areas is not entertained in these critiques. These scholars also ignore the fact that the elected institutions in these cases are not necessarily accountable to their people but to state officials. The next section discusses the views of scholars who support the role of traditional authorities in a democratic South Africa.

### **2.2.2. *Supportive perspective on the role of traditional authorities in the democratic era***

The other view is more sympathetic to the position of traditional authorities. Scholars in this camp, such as Sithole and Mbele (2008:9), contend that traditional authorities represent a different, effective and grassroots form of democracy that is not necessarily a “compromise or contradiction” of democracy as the critics insist. These writers believe that traditional authorities can co-exist in a modern democracy that supports development and good governance. Englebert asserts, “[T]he acceptance and coexistence with new institutions in the post-democratic era could improve African governments by building upon the legitimacy of pre-colonial institutions” (Englebert, 2002:346). Scholars such as Sklar refer to the co-existence of traditional authorities with elected institutions as “mixed government” (1994). He defines “mixed government” as “one that conserves traditional authority as a political resource without diminishing the authority of the sovereign state” (Sklar, 1994:1).

Thus it appears, following Sklar, that the main conditions for an effective system of “mixed government” are, firstly, that there are clear roles for “traditional” and “democratic” systems, and, secondly, that it is accepted that the traditional system plays a secondary and subordinate political role. Its functions should be advisory, ceremonial and extra-constitutional. This point is of crucial importance to the South African situation (Ntsebeza, 2002:15).

Following this trend, Oomen (2005) writes that chiefs continue to be part of rural people’s lives in the former South African Bantustans, suggesting that, even in a democratic country such as South Africa, the role of chiefs in rural communities remains important.

Williams (2010) contends that while Mamdani may have been correct that the colonial use of indirect rule changed traditional authorities in fundamental ways, this did not sever the moral and ideological connections between traditional authorities and their rural communities. He argues that “ideological understandings of the chieftaincy, which predate indirect rule, continue to provide a frame of reference for many in the rural areas” (Williams, 2010:27). Supporters of this view are convinced that it is possible for traditional authorities to co-exist with their elected local government counterparts. Their argument is bolstered by the fact that chiefs continue to have an influence on land relations and forest use and management interventions across Africa (Sklar, 1994; Ray, 1996; Williams, 2010). Sithole (2005:120) clarifies that those holding this view do not deny the need to

democratise traditional authorities; they do, however, contest the basic assumption that traditional authorities are fundamentally undemocratic. Some scholars, including Mokgoro, argue that while the hierarchical character of most traditional authorities was only a means to maintain order and stability in society, they upheld democratic principles in the sense that all affairs were conducted in a democratic manner (Mokgoro cited by ECA, 2007:3). The democratic ideals of the institution of traditional authorities, he asserts, are manifested in their method of decision-making, with emphasis being placed on deliberation that is aimed at reaching consensus (Mokgoro cited by ECA, 2007:3). Although Mokgoro (1994) admits that traditional authorities have always been hereditary and not subject to the electoral processes that characterise modern governance, he contends that power was traditionally exercised only through council, which helped to negate authoritarianism (Mokgoro cited in ECA, 2007:3).

Scholars who argue that traditional authorities can co-exist with democratic institutions of governance maintain that these authorities should not be viewed as being in conflict with elected institutions created by democratic African states but should be seen as complementing them. However, this might be a concern to people who live under traditional authorities and who rely for their survival directly on the land controlled by these authorities. This is the case in South Africa, where traditional authorities continue to play a critical function in controlling access to natural resources such as land (Kompi & Twala, 2014:988). Over 14 million South Africans reside in rural areas and are still subject to the command of traditional authorities. These people are loyal to the traditional authorities, and they believe that traditional authorities are vital to ensure the development of their areas (Kompi & Twala, 2014). Traditional authorities are local structures that have status by virtue of their association with the customs of their communities (Kompi & Twala, 2014). Some researchers acknowledge that traditional authorities are typically unelected, but say that this does not mean that these authorities are unresponsive or unaccountable or that they lack transparency (Lutz & Linder, 2004). They often play important roles regulating village life, controlling access to land, and settling disputes (Lutz & Linder, 2004).

Successful decentralisation of power in a country such as South Africa must take existing traditional authorities into account. While the view among many has been that they have historically been an obstacle to modernity, it is now widely recognised that large numbers of people regard traditional authorities as more legitimate than the state (Lutz & Linder, 2004:4). Some scholars propose looking

beyond the misrepresentation of traditional authorities as despots, and to rather consider the myriad ways in which modern African democracies are shaped by multiple actors: the state, informal institutions and local people, many of whom want the persistence of traditional governance. A study conducted in several African countries about people's perceptions of traditional authorities found that, "despite their negatives, on balance, chiefs are clearly regarded as a key institution that is more beneficial than detrimental" (Logan, 2011:21). Charles (2012) found that in some rural communities of the former Bantustans, traditional authorities exercise authority over people without controlling critical resources such as land, and they are upheld as legitimate leaders, often preferable even to elected officials. In South Africa, traditional authorities survived colonial conquest and the brutal system of apartheid, and successfully asserted their presence in democratic South Africa. They continue exercising public authority in at least the rural areas of most sub-Saharan Africa countries, and often well beyond.

Moreover, there has been a resurgence of traditional authorities in many countries (Logan, 2011; Nuesiri, 2012). Nuesiri (2012) points out that traditional authorities became central to the management of natural resources and dispute resolution in rural areas. He argues that these authorities are now using their resurgence to consolidate their power over rural people and resources. Nuesiri shows that, across Africa, this form of governance is enjoying unprecedented popular legitimacy, having emerged as a key feature of the contemporary political landscape. To this school of thought, the two institutions of governance – traditional authorities and democratically elected institutions – are complementary (Logan, 2011). Williams contends that while the colonial use of indirect rule changed traditional authorities in fundamental ways, the moral and ideological connections between traditional authorities and their rural communities remained. Some argue that, because of the weak state of governance in rural areas, "traditional authorities will remain an important institution because the central state lacks the necessary capacity to fulfil its everyday duties" (Williams, 2001:76). The matter of traditional authorities and their relationship to natural resource management reveals a complexity that is often not sufficiently noted in popular and academic discourse.

According to Williams, traditional authorities benefit from the weakness of the state in Africa. He quotes Keulder's argument that traditional authorities are important in South Africa because they

enhance the state's social control and legitimacy, especially in the rural areas. Williams (2001:79) thus looked at "the ways in which traditional authorities use regime change and democratisation as an opportunity to enhance their authority and expand their functions, as norms and rules are in a state of flux". The crux of the weak state argument is that the main reason that traditional authorities continue to be important in rural areas is the failure of the state, especially at local level, to perform or provide an effective alternative (Ribot, 2001; LiPuma & Koelble, 2009; Williams 2010). Some scholars assert that chiefs continue to enjoy legitimacy and authority from pre-colonial political, cultural, and religious sources (Ray & Labranche, 2001). According to Ray, "traditional leaders/chiefs can claim special legitimacy in the eyes of their people because these institutions can be seen to embody their people's history, culture, laws and values, religion and even remnants of pre-colonial sovereignty" (Ray, 2003:5). These scholars criticise the argument by critics such as Mamdani and Ntsebeza for failing to take into consideration the nature of the pre-colonial shape of traditional authorities (Williams, 2001; Ray, 2004; Van Rouveroy van Nieuwaal & van Dijk, 1999). Whether traditional authorities are elected or not, their existence is legally protected by many democratic states, such as South Africa, and they continue to play an important role in the control and management of rural communities and natural resources (Ribot & Larson 2008; Nuesiri, 2012). Contrary to what Ntsebeza (2004) indicated, Robins and van der Waal (2008) claim that traditional authorities and elected institutions have successfully reconciled, to the extent that they work together in facilitating access to natural resources in the protected area on part of the Kruger National Park. Also, Ray (2003) argues that for stronger rural local governance, a combination of rural local government and traditional leaders is required.

This group of scholars, which is more supportive of traditional authorities, proposes the inclusion of traditional authorities in the management of natural resources in democracies, as well as their co-existence with elected institutions in rural areas. They suggest the participation of traditional authorities in the co-management of protected areas on communal land claims in the former Bantustans. Within this group is also a set of scholars who believe that if traditional authorities' historical role in the management of natural resources in rural areas is replaced by elected institutions such as CPAs and Land Trusts, there will be disorder and disruption, and traditional authorities would undermine the work of democratic institutions in the co-management of protected areas. The chapter will now turn its attention to the resurgence of traditional authorities in contemporary South Africa.

### **2.3 Resurgence of the legitimacy of traditional authorities in contemporary South Africa**

This part focuses on scholarly debates around the resurgence of traditional authorities in South Africa. It provides reasons why hereditary traditional authorities survived many efforts by post-colonial African governments to eliminate them. It further provides an analysis of the pieces of legislation that supported the resurgence of traditional authorities in South Africa. While this study focuses on South Africa, it will also refer to other African countries and see how they dealt with traditional authorities in their post-colonial times. Traditional authorities have been very resilient throughout colonialism and survived many attempts of post-colonial/apartheid governments to restrict their powers in democratic dispensations. It was expected, however, that, when South Africa achieved freedom from the apartheid government, the post-apartheid government would choose to eliminate undemocratic traditional authorities. The same applies to many African states post-colonialism. Immediately after the advent of post-apartheid democratically elected government in 1994 in South Africa, the powers and roles of traditional authorities in a democratic era have been contested due to their complicity with colonial and apartheid states' restructuring of social life. The new government has attempted to replace the role of traditional authorities with the established elected local governance institutions.

However, the ANC-led government has since restored the powers and roles of traditional authorities over management of land in rural areas (Ntsebeza, 2006). This is despite the fact that elected institutions have been created in rural areas. In South Africa, for example, chiefly power has been restored by the ANC government through the promulgation of the Traditional Leadership and Governance Framework Act of 2003, the Communal Land Rights Act of 2004 and the Traditional Courts Bill. Among other things, section 20 of the TLGFA enables chiefs and their traditional councils, who in the past were agents of the apartheid government, to be granted power over the administration and control of communal land and natural resources, economic development, health and welfare, and to administer justice (RSA, 2003; Ntsebeza, 2006). The South African democratic government retained the powers of chiefs to make local rules, adjudicate disputes and allocate land.

As demonstrated in the South African context, during the post-colonial era across Africa, many attempts have been made by post-colonial African governments to curtail the powers of traditional authorities in local government. For instance, countries, such as Guinea, Uganda and Tanzania, have attempted to formally abolish traditional authorities but have failed to do so (Ubink, 2008; Nuesiri,

2012). In Ghana, President Kwame Nkrumah tried to abolish the formal judicial function of the traditional authorities and attempted to break their economic power base by depriving them of any role in land management and, eventually, of ownership and their claims to have the right to collect land 'rents' (Ubink, 2008). In addition, Ghana has recognised traditional authorities in their constitutions and created a formal state structure – the house of chiefs organised at the national and regional levels. Traditional authorities also have control over land and land resources in their domain of authority and have given economic power to those who have valuable mineral resources in their region, such as the Asante (Nuesiri, 2012:34).

After independence, the Botswana government introduced newly democratic District Councils (DCs) in rural areas as an attempt to eliminate the role of traditional authorities over land administration (Ubink, 2008). A similar approach has been followed in Zimbabwean post-colonial government. In order to destroy the power of traditional authorities, Zimbabwe's government promulgated the Communal Lands Act of 1982. At first, the Zimbabwean state created laws that transferred all power to the new institutions and marginalised traditional authorities from participating and exercising authority and control in the management of natural resources in their communities (Scoones & Matose, 1993). Along this line, the Zimbabwean elected state has removed the natural resource management responsibility from traditional authorities and vested it in the newly elected local government structures, such as Rural District Councils (RDCs) and Village Development Committees (Ndore, 2003 cited in Chitotombe, 2012). However, the Zimbabwean government eventually restored the power of chiefs because it wanted to win votes in areas that tended to be political strongholds of the ruling ZANU-PF party (Chitotombe, 2012).

In Uganda, following its independence in 1962, the powerful kings and kingdom of Buganda were also abolished by the 1967 Constitution and replaced by elected leaders at the local level (Englebert 2002; Ray 2003; Nuesiri, 2012). After traditional authorities had been marginalised in Uganda, Museveni reinstated the powers of traditional authorities (Englebert, 2002). His decision to reinstate the traditional kingdom of Buganda in the early 1990s was triggered by the need to broaden his base of support in the run-up to elections for a constituent assembly (Nuesiri, 2012). A similar trend was followed in Malawi, where traditional authorities were left behind and were replaced by elected local government with chiefs playing an advisory rather than leading role as had happened in other British colonies (Nuesiri, 2012). In Malawi, since the introduction of democracy with the defeat of President

Banda in 1994, chiefs have been enjoying greater local autonomy (Nuesiri, 2012). They have not only maintained their local powers over land but find themselves being courted by political office seekers and holders for local votes (Nuesiri, 2012). With this, chiefs have become adept at enriching themselves at the expense of political candidates, and there is concern that some are neglecting their governance functions and focusing more on their role as political middlemen at the local level (Muriaas, 2009 cited by Nuesiri, 2012).

In Mozambique, the post-independence government ruled by the socialist Liberation Front of Mozambique (FRELIMO), in 1975, abolished chiefs and replaced them with new governance institutions (Nuesiri, 2012). According to the Mozambique government, traditional authorities were incompatible with 'the new (democratic) man' and as socio-political structures which had been part of the colonial regime and which should not escape the process of dismantling the colonial state (AfriMAP, 2009 cited in Kompi, 2018). However, the Mozambique government has reinstated the power of traditional authorities and recognised them in the constitution (Kyed & Buur, 2006). Since 2004, traditional authorities in Mozambique have played an important role in land allocation and rural development, citizen mobilisation for national campaigns and elections, and in administering customary law in traditional courts (Buur & Kyed 2005, 2009; Nuesiri, 2012).

Many African states, including South Africa, have enacted several pieces of legislation to restore the power of chiefs, despite the existence of democratically elected institutions (Oomen, 2000; Ribot et al., 2008; Nuesiri, 2014). The existing literature, however, argues that chiefs 'have re-emerged because the state and donor organizations need their cooperation for effective execution of wide-ranging land tenure reforms taking place across Africa' (Lund & Hesselings, 1999; Ntsebeza, 2003; Hughes, 2006; Cousins, 2009; all cited by Nuesiri, 2012:4). According to Oomen, the resurgence of traditional authorities in South Africa was because of the political climate, which enabled traditional authorities to take centre stage in the policy debate (Oomen, 2005). Van Rouveroy van Nieuwaal (1996, cited by Nuesiri, 2012:30) argues that the stringent and painful economic restructuring that African states undertook on the advice of the Bretton Woods institutions alongside the democratic transition, have enabled kin-based support groups to flourish. In turn, their dependence on cultural norms inevitably strengthens traditional authority. Furthermore, van Rouveroy van Nieuwaal (1996 cited by Nuesiri, 2012) asserts that the constraining structures of the colonial and post-colonial state in Africa did not succeed in making chiefs irrelevant. He refers to the long-standing judicial role of



chiefs as an invaluable service to local people, which the state has not been able to replace. He notes that this is part of the reason that the Zimbabwean government went back on its decision not to recognise chiefs. He then argues strongly that chiefs have agency: while some have been stooges and despots, some have had to walk a tightrope in a bid to protect their interests, and serve their subjects and the state (see also van Rouveroy van Nieuwaal, 1991 cited by Nuesiri, 2012).

In addition, Ntsebeza also argues that the strengthening of chiefly power is often associated with the advent of multi-party democracy and decentralisation in the early 1990s (Ntsebeza, 2006). Some researchers add that traditional authorities have

successfully reasserted themselves under the auspices of political liberalization, democratization, and decentralization, frequently succeeding in carving out new political space for themselves, especially, though not only, in the arena of local governance (Logan, 2011:1).

Similarly, the Zimbabwean government passed the Traditional Leaders Act in 1998 to restore the powers of traditional authorities at local level. With the passing of this Act, traditional authorities were given supreme authority to allocate land at village level (Chitotombe, 2012). However, this upliftment of chiefs' power is criticized by some scholars saying that the role provided to chiefs, headmen and village heads by this Act of 1998 were an exact re-enactment of the colonial roles of chiefs and allied traditional leaders (Mandondo, 2000).

In line with the above arguments, 'it is clear that chiefs are re-emerging in Africa and the principal reason for this is the transition to democracy where state actors seek for the support of chiefs as vote banks' (Nuesiri, 2012:42). This sentiment was stated by Oomen (2005) when she argued that, in South Africa, the political climate has created a space for the return of traditional authorities. It has been argued that traditional authorities are also re-emerging because of their instrumental role in political competition (Nuesiri, 2012). Oomen opines that the core features of the 1990s global order – the changing role of the nation state, the related space for the rise of alternative polities, the rise of culture as a means through which to engage with modernity, the recognition of group rights – also facilitated a surprise re-entry: that of traditional leaders (Oomen, 2005). According to Oomen (2005), this involves ideological, cultural and economic elements that combine in a strong mix that makes them increasingly untouchable in the face of demands for their abdication of power. Moreover, the

traditional leaders have artfully reinvented themselves in the interim and have discovered a variety of methods to reclaim their authority in the absence of a forceful state presence (LiPuma & Koelble, 2009). Nuesiri adds that the re-emergence of traditional authorities is, therefore, due to increased state and donor patronage. Some scholars have discovered that ‘traditional authorities are viewed as having a greater influence on communities compared with modern democratically elected structures – due to the apparent failure of post-modern African states – and South Africa is no exception to this blame’ (Beall et al., 2004:1). Some argue that traditional authorities re-emerged because of their power over distribution of land to the people in rural areas, and not because of their legitimacy, or being accountable and representing people (Ribot, 2001). The need for more votes in rural areas for ruling political parties in Africa opens opportunities for traditional authorities to be empowered and given authority over local communities’ affairs (Nuesiri, 2012).

It was also demonstrated that the Zimbabwean government strengthened the power of chiefs over land at village level because it wanted to win votes in areas that tended to be political strongholds of the ruling ZANU-PF party (Chitotombe, 2012). The failure of the post-colonial states in Africa to improve the living conditions of rural people has significantly created an opportunity for chiefs to re-establish themselves in the affairs of post-democratic states. Others, like van Rouveroy van Nieuwaal, conclude that, regarding Togo, ‘chieftaincy has re-emerged as an important vehicle for more or less authentic indigenous political expression’ against the background of the ‘comparative failure of the African state’ to bring about democracy and development. These states were, according to him, often led by ‘greedy and violent political elites within and without Africa’ (van Rouveroy van Nieuwaal, 1996:7 cited in Ntsebeza, 2002:9). Therefore, chiefs are reinvented because the developmental state is failing its citizens, especially in rural areas, or is in retreat (Nuesiri, 2012).

Ntsebeza argues that it seems as if chiefs are re-emerging because the democratically elected institutions which replaced chiefs are either weak or despotic (Ntsebeza, 2002). Ribot argues that traditional authorities are ‘not necessarily representative, legitimate or even liked by local populations’ neither ‘are they necessarily accountable to the local population’ (Ribot, 2001:70). Similarly to this view, Spierenburg argues, referring to Zimbabwe, that ‘though the re-emergence of traditional leadership seems to be widespread, not everybody may feel that local chiefs and headmen represent their interests’ (Spierenburg, 2002:9). Ntsebeza (2006) argues that it is traditional authorities’ involvement in land allocation processes that makes them important, not that they are

liked by local people. This cannot be generalised, as it is inapplicable, for instance, in Dwesa-Cwebe: chiefs have no power over access to co-managed resources around protected areas, but they are still accepted and respected by local residents. Having engaged with the diverse perspectives around traditional authorities and their resurgence in the contemporary era across Africa, I expand the discussion further by elaborating on what democracy entails for this form of authority.

## **2.4 Theories of Democracy**

### **2.4.1 *Minimalist scholars of democracy theory***

The concept of democracy has been assigned different meanings by different scholars. There is no agreement about the meaning of democracy. Various scholars define democracy concentrating on institutions, procedures and qualities. It could be described as, the holdings of elections, public participation, rule of law, and the supremacy of the constitution. One thing that scholars have agreed on is that etymologically, the concept is coined from two Greek words, *demos* meaning “people”, and *kratos* which means “to govern or to rule” (Olanipekun, 2020: 3). Electoral democracy is associated with liberal democracy and separation of powers. Pennock (1979) demonstrates that the element of representative democracy permits citizens to use their power to elect leaders whom they believe would act on their behalf. According to him, ‘electoral process of democracy is believed to constitute the great sanction for assuring representative behavior...’ (Pennock, 1979). In representative democracy, decision making is taken by one party or one person is elected on behalf of the people that they represent. It is, therefore, the responsibility of the elected representative to carry out the wishes of the constituency even if it harms them.

Schumpeter characterized democracy as a system “for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote” (Schumpeter, 1947: 269). He argues that democracy does not constitute government by the people, but that it is “...a method by which decision-making is transferred to individuals who have gained power in a competitive struggle for the votes of the citizens” (Schumpeter, 1950 cited in Fayemi, 2009). In the Schumpeterian thesis, people play a leading role in the creation of government or an intermediate body which forms a national executive (Nwosu, 2012). Schumpeter’s main critique of the traditional emphasis on people as the foundation of democracy is that ‘the will of the majority is the will of the majority and not the will of the people’ (Schumpeter, 1976: 269 cited in Nwosu, 2012: 13). Thus, ‘if results that prove in the long run satisfactory to the people at large are made the test of

government for the people, then government by the people as conceived by the classical doctrine of democracy would often fail to meet it' (Schumpeter 2003: 8 cited in Nwosu, 2012: 13). Huntington (1991) and Schumpeter (1976) argue that electoral process is a legitimate source of democracy (Nwosu, 2012). According to Huntington, in "democracies, legitimacy of the rules usually depends on the extent to which they meet expectations of key groups of voters, that is, on their performance; the legitimacy of the system however depends on procedures, on the ability of the voters to choose their rulers through elections (Huntington 1991b: 50 cited in Nwosu, 2012). This emphasizes the value of the procedures of democracy. However, it fails to note that how governance affects the lives of citizens is key to fulfilling the broad elements of the social aspect (Nwosu, 2012). Huntington's fascination with democracy referents implies that the need for practical measurement of democracy is the explanation for justifying the procedural thesis (Nwosu, 2012:14). Moreover, this paradigm reduces the importance of normative traditions of democratic theory and their emphasis on the substantive component of political rule (Nwosu, 2012). It overemphasizes the empirical, institutional and procedural definition which is believed to be the only approach with empirical referents that render the concept of democracy measurable and useful (Nwosu, 2012).

However, if liberal democracy puts weight on elections as its proponents, Huntington (1991b), Schumpeter (1976) and other liberal democracy debates suggested, "the social contract element and the basis of citizen claims on the state are lost" (Nwosu, 2012: 12). According to Nwasu, this analytical force abandons the idea of people (demos) and privileges system reproduction. Popper (1963 cited in Fayemi 2009) asserts that democracies are a system where one administration can be replaced by another without bloodshed, which to him indicates elections. He rejects the concept of sovereignty in favour of elections, stating that the flaws and ambiguities of elections are preferable to the prospect of tyranny found within sovereignty (Fayemi, 2009). Scholars of the minimalist do not think that elections make it possible for people to govern themselves by choosing the leaders that they want. Instead, elections confer the right to govern on the party that wins elections until the next elections. Elections enable elected representatives to be accountable to their constituencies and allow people to sanction leaders. In the view of these scholars, through elections, people can be able to participate in decision making processes, while they hold their leadership accountable if they seem to be irresponsible. This school of thought seems to suggest that, since African traditional institutions are not elected in nature, they are likely to provide poor leadership that is not necessarily

representative and downwardly accountable to the community they serve (Przeworski & Stokes 1999; 1942; Baldwin & Holzinger, 2019).

#### **2.4.2 *Maximalist scholars of democracy theory***

The maximalists argue that the minimalist definition of democracy theory is narrow. Beyond the procedural electoral minimum, maximalist scholars of democracy have identified further characteristics that must be present for these basic procedures to meaningfully constitute a democracy (Fayemi, 2009). They argue that elections cannot be the only element that defines democracy but that it needs to include practically broad guarantees of basic civil rights such as freedom of speech, association and assembly (Fayemi, 2009). The Electoral Institute of Southern Africa (EISA) (2010) reiterates that electoral process on its own cannot constitute democracy; if it does not come with programmes that improve people's lives in Africa (Nwosu, 2012). According to Dahl, democracy is about the "Rule by the people" (Dahl, 1970:45). It, therefore, means that all people are qualified to select a government of their choice. Dahl (1971) maintains that democracy should entail basic civil liberties and be more inclusive, incorporate freedom of oppression and empowers people to participate in an informed and independent manner. According to Dahl, democracy should not only entail one aspect of democracy such as elections, representation or participation, but should include other aspects to entrench it (Dahl, 1971 cited in Breakfast et al. 2015).

Nwosu (2012) argues that democracy that does not translate elections into socio-economic conditions that improves the lives of citizens is not a true democracy for Africa. Nwosu (2012), further affirms that "...if liberal democracy is reducible to elections as minimalist thinkers of democracy discourses lead us to understand, the social contract element and the basis of citizen claims on the state are lost". Nwosu (2012: 18) contends that electoral democracy does not really produce democratic, representative, responsive and accountable leaders, especially in Africa. He argues that third wave democratization in Africa predominantly ended up in providing an opportunity for dictatorships to follow the formal requirements of the minimalist discourse, by manipulating "elections" to reassert authoritarian rule and other aspects of tyranny that is not found in the dominant perspective on democracy (Nwosu, 2012: 16). Daremas (2009 cited in Nwosu, 2012) qualifies this by saying that some dictatorship African leaders use elections, the notion of liberal democracy, to disguise themselves as democratic. The argument put forwards by maximalists is that political democracy is

pointless without economic emancipation. Therefore, the practice of democracy should lead to the improvement of citizens' lives by reducing poverty, encouraging public participation and facilitation of access to natural resources by people. The social type of democracy based on the maximalist notion was classified as government of, by and for the people. It is the last classification that really captures the meaning of democracy because it embodies the idea of best representation, participation and social justice. It must be noted that maximalist theory of democracy surpasses electoral process. It advocates for socio-economic transformation in the community.

#### **2.4.3 *African perspective on democracy in Africa***

Both African and non-African scholars have been engaged in debating whether Western democracy is good for Africa or not. African traditional institutions have been interpreted in a way that they either complement or obstruct to democracy. A major element of democratic theory put forward the importance of elections in creating accountability and representivity, suggesting unelected traditional institutions are likely to be repressive leaders (Baldwin & Holzinger, 2019). However, these views were criticised by many African scholars. Some African scholars, such as Ake in particular, were critical of Western-style democracies, such as multi-party democracy, liberal democracy, and electoral and representative democracies that were imposed on Africa (Ake, 1991). Other African scholars assert that these democracies imposed on Africa have failed to address many challenges faced by many African countries. Instead, they created corrupt and dictatorial leadership while contributing to the loss of legitimacy (Adetula, 2011). In many instances, elected leadership in Africa tended to 'manipulate procedures, abused power and engaged in non-democratic practices which resulted in authoritarian reversals rather than democratic transitions' (Nwosu, 2012).

Kwasi Wiredu (1996 cited in Fayemi, 2009) argues that, in a multi-party democracy, for example, there is no representativity of all citizens as it is meant to be. Instead, the small section of constituency representatives who did not win the elections is dominated by the majority representatives of those who win elections. The implication of this is that the participation of the parties and their electorates who did not win elections in decision making processes is perceived unimportant (Wiredu, 1996 cited in Fayemi, 2009). Moreover, African scholars are critical of the view that any institutions or leaders who are not subjected to electoral sanction like traditional authorities are unaccountable and undemocratic and tend to provide be autocratic leaders. Ake (1991) and Mafeje (2002) rejected the argument that there were no democratic practises in traditional African political systems and societies before the arrival of colonial settlers in Africa. They argue

that while democracy evolved outside of Africa, does not mean that African institutions were not democratic at the first place. Ake (1991) for example, argues that traditional African political systems were imbued with democratic values, such as patrimony and communalism, a strong emphasis on participation, and standards of accountability. “Chiefs were answerable not only for their own actions but for natural catastrophes such as famine, epidemics, floods, and drought” (Ake 1991:34). Ayittey (1992:18) reaffirms that in the past,

Africa had participatory and direct democracy, free village markets, and free trade. Freedom of expression also existed in traditional societies. At the village meetings, the natives of Africa freely expressed their ideas and exchanged viewpoints. Africans had a value system, they knew of the works of ethic, justice, order and fairness. ‘Primitive’ Africans had forms of family, social and political control.

This confirms that democracy is not new in Africa as the liberals think. African societies and their institutions practise democracy in the past. At that time, there was a distorting view which associated African traditional political institutions with autocratic, uncivilised, barbaric, personalised and corrupt characteristics. According to Mafeje (2002), “these range from predispositions of chiefly institutions in Africa in which power is supposed to be personalised and arbitrary to unlimited access by chiefs to public resources and to venality and lack of ethics among modern African leaders”. Mafeje contends that such detrimental speculations ignore the fact that traditionally Europe was a land of corrupt absolute monarchs and predatory and callous feudal lords. Yet, these institutions were supplanted by liberal democracy in Europe under changed socio-economic conditions. In contrast, in Africa where plenty of egalitarian traditional societies and representative political institutions existed liberal democracy never took root. ‘Attempts to reproduce western models of liberal democracy such as elections in post-independence Africa failed because they only produced one-party dictatorships under a guise of European bureaucratic structures and procedures’ (Mafeje 2002). Mafeje is completely against the viewpoint that African culture and its tradition institutions were not democratic. Oladipo (2000:2) also states that, “although the traditional African political system was based primarily on kinship and was guided almost entirely by oral tradition and a body of unwritten conventions, it did not lack the core ingredients of a democratic order” (cited in Anyanwu, 2005). In this case, under traditional African political system, all people were represented and allowed to participate in the governance of society. Similar to the modern democratic procedures of using age as

a criterion to determine eligibility to cast vote, Kenyatta (1974:5) demonstrates that in the pre-colonial Africa, “circumcised men and women” were permitted to be elected in the council (Anyanwu, 2005). This is not different from the election procedures used in the liberal democracy of the West that provide rights for specific age to vote. It is also highlighted that decision making on traditional African societies was encouraged and based on consensus.

Wiredu (1996) confirms that decision-making by consensus was frequently the order of the day in African concessions, and on principles. This means that in traditional African society, people were directly participating in decision-making processes. Kalnik (1996:119) made a point, suggesting that “the powerholders of modern African states accept the authority of original African institutions and show willingness to learn from the democratic principles on which these institutions rest”. He considered African traditional institutions as “elements of direct democracy complementing representative democracy”, which, according to him, “is even absent” in some African states “because of military coups” (Kalnik, 1996:119 cited in Ntsebeza, 2002:20). Kalnik and others believe that traditional authorities can enhance democracy in contemporary Africa.

Baldwin and Holzinger (2019: 1) further “challenge the electoral accountability framework for understanding the quality of traditional leaders’ performance, instead arguing that traditional political institutions can be compatible with democracy and even accountable to their citizens insofar as they adopt inclusive decision-making processes, and their leaders have strong non-electoral connections to the communities they represent”. In their paper they provide evidence that traditional authorities perform better than would be theoretically expected given the limited role of elections in selecting and sanctioning them (Baldwin and Holzinger, 2019). According to them, at least for Africa, traditional authorities are considered to be performing well by their communities, and usually better than state politicians (ibid: 14). In Afghanistan for example, traditional authorities have been found to perform better than existing alternatives in protecting women’s rights and establishing rule of law (Baldwin and Holzinger, 2019: 16). There is evidence that before the arrival of colonial settlers in Africa, ‘there were democratic elements of participation, representation and involvement which involved public participation in decision-making, direct involvement in communal affairs and functional representation of different sectors in ruling councils (Coleman, 1960: 255). Others suggested that “Africa’s past can serve as a guide to its re-democratisation, particularly the equality and participation found in village councils” (Barber and Watson, 1988: 85). Mazuri (1991: 30) added



that “in many systems leaders were held accountable through de-selection and the removal of the symbol of leadership”. It is in this regard that some African scholars advocate for an alternative path to democracies that were imposed to Africa, with no significant changes.

Idahosa (cited in Martin, 2011: 34) clearly shows that in his quest for an alternative path to capitalist development, Fanon saw the need for a new ideology and new institutions as the basis for political and socio-economic transformation and participatory, people-centered democracy. Fanon proposes an alternative path to Western liberal democracies and urged Africans to stop reproducing Western culture, traditions, ideas, and institutions (Martin, 2011). He adds, Africans must be bold, innovative and develop their own ideas, concepts and institutions based on African culture, values, and traditions (Martin, 2011). According to Ake, this alternative democracy suggested by Fanon should encompass traditional African political institutions such as chiefs as they constituted democratic values, such as patrimony, communalism, participation, and standards of accountability (Ake, 1991 cited in Fayemi, 2009). The arguments put forwards by African theorists is that “...many traditional African societies were democratic, even in their monarchical social organizations, and that resorting to their values and principles in contemporary Africa would be an answer to the plethora of Africa’s problems” (Fayemi, 2009: 115).

Mafeje argues that these traditional authorities continue to receive respect from their people and some of them joined the national political parties and became national heroes. Based on this, Mafeje sees no reasons why chiefs could not be part of a more pluralistic democratic structure (Mafeje, 2002: 10). This study argues that traditional authorities are an integral part of the governance of resources in Africa, given their embeddedness in social and cultural norms and practices of many communities. There is agreement among African scholars that democratic aspects of these authorities should not be abandoned in the post-colonial project of building democracy in Africa. Along these lines, Ntsebeza argues that traditional authorities “can bring to the post-colonial democracy the participatory elements in decision making that traditional systems are renowned about” (Ntsebeza, 2006: 35). In his view, this form of democracy will eliminate the division between citizenship (urban) and subjects (rural areas) that Mamdani so articulately connected with colonialism (Ntsebeza, 2006). The views in this section caution us not to think that democracy comes with modern dispensation in Africa. It has been argued that African traditional institutions were based on some democratic values even before colonialism.

To bring back the concept of democracy here, the assumption running through the views of those who contend that traditional authorities are undemocratic, unaccountable, and non-representative because incumbents are hereditary rather than elected, and that election of leaders gives rise to representation and, therefore, accountability, is a narrow interpretation of democracy. Theories of democracy discussed in this section imply that, even though election is an important element of democracy, it is not an assurance of representation or participation in binding decisions in a democracy. Evidence from this study suggests that traditional authorities are not always regressive or unaccountable, nor do they always act undemocratically as suggested by critical perspectives. At the same time, democratically elected leaders are not always democratic or accountable as contended by the supportive perspectives. The hereditary status of traditional authorities does not make these authorities undemocratic and repressive per se; traditional authorities are still playing an important role in the lives of people in rural areas in South Africa, such as Dwesa-Cwebe. There are instances in this thesis (Chapters Seven & Eight) where I show that traditional authorities acted democratically by using democratic principles and values when they helped local people to hold accountable their elected members of the Land Trust A, who were implicated in corrupt activities. The position taken in this study is that the view that traditional authorities are not democratic may suggest an unrealistic view of traditional authorities of the past, but the crux of the argument is that democracy cannot be meaningful unless it includes democratic aspects for which traditional authorities are renowned. The democratic aspects of such authorities must not be neglected in the post-colonial project of building democracy across Africa, and post-apartheid in South Africa. This could prevent the conflict between traditional authorities and elected institutions that has tormented rural areas, especially around protected areas in South Africa.

## **2.5 Conclusion**

Given the strong arguments presented by two perspectives as discussed above, it appears that protected areas in rural areas cannot be successfully managed without consideration being given to involving traditional authorities. Before finding solutions that would make such a project successful, one needs to consider the complexity of the issue illustrated above, especially within the views of the scholars who are supportive of traditional authorities. Despite the argument that traditional authorities are problematic, disruptive, and despotic, corrupt, they continue to be influential, and local communities look to them for various purposes. In some cases, they still facilitate community access to natural resources. The chapter also discussed the literature on the resurgence of chiefs and

outlined why post-colonial African governments have restored the powers of chiefs after many attempts to eradicate them. It provided various reasons for the resurgence of chiefs in contemporary dispensations. The establishment of partnerships for the collaborative management of protected areas between traditional authorities and new institutions of resource management seems to be a solution to avoid tensions. These are usually sparked by traditional authorities in order for their power to be recognised, which, in turn, has delayed progress towards attaining joint management objectives in rural areas, as in the case of Dwesa-Cwebe. Such partnerships and collaborative management will, however, only occur when the nuanced role of traditional authorities is recognised and they are regarded as real partners in the co-management of protected areas rather than as antagonists or former “stooges of the apartheid government”.

The stronger, more clear-cut view is that proposed by Ntsebeza and Nuesiri, in particular, that traditional authorities should contest elections in a democracy if they want to play political and developmental roles. For them, this is the only way for all leaders, including traditional authorities, to be made accountable to the constituencies that elected them. However, as this study demonstrates, the democratic election of leaders does not guarantee downward accountability and representation since elections can, and often are, manipulated (Ribot, 1999; Nwosu, 2012), and because they often result in only upward accountability instead. Further, it has been argued that elections alone do not ensure representatives who will deliver the expected results. Instead of representing community interests, elected representatives may represent their own interests or those of particular institutions (Ribot, 1999). It is important that, whether elected or not, the participation of traditional authorities in the co-management of protected areas emerges as the most important component of a solution for the successful co-management of protected areas in the rural areas.

However, it is not clear whether this can bridge the divide that often exists between traditional authorities and local people, as in Dwesa-Cwebe, where the former continues to exacerbate the legacy of their ignominious past through similar devious actions, even while retaining the support of many residents. The situation seems to necessitate a more nuanced approach than the black-and-white view of the exclusionists/qualified inclusionists such as Ntsebeza and Nuesiri, in which traditional authorities are also held accountable by rural residents, as illustrated in Dwesa-Cwebe.

## **CHAPTER THREE**

### **Protected areas and traditional authorities in South Africa:**

#### **A historical context**

##### **3.1 Introduction**

This chapter focuses on the historical context of the establishment of protected areas, such as forest reserves, national parks and nature reserves, in the communal areas that are governed by traditional authorities in South Africa. It broadly looks at Transkei in the Eastern Cape, with a smaller discussion on other provinces such as KwaZulu Natal (previously Natal). The role played by traditional authorities during and after the creation of colonial and apartheid protected areas will be given particular attention.

Before the establishment of the first official protected areas by the British colonial authority in the Cape Colony in 1888, indigenous people had relied heavily on natural resources such as forests, land, wildlife and fish for their survival. Historically, access to these natural resources was managed by traditional authorities such as chiefs and headmen (Thornton, 2002). However, with the institutionalisation of protected areas by colonial legislation from the late 19th century, indigenous people lost much of their land, and they were denied access to state-protected areas (Dahlberg, et al., 2010). Traditional authorities became employees of the colonial state, and were tasked with enforcing the restrictions on access to protected areas, which continued into the apartheid era (ibid). In this way, the power of traditional authorities to control and manage protected areas according to previous norms was undermined. They also then became perceived as servants of the oppressive colonial powers, and they lost legitimacy in the eyes of their own people. However, they were still making and maintaining the rules for resource control in communal areas.

This chapter argues that, despite the fact that the role of traditional authorities in the management of protected areas was ignored by policies and legislation of colonial and apartheid governments, in reality, they always participated in the management of protected areas in their rural areas. At some point, traditional authorities worked with the colonial powers (and apartheid government) to prevent rural residents from using and accessing forest resources within protected areas.

The rest of this chapter is divided into four sections. The first section deals with the different types of protected areas, including forest reserves, that had been established by colonial governments in rural areas formerly controlled by traditional authorities. The role of traditional authorities in protected areas in the 1800s, leading up to the formation of the Union of South Africa in 1910, is also discussed. The section details the effects of the conservation policies promulgated by the British colonists on the changing role of traditional authorities in the management of natural resources and on the livelihoods of African people.

The second section, which covers the period from 1910 into the 1940s, provides historical background on the different forms of conservation, such as national parks and betterment planning, in rural areas where traditional authorities had previously managed access to natural resources. It demonstrates how local communities lost their access rights to natural resources due to the creation of parks and protected forest reserves in areas such as Hluleka in the former Transkei<sup>3</sup> Bantustan (in what is today part of the Eastern Cape). Access to newly-demarcated forests was restricted. In this period, traditional authorities, such as headmen, were under the direct authority of district magistrates. The removal of African communities from their land in the name of protected areas was driven by policies of racial segregation. The government of the Union of South Africa passed a number of racist laws to alienate African communities from nature and land, which had a profound impact on the institution of traditional authorities. The section suggests that while traditional authorities had been drawn to the colonial administration, their power had been successfully undermined and their functions taken over by white magistrates and the Forest Department, following the displacement of African communities.

The third section investigates the creation of protected areas by the apartheid government from the 1950s to the 1980s, using tools such as betterment and rehabilitation schemes, nature reserves and increasing forest restrictions. This period includes the ascending to power of the National Party, the introduction of apartheid policies, and self-government of the former Bantustans – with some getting apartheid-style independence in the late 1970s and early 1980s.

---

<sup>3</sup> “Transkei” was the name given by European settlers, in the late 18<sup>th</sup> century, to the area east of the Great Kei River. When the Union of South Africa was formed in 1910, it was part of the territories in that part of the country that were incorporated into the Cape of Good Hope. In 1959, it became the first of the Bantustans, after the promulgation of the Promotion of Bantu Self Government Act. In 1963, it became “self-governing” but still under South African control, as was the case in 1976, when it became “independent”. Under the 1993 constitution, part of Transkei was incorporated into the Eastern Cape province and a part into KwaZulu-Natal (Encyclopaedia Britannica Online).

The fourth section in this chapter discusses the era of the transition to democracy from 1990 to 1994. It covers events where communities, previously dispossessed of their land for the creation of protected areas, organised themselves to protest against conservation officials and the government to reclaim access to these protected areas. These community protests were also directed towards chiefs and headmen who had enforced apartheid conservation restrictions that had prohibited community access to protected areas.

### **3.2 Protected areas and the role of traditional authorities in South Africa: late 1800s to 1910**

This section covers the history of the establishment of protected areas in areas formerly controlled by traditional authorities, and the role played by these authorities from colonialism until the creation of the Union of South Africa in 1910. Before the colonisation of territory now called the Republic of South Africa, indigenous people relied heavily on natural resources such as forests, land, wildlife and fish for their survival. Access to these natural resources was managed by traditional authorities such as chiefs and headmen in the Cape and in the rest of the country (Thornton, 2002; Tropp, 2006; Dahlberg, et al., 2010). People utilised forest lands for crop cultivation and livestock grazing, hunted wildlife in forests and woodlands, and exploited other forest resources for food, medicine, healing, and a host of other social and cultural purposes (Tropp, 2006).

“Black communities were composed of groups that were under the authority of independent chiefs” (Beinart & Bundy, 1987:5; see also Beinart, 1982 cited in Ntsebeza, 2002:29). Ntsebeza points particularly to chieftaincies in the Eastern Cape to show that they had been independent, and that chiefs had jurisdiction over specific areas or locations (Ntsebeza, 2002:26). Although contact between colonialists and indigenous African people in South Africa dates back to the time of the arrival of Dutch settlers in the 1600s, the first officially established protected areas were proclaimed only in the early 1900s, largely as a response to declining wildlife numbers and the extermination of game (Kepe, et al., 2005). At the same time that protected areas were designated, a number of racially discriminatory restrictions on hunting and fishing were also introduced. The first protected area was proclaimed in the British Colony of Natal (now KwaZulu-Natal) in 1895 in what is now the Hluhluwe-Imfolozi Park (Masuku Van Damme & Meskell, 2009), in an effort to save the wildlife living in the area. Hluhluwe-Imfolozi was previously three separate reserves that were united under its current name in 1989 ([southafrica.co.za](http://southafrica.co.za)). The park is currently surrounded by 10 traditional authorities. The communities surrounding the park were resident in the area long before its

establishment, and they sustained their livelihoods by hunting wild animals, picking firewood, and collecting building materials (Mkhwanazi, 2018). The park changed the social and economic experiences and patterns of these communities (Wadge, 2008), and tribal authorities lost some of their recognition, as most of what had been their traditional functions were passed to magistrates.

In the part of the Cape Colony later known as Transkei, protected areas such as reserved forests were created during the late nineteenth and early twentieth centuries, causing the displacement of African communities that were then prohibited from using the resources in the demarcated areas (Beinart, 2002; Tropp, 2003). In the Cape Colony, the first major law protecting forests dates back to the Cape Forest Act 28 of 1888. This statute enabled state forests to be demarcated as formal protected areas (Fuggle & Rabie, 1983:15). Following the passing of this Act, a large number of indigenous forests were demarcated as protected forests in the Cape Colony. The Dwesa and Cwebe forests were declared as demarcated state forests in 1891 and 1893 respectively (Palmer, Timmermans & Fay, 2002). In terms of the Act, the ownership of all indigenous forests of more than five hectares in size vested in the state and, while not formally proclaimed as a protected area, the adjacent Dwesa and Cwebe coastal forests were regarded as forest reserves (Palmer, et al., 2006). During this period, the indigenous people of Dwesa-Cwebe relied heavily on forest resources (Palmer, Timmermans & Fay, 2002; Chapter Four). As in other Transkei rural areas, the people of Dwesa-Cwebe had been under the rule of traditional authorities since before the arrival of the Dutch colonialists in the Cape in 1652 (Palmer, Timmermans & Fay, 2002).

As explored in Chapter Five, these traditional authorities had been the managers of natural resources for the people. Moreover, traditional authorities regulated community access to natural resources to ensure the sustainable use of the forest resources. Historians have shown that the period from the 18th to the 19th centuries was one of enormous upheaval, change and conflict for the peoples of the Eastern Cape (Peires, 1989; Delius, 2008 cited in Sunder, 2014:84). Incursions into the rural areas led to the frontier wars between amaXhosa chiefdoms and the colonialists that lasted from 1779 to 1878, at the end of which the Eastern Cape was brought under colonial control (Delius 2008:221 cited in Sunder, 2014). The whole of the Transkei was annexed by White settlers under the colonial administration, with the power of the chiefs being systematically broken by the direct rule of resident magistrates for each of the districts into which the region was divided (Palmer, et al., 2002; cf. Mamdani, 1996).

With the demarcation of indigenous forests into state-protected forests through the Forest Act of 1888, the role of traditional authorities, such as the Gcaleka Xhosa Chief Sarhili, over resource management was eroded (Tropp, 2006:65). In the late 1890s, the colonial government extended its control over natural resources in general in the Transkei region. A number of restrictions on hunting, forestry and fishing were introduced by the Cape colon authorities (Tropp, 2006). The demarcation of forests by the colonial administration resulted in the removal of black indigenous communities from the land they had previously lived on (Kepe, et al., 2005; Kepe & Whande, 2009). While some of the removed communities, such as Dwesa-Cwebe, were still permitted to access and use a variety of natural resources on state-demarcated forest reserves, access to forest resources was severely limited (Palmer, Timmermans & Fay, 2002; Kepe & Whande, 2009; Guyot & Dellier, 2009; see Chapter Four). During this period, more forests were demarcated by the colonial state in this eastern region of the British Cape Colony, one of which was the Msikaba Forest in Pondoland (Kepe & Whande, 2009). While the people of Ndengane relied on the resources in Msikaba Forest for their survival, after its demarcation (which was before 1910), they were restricted from using the forest to meet their livelihood needs, a practice that continues to this day. The creation of these protected forest reserves in the late 19th century was largely as a response to declining wildlife numbers and the extermination of game in the Cape Colony (Kepe, Wynberg & Ellis, 2005). Control over forests and other wildlife resources, which took the form of fines or imprisonment for infringements by local people, was a reflection of the institutionalisation of state forest reserves in the former Bantustan rural areas of the Eastern Cape (Kepe & Whande, 2009 cited in Guyot & Dellier, 2009).

In the late 19th century, colonial authorities established varying approaches to the issue of how to rule the territories that they had occupied and demarcated. The colonial thrust into Transkei broke the power of traditional authorities and, thus, the traditional environmental controls that had existed (Palmer, 1998). As the Cape Colony expanded its territories to the east, the British imposed measures to break the power of traditional authorities through the imposition of magistrates (Sunder, 2014). In the context of the introduction of protected areas in rural communities of the eastern regions, the role of traditional authorities in natural resource management was weakened and they were excluded from the direct management of protected areas by the colonial government. The authority for management of protected reserve forests was assigned to magistrates and the Forest Department.



In the late 1890s, the establishment of protected areas led to the introduction of a range of restrictions that prevented indigenous communities access to forest reserves (Tropp, 2003). Although the authority to manage the reserves was vested in the magistrates and Forest Department, the colonial state relied on traditional authorities to manage natural resources on state forest reserves. The state accomplished this by providing compliant traditional authorities with powers to fine and prosecute local residents who entered and used resources within protected forest reserves (Palmer, et al., 2002; Tropp, 2006). Thus, while the role of traditional authorities was disrupted by colonial conservation policies, the colonial government used the same traditional authorities to manage state forest reserves because it did not have capacity to manage the reserves without assistance from traditional authorities. Moreover, the smaller and more heavily-harvested forests and scrub areas were relegated to the control of local headmen for the less restricted use of location residents (Tropp, 2003).

Nonetheless,

Chiefs and headmen also asserted their own claims to “customary” legitimacy as environmental managers of community resource access, exploiting their indispensability to official schemes and pursuing their particular political, economic, and ecological interests, whether it be strictly enforcing government forest restrictions, shielding local residents from interventions and local representatives of the colonial state, or using their position to derive personal benefits beyond official control. Although relegated to an increasingly subordinate role in resource management at the turn of the century, chiefs and headmen found formal and informal avenues for protecting their ability to interpret their environmental authority and prerogatives in their own localized ways, often at the expense of residents in their wards (Tropp, 2006:10-11).

In the 1890s, the Cape Colony government expanded the activities of European forest officers and African forest guards who had worked alongside headmen in controlling location forest access until the late 1900s, as a new management policy emerged for location forests (*ibid.*). From this point forward, foresters’ patrols were confined to demarcated government-protected areas, and headmen took over the daily management of newly-defined “headmen’s forests” in their districts. Traditional authorities were extremely adept at extracting personal advantages from their direct participation in colonial environmental restrictions (Tropp, 2006).

In the late 19th century, various traditional authorities pursued opportunities in the new colonial legal system to continue to collect certain “customary” environmental dues from their subjects. As with land allocation, struggles quickly resulted from headmen’s exercise of forest control, as they often exploited this for their personal benefit (Tropp, 2006). Chiefs and headmen had a duty to protect timber trees, which could only be cut with the permission of a magistrate (Tropp, 2006). Headmen also had to conserve, for local communities’ benefit, “all vegetation but could give permission for the cutting of non-protected species. People could remove dry firewood, bark and twine without permission, as long as it was for their own personal use and not for sale” (Tropp, 2006). By 1903, the Forest Department took over complete responsibility of managing all protected forests in the Transkei, but relinquished forest control to traditional leaders.

Apart from removals and strict control over access to resources and grazing within protected forests, the Forest Department also sought to take control of resources surrounding their forests, such as sand shingle and sea weed: “on account of the difficulty that would be experienced in exercising control over such areas, [the department] has authorized the Forest Department Tariff rates, for the removal of sand, stone, shingle etc., from seashores adjoining Forest Reserves, or where the Forest Department is in a position to supervise and control the removal of the material”. (Department of Native Affairs, cited in Edmon, 2013:46)

However, this change was challenged by senior colonial authorities who urged these departments to reconsider the concession and suggested that the change would result in the “extinction of undemarcated forests, at an early date” (Tropp, 2006).

At the same time, these changes had implications for local livelihood strategies as activities such as hunting and cultivation on the fringes of the demarcated forests, as well as gathering of fruits – even if it clearly fell outside the protected area – were prohibited, and were punishable offences (Tropp, 2003). By 1908, a total of 66 small coastal forests had been named and demarcated under state authority in the eastern part of the Cape Colony, and there was a number of undemarcated forests where different sets of access and use were imposed, as provided for by Proclamation No.135 of 1903 (Tropp, 2003; Beinart, 2003 cited in Kepe and Whande, 2008:106). This period witnessed the foundation being laid for a system of protected natural areas, which, during the twentieth century, would develop into national parks and provincial game and nature reserves, as will be seen in the next sections. It was a period when, after the creation of state-proclaimed Forest Reserves by the

Cape Colony government, the authority of traditional authorities in natural resources' management was weakened by transferring their roles to magistrates and Forestry Department bureaucrats. However, while traditional authorities were marginalised in this period, the colonial government relied on them to assist in managing these forest reserves. They incorporated traditional authorities into the colonial system as local police who protected the state forest reserves from local residents. The following section focuses on the history of protected areas in territories that were under the jurisdiction of traditional authorities from 1910 up to 1948.

### **3.3 Protected areas and traditional authorities in rural areas: 1910 to 1940s**

Prior to the formation of the Union of South Africa in 1910, the British governed the Cape and Natal colonies, and the Boers, the South African Republic (Transvaal) and the Orange Free State. The policies and practices of the British and the Boers towards Africans during this period differed significantly (Ntsebeza, 2002:34). With the establishment of the Union, the national government assumed conservation responsibility for protected areas. Nature conservation was driven by the racial segregation of white and black populations (De Koning, 2010). It was in this period that the Union parliament enacted new laws that aimed at alienating black people from nature (Dahlberg, et al., 2010). These included the Forest Act and the Natives Land Act, both of 1913 (Tropp, 2006; Dahlberg, et al., 2010). In the name of conservation, the government used racial segregationist legislation to remove black people from their land. In the Eastern Cape, the passing of the 1913 Forest Act resulted in state restrictions within reserved state forests being strengthened, providing for more wooded areas to be demarcated as state forests. All undemarcated "valuable" forests were returned to the Forest Department and any remaining smaller forests and scrub continued to be managed by local headmen for the less restricted use of rural people.

However, traditional authorities continued to contest these changes and, through the new regulations of 1912 and 1913, headmen were granted sole authority over the harvesting of all undemarcated trees and bushes growing on communal land (Tropp, 2006). In order to further protect the reserved forest areas, the 1913 Forest Act made provisions for the demarcation of what was referred to as "headmen's forests" (Kepe & Whande, 2009). By giving some concessions regarding these headmen's forests, the state was able to maintain the strictest form of control over state-protected forests (Kepe & Whande, 2008:106; cited in Guyot and Dellier, 2009). In the 1920s, the state removed people living in the Dwesa and Cwebe forest reserves in the Transkei, but they were

allowed controlled access to forest resources (Fabricius & de Wet, 2002). In October 1920, those among the Khanyayo people who had been resident in the demarcated area were forcibly removed to create the Mkambati Leper Reserve. On 18 December 1922, the Minister of Native Affairs authorised the reservation of the area as such. In addition to forced removals, the people were also prohibited from grazing, hunting, and collecting various plant resources. The Khanyayo people are part of the Bumbantaba clan, but they were restricted to new boundaries that brought them under a different traditional authority (currently the Thaweni Tribal Authority [TTA]), after the annexation of Pondoland in 1894 (Kepe, 2004:694).

The growing racially-based, segregationist thinking of the government was evidenced in the management of protected areas during this period. Nature conservation was retained as predominantly a provincial competence by the Union of South Africa government (Goosen & Blackmore, 2019). The state officially institutionalised protected areas such as national parks, and regulated them through the 1926 National Parks Act. It was through this Act that the government perpetuated the process of spiritual and physical separation of black South Africans from the land, a process that had begun during the colonial era (Khan, 2000). Khan (2000) explains that this was the period when White supremacist ideas were advanced by the Union government. I disagree. This period was, rather, a continuation of White supremacist ideas that had been operational long before 1926. The creation and fencing of the Kruger National Park in 1926, closely linked to the resurgence of Afrikaner nationalism (Carruthers, 1995), resulted in many indigenous rural communities being forcibly removed from their ancestral land, as was the case with the Makuleke community.

National and provincial conservation agencies and legal tools for the management of protected areas were instituted in this period. The National Parks Act was enacted in 1926 and the first National Parks Board of Trustees (later SANParks) was constituted to manage the parks, as stipulated in Section 5(1) of the Act. The Act provided “for the establishment of national parks and the preservation of wild animal life, wild vegetation and objects of geological, ethnological, historical or other scientific interest therein, and for incidental matters” (National Parks Act, 1926). According to Section 12(1) of the Act, “It shall be the function and duty of the board to control, manage, and maintain the parks for the objects described in section one, and for that purpose it shall utilize such moneys as may from time to time be appropriated by Parliament or any provincial council for the purpose and other revenues of the board under the provision of this Act.”

SANParks was provided legal authority to manage all national parks, and access to protected areas by White people for recreational purposes was legalised (Mabunda, et al., 2003 cited in Dahlberg, et al., 2010). Section 16(1)(a) stipulated: “It shall not be lawful for any person other than a member, officer, servant of the board acting under the authority of the board, to enter or reside in a park except with the permission of the board or any officer of the board authorized to grant such permission and subject to the provisions of this Act and of the regulations” (National Parks Act, 1926). Black communities were excluded from enjoying these protected areas and were tolerated only in the role of menial workers, despite the fact that the National Parks Act stated that national parks had been established for the benefit of the South African public as a whole (Khan, 2000). The promulgation of conservation laws made it difficult for local black residents to legally utilise wildlife and natural resources within protected areas (Carruthers, 1993). The Makuleke rural community gradually lost effective access to, and control over, natural resources, as provincial and national governments claimed the territory, restricting the Makuleke to a small reserve, and establishing larger protected areas (Carruthers, 1995; Harries, 1987 cited in Turner, 2006).

In 1929, Hluleka Forest Reserve was established in the Transkei (Emdon, 2013), and local people were removed from the land. For the Forest Department in the 1920s, conservation was based on racially-based ideas about who should use the forests and how, not on the vision of preserving biologically diverse forests as a fulfilment of international obligations (Palmer, Timmermans & Fay, 2002:60). As in Dwesa and Cwebe, in other areas as well, such as Ngqeleni in the Eastern Cape, the Forest Department sought to take control of resources surrounding the forests, such as sand shingle and seaweed. A “fortress conservation” model (also known as “protectionism”) has dominated the establishment of protected areas or forests in southern Africa for much of the 20th century (Hansen, 2014). Relocations and a “fences-and-fines” conservation approach have often pitted conservation authorities against local people, and have led to a lack of access to natural resources for locals (Hansen, 2014).

Under the Union, traditional authorities continued to act as local police to prevent villagers accessing natural resources within state-proclaimed protected areas. The Native Administration Act 38 of 1927 gave traditional authorities authority over the rural population and empowered them to enforce state conservation restrictions that prohibited community access to protected areas (Delius, 2008). Under this Act, rural Africans were to be governed in a distinct domain legitimised by custom and chiefly

rule, but under strict state control (Cousins, 2000 in Edmon, 2013:31). The Act also “instituted a segregated system of native commissioners’ courts, provided for the chiefs not to be authorized to hear civil cases and established an appeals procedure with the Magistrate” (Delius, 2002 cited in Edmon, 2013:31). The Act also empowered traditional authorities to impose controls over rural people, and was a significant mechanism of power used in the process of re-shaping traditional authority (Sunder, 2014). A few years later, in 1936, the Union government enacted the Native Trust and Land Act of 1936, which consolidated the Native reserves (Sunder, 2014), and reduced the amount of land that could be occupied by African indigenous communities to a total of 13 percent of South Africa (Khunou, 2011).

After the passing of this Act, the state introduced other conservation measures to protect the environment, which included measures to rehabilitate rangelands in communal areas. Black communities were removed from their land through these conservation-related programmes popularly known as “betterment planning” (Yawitch, 1981). Motivated by a concern for the conservation of natural resources in African reserves, betterment planning led to the passing of Proclamation 31 of 1939 (de Wet, 1995). Betterment planning was officially implemented from the 1940s, but systematic removals of people had been ongoing since the 1920s, as people were forcibly moved into areas with limited agricultural potential (de Wet 1995; Beinart, 2002 cited in Kepe, 2004:692). The central objective of betterment planning was the transformation of rural settlement and land use in African reserves (Beinart, 2002). This attempt at implementing conservation measures along the coast amounted to government forcing people living closest to the coast or to protected areas to move further inland. This action was another *de facto* imposition of a buffer zone to protect coastal forests, nature reserves and the coastline in general. The introduction of these “betterment” or “rehabilitation” schemes severely affected traditional authorities.

Many rural communities resisted these government interventions that deprived them of their livelihoods (Beinart, 1982; Fay, 2003; Kepe, 2003). In the Eastern Cape, “by 1946 the director of forestry in Pretoria had approved that many demarcated forests in rural areas such as Ngqeleni be closed to the removal of all forest produce. Provision was also made for the closure of the entire coastal forest reserves and portions of other reserves abutting on the coast” (Department of Native Affairs, Forests and Trees, cited in Edmon, 2013: 68). Forest rangers were placed in South African Native Trust forests to supersede the authority of headmen. With the establishment of the Union

government in 1910, traditional authorities in rural areas of the Transkei were indirectly integrated into the management of protected areas to advance policies of the state that discriminated against black people in the use of natural resources within protected areas. These traditional authorities were used as an instrument to divide black people in the reserves to make it easier to control them, and to punish local residents who had entered state-created protected areas.

In summary, the maintenance and perception of national parks as grandeurs of white privilege caused many problems, chief among which was the resentment and growing animosity between black people and those responsible for managing these parks. The establishing of protected areas in South Africa was based on the philosophical assumption by conservationists and colonialists that blacks were savages who took no interest in protecting nature for future generations (Masuku Van Damme & Meskell, 2009). In the period under review, traditional authorities continued to act as local state conservation officers who assisted government to implement conservation measures in rural areas. The exclusion of the black population from protected areas took place concurrently with the extension of privileges to white settlers in terms of usage of land on which they vigorously pursued anti-trespass policies (Whande, 2007).

### **3.4 Apartheid, the establishment of nature reserves, and traditional authorities: 1948 to 1960s**

The electoral victory of the National Party (NP) in 1948 was not only a victory for racial separatism but also marked the beginning of a period of extreme politicisation of environmental conservation and the institutionalisation of environmental racism (Khan, 2000:161). Khan argues that for the NP government, conservation was merely one more sphere of activity that had to be controlled and forced to conform to the dictates of apartheid ideology. The apartheid era reinforced the division between communal-managed areas and state-managed protected areas. With the creation of homelands in the 1950s, the management of protected areas became fragmented. Protected areas became the responsibility of homeland governments, with each having its own legislation and management authority. Relationships between communities and government were strained due to the exclusion of the former from protected areas. Just as with segregation in the pre-apartheid period, the apartheid era saw the roles and powers of traditional authorities being reduced, and most aspects of decision-making concerning management of protected areas being vested in the government. However, the establishment of homelands resulted in traditional authorities being empowered and provided with authority to rule African people in rural areas. They thus exercised political control

over homeland residents. The Bantu Authorities Act of 1951 was one among many laws that increased the power of traditional authorities over rural communities, making them responsible for the allocation of land in communal areas (Ntsebeza, 2006). The Act laid the foundation for the incorporation of traditional authorities into the homeland administrative system (Delius, 2008) and provided for the establishment of Tribal Authorities to replace iBhunga (Ntsebeza, 2002). Mafeje contends that the Act practically recognised “the authority of the chiefs and other tribal dignitaries or people appointed by the government as the legitimate rulers of the people in the Transkei and other ‘Native Reserves’” (1963:7). The Act granted traditional authorities more power over their own people, as long as they served as puppets of the state (Ntsebeza, 2002).

Having been reinvigorated by the Bantu Authorities Act, traditional authorities performed a range of functions on behalf of the state, and were compelled to implement government’s policies. While a few traditional authorities were opposed to the betterment schemes, the majority of them implemented the policy (Fay, 2003). In Pondoland, Ngqeleni’s headmen accepted the implementation of betterment conservation schemes in their areas, while their people rejected them (Emdon, 2013). In return for accepting rehabilitation measures, many traditional authorities were offered incentives including increased stipends, land allotments, and places of honour (Southall & Kropiwnicki, 2001). The betterment schemes confirmed traditional authorities as the main agents of apartheid rule in rural areas (Southall, 1982), but resistance to attempts to implement betterment planning were reported in other former Bantustans (Mbeki, 1984).

This resistance, McAllister (1989:346) argues, stemmed predominantly from so-called red Xhosa – traditionalists who were at the forefront of resistance to betterment schemes. In the 1950s and 1960s, resistance to betterment became intertwined with resistance to the application of the Bantu Authorities Act. This was one of the major reasons for the Pondoland Revolt. Outbreaks of violence occurred in Bizana, Lusikisiki and Flagstaff as rural people protested against Chief Botha Sigcau’s efforts to push through apartheid policies in the reserves (Emdon, 2013:61). The main point in this section is that, whereas traditional authorities had been marginalised before the introduction of homeland rule, they were drawn into management when homelands were established in the 1950s by the apartheid state. The 1959 Promotion of Bantu Self Government Act 46 aimed to consolidate the policy of separate development by enabling the self-governance of the Transkei as an independent African “homeland” (Sunder, 2014). This legislation was one of the most important pieces of



legislation in the Bantustan strategy. Its primary focus was to establish “self-government” in the former Bantustans (Ntsebeza, 2002:82).

### **3.5 Protected areas and traditional authorities in the era of Bantustans: 1960s to 1980s**

The South African government granted self-government to the Transkei in 1963, and a number of traditional authorities were part of the process leading to a self-governing Transkei (Ntsebeza, 2002; Ncapayi, 2014). Because of his loyalty to the South African government, Kaiser Matanzima was made a paramount chief and became the leader of the self-governing Transkei (Ntsebeza, 2006). Immediately after granting Transkei self-government, the South African parliament passed the Transkei Constitution Act 48 of 1963. It transferred the responsibility of preservation of natural resources such as game and fish to the Transkei government (Palmer, Timmermans & Fay, 2002). It also provided for wildlife and marine reserves and granted headmen *ex officio* status as conservation officers (Vermaak & Peckham, 1996 cited in Palmer, 2003). With these developments in the Transkei, a “Flora and fauna” division of the Department of Agriculture and Forestry was established (Palmer, Timmermans & Fay, 2002:90), to be responsible for all matters previously connected to nature conservation under the Cape Provincial Administration (Sunder, 2014:118).

In 1971, the Transkei government enacted the Nature Conservation Act 6 of 1971, paving the way for increased protection of natural resources and the creation of protected areas such as nature reserves. In the late 1960s, and subsequent to the passage of this Act, widespread apartheid land dispossessions took place in Transkei to create protected areas. A number of nature reserves, such as Dwesa-Cwebe Nature Reserve, Mkambati Nature Reserve in north-eastern Pondoland and Hluleka Nature Reserve, were established (Palmer, Timmermans & Fay, 2002; Kepe, 2008; Emdon, 2013). The Nature Conservation Act prohibited rural residents from accessing forest and marine resources within protected areas. As it was responsible for the management of all protected areas in the Transkei, that Bantustan’s Department of Agriculture and Forestry increased restrictions that denied community access to protected areas (Fay, et al., 2002b; Kepe, 2008; Emdon, 2013). The officials in charge of agriculture and forestry in Transkei were still primarily white bureaucrats accountable to their superiors in Pretoria (Emdon, 2013).

Traditional authorities effectively were made an extension of the Bantustan government (Ntsebeza, 2002). They become directly involved in the establishment of many nature reserves in the former homeland communal areas. When the homeland government of Lebowa established the Masebe

Nature Reserve around 1984, the Langa Ndebele traditional leader and his councillors were approached to develop 4 500 hectares of trust land as a nature reserve (Boonzaaier, 2012). In the late 1980s, three traditional authorities donated the land already occupied by people to the former Venda homeland government to set up the Makuya Nature Reserve (Whande, 2007). According to Whande, these traditional authorities were rewarded and were paid an annual land rental of R2.00 per hectare. The Maleboch Nature Reserve (MNR) was also established in 1981 by the Lebowa government. It was made possible after the chief agreed to its establishment, in consultation with three headmen from the surrounding villages (Constant & Bell, 2017:544). Thus, in this period, traditional authorities assisted the homeland governments with the establishment of protected areas in their communal areas.

Whande (2007) points out that, in several cases, the chiefs in the Bantustans were appointed by the state and, consequently, demonstrated loyalty to the apartheid regime rather than being representatives of their people. The collaboration of the chiefs meant security for the regime; not only did chiefs report on security issues, they also became the first targets of local resistance, providing a buffer between the people and the state, and allowing time for national authorities to respond. This arrangement also gave credence to the apartheid philosophy by suggesting the “independent” territories had their own recreational facilities (Whande, 2007:24). The homeland governments held decision-making powers for most aspects of the management of nature reserves, but delegated certain responsibilities to traditional authorities. The chiefs and headmen then became the main contact points for the homeland governments on issues concerning access to natural resources in protected areas.

In the context of the management of state nature reserves, traditional authorities enhanced restrictions on community access to, and use of, local resources by acting as localised centres of indirect rule (Duffield, 2005; Whande, 2007). In many cases, incidents of poaching of wildlife and illegal grazing of livestock inside protected areas by local villagers escalated (Fabricius & de Wet, 2002). It then became the responsibility of traditional authorities to deal with these incidents through fines, as they had been empowered to do by the state. Chiefs and headmen became state policemen who prosecuted and fined local villagers caught inside state protected areas. In the homelands, state-appointed traditional authorities owed their allegiance to the apartheid authorities, and would report any security concerns to the authorities (Whande, 2007:24). This, however, tainted the legitimacy of

traditional authorities in the eyes of the rural people. As Ntsebeza (2002:116) points out, “They became highly despotic and were in many areas feared by their subjects.”

This section showed that the creation of protected areas by apartheid and homeland governments in rural areas deprived rural people of their rights to access natural resources with which they had co-existed for centuries. It was against this backdrop that rural residents in South Africa’s former homelands developed a distrust of both conservation management authorities, including traditional authorities, and the concept of protected area management in general (Hanna, 1998). This distrust is also evident from the lack of cooperation between the ECPTA and the Dwesa-Cwebe communities in the Eastern Cape Province of South Africa regarding the management of Dwesa-Cwebe Nature Reserve (see Chapter Five).

### **3.6 The era of transition: late 1980s to 1994**

During the political changes in South Africa in the late 1980s and early 1990s, many dispossessed communities began to protest against the state to claim back their land in protected areas from which they had been removed during colonial and apartheid times (Fay, et al., 2002a; Fabricius & de Wet, 2002; Palmer, et al., 2002; Emdon, 2013). NGOs such as TRALSO in the former Transkei supported communities in this regard (SASUSG, 1997 cited in Fabricius, 2004). In 1992, for example, people from Khanyayo in the Eastern Cape invaded the Mkambati Nature Reserve for nine days, demanding the unconditional return of their land and resources (Kepe, 2004). The communities were then allowed access to marine and forest resources through the intervention of the then-government of Transkei. The communities of Dwesa-Cwebe invaded Dwesa-Cwebe Nature Reserve twice – in 1992 and 1994 – to demand access rights to land, forest and marine resources (Timmermans, 2004; Ntshona, et al., 2009). In 1993, residents from Hluleka organised a peaceful sit-in protest inside the Hluleka Nature Reserve (Emdon, 2013). The community wanted to negotiate with the reserve authorities about the closing of the land to the community. People resented having to apply for a permit to pass through the reserve (Emdon, 2013:82). In the St. Lucia region, new contestations emerged with locals beginning to organise themselves to reclaim their lost land (Chellan & Khan, 2008).

The cumulative consequence of these incidents was the rapid escalation of conflicts between conservationists and local communities, to a point where the future and the sustainability of conservation was being endangered. “The rural people had begun to see conservation as the ‘enemy’

and conservation's main support base lay in the affluent suburbs of the sub-regions' cities and towns, and with overseas donors and conservation pressure groups" (Fabricius, et al., 2001:835). As this was a period of political mobilisation and awakening in rural areas, the struggles for reclaiming access to resources within protected areas were also directed at chiefs and headmen. In this regard, many chiefs and headmen were seen as illegitimate and simply pawns of the Bantustan administrations, as they imposed state restrictions to preclude local communities' access to protected areas (Kepe & Scoones, 1999; Kepe, 1997).

These community struggles were characterised by a belief that chiefs and headmen had sold land in order for it to be designated as protected areas (Whande, 2007). This was also the period, the late 1980s and early 1990s, when national mass mobilisation that had overwhelmed most urban areas of South Africa during the 1970s and especially the 1980s had spread to rural areas (Ntsebeza, 2006). For reasons stated above, chiefs and headmen became the main targets of this mobilisation, and people in the former Bantustans displayed their dissatisfaction with the role of traditional authorities in the allocation of land and management of natural resources. In many rural areas in the former homelands, the Tribal Authority system had collapsed leading up to, and subsequent to, the 1994 elections (Jara, 2011). New elected institutions that were linked to the ANC through rural forums and civic associations emerged (Kepe & Scoones, 1999), resulting in an increase in local tensions over who was in control. These contests over legitimacy and authority have had major impacts on resource management in nature reserves such as Mkambati (Kepe & Scoones, 1999).

During the period of political negotiations for a transition to democracy, from 1990 to 1994, the ANC promised to restore people to the land they had lost as a consequence of forced removals. It also promised to develop policies and laws that would promote participation of concerned communities in decision-making processes and would allow them to share in the benefits of protected areas (Whande, 2007). The transition to democracy required greater transparency and accountability in public decisions, and the new government was eager to democratise rural local government and land administration, as well as to decentralise power to democratically-accountable local institutions (district and local municipalities) (Medvey, 2010). It is because of this background that, after several disputes between the communities and the state over access to the land and nature reserves, local communities such as Mkambati, Makuleke and Dwesa-Cwebe lodged their claims

through the post-1994 land restitution programme. The ANC government felt the pressure to deal with their grievances and demands, including the demand for accelerating the land claims process.

In summary, local communities have used their struggles to reclaim access rights to protected areas from which they had been evicted by previous governments, and to challenge the power of traditional authorities over land in rural areas. Traditional authorities lost the trust of people because they had collaborated with the apartheid government (and the colonial government before that) to remove people from their land to make way for the creation of protected areas. The continuous role of traditional authorities in enforcing restrictions on access to natural resources through merciless implementation of the strict regulations, particularly on behalf of the brutal apartheid state, leading to fines and prison sentences for trespassers, caused them to be hated by their people.

This chapter showed that traditional authorities have always been involved in the management of protected areas in rural areas, despite the fact that the legislation and policies crafted by colonial and apartheid regimes had ignored them. From the origins of protected areas in South Africa, through the colonial and apartheid eras, the lack of state resources to enforce these legislation and policies necessitated the state's co-opting traditional authorities to be the enforcers, right up to the transition to democracy. It is clear that what is written in law is not necessarily what is applied on the ground. Despite having acted as localised centres of indirect rule, and often having exploited their authority in their own interests, traditional authorities played an important role in the management of protected areas, to the benefit of the state though not to the benefit of their people. Therefore, it is an oversimplification to suggest that traditional authorities were completely excluded from the management of state-owned protected areas in South Africa's former Bantustans.

### **3.7 Conclusion**

This chapter explored the establishment and management of protected areas in South Africa from colonial times (1800s) up to the end of the apartheid era in 1994. It showed that before the establishment of the first protected areas, indigenous people in the British colonies were heavily dependent on natural resources for their survival. Access to these natural resources by rural residents was managed through traditional authorities. However, after the removal of black people from their land to create protected areas by successive governments, this role was taken away and delegated first to the colonial magistrates and Forest Department officials, then, under apartheid, to various state institutions. Notwithstanding the marginalisation of some traditional authorities during the

colonial period, traditional authorities were incorporated into the management of protected areas. Both colonial and apartheid governments had faced the problem of how best to manage protected areas in rural parts of the country. Their solution was to use these same marginalised traditional authorities to guard the natural resources and prevent community residents from using and accessing forest resources within protected areas. During the apartheid era, many policies were adopted and legislation enacted that extended the power of traditional authorities over land and rural people in the homelands. Traditional authorities played a key role in the creation of protected areas in the homelands, and assisted the government by donating land belonging to their people to the state to create nature reserves.

Though it was the state's responsibility to manage all nature reserves, certain tasks were delegated to traditional authorities. During the apartheid era, traditional authorities were provided additional powers to discipline and charge local residents who were caught inside protected areas and forests. It was the responsibility of traditional authorities to arrest and collect fines from those who illegally used natural resources inside protected areas in the former Bantustan reserves. Collaboration with the apartheid regime tainted the image of traditional authorities; local people feared their traditional authorities, who had become associated with the brutal policies of the apartheid state.

I have also shown in this chapter that, during the 1990s, when the political landscape of South Africa began to change, local people who had been evicted from their land began to fight government conservation officials to claim back their access rights to protected areas. However, these land struggles were also directed against the traditional authorities who had collaborated with the apartheid government during the creation of many nature reserves in the former Bantustans. The chapter makes a point that the controversial role played by traditional authorities during the creation of protected areas in rural South Africa and the enforcement of the regulations regarding access may have serious implications for their position in the post-apartheid era, especially in Dwesa-Cwebe. In the next chapter, I will deal with post-apartheid developments.

## **CHAPTER FOUR**

### **The post-1994 South African Land Reform Programme and its impact on protected areas in the former Bantustans**

#### **4.1 Introduction**

In this chapter I deal with the post-1994 events, which resulted in significant legislative changes that had implications for tenure arrangements, especially with regard to the post-land claim co-management of protected areas and the role of traditional authorities in communal areas. Soon after South Africa's first democratic election in 1994, the government initiated a comprehensive land reform programme that was aimed at addressing, amongst other matters, the injustices of racially-based land dispossessions of the past (Department of Land Affairs, 1997). Land reform since 1994 comprises of three components: a land redistribution programme aimed at broadening access to land among the country's black majority; a land restitution programme to restore land or provide alternative compensation to those dispossessed as a result of racially-discriminatory laws and practices since 1913; and a tenure reform programme to secure the rights of people living under insecure arrangements on land owned by others, including those who live in communal areas under traditional authorities, and farmworkers. This chapter focuses on the second and third components of the land reform programme because they are of key relevance to the settlement of South Africa's communal land claims in protected areas and, thus, to this study.

In Chapter Three, it was demonstrated that protected areas in South Africa had been established largely through the forceful removals of indigenous communities from their lands (Ramutsindela, 2003; De Koning, 2010), as was the case in Dwesa-Cwebe. The Restitution of Land Rights Act 22 of 1994, which provides the statutory framework for implementing the restitution component of the land reform programme, is the most relevant legislation to this study, as it made it possible for communities that had since 1913 been dispossessed of their land to lodge land restitution claims related to protected areas through the Land Claims Commission (RSA, 1994). The Act requires the new landowner communities of protected areas to enter into management agreements with the relevant state conservation agency. Thus, management authority is shared between rural

communities and the state. The Act also stipulates power sharing, resource access, and benefit-sharing arrangements.

Tenure reform, the third component of South Africa's land reform policy, which is also relevant in the context of this thesis, is aimed at promoting, protecting, and securing the rights that people on farms and rural areas have over land, especially where those rights are legally insecure as a result of former racially-discriminatory laws and practices. It is highly relevant in the context of the Dwesa-Cwebe Nature Reserve, the case study of this thesis, because the reserve is located in rural areas. During the colonial and apartheid eras, land in communal areas was owned by the state, but the day-to-day administration of land was in the hands of state-appointed traditional authorities. Residents in these areas had rights of occupation only, which were inferior to freehold land rights. In order to regulate the tenure security of people living in these communal areas, new laws and policies were put into place by the democratic South African government. These include the Communal Property Associations Act 28 of 1996 and the Communal Land Rights Act 11 of 2004. These laws are of fundamental relevance to the settlement of communal land claims in protected areas in South Africa, and to my study.

The Communal Property Associations Act allows new landowner communities to form democratically-elected communal property associations (CPAs) that manage the returned land on behalf of the beneficiaries, and in terms of a written constitution (RSA, 1996). They should operate according to democratic principles, including fair and inclusive decision-making processes, which are unlike the undemocratic practices of traditional authorities. By giving back the land in title to the CPAs, the state attempts to create an opportunity for the communities to gain full control of their natural resources that are situated inside the restored protected areas. The Communal Land Rights Act provided for the recognition and regulation of the communal land rights regime in South Africa, but was declared unconstitutional by the Constitutional Court in 2010 (SAFLII, 2010). The Act anticipated the creation of democratically-elected land administration committees (LACs) as the future institutions responsible for managing communal land.

The first section of this chapter discusses the land restitution component of South African land reform. Section two deals with practical challenges to the settlement of land claims around protected areas. Section three discusses the tenure reform component, which is relevant to the settlement of communal land claims within protected areas. The fourth section reviews and analyses the



management of protected areas on restored communal land in South Africa. This is followed by an analysis, in Section five, of the post-1994 South African state's move to legally empower traditional authorities that had been hated by people during the transition period of the early 1990s. This post-1994 section is further divided into two sub-sections: 1994-2003 and 2003 to the present. Section six focuses on the impact of the laws that increase the power of traditional authorities over land in rural areas of the former Bantustans.

Notwithstanding attempts to regulate tenure security through the formation of CPAs on restored land, the post-apartheid government continues to pass laws, such as the Traditional Leadership and Governance Framework (TLGF) Act of 2003 and the Communal Land Rights Act (CLARA) of 2004, which increase the power of unelected traditional authorities over natural resource management and land administration in communal areas, without clearly stating how their role should be accommodated, especially in the co-management of protected areas. On the other hand, the protected areas, which were previously under direct state control, are being restored and released into the control of elected community institutions in line with the principles of democratising the rural areas as promoted by the Constitution and relevant laws. In the process of the formation of elected community institutions for co-management of restored protected areas, traditional authorities are marginalised since they are not elected structures.

## **4.2 Two important components of land reform in South Africa**

### **4.2.1 *The land restitution component***

This sub-section discusses the land restitution component of the land reform programme of democratic South Africa. As mentioned in the White Paper on South African Land Policy (1997), racially-based land dispossessions of colonialism and apartheid had created hardship and suffering for the indigenous people of South Africa. People had lost their access rights to land and its natural resources when they had been evicted to make way for the creation of protected areas. To correct these imbalances through the restoration of land rights, the first law enacted by the government in this regard was the Land Rights Restitution Act 22 of 1994 (RSA, 1994). The Act's preamble provides for the restitution of rights to land in respect of persons or communities dispossessed of such rights after 19 June 1913 as a result of past racially-discriminatory laws or practices (RSA, 1994). People who had lost their land because of the establishment of protected areas on their land under colonialism and, particularly, apartheid, could use the land restitution process to claim back

their land. The Act governs the following main aspects of relevance to the restitution of communal land claims around protected areas: who may lodge land restitution claims; the procedure for lodging and settling these claims; and the forms of restitution that can be granted (see also Paterson, 2014:169). The Act ignored the former role of traditional authorities in the co-management of protected areas on communal land, despite the fact that traditional authorities continue to be respected by their people in the rural areas (Kepe, 2008).

Section 4(1) of the Land Rights Restitution Act provides for the establishment, powers and functions of the Commission on the Restitution of Land Rights (CRLR) and the Land Claims Court (LCC). The CRLR is responsible for the administration of land restitution claims lodged in several of South Africa's provinces. Its purpose is to solicit and investigate claims for land restitution and to prepare them for settlement by the Minister or adjudication by the Land Claims Court (LCC) (DLA, 1997:23). The CRLR is headed by the Chief Land Claims Commissioner, who appointed several regional land claims commissioners. The LCC is empowered to make orders on the validity of land claims and the form of restitution or redress that should be provided to claimants who meet the requirements for restitution (Department of Rural Development and Land Reform, 2013). The functions and procedures governing the operation of the LCC are prescribed in Chapter III of the Act. The CRLR's founding mission is "to promote justice in respect of all victims of dispossession of land rights as a result of racially discriminatory laws, policies and practices, by facilitating the process of restitution of such land rights as provided for in the Constitution and in the Restitution of Land Rights Act". Kepe, et al. (2003 cited in Ngubane, 2011:28) note that the Restitution of Land Rights Act was amended in 1997, allowing claimants direct access to the Land Claims Court and giving the Minister of Land Affairs the power to settle undisputed claims administratively rather than subjecting every claim to court adjudication. In 1998, a restitution review process initiated by the Minister of Land Affairs saw a closer integration of the Commission for the Restitution of Land Rights and the Department of Land Affairs (Kepe, et al., 2003:6).

Following the lodging of claims with the LLC, it was the responsibility of the Land Claims Commissioner to give notice of the claim to all stakeholders who had an interest in the matter. In terms of Section 10(1) of the Restitution of Land Rights Act, that would be "any person or the representative of any community who is of the opinion that he or she or the community, which he or she represents, is entitled to claim restitution of a right in land". Moreover, the validity of land claims

is verified by the Land Claims Commissioner, who also identifies the rightful claimants and beneficiaries. The land claim is gazetted, whereby public notice of the land claim is made by the LCC, inviting public submissions. This notice is made public using media such as television or radio, or by displaying notices in public places in the vicinity of the land, and any other reasonable means to bring the claim to the notice of interested or affected people.

The Land Claims Commissioner must lodge the claim with the minister responsible for land affairs for ratification and, if necessary, to assign a monetary value to the claim. At this point, no further engagement between the LCC and claimants would be allowed until the Commissioner is able to facilitate mediation and reach a decision. When a claim cannot be settled through mediation, the Commissioner is to prepare a comprehensive report and to refer the claim to the Land Claims Court for final determination. It is the task of that Court to decide which form of restitution is appropriate and fair in each case. Should the case require expropriation, the current owner would be entitled to fair compensation. The mediation process is supposed to hear all stakeholders, including claimants, land-owners and other interested parties, before the Land Claims Commissioner can make a final decision. Ramutsindela (2003) contends that the complexity of adjudicating land claims through the Land Claims Court slowed down the process immensely, causing much frustration and anxiety among all stakeholders. Only 41 restitution claims (out of more than 50 000 land claims) were settled by June 1999 (Ramutsindela, 2003). Lack of progress in the settlement of land claims resulted in land invasions by impatient communities, which led to attempts to speed up the settlement of land claims (Ramutsindela, 2003). Attempts to accelerate the process included the implementation of an administrative rather than a judicial approach (i.e., through the Land Claims Court) and the launching of the validation campaign on 18 August 2001 (Didiza, 2001 cited in Ramutsindela, 2003). This campaign aimed to tackle the validation of all outstanding land claims (estimated to be around 38 000) between July 2001 and June 2002. It is unlikely that research on the validation of land claims will be completed on time. Nevertheless, there has been a steady increase in the number of settled land claims (Ramutsindela, 2003). However, resolving rural land claims, which account for about 90 percent of all such claims, has proven to be more challenging, and very little has been achieved in relation to these (Lahiff, 2001).

The vast majority of settled claims were located in urban and peri-urban areas and were settled through cash transfers, while the most intractable, costly, complicated, and potentially conflicting

claims in the rural areas are still pending (Riedel, 2007 cited in Ramutsindela, 2003). This is also true of land claims in protected areas, of which only a limited number has been settled, with varied outcomes and successes, such as Makuleke, Mkambati Nature Reserve, the Kalagadi Transfrontier Park (Turner, et al., 2002:44–49; Kepe, 2008:313–318; de Villiers, 2008:37) and Dwesa-Cwebe. An estimated 122 land claims in protected areas are yet to be settled (CRLR, 2007:6). A considerable number of the protected areas managed by conservation agencies are partially or completely under claim. The track record of the CRLR in settling restitution claims within protected areas is similarly problematic. At last count, only a third of the 121 restitution claims in protected areas had been settled in the past fifteen years (Commission on Restitution of Land Rights, 2013).

The nature of restitution is informed by three broad categories of the results of land dispossession: dispossession leading to landlessness, inadequate compensation for the value of the property, and hardships that cannot be measured in financial or material terms (DLA, 1997). In terms of sections 35(1) and 42D of the Restitution Act, restitution can take various forms, including the restoration of rights in land, provision of alternative state-owned land, provision of grant funding to develop the land, financial compensation, and combinations of these forms. For land claims in conservation or protected areas, the Act also makes provision for the possibility, in exceptional circumstances, of legal de-proclamation of protected area status in order that successful claimants can return to their restored land and manage it as they wish. In practice, and through court cases, it has become clear, however, that, while claimants have an enforceable right to restitution (in the form of, for example, the provision of alternative land and/or financial compensation), they do not have an enforceable right to restoration of their original property (Hall, 2010 cited in Cundill, et al., 2013). This has become particularly obvious in the case of land claims in protected areas where the outcomes of claims have overwhelmingly featured the restoration of the land to the claimants, based on an agreement that claimants will not reoccupy the land, as in the case of Dwesa-Cwebe.

The South African government expected to settle all land claims by 2011, and although the state failed to meet this deadline, it is pushing hard to conclude all land claims as quickly as possible (Hall, 2010 cited in Cundill, et al. 2013). Most of the outstanding land claims are for contentious tracts of largely rural land, which include a large number of protected areas (Hall, 2010). The Dwesa-Cwebe land claim on the Wild Coast, the case study of this thesis, was one of the most contentious rural land restitution cases in South Africa (Ntshona, et al., 2010), and took about seven

years to be resolved, from shortly after the 1994 elections up to 2001. According to Kepe (2001), the non-resolution of land claims regarding protected areas in the Wild Coast, which contain numerous natural resources, has been characterised by land-related conflicts. Most of these claims were in relation to land reserved for conservation areas, or land targeted for economic development (Kepe, 2001). About 80 000 land claims had been lodged by the cut-off date of 31 December 1998. The track record of the CRLR in settling restitution claims within protected areas has been very problematic (Paterson, 2011:179). By 20 August 2013, about 150 land claims had been lodged in protected areas and, of these, only 46 had been settled (Commission on Restitution of Land Rights, 2013). According to the CRLR, by August 2013, 44 claims were being researched, 13 had been accepted and gazetted, a verification of households was taking place in four claims, 27 claims were at the negotiations stage, nine claims were at the settlement stage, and four claims were before the courts for adjudication. The CRLR had drawn up a breakdown of claims in protected areas per province (Commission on Restitution of Land Rights, 2013). In the Eastern Cape, for example, there were 18 claims, two were being researched, one was being verified, four were in negotiations, one was in settlement, seven had been settled, one had been dismissed and two were in the courts (Commission on Restitution of Land Rights, 2013).

#### ***4.2.2 Practical challenges to the settlement of land claims in protected areas***

Numerous challenges that have contributed, and continue to contribute, to the slow progress of land restitution in protected areas were identified by the CRLR in 2013. These included: overlapping and competing claims; community disputes; disputes between the CPAs and traditional authorities over management of protected areas; and the tardiness of the DRDLR in engaging the existing management authorities in the settlement of land claims. Most land is neither surveyed nor registered as state land, which contributes to the lack of implementation of co-management agreements (Commission on Restitution of Land Rights, 2013). The non-availability of funds has also been identified as a contributing factor to the slow progress in the settlement of land claims in protected areas (Mdontswa, 2013). In some areas, traditional authorities contested the registration of the CPAs and Land Trusts and insisted that traditional leaders were the only managers of the restored land. This has, consequently, delayed the settlement of land claims in many conservation areas, as was the case in Hluleka Nature Reserve (Mapoma, 2014).

The process of validating the claimants and their claims has been impeded by problems associated with locating claimants, community in-fighting and inter-tribal disputes, the lack of understanding and capacity, impatience of claimant communities, and the lack of cooperation of communities and local traditional leaders in providing adequate information to the restitution authorities. These factors have also contributed to the delay in the settlement of land claims in protected areas in rural areas (Paterson, 2011:180). I agree with Paterson that the majority of these practical challenges remain. “Given that the majority of South Africa’s protected areas are situated in rural environs, these challenges impact on the resolution of the remaining restitution claims within protected areas” (Paterson, 2011:182).

These challenges have been further confounded by Cabinet’s approval of equitable redress, not restoration, being the only means of settling land claims within the Kruger National Park (Commission on Restitution of Land Rights, 2013).

It is uncertain how “contagious” this decision not to restore land rights will be in respect of the other outstanding claims in protected areas. It is furthermore uncertain to what extent this decision, which could be deemed by communities to constitute a “second dispossession” of their land rights, will further undermine the faith of claimant communities in the restitution process (Paterson, 2011:182).

Paterson explains that “specific elements of the land tenure reform programme itself, and the intersection between the tenure reform and restitution components of the land reform programme, have been acknowledged as frustrating the finalisation of outstanding restitution claims” (ibid.). These challenges may have contributed to the failure of many management arrangements of protected areas after land claims had been settled in rural areas such as Dwesa-Cwebe (see Fay, 2007; Ntshona, et al., 2010). The manner in which these challenges have manifested in the resolved land restitution claims in South Africa’s protected areas is considered in detail in Chapters Six, Seven and Eight.

#### **4.2.3 *Land tenure reform component***

Land tenure reform is the third component of the land reform programme that seeks to “bring all people occupying land under a unitary, legally validated system of landholding” (Department of

Land Affairs, 1997). Thus, it addresses the legacy of a dual system of land tenure in which whites owned land as private property, as opposed to communal land allocation among blacks. The majority of rural blacks lived, and still live, on communal land that is registered as the property of the government under the South African Development Trust. Furthermore, tribal authorities that often operated in a corrupt and undemocratic manner acted as custodians of communal land in rural areas (Ramutsindela, 2003). Local residents did not have land rights in communal land, as those land rights were generally held in trust, and communal land was registered as the property of the government.

Land tenure, the most complex element of the land reform programme, seeks to overcome the following challenges:

how to upgrade the variety of highly conditional land tenure arrangements currently restricting the tenure security and investment opportunities of black South Africans, both in urban and rural areas; how to resolve the overlapping and competing tenure rights of people forcibly removed and resettled on land to which others had prior rights; how to strengthen the beneficial aspects of communal tenure systems and at the same time bring about changes to practices which have resulted in the erosion of tenure rights and the degradation of natural resources; to make government services available to communities which do not have legally secure rights to the land on which a development is to take place; how to extend security of tenure to the millions of people who live in insecure arrangements on land belonging to other people, especially in the predominantly white farming areas (White Paper on South African Land Policy, 1997:11).

In its attempt to address this insecurity of tenure in the former homelands, the post-apartheid government enacted new laws to take communal land ownership away from the power of unelected traditional authorities and place it, rather, with the Community Property Associations (CPAs), which are juristic persons. CPAs are mandated to manage land usage. The Community Property Association Act (CPA) 28 of 1996 encourages land claim beneficiaries to establish democratically-elected CPAs, which hold tenure for land in protected areas that had been returned under the Restitution of Land Rights Act (RSA, 1996). The main object of the Communal Property Associations Act, as stipulated in the Act's Preamble, is "to enable communities to form juristic persons, to be known as communal property associations in order to acquire; hold and manage property on a basis agreed to by members of a community in terms of a written constitution; and to

provide for matters connected therewith” (RSA, 1996). Through this Act, new landowner communities have received land independently through CPAs and other land-ownership structures that permit group tenure rights on the basis of a democratically-created constitution, without requiring the leadership of traditional authorities.

The Act acknowledges, “It is necessary to ensure that such institutions are established and managed in a manner which is non-discriminatory, equitable and democratic and that such institutions be accountable to their members; and ensure are protected against abuse of power by other members.” Section 9(4) (b) of the Act provides details on the registration of CPAs and how they are to be run, and provides for government oversight to enforce the rights of community members who hold rights as individual beneficiaries or as part of a group (RSA, 1996; Clark & Luwaya, 2017). The CPAs are required by the Act to function according to democratic principles, including fair and inclusive decision-making processes. The Act requires that members of a CPA draft a written constitution based on the principles of democracy, fairness, inclusion, accountability, transparency and equality. Moreover, CPA committee members are required by the Act to democratically elect a committee through regular elections. Although the committee manages the daily affairs of the CPA, it remains accountable to community members. These democratic features make CPAs an important and necessary alternative that should be available to land reform beneficiaries (Clark & Luwaya, 2017:17). One of the main reasons for the government to establish these democratically-constituted associations was to weaken the power of unelected traditional authorities over the land returned to rural communities through the restitution policy.

Notwithstanding this, CPAs have experienced a number of problems. In some areas, CPA committee members have been implicated in misuse of community funds. Some sources indicated that approximately 952 CPAs and similar entities, such as land trusts (approximately 700 trusts), have not been operational (De Villiers, 2003; Sustainable Development Consortium, 2007; Paterson, 2011). Further, many CPAs have not always been able to comply with the requirements laid out in the CPA Act, including that of holding annual general meetings and the elections of new committees. This is, in part, due to the fact that CPAs remain severely under-resourced when compared to other legal entities (Clark & Luwaya, 2017:17). The CRLR’s 2018/19 annual report, which was presented to the portfolio committee of the Department of Agriculture, Land Reform and Rural Development, identified challenges that affected the implementation of CPAs in South Africa (CRLR, 2019).



These challenges include:

[A]fter registration of CPAs, they did not always get ownership of land; some communities opted for financial compensation after registering CPAs; membership of restitution-based CPAs was generally scattered across the country, and therefore they did not attend CPA meetings; low levels of literacy affected the effectiveness of the CPA Committees; some committees refused to vacate offices when their term expired; unaccountability for the use of CPA resources; consolidation of claims and the subsequent registration of a single CPA; lack of human resources to adequately monitor and intervene in CPAs. Others blame the government for failing to do its oversight task in terms of evaluating and monitoring the functions of the CPAs as to whether they operate according to the provisions of the CPA Act or not (Sustainable Development Consortium, 2007:24).

In some rural areas of the former Bantustans, CPAs have been challenged by traditional authorities, which continue to allocate land to the people. The registration, functioning and legitimacy of CPAs has also been undermined and resisted by traditional authorities, which regard the CPAs as usurping their authority in rural communities (Kepe 2001, Ntsebeza 2003). Long delays in transfer of title to a CPA undermine the authority of elected committees, and the uncertainty that ensues can sometimes allow opportunists to challenge or take control of a CPA (Centre for Law and Society, 2015). In some CPAs, there is abuse of power by the committee or powerful CPA members and neglect or abuse of ordinary members. Committees are sometimes not accountable. It is also not clear to whom CPA members can appeal when conflict or abuse occurs (Centre for Law and Society, 2015).

The challenges experienced by the CPAs are mainly associated with the lack of institutional support from and effective oversight by the Department of Rural Development and Land Reform (Clark & Luwaya, 217:17). This was acknowledged by the department, which promised in 2017 that it would support the CPAs and provide them with necessary resources and skills. According to Clark and Luwaya, “These problems have led to government becoming disillusioned with CPAs, leading to a withdrawal of support for these institutions as they currently exist” (2017:18). The manner in which these problems have manifested in the restored land claims in protected areas is discussed in Chapters Seven and Eight.

### **4.3 The co-management of protected areas on communal land claims in South Africa**

This section focuses on implications of the land reform programme – particularly land restitution and land tenure reform – on the post-land claim co-management of protected areas, with specific reference to the role of traditional authorities, issues that are relevant to my case study, Dwesa-Cwebe. As will be seen in Chapter Seven, following the return of the land to Dwesa-Cwebe residents, they entered into co-management arrangements with the state to jointly manage the nature reserve. In the past three decades, many governments, especially those in Africa, have created policies that promote participatory methods to manage natural resources, especially in protected areas. They shifted towards community-based management policies, moving away from fortress conservation that was prohibiting African people from participating in the co-management of protected areas (see Chapter Two). Some scholars have regarded the shift towards a participatory approach to management of natural resources as the “new conservation” paradigm (Nhira, et al., 1998; Kangwana & Mako, 2001; Matose, 2002; Brockington, 2002). Ostrom (1992) perceives this change towards a participatory approach as a way of avoiding the “tragedy of the commons”, an economic concept according to which an individual’s decisions to consume an open resource are influenced by self-interest, at the expense of other individuals and of the resource. A participatory approach is regarded as the best one for common-property management. In Dwesa-Cwebe, for instance, after the return of the land in 2001, the community was required, through the settlement agreement, to manage the nature reserves jointly with the state.

In South Africa, such a participatory approach has been evident in the co-management of protected areas, including in Dwesa-Cwebe. In particular, land claims, which affect many of the conservation areas in South Africa, frequently result in co-management of protected areas by claimant communities and conservation agencies (Blore, Cundill & Mkhulisi, 2013). Historically, protected areas in South Africa were created through land dispossession and forced removals of black communities by the colonial and apartheid states (Fabricius, 2004). As discussed in Chapter Three, the establishment of protected areas in rural areas by the apartheid state, in particular, denied locals access to the use of natural resources within protected areas, and they were deliberately excluded from the management of these areas. Kepe, et al. (2003:9) point out that South Africa’s history of resource alienation and forced removals in protected areas is stark in its calculation and legislative base, but is not unique. Throughout the world, cases abound of protected areas being established with little or no regard for communities living within or adjacent to such areas. It was in this context that

the post-1994 democratic government attempted to address these imbalances in the post-land claim co-management of protected areas through policies, laws and constitutional principles to support the basic foundations of co-management arrangements.

The co-management approach gives previously dispossessed communities the right of access to protected areas, and the right to use the natural resources, with such access being regulated through joint management. A 2007 Memorandum of Agreement (MOA) between the then-Department of Land Affairs (responsible for administering the country's land restitution programme) and the Department of Environmental Affairs and Tourism (DEAT) (responsible for administering protected areas) stipulated that these areas must remain protected in perpetuity (Government of South Africa, 2007). The state, thus, requires all land claims in protected areas to result in co-management so that the conservation status of the land may be permanently retained (Government of South Africa, 2007; Kepe, 2008). South Africa's land claims in proclaimed/protected areas are being dealt with in terms of the 2007 MOA, which provides for areas of cooperation between the Department of Land Affairs (now the Department of Rural Development and Land Reform – DRDLR) and the Department of Environmental Affairs and Tourism (now the Department of Environmental Affairs – DEA) in relation to the resolution of land claims in protected areas, and also defines the roles and responsibilities of these two departments with regard to the restitution of land rights within protected areas. The two departments agreed on a number of fundamental principles that serve to guide the settlement of land claims in protected areas. Unfortunately, other authorities and institutions, which may have a role to play or a stake in the management of protected areas on restored rural land, are not party to the MOA. The most important of these are the traditional authorities, which continue to play a role in rural land administration, and the district and local municipalities. I agree with Paterson (2011:215) that the exclusion of other state departments and traditional authorities in the MOA may well undermine its usefulness.

The Minister of Environmental Affairs also adopts the National Co-Management Framework that seeks to work within the MOA in promoting co-management as a preferred governance system over restored protected areas in South Africa (Department of Environmental Affairs National Co-Management Framework, 2010). In addition, the framework seeks to accelerate the conclusion of co-management agreements in restored protected areas (*ibid.*). The Management Planning Framework acknowledges that the restored protected area will be community-owned, but stipulates that it will be

co-managed on an equal partnership basis with a competent authority. The assumption is that various institutions, including traditional authorities, can manage resources together (Kostauli, 2011). The roles and responsibilities of these institutions in the co-management of protected areas should be thoroughly understood in order to achieve a mutually beneficial situation (De Koning, 2010). The MOA reiterates the need for the community to form democratic institutions, either land trusts or CPAs, to manage the funds accruing to it in terms of the community levy. Furthermore, it requires the trust or the CPA to represent the community in its dealings with the state management authority in the co-management of protected areas. The mandate of the community representative is to ensure that community expectations and demands are met during the post-settlement process, while the mandate of the conservation agency is conservation management, and its interests will be in, and its behaviour will work towards, protecting biodiversity (Department of Land Affairs, 2001). These democratic landholding institutions (CPAs and Land Trusts) generally hold tenure over the tribal land and resources situated in nature reserves (Paterson, 2011).

The National Co-Management Framework also envisages that the relevant management authority and landholding legal entities to which the land has been restored establish a co-management committee (CMC) to act as the forum for consulting over, preparing and implementing the relevant co-management option (National Co-Management Framework, 2010:14). The CMC is required to meet at least twice a year and only decisions that are duly minuted and agreed to in writing are binding on the parties. The existing management authority is required to provide secretarial support to the co-management committee, while each party is required to fund the costs of their representatives participating in it (*ibid.*). A national co-management framework requires that co-management agreements must ensure that the claimants receive tangible, realistic and optimal benefits without compromising the ecological integrity of the protected area or its long-term objective of financial sustainability.

The CMC takes decisions on the management and development of the protected area, in line with the existing management plan for the area, which is to be reviewed every five years (ECPTA, 2009 cited in Mapoma, 2014). The day-to-day management structure will carry out the decisions of the CMC, and, “[i]n so doing, due cognisance will be taken of the need to strike a balance between the aspirations of claimants applying for their land rights to be restored, and government’s obligation to manage protected areas in the best possible national interests” (Minister of Environmental Affairs,

2012). Through these management arrangements, land claimant communities are able to act as authorities responsible for making decisions on natural resources and the benefits thereof. The objective is that local claimant communities have direct control over the use and benefits of natural resources in conservation areas by managing them in a sustainable way. Most management agreements are premised on joint decision-making in defining equitable sharing of benefits from, and the management responsibilities for, natural resource management. The term “co-management” generates much controversy in development debates because people hold different views regarding the term. Co-management may be defined in various ways but, basically, it refers to a situation in which two or more social actors negotiate, define, and guarantee among themselves a fair sharing of the management functions, entitlements and responsibilities for a given territory, area, or set of natural resources (Carlsson & Berkes, 2005; Borrini-Feyerabend, et al., 2000). It can be simplified to mean a partnership between the state and local resource-users; in cases of restored land the partnership is between the state and local communities (Carlsson & Berkes, 2005).

Co-management is also a more democratic approach than state control since it involves and empowers people at grassroots level (Turner, 2004; Blaikie, 2006; Jones & Murphree, 2004; Poteete, 2009; Nelson & Agrawal, 2008). The co-management strategy connects local-level management with government-level management institutions in areas such as forests, wildlife, protected areas, fisheries and other resources (Berkes, 2002). Berkes (2008) proposes the following four conditions as prerequisites for successful co-management of natural resources: 1) the existence of appropriate institutions; 2) the prevalence of trust between the respective parties; 3) the recognition and protection of community rights of access and use; and 4) the provision of economic incentives to those communal institutions that are partners in co-management arrangements. More recently, some authors have added additional conditions: pluralism, communication and negotiation, trans-active decision-making, social learning, and shared action or commitment (Plummer & Fitzgibbon, 2004). Paterson (2011) argued that the majority of these elements underpin the success or failure of co-management arrangements in general.

The shift to participatory approaches is strongly related to an era when local people progressively demanded greater rights, access, benefits and decision-making power over their ancestral lands (Brockington & Igoe, 2006; Fay, 2007; Ntshona, et al., 2010 cited in Thondhlana, Cundill & Kepe, 2016: 403). In different countries, co-management in practice shows various degrees of application

and outcomes (Borrini-Feyerabend, et al., 2000). In some cases, co-management agreements allow local communities full ownership of claimed land and participation in decision making. In other cases, the state takes a dominant role and the participation of local people is, at best, unstructured and, at worst, simply window dressing (Fabricius, et al., 2007; Cundill, et al., 2013). Most co-management experiences are premised on the discourse of “benefit-sharing”, and benefits, such as access to natural resources, funds from ecotourism, preferential employment opportunities, and other forms of local development, are often identified as key returns for local communities (Adams & Hutton, 2007; Fay, 2007; Kepe, 2008; Thondhlana, Shackleton & Muchapondwa, 2011 cited in Thondhlana, Cundill & Kepe, 2016:404).

Notwithstanding their international and domestic recognition, these co-management arrangements have failed to yield positive outcomes for rural residents’ livelihoods in South Africa (Fay 2007; Kepe, 2008; de Koning, 2009; Ntshona, et al., 2009; 2010; Kostauli, 2011; Paterson, 2011). Conceptually, the model arose to address specific issues in conservation and not as a model for reconciling conservation and community expectations from land restitution. Co-management arrangements, as is the case on the African continent, are largely premised on enhancing participation of local people in resource governance. Interestingly, but perhaps not surprisingly, the practice has been, in most cases, different from the premises (Poteete & Ribot, 2009). De Koning (2009) and Kepe (2008) point out that the South African rationale for co-management arose from the need to incorporate the land of resource-endowed (in relation to capacity and capital) private white landowners as part of protected areas. This is contrary to seeking to jointly manage with severely under-resourced and poorly-informed new communal landowners to retain the conservation status of their restored land. From a practical perspective, many of the pre-conditions for successful co-management, such as appropriate local institutions, existence of trust between different institutions and realistic objectives, are notably absent in South Africa (Mkhulisi, 2010; Borrini-Feyerabend, et al., 2007). Consequently, it becomes dubious why the state continues to advocate co-management as the appropriate model for resolving both the biodiversity conservation and land restitution objectives. Unless, as Kepe (2008:312) argues, continuing to work with the co-management model represents “a camouflage for the continuation of state hegemony over protected areas that evolved from apartheid-era strategies of developing legal agreements with white private landowners with a long-term plan to expanding national parks” (de Koning, 2009:8).

In addition, corruption regarding the distribution of benefits, unequal participation, lack of official recognition, and inadequate income alternatives are some of the other problems experienced in co-management projects (Southgate, 2006; Manyara & Jones, 2007). Indeed, co-management of natural resources between government and local communities has prevented these communities from taking full control of, and responsibility for, how they have to positively use their restored land. After the end of apartheid in South Africa, and with the implementation of a land reform programme, a number of land claims impacted protected areas (Wynberg & Kepe, 1999; De Villiers, 1999; Naguran, 2002; Kepe, et al., 2005). Following successful claims and the restoration of these lands, co-management arrangements were developed to facilitate the interaction and management of the protected areas into the future. Arguably, the formation of co-management arrangements in these protected areas was encouraged by a robust lobby of ecological preservationists who disagreed with the land claims but opted for co-management as a means of protecting the nature reserves (Magome & Murombedzi, 2003). The literature plainly shows that the alternative key motivation for co-management was the realisation by government that it could not maintain the natural resources without including local people (Plummer & Fitzgibbon, 2006). The result is that post-apartheid policy reforms have undermined the role of traditional authorities in communal resource management (Von Maltitz & Shackleton, 2004). In particular, traditional authorities continue to be weakened by lack of clarity regarding their role and responsibility relative to co-management of protected areas in restitution cases. The implication of the exclusion of traditional authorities in the co-management of protected areas is that it could disrupt the functioning of elected institutions in their attempt to facilitate communities' access to natural resources in nature reserves in areas such as Dwesa-Cwebe. Moreover, traditional authorities, which continue to see themselves as custodians of land administration in rural areas, may dissuade residents from cooperating with elected institutions in order to show the latter up as ineffective.

The legislation established to recognise the restitution rights of those who had lost land because of discriminatory laws and practices after 1913, the Land Rights Restitution Act 22 of 1994, eroded the role of traditional authorities in co-management of protected areas in communal areas. Furthermore, tenure reform legislation and policies on co-management of protected areas in South Africa are silent on the issue of the recognition of the pre-existing role of traditional authorities (who continue to play an important role in rural communal land administration). Thus, democratic communal property

institutions in the form of CPAs and Land Trusts are increasingly preferred as owners of the returned land and to represent local communities in the co-management of protected areas in communal areas.

In the next section, I will deal with the political status and position of traditional authorities in the post-apartheid era. The section will also unpack how the post-apartheid state deals with traditional authorities, which facilitated the enforcement of apartheid policies that forcefully deprived rural people of their land and natural resources to create state-protected areas.

#### **4.4 Traditional authorities in post-1994 South Africa**

This section focuses on the position, status and role of traditional authorities in post-1994 South Africa, and discusses how the state dealt with the chiefs who had acted as indirect state conservation police during apartheid. The section is divided into two sub-sections: the first dealing with the period from 1994 to 2003, and the second looking at the period from 2003 to the present. As indicated in Chapter Three, traditional authorities enforced the colonial and apartheid states' conservation restrictions that completely denied dispossessed black communities entrance to protected areas and access to natural resources within them. They also collaborated with the apartheid homeland governments during the implementation of the Betterment planning schemes in the 1950s and the creation of nature reserves such as Mkambati and Dwesa-Cwebe. It is because of this negative history that some people expected that the post-apartheid government would end the rule of traditional authorities in the former Bantustan areas. Paradoxically, despite the efforts to transfer land ownership of restored land to communities through CPAs and Land Trusts, the new democracy gave recognition to traditional authorities through both the 1993 Interim Constitution and the 1996 Constitution. The Constitution recognises the institution, status and role of traditional leadership, according to customary law, and provides for these traditional authorities to continue to function and apply customary law, even though it does subject such application to the Constitution and any applicable legislation (RSA, 1996). The Constitution further provides for the role of customary law and institutions in the regulation of many natural resources, both in respect of regulating land tenure and of providing for natural resource management. The 1993 Interim Constitution protected the institution of traditional leadership, as does Chapter 12 of the Constitution of the Republic of South Africa (1996), which recognises "the institution, status and role of traditional leadership according to customary law, subject to the Constitution". However, the roles, functions, and powers afforded to traditional authorities under the Constitution were not clearly stated (RSA, 1996; Ntsebeza, 2004).



In an attempt to clarify the position of traditional authorities, new pro-traditional authority legislation was passed by the South African Parliament from 2003 to the present, as will be discussed in the next section. Despite the promulgation of these laws, which provide more powers to traditional authorities, especially in natural resource management, this situation remains a subject of ongoing debate, as highlighted in Chapters One and Three. Some see this increasing recognition as contradicting the Constitution and its Bill of Rights (Ntsebeza, 2006). Ntsebeza (1999) warned that the Constitution opened up far-reaching space for traditional authorities to later claim and secure significant control over land allocation and rural local government in communal areas. This tension, furthermore, raises questions about the role of traditional authorities in the co-management of protected areas in a context where new CPAs were established and provided with authority over management of protected areas. The next part deals with the position of chiefs during the post-2000 era in South Africa, where the state seems to empower them while CPAs and Land Trusts are operational.

#### **4.5 Traditional authorities from 2003 to the present**

This section explains how traditional authorities regained their power over natural resource management through state legislation in the post-2000 era in South Africa. Although the 1994 South African government at first hesitated to clarify the roles and powers of chiefs, South Africa's democratic government eventually promulgated legislation, particularly the Traditional Leadership and Governance Framework Act of 2003 (TLGFA), the Communal Land Rights Act (CLARA) of 2004, the Traditional Courts Bill (B15-2008), and the new Communal Land Tenure Policy (CLTP) of 2014, which significantly strengthened the powers of traditional authorities in rural local governance. The Traditional Leadership and Governance Framework Act established traditional councils that are dominated by unelected traditional authorities, while the CLARA gives these institutions unprecedented powers over land administration and allocation. Through these laws, the ANC government gave traditional authorities a secure position in the post-apartheid political scene, and significantly enhanced their powers over rural land and local governance. This shows that the negative perception of traditional authorities by the democratic government has significantly changed in the post-2000 era.

#### ***4.5.1 Traditional Leadership and Governance Framework Act 41 of 2003 (TLGFA)***

The Traditional Leadership and Governance Framework Act (TLGFA) of 2003 serves as the official government framework for the recognition of traditional leadership in South Africa. This Act was enacted to specify the roles and functions of traditional authorities within their rural communities, which had been left unclear in the Constitution. Section 2 of the TLGFA defines a traditional community as one that is “subject to a system of traditional leadership” and “observes a system of customary law”. Section 4(1) lists the functions of traditional councils, including “Administering the affairs of the traditional community in accordance with customs and tradition.” As the pivotal law relating to traditional leadership, the Act stipulates their role in all three spheres of government.

Section 20(1) of the Act provides for national or provincial governments to give traditional councils a range of roles and functions, including “land administration” and “the management of natural resources” (South Africa, 2003). These roles were also entrusted to local governance institutions, thus making it difficult, if not impossible, to specify the actual role to be played by traditional authorities (Ntsebeza 2004, Oomen 2005). Through the deeming provisions in Section 28, the TLGFA entrenches the boundaries of the tribal authorities created in terms of the Bantu Authorities Act 68 of 1951. The Act deems the “tribal authorities” of the apartheid era to be “traditional councils” of the democratic dispensation. Through this Framework Act, the state sought to “transform” the institution of chieftaincy in a manner that it might be able to coexist with democratic institutions. More importantly, the state wanted traditional authorities to become “more representative and more accountable to those living in their jurisdiction” (Williams, 2010:200). Thus, the boundaries of traditional councils mirror those of the tribal authorities created by the 1951 Bantu Authorities Act. Section 28(1) of the TLGFA states:

Any traditional leader who was appointed as such in terms of applicable provincial legislation and was still recognised as a traditional leader immediately before the commencement of this Act, is deemed to have been recognised as such in terms of section 9 or 11, subject to a decision of the Commission in terms of section 26.

Section 28(3) deems, “Any ‘tribe’ that, immediately before the commencement of this Act, had been established and was still recognised as such ... to be a traditional community.” Further, Section 28(4) deems any “tribal authority that, immediately before the commencement of this Act, had been

established and was still recognised as such” to be “a traditional council contemplated in section 3 and must perform the functions referred to in section 4”.

The TLGFA provided that the institution of traditional leadership be represented at every level of government and stipulated their various roles. At the local level, traditional authorities, through traditional councils, were responsible for all community affairs; at the provincial level, traditional leaders, through the Provincial House of Traditional Leaders, were responsible for representing their communities in the legislation process; and, at the national level, traditional leaders, through the National House of Traditional Leaders, participate in and represent rural communities in shaping and informing government policies and programmes that are geared to addressing community needs. Despite recognising traditional authorities, the role of traditional authorities in the co-management of natural resources in protected areas is not specified in the TLGFA.

According to Ntsebeza (2004), the traditional councils created by the TLGFA are largely a remnant of the apartheid regime under which government-sanctioned tribal authorities, recognised under the Black Authorities Act, controlled the administration of land within many rural areas. Traditional councils are undemocratic, resembling the Tribal Authorities they are meant to replace (Ntsebeza, 2006). The TLGFA recognises the participation of rural women in the decision-making structures of their rural communities, and it provided that traditional councils should be established in any area recognised by the Premier as a traditional community, and those traditional councils should recognise certain elements of democracy, including the participation of women. The Act requires that 40 percent of the members of traditional councils must be elected and one-third of them must be women, who need not be elected but may be selected by the senior traditional leader. The composition of the Traditional Council in terms of the legislation must adhere to the following requirements:

- 60 percent – traditional leaders (this includes the chief and headmen), selected by the senior traditional leader;
- 40 percent – other members who are democratically elected; and
- one-third of the overall number – must be women. (Traditional Leadership and Governance Framework Act 41 of 2003, Section 3(2)).

There are many critics of the Act. Jara (2011:14), for example, argues: “In essence, the TLGFA provides the framework for traditional leaders to assume, a la Mamdani (1996), all ‘*moments of power*’: making laws for rural governance, control over development, control over land and other natural resources, and in assuming responsibilities for administering rural areas including the administration of justice.” Despite recognising traditional authorities, the role of traditional authorities in relation to co-management of protected areas related to restitution cases in rural areas was not specified in the Act; it provided generally for the role of traditional authorities in natural resource management in rural areas. This may cause unnecessary conflict between traditional authorities and elected institutions of resource management over who should represent local communities in the co-management arrangements of protected areas.

#### **4.5.2 Communal Land Rights Act 11 of 2004 (CLARA)**

The Communal Land Rights Act 11 of 2004 (CLARA) was formulated to provide for the recognition and regulation of the communal land rights regime in South Africa. Prior to its passing, the Act was highly contested. Rural communities and a number of civil society organisations, for example, strongly opposed the bill mainly because it aimed to give traditional authorities disproportionate and illegitimate powers, and because of the poor consultation and top-down manner in which the state was introducing them (Mnwana, 2018). Rural communities, through legal action, successfully resisted the Act and, in 2010, the Constitutional Court struck it down (see SAFLII, 2010).

Rural communities feared that CLARA would undermine their tenure security because it granted sweeping powers to traditional leaders and councils (which would act as “land administration committees”), including control over occupation and use and management of communal land (Bennet, 2004). The domain of CLARA was to have been far broader than its counterpart, the Communal Property Associations Act (Paterson, 2011:190). As highlighted in Chapter Four, the CPA Act provides for the establishment of institutions to hold rights that were restored to communities under the Restitution of Land Rights Act. CLARA sought to upgrade and secure the previous forms of subservient and permit-based communal tenure prevalent in South Africa, and it sought to reform the frequently-undemocratic institutions responsible for administering land held under such forms of tenure (Paterson, 2011).

CLARA provided for the “transfer of title” of communal land to communities, subject to various conditions (CLARA, 2003; Okoth-Ogendo, 2008). However, the Act required that, before land was transferred to a community, a Land Administration Committee (LAC) had to be established (CLARA, 2003; Cousins, et al., 2007). This is important because, in theory, this is where authority for natural resource management would have been located (*ibid.*). According to the Act, in order to qualify for title to be transferred to a community, the community would be required to draw up and register a set of tenure rules in order to gain recognition as a juristic person capable of owning land (CLARA, 2003). The community would also have to survey and register community boundaries, and subject all the community members to a rights enquiry to investigate the nature and extent of the existing rights and interests in land (CLARA, 2003; Cousins, 2008). All communities whose land was registered under CLARA had to have a set of community rules, which set out the administration and land use by the community as landowner (CLARA, 2003; Cousins, et al., 2007). LACs would enforce rules and exert ownership powers on behalf of the community (CLARA, 2003; Okoth-Ogendo, 2008).

Section 21(1) of CLARA provided that traditional councils that were recognised in terms of the TLGFA might act as LACs. The LAC would represent the community and could act as the owner of the land as long as it acted according to the community rules (CLARA, 2003; Cousins, et al., 2007). LACs would be responsible for establishing and maintaining the register and records of land rights and transactions. In addition, they would have been responsible for safeguarding the interests of the people on their land, and for liaison with the municipality and government departments regarding services, planning and development of the land (CLARA, 2003; Cousins, et al., 2007). There was, thus, considerable uncertainty about whether communities could choose which entity (Land Trust, CPA or LAC) would act as the land administration committee (CLARA, 2003).

Furthermore, while the Act was in force, the Department of Land Affairs claimed that communities were able to choose between their traditional council and some other entity, while the Department of Provincial and Local Government claimed that where traditional councils existed, they would automatically become the LACs (Cousins, 2008). This confusion was compounded by the fact that CLARA failed to provide a clear set of procedures for how a community should make such a choice. The powers vested in the traditional authorities would have significantly undermined the tenure security of people living in communal areas, whose relationships with their traditional leaders ranged

from good, to distant, to hostile, but the Act also strengthened traditional authorities and councils politically, at a time when the relationship between them and elected local government officials remained unresolved and often tense (Cousins, 2008 cited in Clark & Luwaya, 2017). The Act would have granted traditional councils or authorities more extensive powers over land than had been provided for in customary law, and would have undermined local indigenous accountability structures, making it difficult for ordinary people to hold their traditional leaders to account.

Some scholars noted that the wide discretionary powers that would be vested in the Minister as the sole determinant of how the conversion of land rights would be undertaken based on the land rights inequity also raised constitutional concerns (Clark & Luwaya, 2017). Several commentators were of the view that the institutions to be created under the Act would be plagued by the myriad problems currently undermining the functioning of CPAs and, furthermore, held potential for the Act to entrench the traditionally undemocratic and patriarchal traditional councils as the key institutions responsible for administering communal land tenure under the Act (Paterson, 2011).

Concerns were also raised regarding the feasibility of implementing the Act given the capacity requirements and high costs associated with administering its anticipated cadastral system; and the potential for the Act's cadastral system to compound tribal boundary disputes and ethnic differences given its failure to properly account for the nested, overlapping and adaptive nature of communal land rights in rural areas (Paterson, 2011:198).

The Constitutional Court's declaration of CLARA as unconstitutional means that the post-1994 South African government continues to be faced with the challenge of regulating tenure reform in rural areas.

#### ***4.5.3 The Communal Land Tenure Policy (CLTP) of September 2014***

The Communal Land Tenure Policy (CLTP) of September 2014, just like the Communal Land Rights Act (CLARA) of 2003, proposes to transfer the "outer boundaries" of "tribal" land in the former Bantustans to traditional councils. The CLTP also provides for CPAs or trusts to own land titles, with input from community members (as prescribed in the CPA and in trust law). However, the CLTP and the government's new CPA policy declare that no new CPAs will be established in areas where traditional councils already exist (that is, in most of the former Bantustans). The CLTP

stipulates that the units of land transferred to traditional councils will be defined according to the tribal boundaries created in terms of the controversial Bantu Authorities Act of 1951. The Department of Rural Development and Land Reform (DRDLR) proposes that traditional councils will be given title deeds (i.e., full ownership) of these tracts of land, while individuals and families will get “institutional use rights” to parts of the land within them. The CLTP specifically states that traditional council will own the land and be in charge of investment projects such as mining and tourism ventures (Centre for Law and Society, 2015). However, as Clark and Luwaya point out: “The CLTP was criticised on a number of grounds by civil society. One of the primary concerns was that the schema established by the policy made no provision for individuals and households with institutional use rights to hold traditional councils accountable for their decisions” (2017:12).

More recently, the draft Communal Land Tenure Bill of 2017 was introduced as an attempt by government to create legislation that regulates communal land. Clause 28(1) of this Bill states that a community can, by a resolution supported by at least 60 percent of the households in the community, choose to have its communal land managed and controlled by one of three institutions: a traditional council, a CPA, or “any other entity as may be approved by the Minister”. However, the Bill was criticised for offering communities an artificial choice because the government’s Draft Policy Paper on CPAs states that no new CPAs will be established in areas where traditional councils already exist – that is, most of the former homeland areas (Clark & Luwaya, 2017). If the Bill is not amended before being passed, communities will, in reality, not have the right to choose a CPA to acquire, hold and manage their land. It is important to note that the power to register CPAs lies only with the Department of Rural Development and Land Reform, which has, in practice, strongly opposed and undermined CPAs. This means that, if this Bill becomes law, traditional councils are likely to remain the only options available to communities in the former homelands.

The TLGFA provided various powers of rural governance, land allocation and natural resource management to traditional authorities, and returned various powers of rural governance, administration of land and natural resource management to traditional authorities or traditional councils that now own the land on behalf of local communities. Mnwana (2014:21) asserts that the TLGFA gives traditional (tribal) authorities the power to preside over precisely the same geographic areas that has been defined by the apartheid government. Jara (2011) elaborates:

Through the TLGFA, the former homeland boundaries and their authority structures are preserved without democratisation or regard for the will of rural citizens. The same structures are given extensive powers over the lives of rural people, including the power of taxation. The accountability of these authorities to rural people is not adequately provided for and there is no mechanism to enable groups to withdraw from a community that was wrongly constituted under apartheid.

Jara (2011) is critical of these Acts, arguing that they define land rights of those on communal land exclusively by their tribal allegiance – even if the individuals or communities choose differently. The TLGFA and CLARA, in particular, made it easier for traditional authorities to assert unprecedented powers over community resources, as is the case elsewhere in the former Bantustans (see Jara, 2011). While the TLGFA encourages coexistence and cooperation between elected local governance institutions and unelected traditional authorities at local level, tensions have been reported in some areas where there is a duplication of roles between the unelected and the elected institutions (Oomen, 1998).

The CLTP undermines the capacity of rural people to hold traditional authorities accountable by giving traditional authorities land ownership powers as well as key involvement in investment opportunities (Centre for Law and Society, 2015). They also downplay, exclude and undermine countervailing indigenous, statutory and common law rights vesting in ordinary people (Centre for Law and Society, 2015). Although not all traditional authorities are corrupt, these laws allow corrupt, non-accountable traditional authorities to enter into business deals with big companies to sell community resources, as is often the case with relation to mining (Mnwana, 2016). It is possible that, through these laws, traditional authorities would attempt to enter into deals for tourism operations on community land without first obtaining consent from the communities, as has occurred in some instances (Ntimane, 2008). They may also allow the legal transfer of both protected areas and communal land to traditional councils comprised of apartheid-era tribal authorities (chiefs and headmen). The powers provided to unelected traditional authorities through legislation, as elaborated above, also have serious implications for the nature and meaning of democracy and citizenship, especially for rural people.



#### **4.6 Impact of restoration of traditional authorities' power over land in former Bantustans**

The previous section indicated that, since the early 2000s, the South African government drafted and the parliament passed laws that not only gave traditional authorities a secure position in the post-apartheid political space, but significantly enhanced their powers over rural land and local governance. This has created a complex situation with regard to the appointment of headmen, rural local governance, and land in some rural areas of the former Bantustans. In a 2014 case, the people of Cala Reserve in Xhalanga District won a battle against members of the royal family of ama-Gcina after the family used the TLGFA to bypass the customary way of electing headmen by the people of the Cala Reserve community and appointed a headman itself. In some rural areas, traditional authorities are using legal powers provided them by the state to maintain and extend their power, even over protected areas. In many parts of rural South Africa, for example, traditional authorities use the land restitution process, which was created to root out the power of traditional authorities, to re-invent their authority over land claims and to achieve their self-interests. The circumstances of tribal authorities' machinations to gain control of the protected area in Dwesa-Cwebe do not exactly match the discussion below. However, the discussion is instructive in that it illustrates the widespread actions of tribal authorities in rural areas in the former Bantustans in their attempts to reassert control over communal land – with the blessing of the Constitution and the various laws and policies described above. It, therefore, shines a light on the situation in Dwesa-Cwebe.

In Limpopo, Mpumalanga and KwaZulu-Natal, many land claims, including those in protected areas, are constituted as tribal claims represented by tribal authorities (Walker 2008). In these provinces, traditional authorities used the land claims process to regain power over local communities and tried to extend their control over community conservation land (Walker 2008). Drawing from her recent findings in Limpopo, Walker (2008:216) reports that claimants suggest that many traditional authorities see the restoration of tribal land as key to the reinvigoration of tribal identity and the power and status of tribal leaders. It is not, therefore, surprising that traditional authorities are at the forefront in most of these claims, including holding key positions within many of the CPAs or land trusts (Ngubane 2012). In some areas of KwaZulu-Natal, traditional authorities have made political jurisdiction claims over restored land with or without the consent of their people (Mathis, 2007; Ngubane, 2012). These traditional authorities are not only reasserting their power over land administration, but they also tend to be at the forefront of land claims and have sometimes availed themselves to be elected as, or to become, chairpersons of CPAs or land trusts (Ngubane 2012). In

Makuleke, for example, one chief consolidated his power by availing himself to be elected as chairperson of the CPA, established to collectively manage a nature reserve (Robins & van der Waal, 2008; Ribot, Chhatre & Lankina, 2008).

The Makuleke case has been perceived as an example of a community that has succeeded in reconciling democratically-elected institutions with traditional institutions (Robins & van der Waal, 2008:55). Based on her KwaZulu-Natal case study, Mathis reports that “traditional authorities have manipulated the land restitution process to reinforce their ‘resurgence’, which has led to a considerable number of conflicting land claims involving chiefs and their communities” (Mathis, 2007:116). It appears that in most cases the DLA favoured the traditional authorities at the expense of elected CPAs. Mathis (2007:117) observed, “The recent land reform process...was seen by traditional authorities as an opportunity to reassert their authority over land through potentially gaining control over land outside the current boundaries of their Tribal Authority.” She concluded that there was no doubt that, in many of these cases in rural KwaZulu-Natal, the power of traditional authorities over land was being enhanced due to their leadership roles in land claims, irrespective of the existence of elected institutions (Mathis, 2007).

Fraser maintains that in areas of South Africa in which traditional leaders or their allies exert their undemocratic influence, social life in nominally post-colonial South Africa is akin to a colonial present.

The restitution is unlikely to de-stabilize the colonial present unless, that is, the beneficiaries take control of the Communal Property Association formed in their name and use income from the land to achieve greater financial security and, hence, more independence from the traditional authorities (Fraser, 2007).

Such a turnabout might be the only way for the “subjects” in rural areas to reduce the influence of traditional leaders and autocratic decision making more generally. Some scholars claim that the lack of state capacity to enforce the adoption of new rules and to enforce accountable and transparent governance in rural areas leaves the door open for traditional authorities, who are effectively local dictators with unchecked power, to take control (LiPuma & Koelble, 2009).

In this section I showed that although initially, after 1994, traditional authorities had been marginalised, they were later not only provided constitutional recognition, but their role in natural resource management was reinstated by the Traditional Leadership and Governance Framework Act and the Communal Land Rights Act. In the post-apartheid era, traditional authorities, who are regarded by some scholars as undemocratic (Ntsebeza, 2002; 2006), were given space to operate at community level even while new elected institutions were in place. This, however, created tensions between traditional authorities and these institutions over control of land in communal areas. The legislation that recognises traditional councils as communities, favouring them over existing CPAs, may allow for the transfer of the land currently owned by CPAs, including jointly-managed protected areas, to traditional authorities. In reality, South African politicians are confused with regard to the position of traditional authorities in a democratic society; on the one hand they are undermined, while, on the other, they are empowered by various legislation. This study seeks to find out whether this is reflected in practice in the context of the role of traditional authorities in the post-land claim co-management of protected areas of the former Bantustans, which are strongholds of traditional authorities. The South African state itself seems to be torn between supporting traditional authorities, much maligned during the liberation struggle, and working through recently-created institutions that provide room for democracy to take effect in rural areas. Given this confusion, it is important to ask: What does this mean for the co-management of protected areas in communal areas such as Dwesa-Cwebe, which had been acquired through the restitution policy, and where newly-elected CPAs and Land Trusts are in place?

#### **4.7 Conclusion**

This chapter discussed the South African land reform programme, with specific reference to two of its three components: land restitution and land tenure reform, which are relevant to rural land claims related to protected areas. The chapter showed how the Restitution of Land Rights Act was introduced to grant dispossessed communities the opportunity to claim back their communal land that was situated in protected areas. The Act does not mention the involvement of traditional authorities in the co-management of protected areas such as Dwesa-Cwebe. Rather, it prescribes elected institutions to manage restituted protected areas on behalf of their communities. As I noted, there have been practical challenges experienced by the land restitution component in its attempt to complete the restoration of land in the cases of all outstanding restitution claims for land situated in protected areas. With regard to land tenure reform, I mentioned that the post-1994 parliament

enacted laws such as the Communal Property Act, whose objective was to encourage rural communities to form elected legal entities in the form of CPAs and Land Trusts to hold tenure over communal land and resources situated in protected areas. I also highlighted the problems that disrupt and undermine the functioning and powers of CPAs and Land Trusts mandated to own and manage the returned communal land situated within protected areas.

The chapter also demonstrated that co-management of protected areas was imposed in the democratic era as a strategy to ensure participation of claimant communities in the management of protected areas. I reviewed the Memorandum of Agreement between the then-Department of Land Affairs and the Department of Environmental Affairs and Tourism, as well as the National Co-Management Framework that stipulated co-management as the only governance option to be used in the management of protected areas in South Africa's communal areas. In these government policies, the involvement of traditional authorities, which continue to play a role in rural land administration, has been ignored. The two policies preferred elected CPAs or Land Trusts established under the Restitution Act to represent communities in the co-management of protected areas.

Legislation that empowers traditional authorities at the expense of democratic institutions was also discussed in this chapter. The legal empowerment of traditional authorities may give them an opportunity to assert and extend their power even to protected areas that are usually managed by rural communities through their democratically-constituted CPAs or Land Trusts. The restoration of traditional authorities' power over land administration in rural communities is currently undermining, and will continue to undermine, the authority of CPAs and Land Trusts in rural areas. The chapter argues that the continued legal extension of the power of traditional authorities and the unresolved question of their roles and powers in land administration in rural areas by the state will have negative implications for the co-management of protected areas in places such as Dwesa-Cwebe. Over the past two-and-half decades, we have witnessed, in the policy context, traditional authorities simultaneously being given power and power being taken away from them. This chapter showed why and how the ANC-led government reduced and increased the powers of traditional authorities at the same time. The literature review was an attempt to discuss some of these perspectives as they relate to this study. It is also a reiteration of the relevance of a continued review of the management of protected areas, with particular reference to the role of traditional authorities in

South Africa. For illustrative purposes, the next chapter will examine the above issues in relation to the Dwesa-Cwebe case.

## **CHAPTER FIVE**

### **Protected areas and traditional authorities in Dwesa-Cwebe from the 1800s to the present: Introducing the study site**

#### **5.1 Introduction**

This is the first of four chapters focusing on the case study, Dwesa-Cwebe, which is used as an illustration of the tensions and contradictions associated with the role of traditional authorities in democratic South Africa. It showcases how theory and practice unfold and interact in this specific community in the post-land claim co-management of protected areas on communal land, and the role played by traditional authorities. This in a context where elected community representative structures were set up. The purpose is to illustrate the evolution of the role of traditional authorities in the management of natural resources, following the establishment of protected areas. It also shows that the behaviour of traditional authorities is not static; it changes over time – a point largely neglected in current scholarly discussions.

Unlike a rural area such as Xhalanga (Ntsebeza, 2006), where chieftaincy was never entrenched and was highly contested, chieftaincy in Dwesa-Cwebe was rooted even before the arrival of colonial settlers in the nineteenth century. Dwesa-Cwebe is a complex case study in that it is made up of two historically-distinct social groups of isiXhosa speakers (amaBomvana and amaMfengu). These different groups were forged together in unity by their loss of land through colonial dispossession, which led to their joint struggle for the restoration of their rights to land, and, later, access to the nature reserve. The case study shows that, from the late 1800s, Dwesa-Cwebe residents were forcibly removed from their land by colonial and, later, apartheid authorities. Subsequently, the forest reserves were managed by state institutions. From the start, traditional authorities were not included in the management of state-protected forests and reserves as per the legislation and policies introduced by the racist states. However, the case study shows that although they had been excluded, traditional authorities were nevertheless used by the colonial and apartheid states to advance their conservation objectives with the enforcement of restricted access policies, as discussed in Chapters One and Three. In fact, in many instances in Dwesa-Cwebe from the 1930s to the late 1980s, traditional authorities collaborated with the Transkei homeland government to forcibly remove local

communities from their land for the creation of protected areas, and under soil conservation policies known as “Betterment”.

This chapter provides a detailed historical background of the people of Dwesa-Cwebe, their chiefdoms, and their interaction with nature before and after the establishment of what is now known as the Dwesa-Cwebe Nature Reserve (i.e., the period between 1800 and the late 1980s). The history of chieftaincy or traditional authorities since the pre-colonial era is also described. The chapter shows how colonial and apartheid land dispossession in the name of conservation affected local people’s reliance on natural resources and traditional authorities in Dwesa-Cwebe from the 1940s up to the late 1970s. I also explain the position of traditional authorities and their role in supporting the apartheid state to advance its aims regarding the management of state-protected areas such as the Dwesa-Cwebe Nature Reserve. The information presented here is based on secondary literature and, to some extent, interviews that I had conducted.

The chapter argues that traditional authorities in Dwesa-Cwebe have historically been involved in the management of protected areas, even though the nature of their roles has changed over the years. It also argues that, while decision-making powers over the management of state-protected areas such as nature reserves in the former Bantustans were vested in the state and its institutions, the same state officials could not manage those protected areas without the assistance of traditional authorities, who were therefore co-opted and made ex-officio conservation officials.

This chapter is organised into two broad parts, after this Introduction. The first part sets the scene and provides the context of the area of study and its inhabitants, sketching an overview of the Dwesa-Cwebe Nature Reserve and the communities around it. The second part focuses on traditional authorities in the area and examines their changing role in the management of natural resources in Dwesa-Cwebe since the 1800s. This second part is further divided into five sections. The first section discusses the Dwesa-Cwebe residents, state conservation-led land dispossessions and the position of traditional authorities from the 1800s to the 1930s. In the second section, I discuss the further removals of Dwesa-Cwebe residents and the position of traditional authorities from the 1930s to the 1970s. Section three, crucially, examines the establishment of the DCNR and related issues from the 1970s to the late 1980s. The next section looks at Betterment planning and traditional authorities in the 1970s and 1980s, and the last section discusses the position of traditional authorities in Dwesa-Cwebe from 1994 to the present.

## **5.2 The setting and social contexts: The study area**

This part sets the scene and provides the social context of the case study of Dwesa-Cwebe. It provides a general overview of the DCNR and local communities.

The Dwesa and Cwebe forests surround the Mbhashe River as it meets the Indian Ocean on the southeast coast of South Africa (Fay, 2009). The forests span approximately 18 km of coastline, and extend inward for three to five km, encompassing over 5 700 ha (Fay, 2011). The Mbhashe River itself is a natural, political and cultural boundary, separating the two forests; Gatyana and Xhorha magisterial districts, which had been created by the British colonial government in the 1890s; and two historically distinct populations of isiXhosa-speakers (Fay, 2011).

Before colonialism, the area that is known today as Dwesa-Cwebe Nature Reserve, was under the jurisdiction of Xhosa traditional authorities (Palmer, 1998). The land and its natural resources were used and controlled collectively by local people and traditional authorities (Fay, et al., 2002a). But the power to manage access to the land and natural resources by local communities was the domain of traditional leadership, since that was the institutional centre of local governance and the point of contact between the indigenous people and the colonialists (Fay, et al., 2002b). From the late 1800s, successive groups of local people were forcibly removed from their land by colonial, then apartheid, authorities, and the forests were managed by state institutions (Palmer, 1998). Nevertheless, until 1924, communities adjacent to the forests had access to them with minor restrictions, for collecting wood, plants and for fishing along the coast (Palmer, et al., 2002; Fay, 2007). This ended when the forests were fenced off in the early 1980s, following their designation as the Dwesa-Cwebe Nature Reserve by the Transkei government and traditional authorities in 1976 (Fay, et al., 2002b; Fay, 2011). With no active support from chiefs and headmen, the local people campaigned unsuccessfully for the return of the land in the early 1990s. As will be explored in Chapter Five, people from the surrounding communities invaded the reserve in late 1994, removing large quantities of shellfish and other resources (Ntshona, et al., 2006). As an immediate result, the conservation authorities and the newly-formed Eastern Cape Provincial Government granted local residents temporary permit-based access to the forest resources, and village-based Conservation Committees were established to promote the joint management of the reserves by the communities and the conservation authority (Palmer, 2003).



The study area for this thesis is the Dwesa-Cwebe Nature Reserve and its outlying seven villages of Hobeni, Mendwane, Ntlangano, Mpume, Ngoma, Ntubeni and Cwebe, each under the leadership of a headman (Palmer, et al., 2006). Dwesa is on the Willowvale side, while Cwebe and Hobeni are on the Elliotdale side. There is no place called Dwesa-Cwebe; that is just a designation for the purpose of the land claim. What exists are the Hobeni and Cwebe Administrative Areas on the Elliotdale side adjacent to Cwebe Nature Reserve, and Mendu and Msendo Administrative Areas on the Willowvale side adjacent to the Dwesa Nature Reserve.

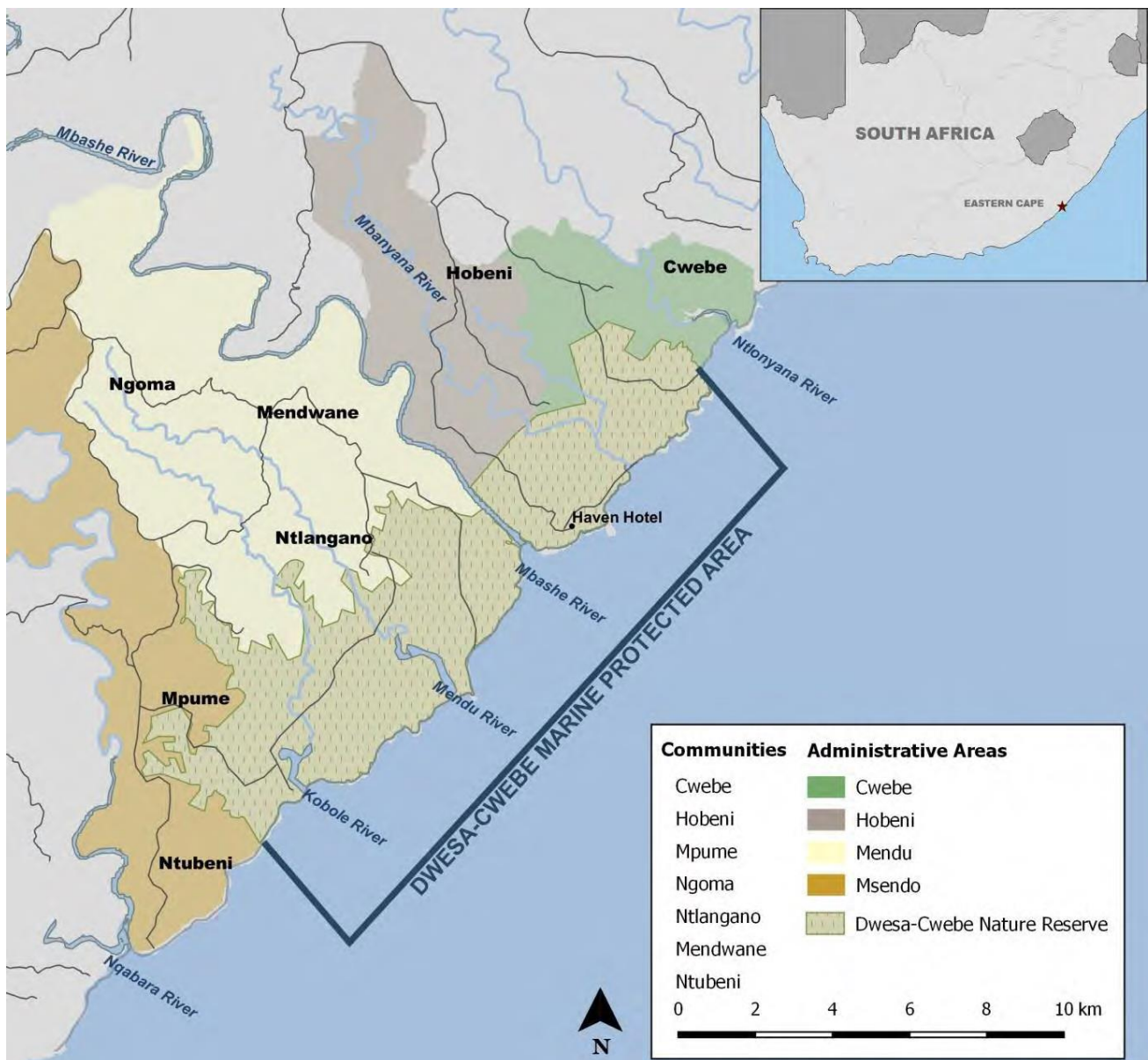


Figure 1 Map of Dwesa-Cwebe and administrative areas (Sunder, 2014:61)

The two reserves were amalgamated in the late 1990s to become the Dwesa-Cwebe Nature Reserve. The people living in the seven communities are diverse in their economic positions, livelihood strategies, ethnic and religious affiliations and forms of local social organisation (Fay, 2007). DCNR is located in the Amathole District Municipality on the Wild Coast in the Eastern Cape province of South Africa. Dwesa-Cwebe's total land area of approximately 235 square km consists of both state and communal land (Matose, 2011). The total population density of the Dwesa-Cwebe communities is estimated to be 15 000 people residing in 2 400 households (Sustainable Development Consortium, 2006:57; Matose, 2011). The DCNR is just under 6 000 ha in size, and occupies a small coastal strip of approximately 14 km in length that extends from three to five km inland (Matose, 2011:43). It conserves the largest tracts of indigenous coastal forest (80 percent in Dwesa and 50 percent in Cwebe) and coastal grassland in the Eastern Cape (Tavenner, 2018). The area is valued as a protected area and a biodiversity hotspot, being home to African buffalo, zebra, eland, crocodile, blue duiker, caracal, spotted genet, and black backed jackal (Tavenner, 2018:13). According to members of the Land Trust and officials of the Eastern Cape Parks and Tourism Agency, some of these animals no longer exist in the park due to "illegal hunting and vandalism of nature reserve fences" by local residents.<sup>4</sup> The DCNR is valued by community members for its numerous natural resources, including wood for fuel and construction, wild grasses and reeds for weaving, and medicinal and edible plants (known locally as *imifino*) (ibid.). Dwesa-Cwebe residents depend on forest resources for many of their livelihood needs (Palmer, et al., 2002; Timmermans, 2004). Fuel wood, thatch grass for building, sand and clay for building, fencing poles, weaving reeds, wild edible leaves, bush meat and marine resources such as fish and shellfish are all important for both consumption and trading (Fay, 2007a; 2007b; Pereira, et al., 2006; Shackleton, et al., 2007; Timmermans, 2004). Grazing resources are also considered extremely important due to the importance attached to livestock by local people (Fay, 2007b). Since 2007, when the then-Eastern Cape Parks Board took over the management of the nature reserve, people have been denied access to the reserve (Matose, 2016).

The name Dwesa-Cwebe Nature Reserve is an amalgamation of Dwesa Nature Reserve and Cwebe Nature Reserve, which had previously been managed separately but are now treated as one nature reserve. The concept of the larger "Dwesa-Cwebe community" is a politically and socially embedded

---

<sup>4</sup> Interview with an official of the Eastern Cape Parks and Tourism Agency (she requested not to disclose her name), June 2017.

concept, created largely through the interaction of the state with the communities in this area (Sunder, 2014). It has been described as “an imagined community” (Palmer, et al., 2006; Sustainable Development Consortium, 2006:57), an identity obtained through their interfacing with the statutory authorities as part of their claim to their protected area and associated natural resources in 2001 (Sunder, 2014). This identity as a single community does not correspond directly to a single territorial or political entity, and the politics of this identity as a single community are ever present (Fay & Palmer, 2000; Sunder, 2014). Despite their differences as outlined above, the people from Cwebe, Hobeni and Dwesa communities were brought together by the struggle for land and access to forest and marine resources within the nature reserve (Fay & Palmer, 2000).

### **5.3 Changing role of traditional authorities in managing Dwesa-Cwebe natural resources: 1800s to the present**

This part traces the history of the governance of the area under study, from before the indigenous people encountered the colonialists to the present. It is divided into five sections. The first describes the history of the people of Dwesa-Cwebe and surrounds in relation to their interaction with natural resources and traditional authorities from before the annexation of the region by the colonial regime in the 1800s, and into the 1930s. The second section examines the further removals of Dwesa-Cwebe residents and the position of traditional authorities from the 1930s to the 1970s. In Section 3, I look at the establishment of the Dwesa-Cwebe Nature Reserve, covering the period from the 1970s to the late 1980s, while the next section discusses Betterment planning and the role of traditional authorities in Dwesa-Cwebe during the 1970s and 1980s. Finally, the fifth section examines the governance structure in the area from 1994 to the present.

#### ***5.3.1 Dwesa-Cwebe residents, land disposessions, and traditional authorities: 1800s – 1930s***

Indigenous people of the Dwesa-Cwebe area have a long historical relationship with nature. From time immemorial, they had relied on forest and marine resources for their livelihoods (Timmermans, 2004). In the pre-colonial period, hereditary traditional authorities were the only local governance institutions responsible for the control and administration of land and the lives of rural people in the area (Fay, et al., 2002b). They were the ones primarily responsible for natural resources management, which included setting and enforcing controls and regulations with respect to access and use of land, forests, grass, water and other resources (Palmer, 1998).

Prior to the advent of the colonial regime in the 1870s in what is now the Eastern Cape, kings, paramount chiefs and chiefs in the Dwesa-Cwebe area ruled over three different isiXhosa-speaking groups. These groups and their traditional authorities fought each other over the authority and control of the land in Dwesa-Cwebe (Palmer, 1998; Fay & Palmer, 2000; Matose, 2009). Ngconde was the first Xhosa paramount chief to govern the area in the mid-17th century. His Great Place was near the Mbhashe River, which now divides the Dwesa-Cwebe communities of the reserve (Palmer, 1998). Chief Phalo ruled the amaXhosa in the 18th century. He and his followers moved westwards, leaving the area to the east of the Mbhashe River, which included the Cwebe forest, without a chief (Palmer, 1998). The second group that claimed Dwesa-Cwebe as theirs was the amaBomvana, who came from what is now KwaZulu Natal. As they were landless in Dwesa-Cwebe, Chief Gambushe of the amaBomvana purchased land from King Hintsa, who was a successor to King Ngconde, and a ruler of the Gcaleka Xhosa, for ten cattle.

The purchased land had been under King Hintsa's authority, but he had not used it, as he and his subjects occupied the area west of the Mbhashe River (Palmer, 1998; Palmer, et al., 2006). Having escaped from King Shaka of the amaZulu nation, amaMfengu arrived later and also established their homesteads west of the Mbhashe River, on the Dwesa side of the reserve (Beinart, 2003). Historians indicate that this group supported the colonial settlers during the 1877-78 frontier wars against other isiXhosa-speaking chiefdoms. Because of their loyalty, the colonial administration gave amaMfengu authority over communal land, particularly where such land was of little value to whites or in areas of contestation between chiefdoms (Switzer, 1992:60-75). Over a period of time, distinctions emerged between the Dwesa and Cwebe villagers. Villagers who lived west of the Mbhashe River, on the Dwesa side of the reserve, came to be regarded as amaGcalecka/amaMfingo, while the people east of the river, on the Cwebe side of the reserve, came to be known as amaBomvana (the Reds) (Palmer, 1998). Historians explain that amaBomvana had migrated along the Eastern Cape coast in the late 17th century, seeking refuge from the wars in southern Natal (Parsons, 1982:34 cited in Sunder, 2014:104). At this time, natural resources were managed by local people and their traditional authorities (Palmer 1998). Traditional authorities also played a major role in the allocation of land to the villagers, and it was the responsibility of both traditional authorities and their "subjects" to control and manage land and its resources in Dwesa-Cwebe (Palmer, 1998; Matose, 2010). People's access to the land and its resources, such as forests, was regulated by traditional authorities (Palmer, 1998).

However, from the late 1800s, successive groups of local people were forcibly removed from their land by colonial authorities to create state-protected areas or forests, which were then managed by state institutions (Palmer, 1998). After the 1878 “frontier war”, which led to the annexation of the whole Transkei region, the chiefs were disempowered and natural resource management responsibilities in the protected areas were vested in the office of colonial magistrates who had jurisdiction in the various districts of the Transkei (Palmer, Timmermans & Fay, 2002). The annexation of Dwesa-Cwebe in 1885, and the conservation practices that were imposed by the colonial dispensation, negatively affected the powers and roles of traditional authorities over resource management there. Palmer (1998) argues that colonialism disrupted the power of traditional authorities in Dwesa-Cwebe and, along with that, the traditional environmental controls. He further states that the disempowerment of traditional authorities over natural resources management created opportunities for travelling groups of sawyers to steal natural resources from the indigenous forests. “In the aftermath of the annexation of the Transkei in the 1890s, the disempowerment of traditional authorities...brought dislocation to the Dwesa-Cwebe communities, which most depended on traditional authorities, the Bomvana and the Gcaleka,” Palmer (1998:3) explains.

With the assistance of traditional leaders who had been appointed as government officials, the colonial government of the Cape Colony dispossessed local people of their homesteads in the grasslands within the forests and between the forest and the coast, and declared Dwesa forests as demarcated state land in 1891, and those of Cwebe in 1893, under the Cape Colony’s Forest Act of 1888 (Fay, et al., 2002a; Eastern Cape Parks Board, 2007). The objective of the colonial governments was to control, conserve and manage the forests and all natural resources (Palmer, et al., 2002; Matose, 2009; Kostauli, 2011). From the 1890s until 1903, local people were still allowed to live inside the forest reserve and to use a variety of natural resources, often competing with efforts to control the forests (Fay & Palmer, 2000; Palmer, et al., 2002). However, that accommodation did not last long, as Fay, et al (2002a:52) explain:

With the visit of Dr J S Henkel, the then South African forest conservationist, to the Dwesa-Cwebe area in 1891, these residential rights inside the state-demarcated forests ended as local people were perceived to be a threat to the preservation of the forest and a constant danger to the forest on account of grass fires and also very inconvenient.

Henkel noted that, with the dispossession of Dwesa-Cwebe residents, “The Government has thus acquired most valuable areas, suitable for the cultivation of sugar-cane, coffee, tea [and] mangoes” (Henkel, 1893 quoted in Fay, et al., 2002a:53).

The Dwesa-Cwebe communities were gradually evicted from the demarcated state reserves from 1894 onwards, after the demarcation was made official, but some people continued to live within these reserves under permit until 1924 (Fay, et al., 2002a). The central motivation for the establishment of Dwesa-Cwebe as forest reserves was mainly economic (Matose, 2009). The objective at the time was management and conservation of indigenous forest reserves for both preservation and commercial gains (Kostauli, 2011). The Forest Department was responsible for the control and management of the indigenous natural resources that had previously been managed by local chiefs and local people (ibid.). It began to regulate local use and enforce regulations concerning all activities within the state conservation areas and forests (Palmer, et al., 2002a). Proclamation 135 of 1903 empowered the Forest Department to enforce regulations concerning all activities within government forests (Fay, et al., 2002a:60). Unauthorised removal of forest produce, negligent use of fire, or damage to forest beacons were all offences punishable with either a fine or a maximum three-year jail term (with or without hard labour). This was reduced to one year in the case of undemarcated forests, reflecting their lower status in the eyes of the colonial Forest Department officials (Fay, et al., 2002a). One example of this kind of punishment was the charging of villagers from Msendo Administrative Area, outside the western half of Dwesa, in December 1912, for cultivating crops on grasslands that fell within the demarcated forest area (ibid.:54).

Local people were not allowed to graze their livestock in the grasslands at Dwesa-Cwebe (ibid.), and from 1911 it was illegal to graze cattle in any wooded portion of a demarcated forest (Vermaak & Perkham, 1996:69 in Fay, et al., 2002b:61). The 1924 Cwebe Working Plan allowed Dwesa-Cwebe residents to graze their cattle on “unfenced grass land but not in the wooded portions of the reserve” (Van der Byl, 1924:1 in Fay, et al., 2002b:61). In the 1920s, the Haven Hotel and cottages inside the nature reserves were created as a means to attract tourists to Dwesa-Cwebe (Fay, et al., 2002b; Matose, 2009). Thus, while it was illegal for Dwesa-Cwebe residents to graze their livestock in the reserve, white owners of tourism businesses were allowed to do so (Fay, et al., 2002a). The 1927 Native Administration Act and the proclamations following it brought land tenure and grazing in the

reserves under the authority of the Native Affairs Department (NAD), which was to act in consultation with chiefs and headmen (Mills & Wilson, 1952 cited in Fay, et al., 2002b:73).

In fulfilling their conservation interests, “the colonial magisterial rule manipulated traditional authorities in the area” (Fay, et al., 2002b:57). Traditional authorities were merged into the administration, in part through the system of District Councils, which was consolidated in 1931 into the United Transkeian Territories General Council – also known as the Bunga (discussion). The Bunga was set up with 30 ex officio members (27 of them white magistrates and three paramount chiefs) and 78 elected representatives (Fay, et al., 2002b:58). Conservative Africans, including many chiefs, boycotted the Bunga but “managed somehow to continue playing administrative and judicial roles, more or less *sub rosa* [because] in the eyes of the uneducated and even some of the better educated...[t]heir authority, however restricted, had value as the only authority not derived from whites” (Mayer 1966:288-89 cited in Fay, et al., 2002a:58).

The magistrates demoted and integrated traditional authorities into the colonial administration, and headmen and chiefs thus became paid officials appointed by the state (Fay, et al., 2002a). “In this situation as headmen were operating at the level of the administrative area, they were in a very different position. As state-appointed officials, headmen co-operated or they were dismissed” (Fay, et al., 2002b:58). Evans points out (1997:209 cited in Fay, et al., 2002a:58), “Chiefs had to serve as a front-line phalanx of vulnerable foot soldiers interposed between peasants and the local magistrate, for duties such as tax collection and turning down applications for land were calculated to breed distrust and resentment among villagers”. Forced to reconcile the conflicting simultaneous roles of servants of the white government and leaders of communities, headmen frequently found this contradiction impossible to effectively discharge in practice. The colonial dispensation gave more regulatory powers to the administration and considerable authority to magistrates, while traditional authorities found themselves torn between their subjects and the state (Fay, et al., 2002b). “For the Dwesa-Cwebe people...[t]hese forests...were the subject of contestation between local people, the [Forest Department] and the Native Affairs Department (NAD)” (Fay, et al., 2002a:65). As early as 1893, headmen had accepted their new role to administer government regulations regarding the undemarcated forests, or “headmen’s forests” as they were called, in their jurisdictions (Palmer, Timmermans & Fay, 2002). Lister illustrates:

Headmen would be responsible directly to the forester of the district, between whom and the people they would act as a buffer. I am told by the magistrates that these posts would be coveted by chiefs and headmen, for the sake of the position and importance it would give them, as agents of government...[I]rritation would be assuaged and the leaders of the people would be with us (Lister, 1893:8 cited in Fay, et al., 2002a:65).

As a result of the administrative problems in meeting the demand for “free permits” for African users of natural resources, the government decided to allocate to each headman a free annual permit authorising him and his subjects to make use of the undemarcated forests in his area.

In 1932, the undemarcated forests of Dwesa-Cwebe were formally regarded as headmen’s forests. “Proclamation 224 of 1932 made it the responsibility of the headmen to manage and conserve for the public benefit all forest produce growing on any location commonage within their jurisdiction in Dwesa-Cwebe” (Palmer, Timmermans & Fay, 2002:65). Headmen were also given the discretion to “grant or refuse permission for the cutting and removal of such produce other than timber trees” (ibid.). Timber trees or indigenous trees with potential commercial value were excluded and subject to further government regulation. Although headmen were legally allowed to remove dry firewood and bark, including headloads of firewood for sale, they were not allowed to charge fees for forest produce.

Under such conditions, traditional authorities were often tempted to use their privileged access to forest resources to benefit themselves, thus establishing themselves as an exploiting elite, alienating themselves from their people, and compromising their own legitimacy (Palmer, Timmermans & Fay, 2002). “The position of headman was often compromised and controversial, and his role in administering these forests was all the more difficult as a result of the unpopularity of the regulations pertaining to ‘reserve trees’” (Fay, et al., 2002b:66). However, the Forest Department had challenged the role of headmen over undemarcated forests, accusing local people who had permits to cut trees in headmen’s forests of cutting trees in demarcated state forests as well (Palmer, Timmermans & Fay, 2002). One Conservator of Forests indicated in a report, “Many headmen are quite irresponsible and allow promiscuous felling and are strongly suspected of accepting remuneration in kind from natives” (Conservator of Forests, 1932 cited in Fay, et al., 2002b:66).



The exploitation of the headmen's forests became another focus of the perennial tension between the Department of Forestry and the NAD. One district forest officer complained in a 1920 letter to the Conservator of Forests:

In nearly every District, illegal felling and working of timber trees from forests handed over to headmen is widespread, and in no instance has any satisfaction been obtained in bringing the case into local courts, and this is very disheartening to the forest staff who are very keen in trying to protect the timber trees, at least, in these forests. The fact that action of some sort is not undertaken by the NA Department seems to convey tacit consent. (Fay, et al., 2002a:66)

For the Forest Department, the handover of forests to the headmen appears to have been an act of despair; the Conservator of Forests wrote at the time that “the position of the great majority of headmen's forests is today hopeless,” and called for the department to focus its attention on 1) the preservation of the demarcated forests, and 2) the creation of plantations, with the headmen's forests being closed once plantations became capable of meeting the demand (Conservator of Forests, circa 1932).

Fay, et al. (2002b:66) note:

While the colonial magistrates and Forest Department took over the natural resource management role from traditional authorities, they depended greatly on traditional authorities to enforce regulation concerning the use of natural resources by rural people. A number of smaller forest patches outside the nature reserve, designated “Headman's Forests”, have always been used by local communities under traditional authority.

This section showed that between the 1800s and the 1930s, Dwesa and Cwebe families were evicted from within the state forest boundary, and were moved to the land adjacent to the fenced reserves of Dwesa-Cwebe. However, despite the removal of local people due to the declaration of Dwesa-Cwebe forest as state forest reserves, local people were still allowed access rights to certain resources for diverse purposes, and with minor restrictions. Moreover, the establishment of Dwesa-Cwebe Forest Reserves also disrupted the historical role of traditional authorities regarding the regulation of community access to forest resources. Traditional authorities were incorporated into the colonial

administration in order to enforce access restrictions by local residents, and their position remained thus throughout the rest of the colonial era.

The next section examines the situation of the people of Dwesa-Cwebe and the role of traditional authorities from the 1930s to the 1970s.

### ***5.3.2 Further removals of Dwesa-Cwebe residents, and traditional authorities: 1930s – 1970s***

From the 1930s to the 1970s, policies that had previously been introduced were implemented more brutally by the government of the Union of South Africa. It was during this period that Dwesa-Cwebe communities lost their residential rights inside the Dwesa-Cwebe Nature Reserve, albeit with continued rights of access to forest products and grazing (Matose, 2009). In the 1930s, the Dwesa and Cwebe communities were removed from the area and relocated to land adjacent to the fenced forest reserves of Dwesa-Cwebe. The removal was effected to give white traders and farmers priority access to prime land. Dwesa-Cwebe community members were not allowed to live in the reserves, but they continued to use the land and its resources under controlled conditions. The 1930s were marked by growing official concern about how to deal with increasing poverty in the reserves, and to thereby prevent African urbanisation (Fay, 2003). The 1932 Native Economic Commission Report exemplified official concerns about soil erosion, overstocking and the declining reserve economy (Delius & Schirmer 2000:720-721 cited in Fay, 2003:45). It placed the blame for rising poverty on the agricultural practices of rural Africans, and concluded that the reserves needed a programme of development to prevent further declines in livelihoods and to prevent migration to urban areas (Fay, 2003). The state responded by introducing betterment planning. The betterment conservation programme was initially implemented by the Union of South Africa government in the 1930s, and later by the apartheid government from the late 1940s up to the 1970s. During these periods, these governments used traditional authorities to enforce the implementation of the betterment conservation programmes in Dwesa-Cwebe (Fay, 2003). Although some traditional authorities refused to involve themselves in these state programmes, the majority of them, across Dwesa-Cwebe, participated (ibid.).

These local events intersected with national political changes from 1936, including the passing of the 1936 Native Trust and Land Act and subsequent segregationist policies that continued through the

election of the National Party government in 1948 – the Bantu Authorities policies of the 1950s, the granting of “self-rule” to Transkei in 1963, and its “independence” in 1976. The Native Trust and Land Act extended the process of territorial segregation that the 1913 Natives Land Act had begun (Fay, et al., 2002b). The Act “effectively granted formal recognition to the outsiders who had come to live at Dwesa-Cwebe, creating an enclave for white recreational land users in black native reserves” (Fay, et al., 2002b:80). As a result, some local families in Dwesa and Cwebe were removed from the coast around 1937 (Terblanche & Kraai, 1996:7 cited in Fay, et al., 2002b:81). Through these laws, chiefs and headmen were given the authority to manage and allocate land, while magistrates issued certificates of permission to occupy (Ntsebeza, 2002; 2006). I will not delve too deeply into these laws, suffice to say that they made way for the state to racially dispossess black communities for the creation of nature reserves and the implementation of conservation policies such as the betterment programmes in the Transkei, particular in Dwesa-Cwebe.

With the granting of “independence” to homelands in the 1970s by the National Party government, and following the passing of the Promotion of Bantu Self Government Act 46 of 1959, the Transkei Constitution of 1963 delegated responsibility for the preservation of game and fish in the Eastern Cape to the Transkei Government (Sunder, 2014:118). Subsequent to the establishment of “self-government” in the Transkei in 1963, a Department of Agriculture and Forestry was established, which transformed the former demarcated forests into “forest reserves” (Fay, et al., 2002b; Matose, 2009). It also established a “Flora and fauna” division to exercise its constitutional responsibility (Fay, et al. 2002b:89). This department was responsible for all matters previously connected to nature conservation under the Cape Provincial Administration (Transkei Annual Report, 1970:61 cited in Fay, et al., 2002b). Working with traditional authorities, the Transkei government did not allow local villagers to enter the reserves, and forbade people to own tools for cutting and harvesting wood (Fay, et al., 2002b). Outside the reserves, restrictions on listed trees were enforced through headmen who continued to manage undemarcated forests in Dwesa-Cwebe (Matose, 2009). In 1969, the Transkei Forest Act was enacted.

### ***5.3.3 Establishment of Dwesa-Cwebe Nature Reserve: 1970s – late 1980s***

In 1971, the Transkei government passed its own Transkei Nature Conservation Act 6 (Fay, et al., 2002b:90; Palmer, et al., 2006), which enabled the introduction of increased preservation of natural resources and the establishment of nature reserves in the Transkei. Chapter 5, Section 22(1) of the

Act states: “For the propagation, protection and preservation of fauna and flora, the Minister may, by notice in the Official Gazette, establish a nature reserve (to which he may assign a name).” The Act also provides headmen ex officio status as conservation officers. In section 30(1), the Act provides that the minister is obliged to appoint nature conservation officers. Chapter 7, Section 30(2), states: “Every magistrate, chief, headman, policy officer and forest officer, every officer appointed by the Minister in terms of section 22 (4) (a) of this Act and every officer appointed by a local authority in terms of section 60 (2) (j) of the Nature Conservation Ordinance, 1965, shall be a nature conservation officer ex officio.” The Nature Conservation Act gave nature conservation officers, which included chiefs and headmen, powers to arrest and fine any person who broke the provisions of the Act. These powers are provided in Chapter 7, Section 31(1). It decreed that no person shall, without authorisation, plunk, cut, take, gather, uproot, break, damage or destroy any indigenous plant in a nature reserve.

The Act amended and expanded on the Forest Act mentioned earlier. It effectively put an end to hunting in the forest reserves, and allowed for dogs to be shot on sight. The collection of honey was prohibited, as was fishing – except in tidal waters (Fay, et al., 2002b: 90). In 1975, the Transkei government used the Nature Conservation Act to establish the Dwesa-Cwebe Nature Reserve (Fay, et al., 2002b). The management of the DCNR was transferred to the Transkei Nature Conservation Department, which retained the reserve’s status as a “Demarcated State Forest”. While legally constituting two reserves, they have practically been managed as a single reserve since then, hence the reference here to the Dwesa-Cwebe Nature Reserve (DCNR) as a single entity. Subsequent to the establishment of DCNR, the state fenced it and filled it with a range of wildlife (including alien species such as buffalo, hartebeest, wildebeest, rhinoceros and crocodile) (Fay, et al., 2002b; Matose, 2009). Local residents were completely denied access to use natural and marine resources in the reserve (Fay & Palmer 2000; Fay, et al., 2002b). This was confirmed by a group of old women and men from Hobeni and Mpume, who told me: “Emveni kokufa kwekwezilwanyana zasendle savalwa ukuba singangeni ngaphakathi kwi-nature reserve ngurhulumente neenkosi. [After the introduction of the wild species in the nature reserves, we were told not to enter the reserve again by the government and local chiefs.]”<sup>5</sup>

---

<sup>5</sup> Interview with a group of women and men from Mpume, Ntubeni and Cwebe, May 2012.

White people were allowed to maintain residential areas within the reserves and to use the forest and sea resources while the locals were denied access to the reserve and its resources. The Wildlife Protection and Conservation Society lobbied the Transkei government to increase conservation along the coast (Wildlife Society, 1976 in Fay, et al., 2002b:92), and the society commissioned a scientific report on Dwesa Forest in 1974 (Fay, et al. 2002b:92). A study conducted by Dr E J Moll recommended the “examination of the practice of forest resource harvesting, the implementation of controlled burning of the grasslands, the controlling of cattle grazing, and the discontinuation of shellfish harvesting to allow for recovery, after which limits should be placed on harvesting” (Fay, et al., 2002b:91; Matose, 2009). “Woodlots of exotics such as gums and wattle were established near the Dwesa and Cwebe forests so that the residents would have alternative sources of wood for building and fires, but these were never popular and hardly used” (Palmer, et al., 2006:26).

At the time, the surrounding communities were increasingly seen as a threat and the Transkei administration’s preservationist attitude to the reserve caused them to impose an entrance fee of R1.00, so as to deter locals (Matose, 2009). Local people were treated as “subjects” (Mamdani, 1996) without any legal rights to the forests; there was no contractual relationship between local communities and the reserve (Fay, 2013). A former sub-headman from Hobeni (Cwebe side) asserted: “Elihlathi lavalwa ngurhulument ka-Matanzima nezinyiNkosi. Zangesixelelwe sabonasekufakwa izilwanyana zasendle. Kwaxelelwa iinkosi ezithile zodwa. [The forest was closed by some chiefs and the Matanzima government. When the nature reserve was fenced off and filled with wild animals, no one was informed or consulted except others chiefs who were close friends of the Matanzima state.]” He further indicated: “When this nature reserve was created, we [Dwesa and Cwebe people] were told by our chiefs that we were no longer allowed to use and access forest resources and even to graze [our] cattle inside the reserve. Matanzima and chiefs denied us access to forest and marine resources within the forest reserve.”<sup>6</sup>

Many older people in the community had similar recollections., One of them told me: “We were not allowed to have access to the forests for collecting wood and plants, and to fish on the coast by the then Transkei government and some chiefs. They treated us as strangers in our own land.”<sup>7</sup>

Another respondent from Ntubeni said:

---

<sup>6</sup> Interview with former sub-headman from Hobeni, May 2012.

<sup>7</sup> Interview with a group of women and men from Hobeni, Mpume and Ntubeni, June 2012.

Sasiphethwe kakubigqitha ziiNkosi zisebenzisana norhulumente kaMatanzima, zingafuni singenengaphakathi kwi-nature reserve. Babengafuni nobasiyojonga amangcwaba otatanotamkhulu bethu. Kwakubuhlungu, kubakusenjalo nanamhlanje. Asikavunyelwa nangulorhulumente umtsha singene ngaphathikwi-nature reserve. [We lived under harsh conditions imposed by our traditional leaders who collaborated with the Matanzima regime to deny us access to the nature reserve. They did not even allow us to visit the graves of our fathers and forefathers. It was painful then as it is painful today. Even the new government does not allow us to enter the nature reserve.]<sup>8</sup>

Some residents I interviewed indicated that the fencing of the nature reserve by government and traditional authorities severely deprived the people of Dwesa-Cwebe. One man from Cwebe said that with the fencing of the reserve, “Our livestock are starving because they are no longer permitted to graze inside the nature reserve.”<sup>9</sup> Another man from Hobeni, indicated: “Babevale mba, kubakusenjalo nanamhlanje, asikwazi nokukha iipali zokwakha ubuhlanti benkomo noxhoma izindlu zethu uphahla, nokulobaoku. [They closed off grazing for our cattle; we cannot even access forest poles for building our cattle kraals and roofing our homestead, even today.]”<sup>10</sup>

This shows that the creation of the DCNR by the homeland government and its policing by traditional authorities had created a situation where local residents were not only denied access to natural resources, but also not allowed to visit the graves of their fathers and other ancestors within the nature reserves, and that this practice continues under the current democratic government. In the 1970s and 1980s, restrictions regarding the Dwesa-Cwebe Nature Reserve were intensified. The narratives from local people also suggest that when the DCNR was established in 1975, they were neither consulted nor informed. According to many informants, they were just told by their headmen to move from their land earmarked for the establishment of the protected area. This showed that consultation on (or information about) the creation of the DCNR probably occurred through certain headmen and chiefs, and their legitimacy had, in many ways, thus been compromised. This could be true, because, as shown above, the Nature Conservation Act included headmen and chiefs in the management of Dwesa-Cwebe Nature Reserve as ex officio nature conservation officers.

---

<sup>8</sup> Interview with Phumzile Jekula, May 2012

<sup>9</sup> Interview with a man from Cwebe (he requested not to disclose his name), June 2012.

<sup>10</sup> Interview with David Gongqoshe from Hobeni, April 2012.

Throughout the 1980s, restrictions regarding access to the Dwesa-Cwebe Nature Reserve increased. It also became more difficult for the people of Dwesa-Cwebe to resist and challenge state restrictions on access to the nature reserves.<sup>11</sup> Some community members recalled, that, at that time, chiefs and headmen were the eyes and ears of the government. They related: “Zazisoyikeka, kwaye ukuba wophule umthetho wawusohlwaywa kabuhlungu ziiNkosi norhulumente. [Traditional authorities were cruel, and we feared them a lot. When you broke the law and entered the nature reserve, you would be prosecuted and punished by local chiefs and the government.]”<sup>12</sup>

People were no longer allowed to utilise forest resources or to graze their livestock inside the nature reserves controlled by the state and traditional authorities. More nature conservation rangers, including traditional authorities, were employed and instructed to enforce the new restrictions. Those who were caught inside the nature reserves were prosecuted and fined by the state and by traditional authorities. Consequently, local people often resented this version of indirect rule, and the legitimacy of the traditional authorities was increasingly being questioned (Kepe, 1997). In Dwesa-Cwebe, chiefs were hated because of the role they played under the Transkei administration (Fay, et al., 2002b). However, regardless of the nature of their role, it is clear that traditional authorities had always been involved in the management of natural resources, which explains their continued desire to be involved in management of protected areas such as DCNR.

#### ***5.3.4 Betterment planning and traditional authorities in Dwesa-Cwebe: 1970s – 1980s***

Betterment planning was initially introduced in South Africa in the 1940s. In Dwesa-Cwebe, it was implemented in the 1970s and 1980s by the Transkei government (Fay, 2009). “Prior to ‘betterment’, homesteads were clustered in neighborhoods affiliated to sub-headmen, situated on the ridges above the streams and rivers that incise the landscape, with gardens adjoining homesteads and fields and grazing land more distant” (Fay, 2012:60). Betterment planning was launched primarily as a conservation project in response to soil erosion that was, by the 1930s, becoming a feature of a number of areas in the Transkei, including Dwesa-Cwebe. The betterment planning scheme was aimed at combating soil erosion by dividing land in a locality into residential, arable and grazing sections (Matose, 2009). These programmes led to the forced resettlement of at least three million people across the country (de Wet 1995a:28 cited in Fay, 2003:45).

---

<sup>11</sup> Interview with six people from Mpume, Ntubeni and Hobeni, May 2012.

<sup>12</sup> Interview with two fishermen, and a former sub-headman, June 2012.

The history of the betterment scheme in the Transkei is intimately connected to the creation of the Bantu Authorities system of local administration (Fay, 2003). Through this system, chiefs were given powers to impose controls over rural people, which was a significant factor in the process of re-shaping traditional authority (Sunder, 2014). By the 1970s, reports had been circulating that the Transkei president, K. D. Matanzima, had given instructions that a strip along the Transkei coast should be cleared of people in order to preserve forests and marine life and to create commercial cattle ranches (McAllister, 1989:357 cited by Fay, 2012). Chiefs and headmen were recorded as giving their assent to betterment planning and, in early 1978, they made a formal request for Hobeni to be planned (Fay, 2012:61). With assistance from some local headmen, the Transkei government implemented the programme in the Dwesa communities in the 1970s and on the Cwebe side of the reserve in the 1980s (Palmer, et al., 2006).

The collaboration of some headmen made it easier to impose betterment in Dwesa-Cwebe (Fay, 2003). As the betterment programmes were implemented in Dwesa-Cwebe rural areas, local villagers and their agricultural gardens were removed from the fence-line in order to discourage and make it difficult for local people to access and use the reserve (Palmer, et al., 2006:26). According to some reports, 46 households were forced to move as a result of the establishment of the protected area (Sustainable Development Consortium, 2006:27). However, Fay (2003) puts the number much higher: "In Hobeni alone 65 homesteads were removed through the second wave of betterment." The displaced families lost access rights to natural resources within the Dwesa-Cwebe Nature Reserve. The betterment planning was enforced on local people to create a buffer between residential areas and the reserve, premised on the supposition that the separation of people from the natural resources, which the state sought to conserve, would help the management and conservation of natural resources (Matose, 2009).

The enforcement of betterment planning in rural areas compromised the powers of headmen in relation to land allocation. Since traditional authorities acted as state agents, they had no choice but to work with the Department of Agriculture and Forestry before areas were surveyed for conversion to different land uses. In many instances, traditional authorities were forced to act as intermediaries in the implementation of these betterment conservation practices, which put them in a very difficult position (Matose, 2009). Some traditional authorities, however, used their controversial relationship with the homeland government to enrich themselves by grabbing vast plots of fertile land and the



largest fields, or by taking bribes before allocating land under betterment regulations (Spiegel, 1992 cited by Matose, 2009).

It was even more difficult for traditional authorities to resist government policies during the apartheid era because they were paid salaries by the government (Goodenough, 2002). For example, “Xhora’s traditional leaders abandoned their resistance to villagization in the 1970s, joining the political camp of Transkei President K. D. Matanzima” (Lodge, 1983:281–286 cited by Fay, 2012:60). As recorded in a 1959 letter from Elliotdale magistrate J. Fenwick to the chief magistrate in Umtata, Chief Zwelinqaba had received a bonus after he had made a public statement that it was his wish that the whole Bomvana tribe accept stabilisation (betterment) and cooperate with the authorities in this regard (cited in Fay, 2003:82). Within months after Zwelinqaba’s pronouncement, the Bantu Authorities system was established throughout the district,<sup>13</sup> and, in subsequent years, Zwelinqaba and Xhora’s other traditional leaders would go on to be among the most loyal supporters of the Transkei homeland government (Fay, 2003). Traditional authorities, as a result, lost the respect of their constituencies and came to be seen as part and parcel of the oppressive state machinery (Ntsebeza, 1999). Betterment destroyed the role of sub-headmen and their local structures in terms of socio-political organisation, control over resources, and economic relationships (McAllister, 1992:209 cited in Fay, et al., 2002b:104). However, in Dwesa-Cwebe the pre-existing social organisation under sub-headmen was retained (Fay, et al., 2002b). Implementation of betterment villagisation was cancelled in Dwesa-Cwebe in 1989, after General Bantu Holomisa’s military coup in the Transkei (Fay, 2013). The outcome was that,

[w]ith the exception of the short-lived and incomplete betterment villagisation policy, land tenure and use largely remained under local control. Under official regulations, traditional authorities controlled land: headmen would allocate land to household heads, technically subject to ratification by the district magistrate and tribal authority (Fay 2013).

The land allocated to each household head consisted of a residential site (including space for an attached garden) and, where fields were available, one field per wife. In practice, district officials’ registration of land holdings relied on local knowledge of borders and neighbours rather than on

---

<sup>13</sup> The district was incorporated into the Gcaleka Regional Authority, along with Willowvale, Kentani and Idutywa districts, thereby addressing the longstanding concern of the Bomvana leadership not to be placed under the Thembu Paramount Chief (Fay, 2003:82).

cadastral surveys. “Most lands allocated were never registered with the magistrate or tribal authority, and headmen and their subjects alike found ways to circumvent the administration’s regulations on land use and transfer” (Fay, 2013). Control over land administration had also collapsed, allowing people who had been forced to move into dense residential areas in the early 1980s to return to their former sites. This created unprecedented demand for roof poles and other construction materials (Fay, 2003). While community resistance contributed dramatically to the end of betterment at Dwesa-Cwebe, political changes in the Transkei also played a part. By the late 1980s, removals from Dwesa-Cwebe communities had ceased as local villagers simply refused to move (Fay, et al., 2002b). Headmen had also stopped charging money for access to land. Some chiefs called community meetings to announce that the Betterment scheme was over, and that it was no longer necessary to bring “gifts” in order to request sites (ibid.:105). The Holomisa period was seen by Dwesa-Cwebe people “as a time of opportunity and freedom, the time of politics” (Fay, 2012:61).

Towards the end of the apartheid era in the late 1980s, Dwesa-Cwebe locals conducted a protracted struggle to restore their land and access rights to the DCNR. Increasingly, militant resistance to management authority and traditional authorities eventually resulted in an invasion of the DCNR by community members. These events and resistances, which were also directed at the traditional authorities who had contributed to the suffering and hardship of Dwesa-Cwebe residents during apartheid will be discussed in greater detail in Chapter Six.

### ***5.3.5 Dwesa-Cwebe traditional authorities: 1994 to the present***

This section focuses on the traditional authority structures in the Dwesa-Cwebe area. These authorities, like all other traditional authorities in rural areas of the former Transkei, were manipulated and used by both the colonial and apartheid regimes to realise state interests such as the grabbing of community land. They were established through various laws of the colonial and, later, apartheid governments (Sunder, 2014). As explained in Chapter Four, traditional authorities had existed in Dwesa-Cwebe since time immemorial (Palmer, 1998), and had played a significant role in controlling community access to natural resources in the Dwesa-Cwebe region. These authorities continue to exist, overlaid by the local governance institutions introduced after 1994 (Sunder, 2014).

The Dwesa-Cwebe traditional authority comprises the regional authorities, which include the paramount chiefs and chiefs (Palmer, et al., 2006). In the traditional hierarchy of the Xhora area,

Chieftainness Nobangile is the highest authority (ibid.). She has been quite hostile to the tenure reform processes although she insisted that the village planner must work through one of her headmen, Chief Vuyisile Qotongo of the Gusi Administrative area.<sup>14</sup> On the Willowvale side, the highest authority is Chief Zwelonke Sigcau, who is the king or paramount chief of all the amaGcaleka people in the area (Palmer, et al., 2006).<sup>15</sup> The villages on the Dwesa side are located within the Willowvale Area (Gatyana), while Hobeni and Cwebe fall within the Xhora (Elliotdale) area (Palmer, et al., 2006). Each village has a headman who is responsible for managing village affairs, including land allocation and resolution of disputes among local residents over resource-related issues such as cattle trespass in gardens and cutting on the commonage (Palmer, et al., 2006:7-8; Fay, 2007).

On the Dwesa side, the villages of Ntubeni and Mpume fall under the Msendo Administrative Area, and are administered by Chief Vulinqaba Ndlumbini, while the Ngoma, Ntlangano and Mendwane villages are under the Mendu Administrative Area and are administered by Chief Solontsi. On the Cwebe side, the Hobeni and Cwebe areas each have their own traditional chiefs. Hobeni falls under Chief Phathisile and the Cwebe area falls under Chief Jonginkosi Geya. Cwebe and Hobeni are both administrative areas with several sub-localities, but, together, they form what is generally referred to as Cwebe. In Dwesa-Cwebe, headmen are commonly referred to as chiefs; they operate at the level of the administrative area. These administrative areas are presided over by headmen and sub-headmen (who are usually men). The sub-headman position is the only one not determined by lineage. Instead, residents at the sub-village level elect a sub-headman through a series of open forums. The responsibilities of traditional authorities include the allocation of land and other natural resources. Since sub-headmen are elected, they are closer and more accountable to the people, and are actually very relevant to the day-to-day lives of their communities. All these administrative areas fall within the Mbhashe Local Municipality, which, in turn, falls under the Amathole District Municipality (Sunder, 2014:64). In Dwesa-Cwebe, the terms ‘headman’ and chief’ are often used interchangeably to refer to the headman at the level of the AA (ibid.) The system of traditional authorities is set out in Table 5.1.

---

<sup>14</sup> Interview with Mcebisi Kraai, 2018.

<sup>15</sup> Interview with Mcebisi Kraai, 2017

**Table 5.1: Traditional authorities of the Dwesa-Cwebe villages (current)***(Adapted for Dwesa-Cwebe from Kepe (2009))*

<b>Administrative level</b>	<b>Leadership position</b>	<b>Source of authority</b>
<b>Regional Authority</b>	Paramount chiefs and chiefs King: Xolilizwe Sigcau	Hereditary
<b>Tribal Authority</b>	Chief (Nkosi) Gatyana: King Xolilizwe Sigcau Xhora: Chieftainess Nobangile	Hereditary
<b>Administrative Area:</b> Cwebe Hobeni Mendu administrative area, incorporating Mendwane, Ntlangano and Ngoma Msentu administrative area, incorporating Mpume and Ntubeni	Headman (Nkosi) Chief Jonginkosi Geya Chief Patrick Fudumele Chief Solontsi  Chief Vulinqaba Ndlumbini	Hereditary
<b>Villages/communities:</b> Cwebe Hobeni Mendwane Ntlangano Ngoma Mpume Ntubeni	Authority of the headman (listed above). This is exercised in consultation with the elders and sub-headmen at neighbourhood level, who meet regularly together with <i>amakosi</i> (chief or headman of the administrative area)	Hereditary
<b>Neighbourhoods</b>	Sub-headmen	Election by members of the neighbourhood

## 5.4 Conclusion

This chapter illustrated how colonial and apartheid land dispossession in the name of conservation created hardships in the lives of the people of Dwesa-Cwebe. It showed that, before the demarcation and proclamation of Dwesa-Cwebe Forest Reserves by the British colonial authorities, local people's livelihoods depended on natural forest and marine resources. The chapter showed that these people

lost their lands, their livestock and their rights to the forest resources. I argued in this chapter that chiefs and chieftainship in Dwesa-Cwebe had existed since time immemorial. These traditional authorities were powerful and respected, and it was their responsibility to manage the land and its natural resources on behalf of their people. However, the chapter demonstrated that with the establishment of state protected areas by colonial and apartheid states, these responsibilities were undermined and transferred to magistrates and forest departments in the Transkei. The colonial and apartheid interference in Dwesa-Cwebe disrupted the pre-colonial role of traditional authorities in natural resource management in the area.

Although the colonial government marginalised traditional authorities, the chapter showed, they nevertheless used the same traditional authorities to prevent access to protected areas by the people of Dwesa-Cwebe. Traditional authorities continued to be utilised by the state throughout the apartheid era, including by the Bantustan regimes. The apartheid and Bantustan governments gave traditional authorities more power to control rural people in the former Bantustans, as in Dwesa-Cwebe, which was managed by the Transkei government. Under apartheid, and especially during the Bantustan era, traditional authorities became paid state employees, cementing their role as an extension of the state. This meant that traditional authorities were compelled to implement government policies that local people disapproved of. In Dwesa-Cwebe, traditional authorities collaborated with the Transkei government when the DCNR was established. While the homeland government did not give authority to traditional authorities to manage nature reserves, the state relied on traditional authorities for the enforcement of no-access restrictions and conservation of protected areas.

This chapter explained that traditional authorities found themselves in a complex position as they did not know whether they should serve the interests of the state or of their people. I argued that traditional authorities in Dwesa-Cwebe had previously been involved in management of protected areas, even though the nature of their roles changed over time. I also demonstrated that, while the role of traditional authorities in the management of protected areas at a policy level was ignored, traditional authorities were always included in the management of these state-protected areas. Forest Department officials could not manage protected areas without the assistance of the traditional authorities, hence they co-opted them into management at some level. The traditional authorities then implemented laws and restrictions that precluded residents from utilising natural resources in nature

reserves in Dwesa-Cwebe. I argued that chiefs and headmen had accepted their roles as state collaborators in order to maintain their control through natural resource management in rural areas.

During the political change in South Africa in the 1980s and 1990s, tensions developed between the people of Dwesa-Cwebe on the one hand, and conservation officials and traditional authorities on the other, which culminated in the protests of the late 1990s. As will be seen in the next chapter, people from the communities surrounding Dwesa-Cwebe invaded the nature reserve in the early 1990s and again in the late 1990s, removing large quantities of shellfish and other resources. Local people used these struggles to challenge the power of traditional authorities over their land and natural resources. The next chapter examines events that took place before the land claims settlement (between 1990 and 1994) and the period after the first democratically-elected South African government in 1994 until the settlement of the land claim in 2001. This covers the land struggles of the Dwesa-Cwebe people in the period before the settlement of the claim and during the land claim process and offers a background in terms of the evolution of community institutions.

## **CHAPTER SIX**

# **Reclaiming the Dwesa-Cwebe Nature Reserve: People's struggles and traditional authorities from the start of the transition from apartheid in South Africa in 1990 up to 2001**

### **6.1 Introduction**

This chapter focuses on the struggles of the people of Dwesa and Cwebe, from 1990 to 2001, against the traditional authorities in their area in their attempts to regain access to natural resources. It sheds light on the dynamics of struggles for resources and community politics around the Dwesa-Cwebe land claim. Influenced by the wave of popular struggles that had swept like a hurricane across South Africa in the late 1980s, Dwesa and Cwebe communities began their struggle for the reclamation of access to the Dwesa-Cwebe Nature Reserve in 1990, mirroring popular struggles that were occurring in the rest of the country.

Soon after the unbanning of liberation movements, the release of political prisoners such as Nelson Mandela, and the start of the negotiations for the dismantling of the apartheid regime in 1990, political activists in Dwesa-Cwebe mobilised seven villages in the area, and led the struggle for the reclamation of their lost land. These community leaders were not elected; they also worked closely with the Transkei Land Service Organisation (TRALSO), an Mthatha-based land NGO. Until 2001, traditional authorities were not visible in these struggles. In fact, traditional authorities were rejected by sections of the residents, particularly local activists from different Dwesa-Cwebe communities. From the early 1990s, the issue of the role of traditional authorities in land administration became a matter of conflict. Supported by local civic organisations such as TRALSO and The Village Planner, the Dwesa-Cwebe leadership questioned the traditional authorities' power and control over communal land.

This chapter also reveals that women from the villages of Dwesa and Cwebe occupied leadership positions and were at the forefront of land struggles. Past divisions along ethnic lines and social distinctions were also no longer as important, as local village leaders began working together to coordinate their protests and negotiations with the conservation authorities and government

departments. TRALSO played an active role in uniting the two groups of isiXhosa-speaking communities against the state, which resulted in their joint struggle for the reclamation of their rights to land and, later, access to the nature reserve. As part of these popular struggles, new leaders were elected, especially after the advent of democracy in 1994. It is significant that this occurred around the time that the land claim was instituted, shortly after the 1994 elections. From 1995, and in line with the principles of the democratic dispensation, local residents of Dwesa-Cwebe elected community leaders as they did not have confidence in the traditional authorities to represent them in the joint management of protected reserve negotiations with government departments. Nevertheless, while the Dwesa-Cwebe leadership abandoned unelected traditional authorities, as shown in Chapter Four, the national government and parliament recognised these authorities in both the 1993 interim constitution and the 1996 final constitution. As the struggles for the restitution of land intensified, between 1997 and 1998, the seven villages of Dwesa-Cwebe established Communal Property Associations (CPAs) and the Land Trust, whose members were democratically elected, and to which the state would transfer the claimed land.

Although traditional authorities were regarded as unimportant in the formation of these elected CPAs, they were still regarded as important leaders in their villages by community leaders and villagers. I show in this chapter that some communities of Dwesa-Cwebe have begun to include traditional authorities in the CPA constitutions despite their history of having collaborated with the apartheid government in controlling access to the reserve. This history was the reason that some traditional authorities opposed the struggles around natural resources and, later, the land claim. While traditional authorities were still unsure about their future role in land administration after the introduction of CPAs and the Land Trust, they tactically supported the process of CPA registration across the seven villages of Dwesa-Cwebe, in contrast to other areas in the former Bantustans.

This chapter also shows that, through the struggles of the 1990s (up to 2001), traditional authorities weakened as they received no support from the state. They were isolated by a group of residents, especially by local activists from the people's struggles for access to the protected area and for land, while, at the same time, their role in land administration was challenged. This manifested itself after the restitution of land in 2001, when local communities elected their own leaders to the CPAs and Land Trust to represent them in the ownership of communal land and the management of the nature reserve.



Three distinct periods are examined in this chapter, which is divided into three sections. The first section deals with land struggles from 1990 to 1994, focusing on the upsurge of a popular movement to regain access to protected land and natural resources. The second covers the period 1995 to 1997, starting with the formation of Conservation Committees (CCs) and their role in negotiating joint management of the land with Eastern Cape Nature Conservation (ECNC). It also discusses the events surrounding the early years of the land claim process and the lack of involvement of the traditional authorities. The third section, covering the period 1998 to 2001, details the events during the later years of the land claim process, culminating in its successful conclusion with a settlement. It also looks at the formation of other elected bodies, the Land Trust and the CPAs, to hold title to and to administer the restituted land, respectively. Furthermore, it highlights the resurgence of tribal authority power through the 1993 interim constitution and the 1996 constitution, various pieces of legislation and policies, and will discuss the legislative policy process by which the ANC government attempted to resolve the complex issue of the role of traditional authorities in the post-1994 era. Community struggles to regain access to their natural resources will be viewed against the background of what was happening nationally. Also, the role of TRALSO in the struggles for land and access to natural resources within the nature reserve will be highlighted throughout.

## **6.2 Community struggles to reclaim access to lost land and access rights to natural resources in the nature reserve: 1990-1994**

By the early 1990s, when the wave of popular struggles that had swept across South Africa in the late 1980s had reached a crescendo, the communities near the Dwesa-Cwebe Reserve started demanding their rights to land and access to the reserve from the state and traditional authorities. The unbanning of the ANC and other liberations organisations and the release of political prisoners in 1990 was the signal for the intensification of their struggle for reclamation of access to the reserves by means of lobbying and negotiations with the authorities (Palmer, 1998). In the early stages of the struggle for land, communities were led by local leaders who had emerged and were either members of the recently-unbanned ANC and/or former members of the trade unions before they had been retrenched from the mines (see Ntshana, et al., 2009). During this time, the relationship between traditional authorities and local people was complicated. Local community activists perceived traditional authorities as collaborators with the Transkei government who had played a leading role during the removal of local communities from their land when the nature reserve had been established. One result of these struggles was that traditional authorities were weakened as their role

over land was questioned by community representatives working with organisations such as TRALSO. The apartheid government that had backed them was in its dying days, and the position and role of traditional authorities – in support of the government – during the land struggles were clear. According to Kraai, although community meetings were held at chiefs' places across Dwesa-Cwebe, chiefs were against granting the community access rights to natural resources inside the nature reserve.<sup>16</sup>

The explosive and hopeful political climate in South Africa in the 1990s also gave courage to communities to demand the return of their lost land from the state. One respondent explained:

I started to be part of the land struggle in 1990 after I completed my schooling in Holomisa High School. I was asked by old people to assist them to write minutes of the meetings. They wanted their land back and access to natural resources in the nature reserve. They wanted to have rights to fish in the sea, to access forest resources in the forest and to be allowed to practise traditional ceremonies in the nature reserve; that was what they wanted from the government. They were completely denied what they used to enjoy in the protected area by conservation authorities and chiefs. They organised their struggles with no assistance from local chiefs and headmen [Bebezilwela bodwa bengancediswa ziNkosi].<sup>17</sup>

As illustrated by this quotation, the struggles for access to natural resources within the DCNR were mainly driven by local people themselves, with no assistance from chiefs. Already in the early 1990s, local leaders from both the Cwebe and Dwesa sides sought assistance from TRALSO. Former TRALSO and The Village Planner official, Mcebisi Kraai, also remembered:

The people of Dwesa and Cwebe approached TRALSO at different times, independently. The people of Mendwane on the Dwesa side were the first local leaders, mostly women, who approached TRALSO for the land claim and the people from Cwebe, around the same time, also came to TRALSO after having gone to the office of General Holomisa, who was then

---

<sup>16</sup> Interview with Mcebisi Kraai, former staff member of TRALSO, June 2012.

<sup>17</sup> Interview with Kuzile Juza, former deputy chair of the Land Trust A, 30 May 2011.

military leader of Transkei homeland. These local leaders were mainly ANC activists, while some of them were recently retrenched from the mines.<sup>18</sup>

André Terblanche of the Villager Planner also echoed:

First the community of Cwebe, followed by Mendwane, individually approached the offices of the then-recently-opened ANC offices in Mthatha, which, in turn, referred the community to the recently-established (1991) Transkei Land Service Organisation (TRALSO) [which was a common practice among organisations approached on land issues then]. This organisation had been established by, amongst others, Tresson Sullivan, Jeff Peirez, Bob Thelin, Nangamso Mdemka, Mawethu Bam, Jean Du Plessis, Temba Manyosi, Rosaly Kingwill, Patrick Mabude, and Ezra Sigwela.<sup>19</sup>

These quotations illustrate that, from the early 1990s, local communities and their leaders began to work closely with TRALSO in their struggles for land. Around 1991, when TRALSO was formed, there was a complete breakdown in land administration of the former Transkei (see Fay, 2005; Ntsebeza, 2006). Holomisa was the military ruler and there was no avenue to channel land disputes. Most of TRALSO's initial cases were referrals from civic structures that were not specialists on land matters. Some local ANC leaders were behind the plan to form TRALSO.<sup>20</sup>

As mentioned earlier, in the early years of land struggles in Dwesa-Cwebe, leaders were not necessarily elected but acquired their leadership status from their ANC membership and activism, and some from their trade union experience gained on the mines. From 1992, while local leaders proactively sought assistance from TRALSO, the NGO also played an important role in mobilising communities around the demand for access to their land, the forest and marine resources on which they had previously depended (Terblanche & Kraai, 1996.; Ntshona, et al., 2009). Community leaders made various efforts to interact with conservation authorities, political parties and chiefs to allow the villagers across Dwesa and Cwebe to access forest and marine resources and to graze their cattle in the DCNR. But their requests through community meetings, usually held at traditional leaders' homesteads, were ignored. Three old men from Cwebe shared their views on this matter:

---

<sup>18</sup> Interview with Mcebisi Kraai, former staff member of TRALSO, 2012.

<sup>19</sup> Interview with André Terblanche, April 2012.

<sup>20</sup> Interview with André Terblanche, April 2012.

Sasidibana komkhulu singabantu balapha eDwesa-Cwebe sicela kuRhulumente neeNkosi zisivulele singene ngaphakathi kwi-Nature Reserve, sikwazi ufumana iresources sikwazi nokuloba iintlanzi. Kodwa isicelo sethu sasisoloko singahoywa nguRhulumente neeNkosi. [As people of Dwesa-Cwebe, we used to attend meetings at chiefs' homesteads to request government and traditional authorities to allow us to access natural resources within the nature reserve. But our request was always ignored by government and traditional authorities.]<sup>21</sup>

The struggle for access to natural reserves intensified during the severe drought between 1993 and 1994 (Fay, 2007). Prompted by the death of their cattle, and led by their leaders and TRALSO, the residents of the villages surrounding Dwesa-Cwebe, especially the cattle owners, requested of conservation authorities, government officials and local chiefs to be allowed to use the nature reserve for emergency grazing, but this was denied (The Village Planner, 1996; Fay, 2007). The most vocal calls for grazing inside the reserves came from two villages on the Cwebe side, where residents had suffered disproportionately from the closure of the nature reserve (Fay, 2007). The residents of these two villages had been dispossessed of grasslands within the reserves, which had previously been their fields and pastures, between the 1890s and 1930s (Fay, 2007). Based on these experiences and historical memory, people from the Cwebe villages were among the most militant activists in the early confrontational phase of the struggle for land and access to the nature reserve. Mcebisi Kraai<sup>22</sup> recalled that a local ANC activist from the Cwebe side, Makuthiweni Mangakeva, was one of the leaders who had first approached TRALSO, and one of the leaders of the protest in the reserves in the 1993–94 period (see also Fay, 2007). According to Fay, “In 1993, residents of these areas also converted a soccer field adjoining the reserve into a training camp for the paramilitary wing of the ANC” (Fay, 2007:93). As the struggle continued, residents from the Cwebe communities insisted that they should be given the right to send their cattle into the protected area (Fay, 2007:93). One TRALSO official remarked that Cwebe communities were the first Dwesa-Cwebe communities to begin the process and discuss their claim with TRALSO, as they had been the worst affected by the drought.<sup>23</sup>

---

<sup>21</sup> Interview with three old men from Cwebe (they requested me not to disclose their names) May 2012.

<sup>22</sup> Informal conversation with Mcebisi Kraai of TRALSO, April 2012.

<sup>23</sup> Interviewed André Terblanche, April 2012.

Immediately after the advent of democracy in 1994, residents in three villages adjacent to the Dwesa-Cwebe Nature Reserve – Mendwane, Cwebe and Hobeni – appealed to the nature conservation officers to allow them to visit ancestral graves, to harvest shellfish and to collect sea water (Fabricius & Timmermans, 1995 in Fay, et al., 2002b:108). Their requests, as well as subsequent demands made at community meetings, were ignored (Fay, et al., 2002b:109). Many of the residents on the Cwebe side, in particular, had been influenced by political activism while working in the mines in Johannesburg (Sunder, 2014). In the 1980s, a branch of Umkhonto we Sizwe, the ANC's armed wing, had also operated in Cwebe (Fay, et al., 2002 cited in Sunder, 2014:128).

Five months after the April 1994 democratic elections, residents of the Dwesa and Cwebe communities held a mass protest meeting outside the reserve, with over 2 500 attendees, to demand land and natural resource rights (Ntshona, et al., 2009; 2010). In this regard, one informant, who was part of a long land struggle, related:

When we realised that our cattle were dying because of the drought, we requested nature conservation officials and our local chiefs to allow us to graze our cattle inside the nature reserve, but they refused to do that. When they rejected our request, we were very angry and invaded the reserve to graze our livestock and harvest forest and marine resources.<sup>24</sup>

When their requests to graze their cattle in the nature reserve were repeatedly ignored by nature conservation officials and local traditional authorities, another protest march broke out in September 1994. Hundreds of people from surrounding communities invaded the reserve, cutting down trees, harvesting shellfish and forcefully driving their livestock to graze in the reserve without permission from reserve managers and traditional authorities (see Terblanche & Kraai, 1996; Fay, et al., 2002b; Fay, 2007; Ntshona, et al., 2009). One TRALSO official commented: “We were there to support the people of Dwesa-Cwebe when they entered by force to the nature reserve and harvested natural resources in the nature reserve.”<sup>25</sup>

A group of five villagers who were present during the invasion of the nature reserves told me: “Saqonda ukuba ayikho enyindlela ngaphandle koku ngena ngenkani kwi-nature reserves sizidapele

---

<sup>24</sup> Interview with Mxolisi Nombona, June 2012.

<sup>25</sup> Interview with André Terblanche, April 2011. (see also TRALSO 1995).

kwi-natural resources zethu. [We decided to enter the nature reserves by force and harvest our resources, because we had no other option.]”<sup>26</sup>

The army was called in to prevent people from using natural resources in the reserve (Palmer, et al., 2002). One old woman recalled: “Mntana wam babanjwa abantu apho ngamapolisa, kwaye kwakufunwa iinkokheli zethu ezifana no Nowezile Ndlumbini, Makuthiweni Mangakeva no Siph Mbola nabanye ke. [My son, many people were arrested by the police on that day. Police targeted our leaders such as Mrs Nowezile Ndlumbini, Mr. Makuthiweni Mangakeva and Mr. Siph Mbola and others.]”<sup>27</sup>

The invasion of the reserve was reported in the national media, including television stations, prompting conservation authorities and the police to intervene. Similar community protests were also reported in other former Bantustan areas, such as Mkambati Nature Reserve, with residents demanding access to the natural resources in the reserves (Kepe, 2008). My interviews revealed that women participated in the mobilisation of the Mendwane community in the early stages of the land claim struggle. TRALSO and The Village Planner indicated that women around the villages of Dwesa-Cwebe, especially from Cwebe and Ngoma, were at the forefront of the invasions of the nature reserves. Women at Cwebe village always participated in the land struggle, although they were rarely vocal in meetings (The Village Planner 2000). After the invasion, as an attempt to calm the anger of the Dwesa and Cwebe communities, the then-Minister of Agriculture in the Eastern Cape, Tertius Delpport, visited the area to investigate the land invasion (Fay, et al., 2002a). During his visit, Delpport encouraged the communities to establish Conservation Committees (CCs) that would represent the communities in negotiations with Eastern Cape Nature Conservation (ECNC) (Terblanche & Kraai, 1996). The ECNC had been created shortly after the 1994 elections, with the purpose of uniting the former Ciskei and Transkei homelands with parts of the old Cape Province (Fay, et al., 2002:108). Delpport also said that once CCs were established, the question of land ownership should be referred to the Land Claims Court (Terblanche & Kraai, 1996). The invasions raised the public profile of the case and forced the government to begin talks with the Dwesa-Cwebe communities, as will be discussed in the next section.

---

<sup>26</sup> Interview with five villagers from Cwebe and Dwesa, April 2011.

<sup>27</sup> Interview with Nonelisi Masimini from Cwebe April 2012.

These events should be viewed against the background of the broader political climate in the country, especially from the early 1990s, triggered by the release of Nelson Mandela from prison and the unbanning of the revolutionary parties. These events motivated leaders of previously-dispossessed communities to stand up on their own to fight for the restoration of their land and access rights to the nature reserve from the state and local traditional authorities. At the same time, local communities began to work with NGOs such as TRALSO to help them reclaim their land rights. Subsequent to the forest invasions, TRALSO “mobilised the seven communities towards the formal lodgement of the claim” (Ntshona, Kraai, Tsawu & Saliwa, 2009:13).

Throughout the period covered in this section, these community leaders exhibited no confidence in traditional authorities. Instead, they worked closely with NGOs, which were strong during this period. People supported their new leaders to represent them in the land struggles, which were also used to challenge the role of traditional authorities in land administration. In this period, traditional authorities could neither resist nor face the momentum or spirit of the people fighting to recover their land and access to the protected area. Traditional authorities had been discredited in the Dwesa and Cwebe communities because, historically, they had been central to the implementation of the government’s betterment programmes and the establishment of the DCNR. From the early 1990s up to the end of 1994, traditional authorities that had been strong during the apartheid era became weakened as their role over land was challenged by local activists and NGOs and, particularly, because the apartheid state, which was fast moving to its demise, was no longer backing them.

### **6.3 Negotiations for return of land and access to resources in the nature reserve: 1995-1997**

After Delpont’s visit, local residents and their leaders followed his suggestion and established Conservation Committees on both Dwesa and Cwebe sides (see also Fay, et al., 2002a). CC members were locally-elected and aimed at assisting in the management of access to forest resources, grazing land within the reserves, and to negotiate joint management with ECNC. The Conservation Committees were comprised of community representatives from each village bordering the Dwesa-Cwebe Nature Reserve, and the reserve management authorities (Fay, et al., 2002b). Fay, et al point out that although membership of the CC was not fixed, each of the frontline communities was represented by two delegates (ibid.). One villager noted that representatives in the CCs were mostly the same community leaders who had been in the forefront of the struggles for reclamation of the

land and access to natural resources and grazing land within the protected areas in the early 1990s.<sup>28</sup> The establishment of CCs elected by villagers demonstrated that people continued to reject the role of traditional authorities as they had done during the previous land struggles. This is despite the fact that, at the national level, the position of traditional authorities had become stronger from 1995, and that their institutions were recognised by the post-1994 Constitution (Ntsebeza, 2002; 2006).

Subsequent to the invasions and the establishment of locally-elected Conservation Committees, a meeting was held on 3 December 1995 in Mendwane where negotiations over the return of the land and access to natural resources at the DCNR began (Eastern Cape Nature Conservation, 1995). These negotiations between local people, ECNC, the Department of Environmental Affairs and Tourism (DEAT), the Department of Forestry, the Wildlife Society, the National Parks Board, the Department of Land Affairs and Agriculture (DLAA), a representative from the Eastern Cape Premier's office, cottage owners, TRALSO and The Village Planner were facilitated by the Independent Mediation Service of South Africa (IMSSA) (Ntshona, et al., 2009). The parties agreed on the institutions that would be centrally involved in the land claim negotiations and that would own and manage the land on behalf of the community (see also Sunder, 2014). The issue of the role of traditional authorities also came up when the land claim was addressed, and locals made it clear that they did not regard chiefs and headmen as important in the process (ECNC, 1995). As a result of the apartheid authorities' deployment of traditional authorities as instruments of their control for implementation of betterment and other administrative functions that had been rejected by the communities, the latter also rejected the involvement of traditional authorities in their land claim (Sunder, 2014). Interestingly, however, the villagers *did* acknowledge the role of the sub-headmen (Fay, 2002). André Terblanche of TRALSO and Village Planner explained:

People were represented by their own leaders who had played a leading role in the 1990s struggle for access to natural resources in the nature reserves. Even us as TRALSO and The Village Planner, we worked with community leaders who were elected by local people to represent them in the negotiations for the land claim. But we always worked with sub-

---

<sup>28</sup> Interview with former member, Kuzile Juza of the Land Trust, April 2012. (See also Fay et al., 2002.)



headmen who participated in the formation of these CCs. Local chiefs and headmen did not really come on board by choice. Anyway, they did not like me and Mcebisi in their villages.<sup>29</sup>

A member of the Dwesa-Cwebe Land Trust emphasised:

Sasingafuni iinkosi zisimele kwezingxoxo zokubuyiswa kumhlaba wethu, kuba bezisebenza kunye norhulumente ka-Matanzima. Kwaye zazizayenza eyazo yonke lento yobuyiswa kumhlaba. Ithemba lethu lalikiwiinkokheli zethu esazonyulayo zisimele no TRALSO. [In these negotiations for the land claim, we people of Dwesa-Cwebe refused to be represented by chiefs who had worked with the Transkei government in the past. We put our trust in our elected leaders to represent us in all land claim processes.]<sup>30</sup>

These comments clearly demonstrate the Dwesa-Cwebe communities' rejection of chiefs and headmen. Local leaders, in particular, were against the role of traditional authorities. The collaboration of chiefs and headmen with the Transkei government, which had completely terminated access to the nature reserves by local communities in 1975, made it even more difficult for traditional authorities to be accepted in the negotiations for access to the nature reserve in Dwesa-Cwebe. The negotiations laid a foundation for the creation of a Joint Management Committee (JMC) that comprised of four democratically-elected community representatives from each village-level Conservation Committee (CC) and officials from the newly re-organised Department of Economic Affairs, Environment and Tourism (DEAET) of the Eastern Cape Provincial government (Palmer, et al., 2002:118).

In this JMC meeting, the CCs demanded that ownership of the land be returned to its "rightful owners" and that they be involved in the management of the nature reserve. The following key resolutions were taken in the meeting: "[T]he communities should have access to the sea and the forest resources based upon the principle of sustainable utilisation as permitted by law; the communities should participate in the management of the nature and forest reserves, and the communities should benefit from the proceeds of eco-tourism" (Department of Land Affairs, 2001:6-7). A joint partnership was also established through these meetings, and local people were to be allowed use of natural resources in the reserve. This was confirmed by the former Deputy

---

<sup>29</sup> Interview with André Terblanche of The Village Planner, 23 May 2012.

<sup>30</sup> Interview with Luthando Maqaga, member of the original Dwesa-Cwebe Land Trust, April 2012.

Chairperson of the original land trust. “In 1995, TRALSO called a meeting in Mendwena, and in that meeting, joint partnership was reached and it was agreed that people should be allowed to use the reserves. However, since the Mendwena meeting, nothing has been done.”<sup>31</sup>

Subsequent to these negotiations, locally-elected community representatives and nature conservation authorities agreed that the nature reserves should be closed to grazing in order to promote tourism. The community-elected committees also requested that the reserve management give them the right to prosecute those who broke the management laws, allowing the committees to deal with offenders rather than prosecuting them through the Magistrates’ Court (Palmer, et al., 2002:118). However, the CCs struggled to enforce the management rules and even to take action against transgressors (Fay, 2007; Sunder, 2014). While the decision to close the reserve to grazing and to promote tourism was widely supported by all the communities around DCNR, people on the Cwebe side continued to take their cattle into the reserve (Fay, 2007; Ntshona, et al., 2009). The communities of Dwesa-Cwebe continued to work with TRALSO and their elected representatives for restoration of their land and access to the nature reserve. In this period, the Dwesa and Cwebe communities united to coordinate their protests and negotiations with the conservation authority, and TRALSO handled the Dwesa-Cwebe land claim as a single case (Fay, 2007).

Assisted by TRALSO, the people of Dwesa-Cwebe formally lodged their land claim with the Eastern Cape Regional Land Claims Commission (RLCC) early 1996. While negotiations between community representatives and the conservation agency for access to natural resources continued at local level, it took several years before the RLCC was ready to begin investigating the claim; subsequent to the negotiations, nothing was done.<sup>32</sup> It was this failure that frustrated community representatives to the point that they suspended their participation in the JMC in March 1997 (Fay, et al., 2002a). Khuzile Juze explained the frustration:

The Joint Management Committee was not about the interests of local people and it was not meant to facilitate community access to natural resources on the forest reserve. The Joint Management Committee was formed to act against the community needs; that’s why we decided not to support it. The local leaders decided to focus on the land claim. As soon as the

---

<sup>31</sup> Interview with Kuzile Juza, May 2012.

<sup>32</sup> Interview with Kuzile Juza, May 2012.

land claim was in place, JMC then [stopped functioning], because it did not serve the purpose it was set for. Local people were saying: “JMC delayed us, let’s claim our land.”<sup>33</sup>

Community frustration stemming from lack of progress in relation to community access to the nature reserves forced community representatives to excuse themselves from JMC activities at the beginning of 1997. Disputes between community leaders and traditional authorities, and confusion over land ownership and authority over the land in question meant that the issue could not be resolved quickly (Ntshona, et al., 2009). Community leaders therefore again threatened mass action in early 1997 (ibid.). In August 1997, the then-Minister of Land Affairs, Derek Hanekom, agreed that the land and one protected area would be returned to the communities of Dwesa-Cwebe, but on condition that the conservation area would remain as it was (Palmer, 2003). The claimants agreed to maintain the protected status of the land under a system of power-sharing arrangements. Local leaders also agreed with the argument that conservation would be necessary for the expansion of tourism that would be the cornerstone of regional economic development.

The fact that elected community representatives continued to reject traditional authorities, but the post-1994 government granted them constitutional recognition, without clarifying their roles, functions, and powers, “raised serious questions about the possibility of a democratic resolution of local government and land issues in rural areas of the former Bantustans” (Ntsebeza, 2002:352). Ntsebeza (2002; 2006) showed that the state’s ambivalence regarding the precise role of traditional authorities in a democratic era gave those authorities an opportunity to mobilise against the policies that seemed to challenge their role in, and power over, land administration in rural areas. In some instances, traditional authorities challenged any attempt by the government to introduce alternative elected institutions that might compete with them in communal areas (Ntsebeza, 2002). They also opposed the notion that land would be transferred to new democratically-constituted CPAs in rural areas. Instead, they demanded that land in rural areas should be transferred to tribal authorities (Ntsebeza, 2006). However, Despite the constitutional recognition of traditional authorities and their efforts to contest democratic reforms in rural areas, Dwesa-Cwebe traditional authorities became alienated from the locals, and their replacement by elected leaders as far as land administration was concerned became a possibility. In negotiations for access to the DCNR, traditional authorities were

---

<sup>33</sup> Ibid.

neither vocal, nor did they participate in making the decision regarding access to the nature reserve by the community.

#### **6.4 Land claim process and establishment of tenure reform communal property institutions: 1997-2001**

This section looks at the resource management institutions that emerged as necessary vehicles for settlement of the land claim and the envisaged co-management arrangements that were to follow. As shown in Chapter Three, the Restitution of Land Rights Act 22 of 1994, in providing for restoration of land rights to previously-dispossessed communities, required claimant communities, through the Community Property Association Act, to form democratic land administrative institutions (DLA, 1997; RSA, 1996). In 1997, when the settlement of the Dwesa-Cwebe claim was still in the balance, the then-Department of Land Affairs (DLA), through its land reform process, created statutory community entities in the form of CPAs and a Land Trust made up of local leaders who had previously served in the LCCs and VCCs that had been elected after 1994, to be involved in the negotiations with ECNC officials and the preparation of the land claim (see also Fay, 2007). These community structures were a product of the intersections of local struggles and national land reform legislation. Land restitution and security of tenure are mandated under Section 25 of the South African Constitution, and subsequent legislation has provided for the use of CPAs and Land Trusts as vehicles to implement these policies, with the aim of creating a non-racial system of land rights and restituting land to communities dispossessed under racially-discriminatory law and practice since 1913. By 2007, more than 950 CPAs and 700 Trusts had been created for land reform purposes (Sustainable Development Consortium, 2007:261–262).

By the end of 1997, the blueprint for tenure institutions at Dwesa-Cwebe was in place (Fay, et al., 2002b:127). The rationale was that the newly-acquired reserve land would be transferred to a statutory institution in the form of a Land Trust. Additionally, seven CPAs would be formed for the seven Dwesa-Cwebe villages. CPAs were composed of community members who had been part of the negotiations for the return of dispossessed land, which was restored in 2001.<sup>34</sup> The establishment of CPAs seems to have been an added advantage in dealing with tenure reform. The Dwesa-Cwebe Land Trust was formed to be the vehicle that would own the land; two members were elected to the Land Trust from each CPA. Dwesa-Cwebe community representatives and the state also agreed that

---

<sup>34</sup> Informal conversation with three men from Hobeni, Cwebe, and Ntubeni, April 2012.

the Land Trust would manage the nature reserve in partnership with the then-Department of Water Affairs and Forestry (DWAF) and the provincial Department of Environmental Affairs. During the establishment of the landowner institutions, community representatives continued to work with TRALSO and The Village Planner. The organisations provided support to ensure that Dwesa-Cwebe communities had followed the correct procedures in claiming the land, and that they had complied with the legislation in terms of mobilising people to establish a legal entity to receive land on behalf of the wider community.<sup>35</sup>

Until the establishment of the CPAs and the Land Trust in 1997 and 1998 respectively, traditional authorities at the level of chiefs and headmen had been marginalised in the process by the communities (see also Sunder, 2014). Instead, local people worked closely with sub-headmen who had stood with local communities during the first phase of the land struggle and the creation of various local institutions.<sup>36</sup> Sub-headmen had played a crucial role during the mobilisation of residents to establish landholding legal entities. Professor Derick Fay, who has done research in the areas since the 1990s, confirmed:

Sub-headmen in Hobeni and Cwebe were very involved at various points in the CPA and the VCCs that preceded them. These are potentially important figures since, as part of the core group of a headman's councillors, they can actually have a lot of sway over opinion. In many cases, sub-headmen seem to be better respected than headmen and chiefs, and every proposal I can recall from the Hobeni CPA for regulating resource management involved working through the sub-headmen as the first line of monitoring/regulation. Their position in relation to chiefs and headmen is complicated. Since [sub-headmen] are not on government salaries and were never officially incorporated into the Tribal Authority structure, one can argue that they are a more "authentic" or less compromised form of grassroots traditional leadership.<sup>37</sup>

Most sub-headmen are respected by community members. I attribute that to the fact that they are closer to the people and, therefore, are more familiar with the community's dynamics, challenges, aspirations and needs. Despite the fact that sub-headmen are an extension of the traditional system, which was modified during colonial times, they are, nevertheless, better understood by the people

---

<sup>35</sup> Interview with Mcebisi Kraai, April 2012.

<sup>36</sup> Interview with former sub-headman (he requested not to disclose his name), May 2012. (See also Sunder, 2014:134.)

<sup>37</sup> Personal conversation with Prof Derick Fay, 2012.

because they are the first point of call for community members in cases that require assistance from traditional authorities. Sub-headmen were also allowed to regulate access to natural resources such as land in Dwesa-Cwebe communal areas, while chiefs and headmen were not recognised. Fay (2007) argues that when members of the Trust and the CPAs work within their own villages, they are generally confident about their ability to enforce their decisions by working with the sub-headmen's courts, which regularly resolve disputes among local residents over resource-related issues such as cattle trespassing in gardens, cutting on the commonage, etc. This sentiment was echoed by TRALSO members. One TRALSO director, who had supported local communities during the land struggle and land claim process, explained:

Chiefs and headmen never had imagined that local people would be able to demand their land, which was, in the past, a domain of chiefs and government. They personally never wanted the land claim because they feared that they might lose their power over local people and land administration on the ground.<sup>38</sup>

Former TRALSO official André Terblanche added: "Local chiefs and headmen were generally antagonistic by their own choice; it's not that we side-lined them. How could we have side-lined them if we were working with the sub-headmen? It does not make sense."<sup>39</sup>

Chiefs and headmen likely withheld support from the land claim because they feared that their power over land management on communal land would be diminished and moved to the more democratic Land Trust and CPAs. One informant stressed that outside support, such as from TRALSO, was seen by chiefs as instigation. This is why there were once rumours that some community activists were on a hit list.<sup>40</sup> The chiefs' hatred of some of the outspoken activists and TRALSO staff is still evident in the comments of some chiefs. André Terblanche gave an example of one belligerent chief:

We fought with Chief Ndlumbini, and we were aware that chiefs were opposing the land claim, so we were not working closely with them across the board because they were kept tied with the old conservation authority. Ndlumbini has long been the most vocal opponent to the land claim, and his family even declined to participate in the land register surveys (the

---

<sup>38</sup> Interview with Mr Simbongile Khamtshe, April 2012.

<sup>39</sup> Interview with André Terblanche of TRALSO, April 2012.

<sup>40</sup> Personal conversation with Mcebisi Kraai, June, 2018.

only family to do so). But never, ever, did we exclude them deliberately by saying you cannot come to the meetings.<sup>41</sup>

These narratives highlight the fact that local headmen had realised that the land claim was a threat to their authority over land administration on communal areas. In the general framework envisaged by the state for handling the return of land, CPAs were intended to function as more democratic and representative bodies than traditional authorities (Ntsebeza, 2006). In their effort to destabilise the land claim process, traditional authorities also threatened TRALSO officials, who supported the establishment of democratically-elected institutions that would own the land on behalf the Dwesa-Cwebe communities. Chiefs such as Nobangile were clearly hostile to the creation of the CPAs and the Land Trust.<sup>42</sup> Some tribal authorities, especially at Cwebe and Hobeni, even declared that the land claim would never succeed, and they consistently remained indifferent to the process (The Village Planner, 1998). Traditional authorities had always been gatekeepers to the community, their power over land was strengthened during the Matanzima era, and it now began to seem as if that power was to be taken away from them, sparking their hostility towards the activists and elected leaders. Interestingly, however, CPA constitution workshops in some parts of Dwesa-Cwebe were held at headmen's homesteads. In Hobeni, a chief agreed to the use of his homestead, but did not attend the meeting.<sup>43</sup> Mcebisi Kraai and Andrew Terblanche of The Village Planner/TRALSO said that they had encountered difficulties in obtaining access to traditional authorities in the Msendo Administrative Area of Mpume village on the Dwesa side.<sup>44</sup> Mcebisi Kraai recalled, "The chief from Mpume even lodged a complaint about the introduction of the tenure reform-related institutions, the CPAs and the Land Trust."<sup>45</sup>

Despite the obstructionist role of traditional leaders, it was interesting that local residents across Dwesa-Cwebe nevertheless have called for the inclusion of traditional authorities in the CPA constitutions as *ex officio* advisory CPA members (Fay, et al., 2002b; Sustainable Development Consortium, 2006; Fay, 2013). This was an attempt by government officials, NGOs and community leaders to involve traditional authorities in the land claim process in Dwesa-Cwebe. The Hobeni CPA, according to one former CPA member, "incorporated traditional authorities in order to

---

<sup>41</sup> Interview with André Terblanche of TRALSO, May 2012.

<sup>42</sup> Interview with Mcebisi Kraai of TRALSO, 2012.

<sup>43</sup> Interview with André Terblanche of the Village Planner, 23 May 2012.

<sup>44</sup> Interview with Mcebisi Kraai and Andrew Terblanche of The Village Planner/TRALSO, April 2012.

<sup>45</sup> Interview with Mcebisi Kraai, April 2012.

promote democracy at village level as a core part of its land management guidelines”.<sup>46</sup> Hobeni residents included the headman as an ex officio member, with equal standing to other members, to ensure accountability and prevent the possibility of autocratic decision-making or abuses (Fay, 2005). In contrast to other rural areas in the former Bantustans, the Dwesa-Cwebe traditional authorities came to strategically support the CPA registration process in 1999 (see also Palmer, et al., 2002:128). Despite their role as ex officio members of some CPAs, traditional authorities have no special privileges, and none of these elected legal entities incorporates tribal authority structures (Fay, 2013). However, in the Land Trust, which would lead the process of establishing co-management of the nature reserve, traditional authorities were not incorporated and given no ex officio representation (Palmer, et al., 2002; Fay, 2013).

These traditional authorities were not willing participants in the CPAs; they were forced to compromise and strategically participate in the land claim process. Their incorporation in the CPA constitutions was an effort to build unity within communities and keep traditional authorities on-side as the struggles around the land claim continued. It must be noted, however, that despite the establishment of the CPAs, traditional authorities continued to play important roles in land administration in Dwesa-Cwebe (Palmer, et al., 2006). The CPAs, whose committee members were democratically elected from the seven communities of Dwesa-Cwebe, never played any role in land administration (see Fay, 2005). One reason for this, according to Mhlayifani Templeton Mbola, former chairperson of the Ntubeni CPA, was that, by 1999, CPAs across Dwesa-Cwebe had not yet been registered.<sup>47</sup> Moreover, the government’s confusion regarding the role, functions and powers of traditional authorities in relation to land administration made it difficult for CPAs to do their work in land administration in Dwesa-Cwebe as in other places (Ntsebeza, 2002; 2006; Ntshona, et al., 2009). The CPAs in some Administrative Areas, such as Ntubeni and Hobeni, were not even functioning.<sup>48</sup> In 2001, the Dwesa-Cwebe land claim was successfully finalised.

This section demonstrated that during the process of establishing the legal (and democratic) entities—the CPAs and the Land Trust, traditional authorities were considered unimportant and were marginalised by local community representatives and the then-Department of Land Affairs. However, leading up to their establishment, traditional authorities began openly opposing the land

---

<sup>46</sup> Interview with former CPA member (he requested not to disclose his name), April 2012.

<sup>47</sup> Interview with former chairperson of Ntubeni CPA, Mr Mhlayifani Templeton Mbola, April 2012.

<sup>48</sup> Personal communications with former CPA chairpersons from Cwebe and Dwesa sides, April 2011.



claim process and the idea that the land would be transferred to the CPAs and the Land Trust in their areas of jurisdiction. In an effort to invite traditional authorities into the land claim process, CPA constitutions gave ex-officio roles to traditional authorities, engendering a situation where traditional authorities would not dispute CPA registration in Dwesa-Cwebe. Many community residents, however, were unhappy with the inclusion of traditional authorities who had been hostile towards the communities' resource struggles.

In the meanwhile, TRALSO continued working with traditional authorities through sub-headmen, and invited them to join all processes related to the land claim, even during the negotiations. On the other hand, the views of traditional authorities about TRALSO were mixed. Chiefs in Cwebe and a few other villages had no problem with the TRALSO's involvement, but chiefs in Hobeni and in Mpume were hostile. However, what became clear was that even those traditional authorities that had been hostile had no other recourse but to accept the situation because TRALSO was on the side of the people and had the communities' support, and the traditional leaders realised they would be fighting a losing battle.

## **6.5 Conclusion**

This chapter dealt with the struggles of the people living around the DCNR for the return of their land and for access to natural resources, and focused on the period from 1990 to 2001. The first section covered the 1990-1994 period; the second, 1995-1997; and the third, 1997-2001. The people were led in these struggles mainly by local political activists, assisted later by land NGOs TRALSO and The Village Planner.

The first period was characterised by people's struggles for access to the nature reserves, which culminated in mass protests and violent land invasions. This period also saw unelected community leaders emerge. Significantly, traditional authorities were rejected by activists within the community. Local leaders did not have confidence in traditional authorities because of the latter's participation in the removal of local communities from their land by the Transkei government. In the 1990-1994 period, support for traditional authorities from the apartheid government was withdrawn, leaving these authorities significantly weakened, and allowing a space for community leaders to challenge the role of these authorities on land administration.

I argued that during the processes to establish democratically-elected institutions – starting with the Conservation Committees and, later, the CPAs and Land Trust in 1997 and 1998 respectively – traditional authorities were marginalised. During the establishment of the Land Trust, these authorities distanced themselves from the land claim, and played no leadership role in it. However, local residents resolved to allow ex officio roles to traditional authorities in their CPA constitutions. This initiative was an attempt to involve traditional authorities in the land claim process and keep them from opposing it. With their inclusion in the CPA constitutions, traditional authorities strategically and cautiously supported the registration processes of the Dwesa-Cwebe CPAs. I also argued that while the people of Dwesa-Cwebe were fighting for the return of their land and for access to the nature reserve, the state recognised traditional authorities at a constitutional and legislative level. This despite the fact that Dwesa-Cwebe communities rejected these traditional authorities during the land struggles. This chapter showed how the government's confusion about the role of traditional authorities in a democratic era has been used by traditional authorities to claim more recognition and authority over land in rural communities. At the same time, I showed how this lack of clarification affected the functioning of CPAs in Dwesa-Cwebe.

I argued that, with the formation of CPAs and the Land Trust, Dwesa-Cwebe residents reinstated themselves as the rightful authority over the land that would be restored in 2001. This represents continuity from the pre-settlement land claim situation, as they represent Dwesa-Cwebe claimants, but also a break with traditional authorities regarding management of protected reserves in particular. However, the chapter pointed out, the recognition of, and the lack of clarity about the roles, functions and powers of, traditional authorities in a democratic South Africa raised serious questions and concerns about the future and role of democratically-elected institutions such as the CPAs and the Land Trusts that were given statutory authority to own and manage protected areas on communal land acquired through the restitution policy. The struggles that have ensued are highlighted and discussed in the following chapters through the presentation of the findings of the case study. The next chapter asks a poignant question: On resolved communal land claims within protected areas where elected CPAs and Land Trusts are established, what would be the implications of the recognition and legal empowerment of traditional authorities.

## **CHAPTER SEVEN**

### **DCNR reclaimed: Management arrangements and complexities: 2001-2009**

#### **7.1 Introduction**

In 2001, with the success of the land claim by the Dwesa-Cwebe communities, the ownership of the returned land was “transferred” to the Land Trust and CPAs on behalf of the communities. The agreement gave the residents the right of access to the protected area, managed through arrangements between the state’s Eastern Cape Parks and Tourism Agency and community representatives from seven CPAs and the Land Trust, together known as the co-management committee (CMC). This chapter shows that traditional authorities, who had been despised by community leaders during the struggles for the reclamation of the DCNR, were held accountable by local communities and not given any role in the ownership and co-management of the nature reserve and communal land. This chapter also deals with the post-restitution dynamics at Dwesa-Cwebe Nature Reserve and their complexities, focusing on the period between 2001 and 2009. It looks at the settlement arrangements put in place for the DCNR and the conditions of the settlement negotiated and reflected in the Settlement Agreement.

The period covered in this chapter was characterised by the introduction of bills and passing of laws in parliament that strengthened the power of traditional authorities in land administration in communal areas. These included the Traditional Leadership Framework Act of 2003 and the Communal Land Rights Bill (RSA, 2003b), which sought to give the land administration role to traditional councils created by the Traditional Leadership Framework Act. At the same time, NGOs such as TRALSO that had worked on land issues, and which had assisted people’s struggles for land in the early 1990s, turned out to be ineffective. In 2002, TRALSO shut down its operations in Dwesa-Cwebe due to a lack of financial support from the national government (Ntshona, et al., 2009). These developments, especially the introduction of the Communal Land Rights Bill, had far-reaching implications in the registration of the CPAs in Dwesa-Cwebe. The CPA registration did not take place, mainly because of disputes over the applicability of CPA legislation as against the Communal Land Rights Bill. With this delay, Dwesa-Cwebe Land Trust representatives expressed concern that the Communal Land Rights Bill, which was due to be passed into law in 2004, would

allow for the transfer of CPA land and the nature reserve to traditional authorities, and would recognise tribal councils as “communities”.

After the reserve’s management was taken over by the ECPTA in 2007, the communities’ rights of access were terminated. Community members retaliated with fence-cutting, poaching and grazing of livestock in the protected area in their effort to claim back access to the nature reserve. Arrests and the shooting of locals as “poachers” led to a new initiative in the seven villages around Dwesa-Cwebe to win back their access rights. By 2008, a number of discontented community members had lost their confidence in their elected leaders in the Land Trust. The Trust and TRALSO were rapidly weakening, and, in 2009, traditional authorities that had earlier taken a backseat became involved in the access rights issue.

This chapter is divided into four sections. The first section examines the settlement of the Dwesa-Cwebe claim. This is followed by a section that looks at the management arrangements created for the nature reserve, highlighting the institutional composition of the CMC and the relations between the institutions. It also discusses the decline of the influence of outside support in Dwesa-Cwebe, such as TRALSO, while the leadership in the Land Trust was dealing with complexities of post-settlement activities and challenging the promulgation of the Communal Land Rights Bill on its own. The third section presents local peoples’ initiatives to claim back access to the nature reserve, which led to elected leaders losing the trust of their supporters and traditional authorities gaining ascendancy, boosted by local communities’ frustrations and new laws. The last section revisits discussions in Chapter Three that dealt with the legal empowerment of traditional authorities through the two critical pieces of legislation that had been promulgated.

I argue in this chapter that, despite the legal empowerment of traditional authorities through the Traditional Leadership and Governance Framework Act (TLGFA) and the Communal Land Rights Act (CLARA), the people of Dwesa-Cwebe continued to prefer more democratic community leaders, and regarded traditional authorities as unimportant in the co-management of the protected area. With the collapse of civil society structures such as TRALSO, and the loss of community trust in elected institutions – largely because of their perceived failure or inability to deliver on the demands and needs of the people as set out in the Settlement Agreement, traditional authorities that had no direct role in the co-management of the nature reserve created tensions within communities in order for

their power to be recognised. This ultimately stalled progress on achieving joint management objectives.

## **7.2 DCNR Settlement Agreement and traditional authorities: 2001-2004**

This section discusses the settlement agreements signed in relation to traditional authorities and elected representatives, following the restitution of the Dwesa-Cwebe land in 2001. It also deals with the establishment of the management structure and its implications for the role of traditional authorities in protected area management.

In 2001, the people of Dwesa and Cwebe succeeded in regaining access to natural resources under South Africa's land restitution policy. After the signing of the settlement agreement between the parties, ownership of the nature reserve was transferred to the Dwesa-Cwebe Land Trust, which represents seven CPAs. A ward committee member affirmed:

On 17 June 2001, the land and the conservation area were returned to the people of Dwesa-Cwebe and a settlement agreement was signed wherein it was agreed that people will benefit in a sustainable and managed way through a co-management committee. It was further agreed that local people, as owners of the land, would be part of managing the nature reserve through representation in a co-management committee.<sup>49</sup>

In 2003 and 2004, parliament passed and government implemented two critical pieces of legislation that strengthened the hand of traditional authorities in their claim of ownership of communal land and its administration. This despite the fact that the Communal Property Associations Act provides for the establishment of elected communal property institutions to hold rights returned to communities under the Restitution of Land Rights Act. In the Dwesa-Cwebe Settlement Agreement, elected representatives in the Land Trust and Communal Property Associations (CPAs), not unelected traditional authorities, had been granted ownership rights to the restored land. The Settlement Agreement had made no special reference to traditional authorities regarding power over land ownership and co-management of the protected area.

The Settlement Agreement granted no role to the traditional authorities that had acted as custodians and administrators of communal areas in the former Bantustans with regard to the ownership and

---

<sup>49</sup> Interview with a ward committee member (he requested not to disclose his name) from Elalini, July 2017.

control over and co-management of natural resources around the conservation area (Settlement Agreement, 2001). This was in line with the new democratic dispensation, and was in marked contrast to apartheid social engineering that had manipulated chiefs into acting as agents of the racist state. As Mamdani argued in *Citizen and Subject*, democratisation in rural Africa would require dismantling and reorganising of local state institutions that African governments had inherited from colonial-era indirect rule strategies (Mamdani, 1996:25-27). The Settlement Agreement attempted to do so by restoring the land to elected institutions rather than to “undemocratic” traditional authorities. The restituted land settlement comprised the following three components:

- the Dwesa and Cwebe Reserves, including the Ntlonyana cottages situated at the northern end of the marine protected area,
- the Haven Hotel, which is situated in the centre of the Dwesa-Cwebe Nature Reserve, and
- development for the seven villages of Dwesa-Cwebe (Settlement Agreement, 2001).

Clearly, traditional authorities were not happy about the decision that led to their exclusion in the ownership of returned land and co-management of the protected area in Dwesa-Cwebe. One traditional leader articulated their frustrations thus: “Thina siziiNkosi, yasikhathaza into yokuba singabandakanywa kwinkqubo yolawulo komhlaba nento zonke ezikwi-nature reserve [As traditional leaders, we were not happy about the fact that we had been side-lined from being part of the ownership and management of the nature reserve.]”<sup>50</sup>

In this section, I show that Dwesa-Cwebe residents had been consistent in distancing traditional authorities from the co-management of protected land, even though these traditional authorities are legally protected through the TLGFA and, from 2004 to 2010, by CLARA. These two pieces of legislation extended the powers of rural governance and control over land, natural resources and development to traditional authorities in rural areas, despite the existence of elected CPAs and Land Trusts. However, despite the provisions of these laws, no responsibilities in the co-management of protected areas have been assigned to traditional authorities anywhere in the country.

---

<sup>50</sup> Interview with a traditional leader Vulinqaba Ndlumbini from Mpume, April 2012 .

I turn now to the settlement arrangements and agreements entered into by the Land Trust. The compensation funds from the government to the community were kept at a Regional Land Claim office because the Dwesa-Cwebe Land Trust had not yet acquired the financial skills to account for the money. As Funda (2014) indicated, plans were developed to address the skills shortage, and implementation of the plans was coordinated. Yet not all these plans had been implemented by the time of writing. When ownership of the land and conservation area was transferred to the Land Trust, a number of conditions were included (Settlement Agreement, 2001): that the reserve land would be maintained as a nature conservation area; that no part of the reserve would be used for “residential, agricultural or other development purposes, save for low-density nature-based tourism development as...approved by the competent authority”; and that “the Trust shall not sell the land other than to the state” (Clauses 6 and 7 of the Settlement Agreement, 2001).

Commenting on these, Fay (2009) argued that nothing had changed “on the ground” after the settlement, and that what had been transferred was not ownership, but a “bundle of duties and a handful of rights”. In addition, the Dwesa-Cwebe residents were also given “new duties”. The transfer of the reserve to the Dwesa-Cwebe residents, with restrictive conditions, meant that the land would remain a conservation area in perpetuity. Arguably, these conditions prevented the Dwesa-Cwebe Land Trust from exercising full ownership rights over the restored land. The state intended to use these conditions to retain its management authority over the returned land, and wanted to ensure that the restored land would not lose its biodiversity conservation status inside the nature reserve. The Land Trust gave its consent for the government to manage the area as a nature reserve for a period of 21 years (see Ntsholo, 2014). Members of the Land Trust said that they had been preoccupied and confused by many legal aspects, and these conditions were being hastily discussed with them through community meetings and workshops prior to the settlement of their claim.<sup>51</sup>

The conditions set by the government contributed to acrimonious relationships stemming from lack of community access to natural resources from the restituted land and reserve. It is unclear whether these conditions had been discussed with the communities prior to the settlement of their claim because the Dwesa-Cwebe communities have always expressed their unhappiness about the lack of proper consultation during the settlement process. Some of these concerns were expressed during the CMC meetings and, in 2003, the community also requested a review of the Settlement Agreement. It

---

<sup>51</sup> Interview with four Land Trust members from Hobeni, Ntubeni and Mpume, April 2012. See also TRALSO/The Village Planner, 1 April 2000.

seems as if members of the Land Trust and the CPAs took decisions without consulting community members. This resulted in conflicts between the Land Trust and members of the community, who accused the Land Trust of lack of accountability.<sup>52</sup> Some community members have alleged that members of the Land Trust and CPAs were not open and transparent to community members when they took decisions about the conditions. As one young man said: “Some of the things in the settlement agreement were not communicated to us as people; members of the Land Trust and CPA did not involve us before they took a decision that denied people to use resources within the nature reserve.”<sup>53</sup>

Clause 4.1 of the Settlement Agreement stipulates that the community will benefit from the income generated from the management of Dwesa-Cwebe as a protected area, and it provides for the co-management of the reserve by the Land Trust and the ECPTA for a period of 21 years – from 2001 to 2022 (Dwesa-Cwebe Community Agreement, 2001).

The key institutions under the Settlement Agreement for Dwesa-Cwebe comprise seven Dwesa-Cwebe CPAs; the Minister of Rural Development and Land Reform; Minister of Agriculture, Fisheries and Forestry; Minister of Environmental Affairs; Eastern Cape Provincial Minister for Economic Affairs, Environment and Tourism; Eastern Cape Development Corporation (ECDC), which oversees the development of enterprises in rural areas in the province; Trustees of the Dwesa-Cwebe Land Trust and lessees of the cottages on claimed land (private individuals owning tourist houses on the sea-shore around the reserve). At the time of the signing of the Settlement Agreement, the CPAs had not yet been registered, and thus could play no role in land administration (Fay, 2005). Although traditional authorities were not recognised in the agreement as community representatives, they were allowed to allocate land in the seven villages around Dwesa-Cwebe through sub-headmen because the seven CPAs had not yet been registered.<sup>54</sup> The Settlement Agreement itself is a legal requirement in terms of Section 42D of the Restitution of Land Rights Act (1994). The purpose of the Land Trust is to act on behalf of the seven communities to ensure the effective use of the allocated restitution funds and to form a connection between the community, the Mbhashe Municipality, the Amathole District Municipality and other state and/or private institutions seeking to work with communities.

---

<sup>52</sup> Interview with a group of seven people from Cwebe and Hobeni, April 2012.

<sup>53</sup> Interview with Mcedi Mhlanga from Cwebe, April 2012.

<sup>54</sup> Personal communication with Kuzile Juza and Mr Mbola, 2012.



The Deed of Trust for Dwesa-Cwebe Land Trust (2001:5) defines representation as:

To act as agent for the Communal Property Associations...in all aspects of the development and exploitation of the cultural, medicinal, commercial and economic potential of the land held or controlled by each such association on behalf of and for the benefit of the members of each of the associations.

Thus, as I will discuss in the next section, the Land Trust's representative role is set out to be part of the CMC as outlined in the Settlement Agreement. The CMC aims to promote collaborative management of the nature reserve by the state and the landowner community.<sup>55</sup> The Settlement Agreement deals with three distinct assets within the nature reserve: the land (the basis of the land claim, the title deeds of which have now been transferred), the Haven Hotel (a source of revenue for the communities), and a number of privately-owned coastal cottages. As for the monetary compensation due to the seven villages, the Dwesa-Cwebe Land Trust received a total of R14.2 million comprising: R2.1 million as consideration for leasing the land to the former DEAET over a 21-year period; R1.6 million as compensation under the RLRA for forgoing certain use rights in respect of the land situated in the DCNR; R7.1 million in discretionary restitution grants; and R3.4 million in settlement planning grants. Regarding the R2.1 million consideration, the Settlement Agreement stipulates that it must be invested by the Land Trust and that the capital may not be used for ten years unless it is in "accordance with a development plan duly approved by the relevant Minister or MEC". The Amathole District Municipality, and not the Land Trust, was appointed as the implementing agent for the settlement and, as a result, the administration of the remaining funds was transferred to it. The principal purpose for these funds was to facilitate agricultural, educational and infrastructure development projects within and adjacent to the DCNR.

Clause 9 of the Settlement Agreement also compelled the Trust to lease the land back to the former Forestry Department for a period of 21 years. The Agreement recognised the provincial Department of Economic Affairs, Environment and Tourism as the formal management authority of the conservation aspects of the reserve, and the lease was passed on to the ECPTA as the appropriate institution on behalf of the state. In terms of the Settlement Agreement, read together with the Community Agreement, the primary responsibility for financing the management of the DCNR fell

---

<sup>55</sup> Personnel conversation with Mcebisi Kraai, June, 2017.

upon the erstwhile DWAF and DEAET (Settlement Agreement 2001:Clause 12 and Community Agreement 2001:Clause 7.3). All revenue generated by the reserve, excluding certain predefined categories of income, must be held in a separate account administered by the CMC. (The pre-defined categories of income that must be omitted, according to Clause 7.5, include: revenue generated from the Haven Hotel; income derived from community levies charged for entry or undertaking recreational activities in the nature reserve; the lease and the interest thereon; the restitution, settlement and planning grants; and donor funding.) The funds in this CMC-administered account may be used to fund the operational costs associated with the DCNR provided that, where such income in any year exceeds 50 percent of the operational costs for that year, such excess shall accrue to the Dwesa-Cwebe Land Trust (*ibid.*). Each party to the agreement undertook to obtain the written approval of the other prior to entering into any “private partnerships or commercial ventures” with third parties to generate revenue through the development or exploitation of resources within the DCNR (Settlement Agreement, 2001).

Thus, after many years of struggle for the return of their customary rights to land, Dwesa-Cwebe communities were still not out of the woods with regard to their enjoyment of the land and its benefits. As demonstrated in this section, the return of the Dwesa-Cwebe Nature Reserve to the communities was characterised by numerous complexities that made it difficult for members of the Land Trust and CPAs to take decisions regarding their land and nature reserves. This led to an acrimonious relationship between the Land Trust members and the broader community, mainly because none of the community demands that had been outlined in the Settlement Agreement were met. The community also blamed the Land Trust for agreeing to conditions in the Settlement Agreement that prevented community members from using natural resources in the reserve. Land Trust members were accused of being accountable to the state rather to the local constituencies that elected them. All this led to a sense of mistrust from community members towards the Land Trust. On the other hand, there has also been a lack of cooperation between entities involved in the Settlement Agreement. The DRDLR has not played its role; it has neither ensured that representative institutions perform their roles nor that resources from the department would reach their intended beneficiaries, the Dwesa-Cwebe Land Trust and its seven CPAs.

This section examined the moment of victory for the people of Dwesa-Cwebe who regained their lost land and access rights to the protected area. It showed how committed the people of Dwesa-Cwebe

were to the principle of democracy, as they continued to prefer democratic elected institutions to own and manage the land and nature reserves on their behalf. As demonstrated in the last chapter, although the Dwesa-Cwebe communities respected traditional authorities, they did not want them to be involved with their natural resources and the settlement funds. Despite their commitment to elected leaders in the Land Trust, however, Dwesa-Cwebe residents blamed these leaders for failing to include them in the decision about the conditions of the settlement. Community members feel that has been no change to their lives after the land claim settlement process, and blame their leaders for this. Local communities continue to be denied access to the nature reserve for forest and marine resources, and the Settlement Agreement has not been honoured by the state. Since 2001 when it was signed, none of the community demands have been met and state officials continue to regard community members as trespassers and poachers on their own land. It seems that the development approach in the context of protected area management by the state has served to marginalise communities in favour of capital and profit generation.

### **7.3 Collaborative management of DCNR, exclusion of traditional authorities**

According to the Settlement Agreement, the Land Trust was required to enter into arrangement for co-management of the protected area with the state through the Eastern Cape Parks Board and ECPTA. Power sharing, resource access and benefit-sharing arrangements are all spelled out. The Settlement Agreement stipulated:

The Department of Water Affairs and Forestry (DWAF), shall in collaboration with its delegated management authority, namely the Provincial Department of Economic Affairs, Environment and Tourism (DEAET), assume State responsibility for the management, continued use and further development of the Reserve as a National Protected Area (DLA, 2001:11).

The Agreement also stipulates the terms of the Community Agreement, which provides for the co-management of the nature reserve by the Trust and the ECPTA for a period of 21 years (Community Agreement, 2001:Clause 4.1). Details of the nature of this co-management arrangement are specified in both the Community Agreement and the Management Planning Framework, which provide for the establishment of a Co-Management Committee (CMC) comprising of equal community and government representation. The CMC is the management structure of the DCNR as set out in the

Settlement Agreement. As was confirmed by a CPA member, the role of traditional authorities in the management committee of a protected area was omitted.

Although here at Hobeni our chief is recognised in the CPA, but we did not see any role chiefs can play in the management of our resources in the nature reserve. The Land Trust is the one that co-manages the reserve with the state. We trusted [the members of the Land Trust] because we had elected them and they are accountable to us as people of Dwesa-Cwebe.<sup>56</sup>

In as much as the Community Agreement and the Management Planning Framework attempt to outline the respective roles and responsibilities of all institutions, they fail to clearly define the role of the CMC and its relationship to the management authority. Community representatives in the Land Trust agreed to manage the area as a nature reserve because these agreements were put in place at a time when the communities, the DLA, ECNC and other parties in the negotiations were all being told that major tourism development activities were imminent. From 1997 to around 2002, the Spatial Development Initiatives (SDI) process was putting pressure on everyone involved to rush the negotiations and was promising new investment and benefit streams, but none of these materialised. Community leaders were open to making concessions over natural resource use and residency in the forests because they were being sold the idea that there was going to be a great deal of new tourism investment in the area. This may be the reason that the role and function of the CMC, established in 2002, have been minimal (see also Palmer, et al., 2006; Paterson, 2011).

This observation is supported by Kostauli (2011), Fay (2008) and many insights from informal and formal discussions with provincial state officials during fieldwork in the Eastern Cape in 2012 and 2017. The Settlement Agreement obliges the state and the landowner community to, within one year of the termination of the Community Agreement, renegotiate its terms and, hence, their partnership arrangements. Under the terms of the Settlement Agreement (Clause 8.1; 8.2), if state and community representatives fail to reach an agreement before the expiry of the current management arrangement, the authority to manage the nature reserve will revert solely to the appropriate state conservation authority, the ECPTA; this means, in effect, that the reserve would be (again) taken away from communities and returned to the state. As stipulated in the Settlement Agreement, the co-

---

<sup>56</sup> Interview with Lindiwe Rasmani at Hobeni Village, June 2011.

management of Dwesa-Cwebe is supposed take place according to a management plan developed by the CMC, which, in turn, must comply with the provisions of the Management Planning Framework, which stipulates equal representation of the state and communities (Dwesa-Cwebe Community Agreement, 2001).

However, to date, no management plan has been developed. Consequently, the management of Dwesa-Cwebe has been guided by the management principles prescribed in the Management Planning Framework, including: the community will have managed access to some natural resources situated in the nature reserves on an ecologically sustainable basis; the community will enjoy preferential status in terms of eco-tourism employment opportunities, resource rights and input into the development of management policies and plans; tourism development will be encouraged in the reserves to ensure that the community receives appropriate financial and other benefits from them; the community's local custom, traditions and knowledge will be respected and used in the management of the reserves; and the community will share in the costs and responsibilities associated with the management and development of the reserves on an equal basis (Management Planning Framework, undated). But these plans remain unrealised, as confirmed by Headman Phathisile from Hobeni: "Here they created a Dwesa-Cwebe Development Plan. I do not know the year when it was created, but what I know is that it has not materialised."<sup>57</sup>

Kuzile Juze, a former Land Trust member who was also part of the co-management negotiations, clarified:

Immediately after 2001, a Management Plan Document was supposed to have been developed, which would give us proper procedures of how, as land claimants, we are going to access natural resources in the reserve. But it did not happen. This document would guide us to establish co-management whereby we will manage natural resources with government and how we are going to access those natural resources. We have waited for this document up until we organised co-management meetings.<sup>58</sup>

Land Trust members say there was a lack of commitment and willingness on the part of the state to do this. As trustees, they claim, they had presented a checklist that identified issues that people

---

<sup>57</sup> Interview with headman Phathisile Fudumele, 2012.

<sup>58</sup> Interview with Kuzile Juze, 30 May 2011.

wanted to benefit by, as they had been requested to do.<sup>59</sup> The lack of a Development Plan, according to Land Trust members, was the start of community members' mistrusting them. Some community members, including traditional leaders, for example, began referring to members of the Land Trust as "sell-outs" who worked with the government (now the ECPTA) to prevent local people from accessing and using natural resources around the nature reserve. These Land Trust members added that, by early 2004, the body was no longer trusted by local residents and traditional authorities. There were also rumours that the Trust had sold the people's forest, and an accusation that the trustees had misused the land claim award. Community members who I had interviewed were unhappy with their representatives, accusing Land Trust members of agreeing with the Settlement Agreement conditions that restricted community access to the nature reserve. Because of these restrictive conditions, they claimed, the reserve management authority refused to allow local people to access a range of natural and marine resources for their livelihoods, which had been permitted in the past with minor restrictions. A former Land Trust member told me:

The failure to develop a development plan created a division between the trustees, and lack of trust by local people because, in 2001, we told people that they are going to benefit from the resources within the reserve. Since 2002, 2003, 2004, nothing happened; people did not receive any benefit from the reserve. And, as trustees, we were accused of not clearly addressing the needs of the people in the meetings with government officials, even though we used to report back to people. People are tired of our empty promises that they are going to benefit and that a management plan will be drafted but it is not. And we end up being called liars and people who sell community forests to the state by our constituencies.<sup>60</sup>

This has been one of the major hurdles surrounding management arrangements in Dwesa-Cwebe. Co-management, as part of the land restitution agreement, was in line with a trend in South Africa to settle land claims in protected areas in this manner (Kepe, 2008). As early as 2004, the Land Trust and the CPAs were unable to enforce the agreed-upon grazing ban in the nature reserves, as some villages from Cwebe, in particular, continued to graze their livestock even after the resolution of the land claim (Fay, 2007). This, however, threatened the legitimacy of the elected leadership in the Land Trust and the CPAs, as they were part of the co-management arrangements. One community leader asserted, "People complained about the lack of capacity of the Land Trustees and CPA

---

<sup>59</sup> Interview with two members of the Land Trust, April 2012.

<sup>60</sup> Interview with Khuzile Juze, April 2012.

leadership to ensure community access to the forest and marine reserves.”<sup>61</sup> At Cwebe village, two informants indicated that they would continue to remove the nature reserve fence to easily send their cattle inside the reserve until their democratic and legally-established rights enshrined in the Settlement and Co-management Agreements were met.<sup>62</sup> In Dwesa-Cwebe, co-management was born out of the community struggle for access to forest and marine resources within the nature reserve, and emerged as a principle for future engagement and controlled access to natural resources, as shown in the first formal meeting between the community and conservation authorities that was held on 4 December 1995. In the pre-negotiations situation and in the subsequent Settlement Agreement, people of Dwesa-Cwebe had enjoyed some form of access to resources, even though they were not part of any co-management agreement. One former TRALSO and The Village Planner official said that co-management had been promoted by both state officials and NGOs to “buy” community support, while others believed it would be a remedy to on-going tensions between the conservationists and the communities.<sup>63</sup>

It was demonstrated in this section that the first five years after the signing of the Settlement Agreement was a time of turbulence; the community was clearly not happy and was not getting the attention of the management authority. Conditions during the period of the land claim settlement and the first five or six years after have not changed. The return of the land did not provide any management rights or responsibilities to the communities of Dwesa-Cwebe, but created “a bunch of new duties with restrictions” (Fay, 2009). The ECNC (or its predecessors) continued to manage the DCNR. During the period covered in this section, community members started to lose hope and trust in their representatives in the Land Trust and the CPAs in Dwesa-Cwebe, and in the ECNC. They had long since lost trust in the traditional authorities. It seems that the community will malign and turn against whoever works with the state to represent communities. Colonial and apartheid governments co-opted traditional authorities; the post-1994 democratic government seems to do that with elected representatives that serve in the collaborative management of DCNR. The development model adopted by the government marginalises the communities and creates tensions regarding the management of protected areas on land under the jurisdiction of traditional authorities.

---

<sup>61</sup> Interview with a community leader from Hobeni (she requested not to disclose her name), April 2012.

<sup>62</sup> Group discussion in Cwebe, May 2012.

<sup>63</sup> Personal communication with André Terblanche, June 2011.

### ***7.3.1 Composition of co-management committee, implications for traditional authorities***

This section discusses the composition of the co-management committee and its implications for the role of traditional authorities in Dwesa-Cwebe. The management arrangements enshrined in the co-management agreement were imposed on the ECPTA by the Forestry Department in 2002 as part of the settlement of the land claim relating to the DCNR. The government attempted to install democratically-elected representatives on a Co-management Committee to give effect to the agreement. The Co-management Committee consists of the Dwesa-Cwebe Land Trust – representing all seven CPAs, the Eastern Cape Parks Board, the Department of Land Affairs, and local government institutions (Dwesa-Cwebe Community Agreement, 2001). Working with the state, community representatives in the Land Trust continued to exclude traditional authorities in the management committee of the protected area as they had done during the land struggle and the land claim process. The composition of the CMC and the roles and responsibilities of its parties related to the management of the nature reserve have been outlined in the Community Agreement. The CMC's role has been to promote collaborative arrangements to ensure sustainable utilisation of natural resources by villagers. The CMC is also supposed to ensure the participation of local communities in the management of the nature reserve and to maintain cooperation between local communities and the state management authority, with the purpose of managing resource utilisation in a sustainable manner. The Settlement Agreement stipulated that the CMC could not take decisions or action in respect of the use or development of the reserve contrary to the provisions of the Management Plan and other legislation applicable to the reserve (DLA 2001).

An examination of the Dwesa-Cwebe CMC documents shows that one set of institutions whose role is not specified clearly is municipal authorities that have been drawn into the direct implementation of land restitution as implementing agents. The Amathole District Municipality was appointed as the implementing agent for the Settlement Agreement but a number of problems arose with this. First, the municipal authority was not represented in the founding agreements and its roles and responsibilities with regard to the nature reserve are, therefore, poorly elaborated. At the same time, important institutions such as the Department of Rural Development and Land Reform, traditional authorities, the Haven Hotel and cottage lessees were excluded from the CMC (see also the Settlement Agreement, 2001; Paterson & Mkhulisi, 2014). Instead, the Dwesa-Cwebe Land Trust is mandated by the Community Agreement and Settlement Agreement to sit in the DCNR management committee and represent the interests of the entire body of land claimants. While the inclusion of



these institutions may add more complexity to the functioning of CMC, their complete exclusion potentially precludes necessary oversight by relevant government authorities, the co-option of traditional authorities, and coordination of the stakeholders' respective functions, mandates and agendas (see also Paterson & Mkhulisi, 2014). Some members of the Land Trust suggested in a meeting that "chiefs" must be included in the CMC to promote mutual collaboration. Kuzile Juza painted a picture of that meeting.

There was a meeting at Haven Hotel in 2005, where we were looking at the composition of the Co-management Committee. The Settlement Agreement states that seven trustee members should be part and parcel of the co-management structure and government institutions. In that meeting, chiefs were also present and I mentioned that the decisions that we as co-management committees take [could easily] be challenged by local people and traditional leaders, because chiefs are not part and parcel of the committee. Then I suggested that one traditional leader must be included in the CMC even if he is from either Dwesa or Cwebe so that he represents the other three chiefs in Dwesa-Cwebe. So that the chief will report back to other chiefs about anything that is discussed in the CMC meetings. I said chiefs must be included in this structure so that when we report back to the community in Chief's Place, there will be no misunderstanding between the Trust, chiefs and people.<sup>64</sup>

These utterances from a former member of the Land Trust suggest that the inclusion of the traditional authorities in the management arrangements of the nature reserve might have made management of the protected area easier. It would also strengthen collaboration between elected institutions and traditional authorities in the management of the DCNR. At the same time, because chiefs and headmen had facilitated conservation policies during the apartheid era, local people had refused to allow them to serve in the management committee that controls community access to natural resources in the DCNR. Despite this, some members of the Land Trust, such as the former chairperson, called for the inclusion of chiefs in the CMC so that, when they reported back to their constituencies, there would be no misunderstanding between them and the chiefs. Headman Ndlumbini also complained about the exclusion of chiefs.

---

<sup>64</sup> Interview with Kuzile Juza of the Land Trust, April, 2011.

Chiefs were deliberately excluded in the co-management arrangements by TRALSO and local people. Although we used to attend co-management meetings here at Dwesa Nature Reserve, we are not full members of this institution. Babengasifuni sibeyinxalenye ye-CMC. [They did not want us to be part of the co-management committee]. The Land Trust takes decisions for the management of forest resources, and they requested people to go to the Trust when they want to access natural resources in the nature reserve, not to the chiefs.<sup>65</sup>

Headman Phathisile Fudumele suggested that despite their exclusion, traditional leaders were still involved in the issue. “Even though they excluded us in the co-management, we are still involved in a number of ways. Here in Hobeni, nothing is happening without my involvement and approval,” he said.<sup>66</sup>

As these traditional leaders confirm, chiefs in Dwesa-Cwebe have resisted their exclusion from the DCNR management arrangements and refused to be under the leadership of and represented by the Land Trust in the management committee of the nature reserve. However, people continued to approach chiefs when they wanted land or when they had family- and land-related disputes in their sub-localities. Thus, locals rejected a role for chiefs, and chose elected local leaders instead, to jointly manage their returned nature reserve together with the state, but still resorted to the chiefs for other needs. Despite the lack of confidence of these communities towards traditional authorities in relation to co-management of the nature reserves, however, the government gave them even more powers than they had had during the apartheid/Bantustan era (see Ntsebeza, 2006).

As illustrated in this section, the choice of the Dwesa-Cwebe CMC created problems with regard to the community’s recognition of the Land Trust and the CPAs. The structure of the Land Trust and the CPAs resulted in significant tensions amongst communities. The other profound implications surrounding the choice of elected resource governance institutions in the CMC relate to rural land administration, not just in the case of Dwesa-Cwebe, but for South Africa as a whole. This choice undermined the pre-colonial powers of traditional authorities over land and natural resource management (see also Ntsebeza, 2006). “This conundrum is compounded by the fact that the laws do [not] clarify[] the relationship between the new ‘democratic’ CPAs and their traditional ‘apartheid’ counterparts” (Paterson, 2011). This lack of clarity of the roles and responsibilities of these two

---

<sup>65</sup> Interview with headman Vulinqaba Ndlumbini, Mpume side, 28 May 2011.

<sup>66</sup> Interview with headman Phathisile Fudumele, Hobeni, Cwebe side, June 2017.

institutions regarding the CMC and overall resource governance created problems (Palmer, et al., 2006).

Further, the institutional choices that the state made in shifting responsibility from one department to another led to confusion regarding the institution that was the competent authority for the reserve. This was compounded by the membership of the reserve's CMC. Overall, the CMC is a complex institution with no clarity of roles and responsibilities and without clear financing mechanisms in a period when all settlement support from the state was withdrawn. In other words, the CMC was set up for failure. I agree with Paterson (2011) that the hesitance of the state to implement the communal land tenure regime clearly posed, and continues to pose, numerous challenges for the settlement of land claims on protected areas in South Africa.

#### **7.4 Declining influence of support organisations, challenge to the Communal Land Rights Bill by the Land Trust: 2002-2005**

From 2002 to 2005, the leaders of the Land Trust and CPAs were left with no support from the land-based NGO activists. With no capacity, resources or support from government, and without their NGO allies, the Land Trust and CPAs were left to deal with state departments on their own. TRALSO had become inactive, traditional authorities were legally protected by the state (see Ntsebeza, 2006), and the Land Trust leaders engaged in national politics. The Land Trust leaders voiced their opposition to the Communal Land Rights Bill in 2003 it was passed into law in 2004 after the enactment of the Traditional Leadership and Governance Framework Act 41 of 2003 by the national parliament. The Land Trust's concern was that the Communal Land Rights Act gave traditional authorities more powers to manage communal land, despite the existence of elected landholding institutions such as CPAs. The Act was rescinded six years later, in 2010, as a result of a Constitutional Court ruling (see Chapter Three).

From 2002, TRALSO became inactive, suspended its operations in Dwesa-Cwebe due to a funding crisis, and was no longer as influential as it had been during the struggle for reclamation of access to the nature reserve, and during the land claim activities. The NGO also played no influential role in the implementation of post-settlement promises. A former TRALSO Land Reform officer, Mcebisi Kraai, confirmed:

After the settlement of [the] land claim in 2002, TRALSO stopped working with the people of Dwesa-Cwebe. One of the reasons...was that the post-apartheid government was no longer supporting us financially. This made it difficult for the NGO to continue assisting the people of Dwesa-Cwebe in terms of making sure that post-settlement development is happening.<sup>67</sup>

TRALSO participated in only a few post-settlement processes, such as the settlement planning and co-management meetings in Dwesa-Cwebe (see also Ntshona, et al., 2009). However, in 2005, TRALSO returned to Dwesa-Cwebe after it received funding from the International Land Coalition for the empowerment of the communities it had worked with in the Wild Coast, including the communities of Dwesa-Cwebe.<sup>68</sup> Among the key needs in Dwesa-Cwebe that this TRALSO project could serve was assistance required by the Land Trust to access information regarding its entitlements on the reserve, the legislation relevant to the management of the environment, and administrative capacity to manage the money they were supposed to hold on behalf of the community. In addition to these specific needs, the project sought to support, build and strengthen the institutional capacity of land-claiming rural communities of the Wild Coast; facilitate conflict resolution among communities and external parties who were involved in major disputes; enhance the capacity of the rural people of the Wild Coast to access and utilise their land and natural resources more efficiently and productively; and increase rural people's participation in decision-making processes (Ntshona, et al., 2009). However, even though TRALSO returned to Dwesa-Cwebe through this project, the NGO has not been as active and influential as it had been during the early years of land struggles.

TRALSO's André Terblanche told me that the empowerment of traditional authorities through CLARA led to delays in the registration of CPAs because of the contradictions between the CPA legislation and CLARA.<sup>69</sup> These delays have discouraged tourism investment in the land outside the DCNR (Dwesa-Cwebe Community Consultation, 2003). Former Land Trust and CPA members in Ntubeni, allege that, as early as 2005, the CPAs' mandate to administer communal land in the villages was undermined by traditional authorities.<sup>70</sup> By that stage, they said, the CPAs could not play any role in the management of land (see also Fay, 2006:4; Ntshona, et al., 2009). The battle

---

<sup>67</sup> Interview with Mcebisi Kraai, April 2012.

<sup>68</sup> Personal conversation with Zolile Ntshona, 2007.

<sup>69</sup> André Terblanche, personal communication, June 2011. See also Fay, 2006.

<sup>70</sup> Interview with Mr Mhlayifani Templeton Mbola, May 2012.

waged by local traditional leaders, who were empowered by the state, against the CPAs was likely one of the reasons that CPAs became dysfunctional in Dwesa-Cwebe. I agree with Fay (ibid.) that the CPAs had grown out of structures that had been elected with a mandate to execute the land claim, not to become involved in village land management.

When TRALSO suspended its services in Dwesa-Cwebe, traditional leaders who had been despised by TRALSO officials and community leaders were provided powers over land management in rural areas by the government. However, the people of Dwesa-Cwebe did not simply accept the developments at the national level; the government's empowering of traditional authorities was challenged by the Dwesa-Cwebe Land Trust. In a document presented to the National Assembly in 2003, community representatives in the Land Trust rejected the Communal Land Rights Bill, which, they believed, was undermining the authority and the functioning of elected representatives in the CPAs, and obstructing their mandate to bring development to Dwesa-Cwebe villages.

Their concern was that the Bill, if it became law, would allow for the transfer of people's land and the nature reserve to traditional authorities (Dwesa-Cwebe Community Consultation, 2003). The chairperson of the Land Trust pointed out that the Act would favour traditional authorities that were fighting CPAs that had been established to administer land in the villages (ibid). "In that submission document to parliament, our position was clear that, as communities of Dwesa-Cwebe, we have chosen the Land Trust and CPAs to own and manage the land and protected area," said Mhlayifani Mbola, who was then the chairperson of the Land Trust.<sup>71</sup> Another CPA committee member, added:

In [the Dwesa-Cwebe Community Consultation] document we made it clear that we wanted the Act to be removed because it would allow chiefs to control our land including all natural resources in the nature reserve. Let me tell you something: here at Ntubeni, a chief had allocated land to outsiders without the permission of the CPAs. So, we did not want the Act because it would give more power to the same chiefs that attempted to sell our land and natural resources to strangers.<sup>72</sup>

The delay of the CPA registration and the continued management of village land by traditional authorities caused the Land Trust leaders to reject the passage of the Communal Land Rights Bill

---

<sup>71</sup> Interview with Mhlayifani Templeton Mbola, May 2012.

<sup>72</sup> Interview with former CPA member (he requested not to disclose his name), April 2012.

into law. However, with this Act and others, the state has effectively presided over the demise and disempowerment of elected landholding institutions such as the CPAs and the Land Trust (see also Ntshona, et al., 2009). Regarding their participation in national politics, the people of Dwesa-Cwebe have become more “citizens” than “subjects” (see Mamdani, 1996). In addition, it seems as if they managed to avoid being subjected again to the rule of chiefs and headmen in their villages as far as the management of natural resources on communal land around protected areas was concerned. During this period, despite experiencing serious problems, CPAs and the Land Trust were more influential and respected than the chiefs and headmen regarding the management of access to natural resources in the nature reserve. One explanation is that leaders who serve in the CPAs and Land Trust had been at the forefront of the land struggle and land claim process in the 1990s. As Fay and Palmer (2000:196) indicated, community representatives in the Dwesa-Cwebe Land Trust defined the boundaries of Dwesa-Cwebe in terms of past participation in the struggle to restore access. The claimants generally explain the composition of the Dwesa-Cwebe Land Trust in terms of the common experience of those who it represents. They see their shared past struggle both as a basis for unity and for exclusion of those who did not participate.

Moreover, according to Land Trust members, the Dwesa-Cwebe “community” is conceived as encompassing “the residents of the areas...that took an active role in the protest actions of 1994” (Fay & Palmer, 2000:196 in Fay, 2009). As indicated in Chapter Six, chiefs and headmen had distanced themselves from community struggles for access to land and natural resources in the nature reserve, and they were, in turn, rejected by the community and by TRALSO. In Dwesa-Cwebe, chiefs and headmen were not at the forefront of the land claim, nor did they hold key positions, such as chairperson of a community land trust, as was the case elsewhere in the country (see Ngubane, 2012). It is therefore unsurprising that the Dwesa-Cwebe land claim has not contributed to an increase of land under the control of traditional leaders. Paradoxically, while traditional authorities were challenged at the local level by residents of Dwesa-Cwebe, the state continues to legislate ways in which to empower the same authorities in communal areas at the national level.

In the next section, I will deal with new community struggles, from 2006 to 2009, to claim access to DCNR after the state had prevented residents from access to natural and marine resources in the forest and nature reserve. These struggles contributed to the fall of elected institutions because they

failed to facilitate community access to the nature reserve. As I will show, it was at this point that traditional authorities got an opportunity for resurgence in the area.

### **7.5 The beginning of the fall of elected representatives?: 2006-2009**

This section describes new initiatives which erupted in Dwesa-Cwebe to reclaim access to the Dwesa-Cwebe protected area. As will be shown, the situation became worse for communities, especially after the Eastern Cape Parks Board (ECPB) took over management of the reserve in 2006. The Parks Board prevented people from fishing and gathering food and wood in the forests. Residents were arrested, harassed and incarcerated by ECPB rangers for entering the reserve “illegally”. In response, a group of dissatisfied community members resorted to violence, directing their frustrations at Land Trust members. It was at this point, between 2008 and 2009, that traditional leaders who had been quiet or had hidden their interests in the area reappeared.

The Dwesa-Cwebe communities continue to wait for title to the land that had been returned to them in 2001. The title for the land has not been registered to the rightful owners, the CPAs, nor to the Land Trust for the DCNR or The Haven Hotel, which is still registered to the Transkei Development Corporation. From 2001, local residents have been denied access to a range of natural resources in the nature reserve for their livelihoods, and the settlement funds are still held by the Amathole District Municipality. There has been no implementation of post-settlement socio-economic development in the area, as had been promised. Co-management of the protected area has never really taken off in Dwesa-Cwebe, and even tentative discussions through co-management meetings that took place in the years immediately after the settlement of the claim (2002-2005) have borne virtually no fruit. One resident expressed the communities’ frustration:

Koko wabuya umhlaba ngo-2001, sasayina i-co-management agreement, akonto siyifumanayo phaya ngaphakathi kwe-nature reserve. Into eyenzekayo siyabanjwa qha xasingena ngaphathikwi-nature reserve. Siyahlupheka kodwa kwathiwa sizoxhamla kwi-nature reserve. [Since the restoration of the land and the signing of the co-management agreement in 2001, there’s nothing here that benefits us in the reserve. Instead, we experienced poverty in every way although they promised us that we would benefit.<sup>73</sup>

---

<sup>73</sup> Interview with Nosapho Siyaleko at Hobeni, July 2017.

Although there are a few successes of co-management arrangements in other parts of the country (Leach, Mearns & Scoones, 1999; Campbell & Shackleton, 2001; Blaikie, 2006), there have been no effective co-management practices in Dwesa-Cwebe since the settlement of the land claim in 2001. Community members also indicated that the CMC had failed to deliver on the promise of benefit sharing, such as access to natural resources, jobs, revenue sharing from eco-tourism opportunities, and socio-economic development. As one respondent said:

Co-management is no longer existing, no longer active. From the start it focused on the issue of conservation more than on issues of community benefit and utilisation of resources by the community as it was supposed to. It was supposed to balance issues between access to natural resources by communities, which surround the nature reserve, as well as adhere to the laws and regulations that are applicable from the government side. I think the structure was active from 2003 up to 2005; thereafter it was not fulfilling the mandate according to the settlement agreement. It was only active for about three years. It was only active when Mr Mbethe was a reserve manager; after he left the position, the structure was no longer active in terms of co-management meetings. This structure was supposed to meet monthly.<sup>74</sup>

Co-management, as suggested by this respondent, has not delivered on its mandate; it failed to balance the needs of the community with those of conservation, focusing, rather, on the latter. The ECPTA's Mazwi Mkhulisi disagreed that there had been no co-management interactions between 2007 and 2008.

There is partnership interaction between the landowner and us (the Agency). What is not there is a degree of empowerment; it is quite low related to what is called co-management...I think a lot of the tensions that are found on the ground [have] a lot to do not only with conservation as the land use that is continuing on this restored land, but also because the other partners in the settlement agreement did not deliver.”<sup>75</sup>

Mkhulisi insisted that though co-management has been weak, it had not failed as people on the ground had indicated.<sup>76</sup> He challenges the view that co-management of the protected area in Dwesa-

---

<sup>74</sup> Interview with Khuzile Juze, 2012.

<sup>75</sup> Interview with Mazwi Mkhulisi, June 2012.

<sup>76</sup> Ibid.



Cwebe failed to deliver to the landowners, insisting that it was not possible to assess co-management capacity or effectiveness in Dwesa-Cwebe because there has been no formal management agreement between the ECPTA and the landowner community.

Things became worse for the people of Dwesa-Cwebe around 2006/2007 when the Parks Board took over the management of nature reserves and introduced strict measures prohibiting local people from entering them. According to some local villagers, the Forest Department used to allow people to access forest resources from the nature reserve before the ECPTA (previously the Parks Board) became responsible for the management of DCNR.<sup>77</sup> One headman confirmed this: “We used to access forest and marine resources from the reserve and around it, but since the ECPTA took over, we are not allowed to access these resources. The Land Trust is useless; it failed to challenge the ECPTA to allow people to access natural resources in the reserve.”<sup>78</sup>

With the total transferral of management authority to the ECPTA in 2006, local people were completely denied access to natural resources for their livelihoods, ostensibly for fear of unsustainable harvesting practices. I was told that the ECPTA terminated the permit system for access to forest resources that had been introduced in 2000 without involving the Land Trust.<sup>79</sup> Interviews with locals, who are impatient at the lack of implementation of the co-management agreement promises, revealed their frustrations and suggested that should the situation worsen, they might invade the nature reserve. Even though local people have representation in the management structures of the nature reserve, community access to marine and forest resources, participation in the management of the nature reserve, and revenue returns that were expected from eco-tourism receipts have not been realised (see Paterson, 2010; Fay, 2008). This has perpetuated the people’s distrust of authorities. One resident angrily explained:

We elected the Land Trust to represent us in the management committee of the DCNR so that we can access forest and marine resources in the nature reserve. But instead of getting what

---

<sup>77</sup> Interview with a female traditional healer (requested not to disclose her name), June 2017.

<sup>78</sup> Interview with Headman Vulinqaba Ndlumbini, June 2017.

<sup>79</sup> Personal communication with a villager.

was promised to us by the state and the Land Trustees in 2001, we got arrested by the ECPTA and the Land Trust.<sup>80</sup>

In two meetings facilitated by TRALSO that were held at the Dwesa-Cwebe Haven Hotel on the 14 and 15 November 2007, local people, CPAs, traditional authorities (chiefs, headmen and sub-headmen), the fishers associations and ward committees expressed anger with the Land Trust for being unable to hold the Amathole District Municipality accountable for the settlement grant.<sup>81</sup> They demanded the Land Trust must write a letter to the Municipality requesting it to transfer their settlement funds back into the Trust's bank account. The meeting insisted that the Land Trust must force the Municipality to hand over all their money as they could now manage their settlement funds and finances from the Haven Hotel.<sup>82</sup> In these meetings, there were claims that the money had been "stolen" and "used" by government officials and/or members of the Land Trust. These two meetings were the manifestation of the political dynamics unfolding in Dwesa-Cwebe at the time, as will be discussed in the next chapter.

The Land Trust explained to the meetings that it had not had the experience and expertise to manage the funds when the land claim had been settled in 2001, and that was the reason that the funds had been handed over to the Amathole Municipality. Although the Land Trust was attacked in these meetings, it had been struggling unsuccessfully since the settlement agreement to hold the municipality accountable for its responsibility to spend the settlement grants on local development. Frustrated in its attempts, it was eventually considering legal action against the municipality. Although this did not happen, community institutions threatened the ECPTA and the Amathole Municipality that if community demands and concerns were not seriously considered before the end of November 2007, they would invade the reserves forcefully.

Between 2008 and 2009, arrests, assaults and even shootings of local residents as "poachers" forced the seven Dwesa-Cwebe villages to reclaim access. In their attempt to claim back their access rights to natural resources within the nature reserve, local people resorted to violence, cutting fences, poaching resources, cutting trees illegally and grazing stock in the DCNR.<sup>83</sup> Increased levels of

---

<sup>80</sup> Interview with a man from Hobeni (he requested not to disclose his name), July 2017.

<sup>81</sup> During this period (from 2002) TRALSO was no longer fully operating in the area, but the Land Trust and CPAs had requested TRALSO to facilitate the meetings and write letters to the relevant departments.

<sup>82</sup> Dwesa-Cwebe Co-management meeting, 16 April 2007.

<sup>83</sup> All respondents I interviewed in July 2017 confirmed this.

poaching and other illegal activities in the nature reserve were reported. Two rangers from Cwebe recalled:

At this side of Cwebe, people continued to destroy the fence around the nature reserve in order to access forest resources and in order to graze their cattle inside the nature reserve. We tried to stop them several times without success. They say the land is theirs. And, as rangers, we also know that the land and all natural resources belong to us as people of Dwesa-Cwebe, not to the ECPTA. We understand their frustration but we have to guard against them entering the nature reserve as we are employed by the ECPTA.<sup>84</sup>

A Cwebe resident insisted:

We will continue destroying the reserve fence to drive our cattle inside the reserve if the ECPTA continues to deny us access to forest resources, marine resources and to graze our cattle inside the forest. This reserve is ours. In 2001, we were told that the reserve and all natural resources are back to us; we can use them. But why now we got shot when we use them?<sup>85</sup>

An old resident of Hobeni, Mr Batshise “Dingatha” Mase, expressed his disappointment to me.

We used to cut wood; as you can see these fence posts here, they came from the forest. Now we do not have legal permission to get wood. We are not allowed to access forest resources, marine resources and graze our cattle inside the reserve. Now we are poaching. We organise *umqombothi* for young men who go in there during moonlight and cut the required wood overnight.<sup>86</sup>

Another respondent added:

People were initially told that they should not move inside the reserve because the wild animals were pregnant and were aggressive. It was then quiet for about six months. Then it all changed. When people went inside the reserve they were arrested, handcuffed and beaten

---

<sup>84</sup> Interview with rangers from Cwebe (they requested not to disclose their names), 2017.

<sup>85</sup> Interview with local villager from Cwebe (he requested not to disclose his name), May 2012.

<sup>86</sup> Interview with an old man from Hobeni, Mr Batshise “Dingatha” Mase, June 2017.

up. They were never properly consulted. They were surprised when this happened because they were charged with trespassing, but it was said that the land now belonged to them. The only grazing land they have is inside the nature reserve and that is where their cattle have always grazed.<sup>87</sup>

An Elalini resident had a similar narrative.

The forest reserve is ours but we do not have full access to it; it is taken over by the ECPTA. The ECPTA does not even allow us to cut down the trees for firewood and also to hunt for animals as well as to fish in the sea. We have a right to access natural resources in the reserve but [cannot exercise it] due to ECPTA rangers not allowing us to have access to the reserve.<sup>88</sup>

These frustrations caused conflict between the local people, the ECPTA rangers and community representatives. Government departments in the co-management arrangements, especially the ECPTA, seemed to focus on the conservation of biodiversity and not on community access rights over natural resources. People were angry with what they called the continuous denial of their access rights to natural resources such as poles, medicinal plants, grazing land for livestock, firewood, thatching grass, medicines, wild fruits, honey and game meat, which had previously been permitted with minor restrictions. Local people did not understand why they continued to face restrictions to access these natural resources despite being told in 2001 that the land and all natural resources were theirs. When the land was returned to them, they expected that their cattle would be allowed to graze inside the nature reserve, but the ECPTA prevented that. Local people are not even allowed to visit their ancestors' graves within the protected area. With no resources and support from the state partners in the co-management arrangements, the Land Trust has suffered the most. Its members were perceived by some community members as weak, with no power to deliver on promises they had made when the land claim was settled in 2001.

An angry fisherman, Mr Gongqoshe, explained the problem from the perspective of the fisherfolk.

As rightful owners of the land, when ECPTA established Marine Protected Areas in Dwesa-Cwebe, we were not consulted. Since we are not allowed to fish, we only go fishing during

---

<sup>87</sup> Interview with Davide Gongqoshe, July 2017.

<sup>88</sup> Interview with Nokuthula Nolesi, July 2017.

the night to make it difficult for the rangers to arrest and even to kill us because what we are doing is illegal. Fishing in this area is tradition, it is something that has been practised by our fathers and forefathers. Through fishing we are able to provide food for our families and we sell some of the fish to the tourists.<sup>89</sup>

I witnessed him returning from the sea after his night-time illegal fishing. He told me, “When we grew up, they used to have free access to the sea and during that time we used to move up and down the sea freely and were even healed by the sea breeze.”<sup>90</sup> I was also told in Ntubeni, “A man was shot dead inside the Dwesa nature reserve while he was busy fishing.”<sup>91</sup>

In early 2009, a group of disgruntled community members began to express their frustration and anger towards their elected representatives in the Land Trust, shifting their anger from the ECPTA and its forest rangers. The Dwesa-Cwebe traditional authorities that had, until then, taken a back seat, used this opportunity to get involved. They supported the demands of the disgruntled villagers who blamed the Land Trust for the failure of other collaborative management partners in the Settlement Agreement to deliver on their promises. Traditional authorities created alliances with community members against the Land Trust. One chief expressed his satisfaction with the developments. “Siyavuya siziNkosi abantu bade bayibona leTrust ukuba ayenzinto into eyenzayo itya nje imali yabantu. [As chiefs, we are happy now that the people have seen that this Trust is not doing anything but misusing the money of the people.]”<sup>92</sup>

Local residents accused members of the Land Trust of being undemocratic but not unaccountable, accusing the Trust of being accountable to the state management authority of the nature reserve. Since the signing of the Settlement Agreement, local people had experienced increasing restrictions on their access to forest and marine resources in the protected area. This worsened after the ECPTA changed conservation policies that declared the nature reserve a “no-take” area. Monitoring and enforcement were also increased by the state. The community was split, with some discontented community members, backed by traditional authorities, calling for the replacement of Land Trust leaders, and others wanting them to continue serving in the management arrangements.<sup>93</sup> Such

---

<sup>89</sup> Interview with Mr David Gongqoshe, June 2017.

<sup>90</sup> Interview with Mr David Gongqoshe, June 2017.

<sup>91</sup> Interview with a local fisherman, Mr Phumzile Jekula, July 2017.

<sup>92</sup> Interview with a chief, Phathisile Fudumele, June 2017.

<sup>93</sup> Group discussion, July 2017.

community struggles detract from the core issue of the failure of post-settlement development and often channel dissent in ways that empower traditional authorities and the ECPTA to extend their control, and for the traditional authorities to reinforce their legitimacy as mediators of community conflict.

This Dwesa-Cwebe experience suggests that whoever works with the state becomes the enemy of the community. The failure of the elected local institutions to force state departments to deliver on their objectives as set out in the Settlement Agreement made them enemies of their community and traditional authorities. This made it possible for traditional authorities to create alliances with community members by standing with people who have grievances against the developmental model that privileges the state over the community.

## **7.6 Revisiting the legal empowerment of traditional authorities in South Africa**

This section briefly revisits the discussions in Chapter Four about the legal empowerment of traditional authorities in order to provide a context for developments discussed in this chapter. It is important to make the point that while land restitution in DCNR has not entailed subjection to traditional authorities, it has been the vehicle by which traditional authorities, which had been marginalised before and after the settlement of the land claim in 2001, returned to influence. I demonstrated in this chapter that the failure of the collaborative management arrangements, leading to the loss of community trust in the Land Trust, the loss of outside support from TRALSO, and national legislation strengthening the role of traditional authorities combined to offer a window of opportunity to traditional authorities to begin to reassert some influence after 2010.

Since 2000 and leading up to the 2004 elections, as Chapter Four highlighted, the relationship between the government and traditional authorities strengthened (Ntsebeza, 2006; Robins & van der Waal, 2010). In 2003 and 2004, the state increased the role of traditional authorities in the ownership, administration and natural resources of communal land through the Traditional Leadership and Governance Framework Act (TLGFA) of 2003 and the Communal Land Rights Act (CLARA) of 2004. This despite the fact that in rural communities such as Dwesa-Cwebe, democratically-elected Land Trusts and CPAs are in place as the landholding institutions. These acts also created confusion since they are silent on the roles and responsibilities of traditional authorities in the management of protected areas under their jurisdictions. Since the extension of control of land to traditional authorities in Dwesa-Cwebe, there has been fierce competition and conflict between

traditional authorities and the CPAs and Land Trust. As will be seen in Chapter Eight, traditional authorities have used this opportunity, together with the collapse of the influence of civil society organisations such as TRALSO, to their advantage on issues of local governance in Dwesa-Cwebe. These events after 2010, when traditional authorities began to wrest control from community-elected representatives and even threatened legally-established community rights and state-originated democratic procedures, will be dealt with and analysed in the next chapter.

## **7.7 Conclusion**

Notwithstanding their different social groups, the Dwesa-Cwebe communities finally regained their lost land in 2001 through the post-1994 land restitution policy. They are now the owners and managers of land and resources previously controlled by the state and traditional authorities. In the Settlement Agreement, traditional authorities are not provided any role in the ownership of communal land and the management of the protected area. However, as shown in this chapter, a huge burden was placed on community representatives without allocating resources for them to work. If the resources were availed, perhaps the Trust and CPAs would have been able to execute their roles and to meet the expectations of their constituents. This chapter also showed that the composition of the management committee in the Community Agreement ignored the role of other institutions, such as traditional authorities. The Settlement Agreement mandates the Land Trust, not traditional authorities, to represent the seven Dwesa-Cwebe villages in the post-land claim management arrangements committee of the nature reserve. The money allocated to the people as part of the settlement agreement appears to be largely unused and there is no implementation of the detailed Development Plan that had been formulated to guide sustainable use of natural resources in the nature reserve. However, the Land Trust, the members of which had been involved in land struggles and land claim negotiations for years, came under massive criticism from the communities for the failure of other partners in the Settlement Agreement to deliver on their promises. The rights of the people of Dwesa-Cwebe to their land have been constrained by a number of conditions stipulated in the Settlement Agreement. As I showed in this chapter, since the signing of the agreement Dwesa-Cwebe residents were restricted in their access to natural resources inside the nature reserve. With the establishment of the ECPTA, which took over as management authority in 2006, matters worsened as community access rights to the protected area were completely denied. Discontented community members then began to attack their elected institutions for the failure of the collaborative management arrangements. It was in this situation that traditional authorities opportunistically found

ways of making themselves relevant through supporting disgruntled villagers to fight the elected Land Trustees.

Clearly, a lack of resources and/or political will undermined the functioning of the Land Trust and CPAs. This chapter illustrated that the state has been reluctant to decentralise authority to the elected landholding institutions and to support them by building their capacity to play their required roles. I showed how community representatives in the Land Trust lost the trust of their communities while the NGO that had supported them during the land struggles and land claim process, TRALSO, was becoming inactive due to financial constraints. This chapter also showed how the failure of the co-management arrangements provided an opportunity for the return of traditional authorities in Dwesa-Cwebe. Conversely, elected institutions lost their legitimacy because they did not deliver on the demands of the people. It is within this environment that we see traditional authorities resurfacing in Dwesa-Cwebe in 2009. In the next chapter, I will focus on the dynamics that provided space for the resurgence of traditional authorities in Dwesa-Cwebe Nature Reserve from 2009.



## **CHAPTER EIGHT**

### **Resurgence of traditional authorities in DCNR, implications for management of the reserve: 2009-2017**

#### **8.1 Introduction**

This chapter focuses on the period from 2009 to 2017, paying particular attention to the resurgence of traditional authorities. This is against the backdrop of the weakness of the Land Trust and its leaders, and their loss of the popular support they had initially enjoyed. The political muscle that traditional authorities enjoyed after the passage of several pieces of legislation favourable to them, as discussed in Chapter Seven, led to their resurgence, helped by the community leaders' loss of TRALSO support. The Land Trust also experienced diminished support from villagers who had initially supported it, creating the opportunity for traditional authorities to openly challenge it. In this, these traditional leaders were supported by disgruntled local people. This chapter will show how, from early 2010, a succession of Land Trusts and an interim CPA came into being, with their formation strongly manipulated by traditional authorities. In this way, traditional authorities, who had always opposed the land claim and had elected tenure reform institutions, as shown in Chapters Six and Seven, were involved in promoting changes over who came to represent communities. Especially between 2010 and 2017, this resulted in ongoing dynamic inter- and intra-community division and manoeuvring to attain power in Dwesa-Cwebe.

But not all local people took this lying down; many pushed back in different ways. They held traditional authorities accountable for their role in the formation of a second Land Trust (B) by challenging the legitimacy of the trust in court; they undermined the functioning of the third Land Trust (C); and, at the end of the first term of the interim CPA, they stopped it from functioning until new committee members were elected. From 2011, the state – through the Land Claims Commission and the Department of Rural Development and Land Reform – intervened to break the impasse caused by the court case regarding Land Trust B, and speedily organised “elections” for yet another Land Trust (C). It seems that in working closely with local headmen to establish the third trust, the state supported traditional authorities. Were these misguided attempts by the state to deal with the confusion it had created by the statutory empowerment of the traditional authorities in direct opposition to the democratic principles and institutions of the post-apartheid state?

The power of traditional authorities in Dwesa-Cwebe is ascendant. The lawsuit brought by their Land Trust (B) against the original Dwesa-Cwebe Land Trust (A) has created a situation where discontented traditional authorities are able to remove democratically-elected representatives of the original Land Trust and consolidate the power of traditional leaders. In addition, they are depending on the TLGF and, until the rescission of CLARA, depended on that law as well. Their increasing power and assertiveness are also reflected in their bullying and abusively-arrogant behaviour towards local people. It seems that the leopards of the Bantustan era are unable to change their spots.

Traditional authorities ousted the original Land Trust (A)<sup>94</sup> using allegations that the trustees had not performed satisfactorily, that they were corrupt and unaccountable and that they had used people's money for their own personal activities. In addition, the delay in the setting up the new CPA created opportunities for traditional authorities, government departments and other interested parties to exercise their powers, resources and influence in the post-land claim co-management of the protected area in Dwesa-Cwebe.

I argue in this chapter that while traditional authorities, supported by discontented local residents, acted undemocratically by undermining the Land Trust, they had managed to hold members of Land Trust A and the CPAs accountable regarding the allegations of corruption, lack of accountability and personal use of people's money, which eventually led to the creation of a succession of Land Trusts and an interim CPA.

This chapter is divided into four sections. The first discusses the weakness of the original Land Trust; the second examines the resurgence of traditional authorities in the post-land claim co-management of the Dwesa-Cwebe protected area; the third section focuses on the creation of Land Trust C by the state and traditional authorities, and its impact on the management of the nature reserve; and the last section looks at the establishment of the new interim CPA and the role of the reinvigorated traditional authorities.

## **8.2 Discontented traditional authorities exploit Land Trust's weakness**

This section shows how traditional leaders who, before 2010, had not openly expressed their dissatisfaction with the way the settlement had taken shape and their marginalisation in that process,

---

<sup>94</sup> After the establishment of Land Trust B by traditional authorities, the Dwesa-Cwebe Land Trust was then called "Trust A" by local people and traditional authorities.

suddenly openly challenged the Land Trust. This was the first thrust in what was to become their campaign to regain the power they had had in land administration and management, particularly in the case of the DCNR. Traditional authorities began to exploit the weakness of the Land Trust as it lost support from villagers who had initially supported it. The democratically-elected Dwesa-Cwebe Land Trust has a mandate for development, as well as land ownership. It owns and leases out the Haven Hotel in the middle of the nature reserve, as stipulated in the Settlement Agreement of 2001. The agreement also gave it the authority to represent community interests in the management arrangements of the Dwesa-Cwebe protected area. From the most recent lease of the hotel, the Trust received revenue of R60 000 per annum and a further bed occupancy levy on behalf of the communities they represent. There are also other funds that are derived from the lease of cottages that are paid by the ECPTA directly into the coffers of the Trust, although this is not as substantial as the fees for the lease of the hotel.

From around 2009, the revenue from the hotel no longer accrued directly to the Trust, but was paid to the Eastern Cape Development Corporation (ECDC) that has oversight over the hotel management on behalf of the communities, as enshrined in the Settlement Agreement. This revenue is then channelled back to the communities through the Land Trust, but only for specific activities, such as when Trust members hold workshops for the benefit of communities. The bulk of the revenue is ploughed back into maintenance of the hotel, which is rather old and in need of a major revamp, according to all those involved with the nature reserve. Interviews with members of the Land Trust, traditional authorities, TRALSO and community members in Hobeni, Cwebe, Mpume and Ntubeni villages yielded no information regarding the amounts in the Trust account and what happened to the money therein. As part of the settlement agreement, R800 000 was transferred to ECDC for the hotel. My attempts to trace what happened to this money proved fruitless; my experience partly explained some of the frustrations encountered by community members who also felt frustrated by the Trust. The second contentious resource transfers centred on the funds set aside from the Settlement Agreement as a development levy, an amount of R14 million that was given to the Amathole District Municipality. From interviews with both local people and state officials, it was clear that the R14 million had still not been committed to development purposes, as it was supposed to have been. At this time of writing, by mid-2021, this money was still being held by Amathole District Municipality, and no community development project had been implemented from this funding. A sizeable portion of the money had been allocated in 2002-3 to a Development Plan that

had not materialised by the time of writing. This large amount of money (for hotel and cottage rentals) was yet to be made available to communities through the Trust, thus causing huge ire among community members. One local leader pointed out, “As local people we have benefits in the hotel and cottage rentals; we are supposed to get money from these people [who patronise these facilities]. The money is managed by the Land Trust but we do not know what they did with the money because it did not benefit us.”<sup>95</sup>

A chief expressed his frustration: “Abantu bethu abavunyelwa nongena kwi-nature reserve bayotheza yi-ECPTA, kodwa sine-Land Trust. [Our people are prevented by the ECPTA from entering the nature reserve to access forest and marine resources, while we have a Land Trust that represents them.]”<sup>96</sup> Phumzile Jekula of Ntubeni also blamed the Land Trust. “The Land Trust, working hand-in-hand with the ECPTA, does not allow us as real owners of the land to access natural and marine resources in the forest reserve and the sea,” he said.<sup>97</sup>

In these narratives, the traditional authority and some villagers justified the perception of the incapability of the Land Trust to hold the Amathole District Municipality and other co-management partners, such as the ECPTA, accountable, or to negotiate about the Settlement Agreement and co-management agreement. The comment of the chief makes it clear that by showing hatred towards the Land Trust, dissatisfied traditional authorities want to be in charge. Participants reported that members of the Land Trust have neglected community members in terms of facilitating their access to the nature reserve and for not providing updates to the landowner community.

Upset with the continuous failure of the Land Trust to facilitate local people’s access to natural resources in the nature reserve, one villager from Mpume told me:

Le land trust ayenzinto tu asikwazi nokungena ehlathini, siyadutyulwa ngamapolisa ka ECPTA, kunzima kunakuqala. [This Land Trust is not doing anything; we are completely barred from accessing and using natural resources in the forest reserve. Instead, we are

---

<sup>95</sup> Interview with a local leader (she requested not to disclose her name), April 2012

<sup>96</sup> Interview with Chief Phathisile Fudumele in Hobeni, April 2012

<sup>97</sup> Interview with Phumzile Jekula, a fisherman from Ntubeni on the Dwesa side, 25 May 2011.

harassed and even got shot at by rangers of the Eastern Cape Parks and Tourism Agency (ECPTA). This is harder than before.]<sup>98</sup>

Despite many attempts by local people to appeal to the Land Trust and the ECPTA to allow them to fish and access natural resources from the conservation area, since 2001, nothing was done in relation to local community access to marine and forest resources, participation in the management of the nature reserve, and benefiting from the proceeds of eco-tourism. Local people have waited a long time, but the Settlement Agreement terms were still not implemented by the DRDLR and ECPTA by the time of writing of this thesis. As discussed in the previous chapter, this failure of the Land Trust to facilitate easy access to natural resources by local people and to force the Amathole Municipality and DRDLR to implement post-settlement economic development led to deep divisions and tensions between local people and their resource governance institutions from 2009. Residents were dissatisfied that they did not receive or experience any financial benefits from the Dwesa-Cwebe Nature Reserve and had no formal access to resources (timber, grazing, marine and medicinal plants) even though they are the real owners of the reserve.

As it lost its popularity among some villagers, the Land Trust came under severe attack by local chiefs and headmen. It was perceived by traditional authorities as an institution that had failed to hold the Amathole Municipality accountable to spend the settlement grants on local development. Although local people were divided on this issue, some sided with traditional authorities and called for the removal of the original members of the Land Trust from office, as their term had ended. By early 2010, members of the original trust were labelled “liars” by some locals and some traditional authorities. However, one member of the original Land Trust, Kuzile Juza insisted that local people had been part and parcel of meetings held at the local Chief’s Place. The interviewee added:

People thought that the Land Trust is part of the ECPTA and they felt that when the ECPTA failed to implement the co-management agreement, they also alleged the Trust to be no longer their representative resource governance institution but [viewed us as] siding with the government. This has created a group of discontented people from the community, people who say they represent local people better than Trust A, people who have been attending school somewhere, people who have been working in mines in Johannesburg and Cape

---

<sup>98</sup> Interview with a villager from Mpume Village (she requested not to disclose her name), April 2012.

Town. They organised themselves against the former Land Trust because of a perceived failure of implementation of the agreement by the ECPTA and ourselves, then they said “we can do this better”.<sup>99</sup>

The enforcement of community access restrictions to coastal forest and marine resources in the nature reserve by the ECPTA made traditional authorities and local residents perceive their own elected leaders as collaborators with the ECPTA. The Trust is on the frontline of engagement with the communities, so it is blamed for the failure of other parties to the Settlement Agreement (especially state departments) – even though the agreement itself gave the Trust no power to hold those other parties accountable. The failure of the Land Trust to deliver on the expectations of the people resulted in a group of discontented people and traditional authorities who were ready to take over from the Land Trust. These dynamics made it difficult for the Land Trust to do its work effectively, as it was no longer trusted by the seven CPAs or by traditional authorities. The majority of local people I interviewed alleged that the Land Trust had failed even to report back to them about developments, or about their money. One Ntubeni villager angrily expressed this sentiment:

According to the trust deeds, month after month there must be community meetings in order for the Land Trust to inform us about what is happening regarding our funds and development, but, instead, members of the Land Trust distanced themselves from us until we as local people decided to ask them to come and report.<sup>100</sup>

He was not the only person with this sentiment; the majority of my interviewees concurred that no meetings had been held by the Trust to provide feedback to the local people. However, former TRALSO officials and some members of the Land Trust recalled that meetings did take place soon after restitution in 2002, but there were no meetings since 2008. The traditional authorities added fuel to the fire by inciting local people against the Trust, and many people supported the traditional authorities in this conflict. One respondent from Mpume village alleged: “The Trust side-lined their chief; they are not respecting the chief. He explained that the Trust even attempted to govern access to natural resources in the area. Because of that, their relationship has never been good.”<sup>101</sup>

---

<sup>99</sup> Interview with member of the original land trust, Kuzile Juza, April 2012.

<sup>100</sup> Interview with a Villager from Mpume (he requested not to disclose his name), April 2012.

<sup>101</sup> Interview with Luthando Mqaqa, May, 2012.

A woman from Mpume similarly remarked:

Phambi kokufika kwezi-CPAs ne Land Trust apha kwezilali zethu, yayiziNkosi ezazigada abantu ababa kwelhlathi, kwaye zazirhabaxa kakhulu kubantu ababanjwe besiba ngaphakathi ehlathinu. iNkosi ke yadalwa ukuba ilawule umhlaba nabantu. Aziyindawo iiNkosi apha eCwebe uyakutsho eDwesa. In fact, irole yeNkosi isenophela apha ezilalini, kodwa soze zinikezele lula kuba iiNkosi zizakulwa and soze zinikezele. [Before the existence of the CPAs and Land Trust, chiefs were very strong and harsh against people who stole from the forest. A chief was born to manage the land and people in rural areas. Chiefs are going nowhere here in Dwesa-Cwebe. In fact, the role of chiefs may end, but it is not going to be easy because chiefs are fighting back and they will never surrender.]<sup>102</sup>

Another respondent, Nobangile, shared this view: “It is an old custom that chiefs manage the land here in Dwesa-Cwebe. Chiefs help us to respect our cultures and customs. Without chiefs we are nothing because our natural resources will be stolen by strangers. Chiefs will always be a part of us that we cannot do away with.”<sup>103</sup> These opinions are representative of people who see traditional authorities as having a right to play an essential role in the administrative and management affairs of the community, and as always having been in that position.

The term of the Land Trust had come to an end in 2003 and it was felt, by traditional authorities and some local people, that the trust was not delivering. By 2010, community members began to see traditional authorities as saviours. They began to believe that traditional authorities could do better than the Land Trust and CPAs.

Buoyed by their resurgence, traditional authorities intervened, portraying the Land Trust as a “useless” institution that had failed to bring development to the area as stated in the Settlement Agreement. Some local residents began to accuse the Land Trust of undermining traditional authorities in the management of natural resources. As seen in the quotations above, some even indicated that traditional authorities should continue to be part of their lives because they represented their customs and traditions and that without traditional authorities they were “nothing” and their

---

<sup>102</sup> Interview with a woman from Mpume (she requested not to disclose her name), July 2017.

<sup>103</sup> Interview with Nomanesi Nolwazi from Hobeni, July 2017.

land and natural resources would be easily stolen by outsiders. It was clear that traditional authorities had an agenda of re-establishing themselves by using or taking advantage of the weakness of the elected Land Trust. It is also clear that Dwesa-Cwebe traditional authorities wanted to be part of the collaborative management committee that manages access to natural resources within the protected areas and the money that results from the Settlement Agreement, and they resented the fact that they had been excluded from the CMC by local people and excluded in the Settlement Agreement. One former Land Trust member expressed it thus: “Chiefs never liked the Land Trust because they always wanted the power which they believe resides with the trust. Chiefs wanted to replace this trust with a new trust that will put forward their own interests and not those of the community at large.”<sup>104</sup>

Another member of the trust, from Ntubeni village, said:

Chiefs hated us so much because we refused our land to be administered by them and we even challenged the Communal Land Rights Act that was going to bring back their powers over land that had disappeared after the settlement of the land claim in 2001. Due to this, chiefs had blocked the Trust and CPA from reporting back to the community.<sup>105</sup>

These statements validate the claims of chiefs in the disbanding of the Land Trust and establishment of Land Trust B, because they were angry with the Dwesa-Cwebe Land Trust, as will be traced in the next section. I was told by one informant that, around late 2010, some members of the Land Trust and CPAs were blocked by some chiefs from attending meetings at chief's places to report back to the community. Thus, problems and challenges that the Dwesa-Cwebe Land Trust encountered were not taken back to the local people, the seven CPAs, and the traditional authorities. The banishment of Land Trust and CPA leaders from community meetings on traditional authorities' homesteads was one of the strategies used by discontented traditional authorities to discredit the legitimacy of the Land Trust and CPAs in the eyes of their own constituencies. This is why it was easy for local people to be influenced about the alleged failure of the trust, notwithstanding the capacity and resource constraints it suffered. The Land Trust was intended to facilitate access to natural resources, but most respondents perceived it as having failed to reach this intended outcome. Traditional authorities, in

---

<sup>104</sup> Interview with Mrs Nomandla Ngalwa, April 2012.

<sup>105</sup> Interview with Mr Mhlayifani Templeton Mbola, July 2017. The same view was expressed by a local fisherman.



particular, regarded the Land Trust as incompetent because of its failure to implement co-management objectives and to bring about development – as stated in the Settlement Agreement.

It must be noted that members of the Land Trust were themselves frustrated with the failure of the Amathole Municipality to spend the restitution funds on development in the area, and with the lack of co-management of the reserve since settlement. Thus, local people and local chiefs were sceptical of the Land Trust and frustrated with the lack of reporting back to them on its activities and expenditures. However, the Land Trust lacked resources and land ownership to make things happen in Dwesa-Cwebe. As a result, it lost the support of the local people, and chiefs saw it as a threat. This situation challenged the legitimacy and accountability of state-recognised institutions, and of responsiveness of a community institution (even though, in reality, the Trust did not have the state's resources to be responsive). While traditional authorities have held Land Trust members to account for perceived corruption and mismanagement of the nature reserve, it seems as if these authorities used the weakness of the Land Trust and its lack of popularity among local villagers to launch their comeback in Dwesa-Cwebe Nature Reserve affairs. This section also showed that the role of state institutions in undermining elected institutions in communities made the latter vulnerable not only to traditional authorities but also community members who had elected them. The fact that they had refused to step down when their term of office ended also placed them on shaky footing.

### **8.3 The resurgence of traditional authorities: Land Trust B formed**

Having seemingly deliberately laid the groundwork and garnered popular support, traditional authorities in Dwesa-Cwebe progressed to the next step, the ousting of the Land Trust. They subverted democratic processes through the establishment of their own land trust. This section examines certain events that took place before 2010 to show how traditional authorities had reappeared as actors in the land affairs of Dwesa-Cwebe. After years of “passive resistance” – as former TRALSO officer Mcebisi Kraai put it – local chiefs, supported by a group of discontented local residents, found opportunities to once again insert themselves into the affairs of Dwesa-Cwebe, to the extent that they undermined the democratically-elected Land Trust in the co-management arrangements.<sup>106</sup> As discussed previously, the non-implementation of management agreements was one of the opportunities which allowed traditional authorities, disgruntled residents, and a white shop owner not from the community to “overthrow” the original Dwesa-Cwebe Land Trust. Chief

---

<sup>106</sup> Interview with Mcebisi Kraai, May 2012.

Vulinqaba Dlumbini of Msendo, a member of Land Trust B, explained how the attack on the Land Trust began:

In 2008, I wrote a letter to members of the Land Trust from Ntubeni and Mpume [within the Msendo Administrative Area] informing them that they were no longer trustees and elections for the new trust would be held in March that year. I sent similar letters to other original land trustees from other villages.<sup>107</sup>

Trustees from Cwebe were excluded and were not sent these letters. Chief Phathisile Fudumele from Hobeni summed up the traditional authorities' justification for ousting Trust.

When their [Trust A] term in office expired we called them so that we could elect the new Trust but they did not cooperate with us. That is why we decided to intervene as chiefs, to show them that we have the people. We woke up and sought legal assistance from the lawyers to demolish this Trust because we found that it was a problem, leading to the lack of development in the area.<sup>108</sup>

He continued: "As chiefs, we had no choice but to remove them from office because they misused our funds and mismanaged the finances from leases on cottages and the Haven Hotel; money that goes directly into their account as trustees."<sup>109</sup>

Other respondents confirmed this stance. Chief Vulinqaba Ndlumbini shared this sentiment.

The reason for us to disband Trust A was because they were corrupt and used our money for their own personal activities. We regularly called them to come and report on the money they spent regarding the settlement grant, and about lack of access to marine and forest resources by local people. They never came.<sup>110</sup>

One community member also pointed out:

---

<sup>107</sup> Interview with Chief Ndlumbini, 2012.

<sup>108</sup> Interview with Chief Phathisile of Hobeni, November 2012.

<sup>109</sup> Interview with Chief Phathisile of Hobeni in November 2012.

<sup>110</sup> Interview with Chief Ndlumbini, 2012.

According to the Trust Deed, month after month there must be co-management meetings in order to inform the community about what is happening regarding our land claim funds and development. But, instead, members of Trust A distanced themselves from us up until we as community and chiefs decided to ask them to come and report to us.<sup>111</sup>

In October 2008, Trust B secured an endorsement of its elections from the Master of the High Court, with twelve new trustees and the two Cwebe trustees of Land Trust A (see also Fay, 2013:117). However, a complex situation erupted as members of Land Trust A refused to step down as the traditional leaders wanted them to. Land Trust A also challenged the claim by Trust B that “most or all” members of Trust A were present during the March 2008 elections. A former Trust A member, Mxolisi Nombona explained:

We refused to step down as chiefs [tried to] force us to do. We were not elected by chiefs but by local people who wanted access to natural resources from the DCNR. We can only step down if the community wants us to do so, not chiefs. We even took the matter to court and challenged the claim by Trust B that all the members of our trust were part of the elections that took place in March 2008. We explained to the court that Trust B was not democratically elected; its members were appointed by chiefs.<sup>112</sup>

Another former member of Trust A, Kuzile Juza added to that explanation.

In 2006, our term as trustees expired and, in 2007, there were supposed to be elections of the new trust. What happened before there were those elections, is that there were already divisions in the community. The people that were favoured by chiefs were taken to the headman’s house and appointed, not elected by the community. There was a traditional gathering without the community involvement, where the headman and his advisers appointed two people to be trustees. These people were close friends of the headman. We were not there but we heard that people were appointed without our consultation as a community. We heard that the trust [B] was taken to the High Court in Mthatha for registration, and when we [Trust A] were called to the Master of the High Court, we found

---

<sup>111</sup> Interview with a community member (he requested not to disclose his name), June 2012.

<sup>112</sup> Interview with Mxolisi Nombona, June 2012.

documents which were saying Miss So-and-So from Hobeni and Cwebe has been appointed to the Trust, replacing us. We asked: “When did this meeting to elect take place?”<sup>113</sup>

The people’s elected representatives were thus attempting to hold the chiefs accountable for the undemocratic way in which the new trust was created. They challenged the view that elections had been transparent and fair, since they had been excluded from the elections. They indicated that in a meeting held at the chief’s place, people had been appointed by chiefs to serve in the new land trust, and people were told that nobody could challenge that. They also did not understand why some Cwebe members of Trust A were included in Trust B, even though Trust B was not welcomed in Cwebe. One dissenting voice from Cwebe was Chief Jonginkosi Geya, who expressed his view to me.

Here at Cwebe we want the old trust to continue working; we do not support the new trust. Trust B was formed by some chiefs, and I was not involved in the whole process of forming it. They just told us here that they formed Trust B, and we also told them that, as people of Cwebe, we are not going to elect any new trustees because Trust A is still working. We were shocked when we found out that two members of Trust A were listed as new trustees.<sup>114</sup>

I observed that Chief Jonginkosi Geya is respected and liked by some people in Dwesa-Cwebe because he refused to work with other chiefs to destroy the old trust. He seemed keen to work with his people and tried to be relevant at all times. He is regarded as a chief who listened to his people and who had a good relationship with Trust A and the CPA. Members of the Cwebe CPA also distanced themselves from the new Trust. One community member told me, “Land Trust A was destroyed by chiefs and some local people on the allegation that it did not report back to the community. Here at Cwebe, we did not have Trust B, it was in Hobeni. We heard that the chief in Hobeni created his own trust. We do not have that trust here at Cwebe.”<sup>115</sup>

One of the two trustees from Cwebe who had been included in Trust B said he had felt pressured into accepting the appointment as he had not wanted to embarrass the headman in front of traditional councillors, because he had a close relationship with the headman. His acceptance of the

---

<sup>113</sup> Interview with Mr Lulama Nohaha (he requested no to disclose his real name), May 2011.

<sup>114</sup> Interview with Chief Jonginkosi Geya of Cwebe, 24 April 2012.

<sup>115</sup> Interview with Mcedi Mhlana, May 2012.

appointment, he said, was a compromise. He indicated that in the meeting that had been held at the chief's house, people had been forced to "elect" those persons that had been nominated by the chiefs. People feared challenging the chief's decision. It seems clear that the creation of Trust B was not democratic, as the sentiments of the former member of Land Trust A and some community members suggest. People did not democratically elect members of Trust B; they were, rather, *appointed* by the chiefs. Many members of the community were not part of the creation of Trust B, and had not been consulted by their chiefs. Chiefs across Dwesa-Cwebe made sure that their friends were elected to the co-management institutions.

Leaders of Trust A and the CPA were barred from participating in community meetings by local headmen and their councillors.<sup>116</sup> This happened after they had refused to step down when the chiefs wanted them to do so. Mr Sithayi Bhunga, chairperson of the old CPA, confirmed this: "Some community members, like Khuzile, are not allowed to attend meetings at Chief's Place in Hobeni. He was expelled by the chief to come and attend meetings at his place."<sup>117</sup> Some community members explained that the conflict between the traditional authorities and Land Trust A is purely a power struggle, and that members of Trust A were forced out of office illegally by the traditional authorities who wanted their own unelected appointees to hold office.

While members of Trust A were surprised to see the names of the Cwebe trustees on Trust B, they were even more concerned about another name on the list, that of Petrus Booysen Knotze.<sup>118</sup> Pieter (as he is known in the area) is a white shop owner with a business in Ntubeni Village. Some community members alleged that Pieter had been given a site by a headman without the involvement of the Ntubeni CPA.<sup>119</sup> He had regularly been seen at Chief Vulinqaba Ndlumbini's *Komkhulu*, and allegedly loaned Ndlumbini his old white Dodge Colt bakkie so that the chief and other members of Trust B could travel to meet with attorneys. While I stayed on the headman's homestead during field work in 2012 and 2017, I did see a white Dodge Colt parked in the yard. Members of Trust A and some community members were unhappy to learn that Knotze was listed as a member of Trust B.<sup>120</sup> Trust A wrote to the ECPTA, demanding that an interim reserve manager should be removed as he

---

<sup>116</sup> Personal communication with Khuzile Juze of the old trust, April 2012.

<sup>117</sup> Interview with Mr Sithayi Bhunga, CPA chairperson, 23 April 2012.

<sup>118</sup> Interview with Kuzile Juze, April 2012.

<sup>119</sup> Interview with Phumzile Jekula, June 2012.

<sup>120</sup> Interview with a group of people from Ntubeni and Mpume, 2012.

worked with Knotze, which led to the manager's failure to implement the co-management agreement.<sup>121</sup> The letter said:

To rub the salt to the wound, [the interim manager] chose to collaborate with a Mr. Coetzee [sic], a white guy who is operating a spaza shop in the vicinity of Ntubeni CPA, one of the villages that is a beneficiary to the Trust. Mr. Coetzee is a big poacher [in] the Marine and Nature Reserve, the very assets that are preserved into perpetuity...This complicates the whole process of harmoniously implementing not only our settlement agreements, but to take forward the process of promoting eco-tourism through bio-diversity conservation. This is also a serious allegation that the official in question is conniving with the splinter group that is working in tandem with the illegally established Trust.<sup>122</sup>

Trust A members and other Dwesa-Cwebe community members who I interviewed were unanimous in their assessment of Knotze's motives for joining Trust B. One trustee commented: "We have noticed that since the land is returned to us, people coming from outside Dwesa-Cwebe tried their luck to be part of the community to gain natural resources, benefits and development, but do not [get] involved [in] community structures."<sup>123</sup>

As Fay (2013) indicated, Knotze was alleged to follow the standard *modus operandi* of white shop-owners involved in criminal activity in the rural Transkei: hiring destitute local people to do the actual theft of resources. The Dwesa-Cwebe manager had caught some of them removing abalone at night. However, claims that Knotze was a poacher have not been proven in court and are beyond the scope of this thesis to substantiate or disprove.

The entire situation effectively created a double bind for members of Trust A. They were publicly attacked for not reporting back on their activities, but were unable to attend or hold meetings to do so. Likewise, the legal action of Trust B forced Trust A to spend even more of its cottage and hotel revenues on legal fees, both to defend the lawsuit, and possibly to take legal action together with ECDC to remove Grant Miller from the Haven Hotel. Because of these circumstances, some villagers became sceptical about Trust A. They were frustrated with the lack of reporting from the

---

<sup>121</sup> Dwesa-Cwebe Land Trust letter to M. Kostauli, Regional Manager: Eastern Cape Region, ECPTA, 12 February 2008.

<sup>122</sup> Ibid.

<sup>123</sup> Interview with Kuzile Juza, April 2012.

Land Trust on its activities and expenditures, and this frustration was seized upon by some traditional authorities with the intention of destabilising the authority of the community-elected members of the Land Trust in the management arrangement committee.

The chiefs used their influence to mobilise support against Trust A. Further, by referring to “our funds” and “our money” (as in some of the quotes above) they project an alliance with disgruntled locals. Traditional authorities had managed to remove Trust A from office based on corruption allegations and the accusation that Trust A had failed to address the interests of people in the co-management arrangements with government. The chief from Hobeni also seemed to have had personal difficulties and conflictual relationships with Trust A and the CPA in recent years. One Hobeni resident suggested to me that the CPA may have undermined the chief by “taking his land from his hand”. He was seen as a link between Haven Hotel and Trust B, though he was not a trustee in Trust B. He had been close friends with the two Hobeni members of Trust B from high school. Thus, his interest in the establishment of Trust B seems clear.

Some chiefs explained to me how they had removed the old trustees from office. According to them, after the old land trustees refused to report back to the community, the chiefs mobilised the people to remove the Land Trust from office. Chiefs used their offices to undermine the authority of the Land Trust in the co-management arrangements. In his affidavit, the new chairperson of Trust B attached an audit report that allegedly showed, “For the years 2005, 2006 and 2007, a sum total of R1 283 725 has been expended on consulting, meetings and catering without the knowledge of the communities who are the actual beneficiaries of the Dwesa-Cwebe Land Trust.” He also sought urgent interdicts against the former trustees, their bank, and the Amathole Municipality. The affidavit noted that the Trust had not held scheduled elections in 2006. However, members of Trust A insist that meetings had been held in the seven CPAs in 2006, and that these meetings had decided to retain the old trustees. These events led to the removal of Trust A and brought community development and co-management to a complete halt. No eco-tourism development has been implemented, and people continue to be excluded from the management of nature reserves and denied access to forest and marine resources in the nature reserve. Some community members blamed the removal of the Land Trust and infighting for the lack of implementation of the Settlement Agreement. This is borne out in the following comment from a Cwebe community member:

Zininzi izinto ezibangela kungaphikho nqubela phambile apha eDwesa-Cwebe. Akhonto yenzekayo tu apha eDwesa-Cwebe. [There are many things that led to a lack of implementation of the Settlement Agreement. Nothing has been done here.] Akhomntu ufuna usebenza nomnye, yiyo lento kungekho nqubela apha. [The area is not getting better, it is going down because there is a lack of cooperation between the CPAs, Land Trust and the ECPTA.]<sup>124</sup>

The High Court's preliminary judgment on the case in March 2009 acknowledged that, under the terms of the Trust Deed, legal proceedings can be brought against the Trust in the name of the Trust, but he denied the request for urgency, leaving the case on the court roll, where it has remained since late 2010.<sup>125</sup> While the legal battle between the two trusts was ongoing, chiefs flexed their muscles through a series of actions. First, in February 2009, Trust B used its lawyers to prevent Trust A from using the money in its account. Trust B also demanded that Trust A's bank account be handed over, and that the Amathole Municipality turns over documents and accounts. Trust B's attorneys also ordered the cottage owners to pay their rent into Trust B's account. Secondly, Trust B extended the lease of the Haven Hotel without involving local people and the CPAs. The allegations that instigators of Trust B were sponsored by a white poacher and the current hotel leaseholder seemed to hold water. One villager pointed out that meetings to establish Trust B were held at the hotel.<sup>126</sup> Another stated: "We want Grant to leave Haven but he is protected by the chief."<sup>127</sup>

While speculation abounds, it remains to be seen why the hotel chose Trust B to extend its lease. One respondent referred to this as a reason for the attack on Trust A.

We heard that Mr Grant bribed members of Trust B in order to extend his contract, which by then was ended, by eight years. This could be another reason why chiefs played a front role in the dismantling of Trust A, as they [Trust A] do not want Grant in Haven Hotel. As land claimants, we want Trust A to continue representing us.<sup>128</sup>

---

<sup>124</sup> Interview with a Cwebe community member (he requested not to disclose his name), June 2012.

<sup>125</sup> Acting Honourable Judge P.W. Tshiki, High Court: Mthatha Judgment of March 2009 in case No. 430/2009.

<sup>126</sup> Interview with a man from Hobeni (he requested not to disclose his name), April 2012.

<sup>127</sup> Interview with Mr Bongani Dumezweni, April 2012.

<sup>128</sup> Interview with a local resident (he requested not to disclose his name), June 2012.



According to some Hobeni residents, the village chief does not want Grant Miller's lease to be terminated because the chief benefited from Miller's presence. They said that Miller had built a house for the chief in Hobeni using community funds. I saw the house alleged to have been built by Miller when I interviewed the chief. When I asked him about the allegations, he rejected them as lies promoted by friends of the original Land Trust. Land Trust A had served the hotel with a notice that the lease would not be renewed when it was coming to an end. The hotel's support for Trust B bolstered its chances of having the lease extended, which it was – by eight years. Land Trust A offered this perspective: "Late in 2009, while we were busy negotiating with a prospective investor who was going to replace the current manager of the Haven since his term as a lessee had expired in April 2009, he negotiated with the new trust, and his lease was extended for eight years."<sup>129</sup>

Additional information was provided by another respondent:

There was a problem with the lease agreement of the current operator, which they had extended for eight years, something which shocked us. On our investigation, we found out that the chief instructed the trust to sign the agreement and was present at its signing. We were told he even suggested that he could take [ownership of] the hotel if he wanted to. As local people, we became concerned about this, since we are the owners of the land, and why would this agreement be signed without our mandate...On close inspection, we found that the lease agreement was signed at Ntubeni in Willowvale, and there was no person from our side except the chief. On hearing these things, we tried to remove the trust [B]. Land Affairs arrived at the school and told us to form a CPA in place of the trust because a CPA is easy for us to hold accountable and is closer to the community. We welcomed their advice.<sup>130</sup>

Apart from these allegations by some members of the community that Land Trust B was financed by a white poacher linked to the traditional authorities and by the management of Haven Hotel, many people I interviewed also felt that Trust B had been created out of "greed for the money" that was being earned from the cottage and hotel rentals, which accrue to the account of Land Trust A.

---

<sup>129</sup> Interview with Kuzile Juza, April 2012.

<sup>130</sup> Interview with Bongani Dumezweni, April 2012

Many of my respondents, who did not hide their dissatisfaction, were very critical of the traditional authorities. Indications are that there were many more such people in the affected communities. According to one participant in my focus group discussion:

It shows that Trust B was never created to help us, as we continue not to be allowed to enter the nature reserve and access natural resources, as owners of the land. In addition, chiefs wanted to be part of the management committee that controls access to protected areas and other revenues that come from the Haven Hotel.<sup>131</sup>

Mthobeli “Jomo” Khuselo told me:

Trust B did not work and was established in a wrong manner before Trust C came in. Trust B is the one that was facilitated by headmen, including Fudumele and Ndlumbini. It never succeeded, and all the time our headman had his own agenda, which had nothing to do with helping the community but to step on them. He was dictating to the trust.<sup>132</sup>

Mrs Nqaba Nowezile said Trust B was illegitimate because

its main objective is not to take the mandate from local people; even the way they were elected did not involve people. Instead, Trust B will be a trust that stands for traditional leaders’ interests because people who were not elected into that trust are the people who look after the interests of the local people. Trust B will never address the needs of the community but the needs of the chiefs; even now it does not respect local people.<sup>133</sup>

Bongani Dumezweni from Hobeni was against the establishment of Trust B. He said, “Chiefs want to use this control [of Trust B] for their own benefit because they wanted to continue controlling the land in the villages, and, more importantly, to participate in the management of natural resources in the DCNR.”<sup>134</sup>

---

<sup>131</sup> Group discussion with twelve people, April 2012.

<sup>132</sup> Interview with Mthobeli “Jomo” Khuselo, July 2017.

<sup>133</sup> Interview with Mrs Nqaba Nowezile (not real name), 24 April 2012.

<sup>134</sup> Interview with Bongani Dumezweni, April 2012.

Members of the Mpume CPA also did not support Trust B. They alleged that it had not been elected by Dwesa-Cwebe people but had been appointed by chiefs and their friends. My focus group participants believed that the conflict between the Land Trust and traditional authorities had affected the holding of meetings. As was alluded to by some local residents and some former Land Trust members, the removal of the old trustees was purely about a power struggle. On the Dwesa side of the reserve, a CPA member from Mpume spoke about this.

As CPAs we do not support the new Trust [B] by chiefs as it was elected without following the Trust Deed during the elections. We called a community meeting following the election of Trust B, indicating to all local people that we were not part of the elections of Trust B as we were not involved from the beginning.<sup>135</sup>

These narratives show that while traditional authorities claim that democratic practices had been followed in the election of the new members of Trust B, some members of the community did not legitimise or recognise Trust B, saying that it was not properly constituted by all members of Dwesa-Cwebe who had previously been dispossessed of the land and land inside the nature reserve. Some people alleged that the chiefs had “manipulated” the election processes for members of the new Trust. The chiefs had mobilised people and given them names of people they had wanted to be elected onto Land Trust B. This, however, split the community apart, as some people supported the chiefs while others sided with the members of the original Dwesa-Cwebe Land Trust. These divisions within the community have had significant implications for the management of the DCNR, since they disrupted negotiations with the ECPTA to allow people to access and use natural resources within the nature reserves.

The majority of local people who were interviewed echoed the view that since the creation of Trust B by chiefs, democracy at local level had been derailed. A former Land Trust A member, for example, angrily expressed his disapproval of the chiefs’ behaviour.

I am feeling that our people are being intimidated by the headman and his traditional advisors. He is dictating matters now. He is not allowing people to voice their concerns. At Komkhulu [the chief’s meeting place], there was an instance where a member of the

---

<sup>135</sup> Interview with CPA chairperson from Mpume, Mr Mhlayifani Templeton Mbola April 2012.

community was arguing against the re-instatement of the current lease at Haven Hotel. The headman called him to order and shouted that he was talking nonsense, yet he was simply raising issues that pertained to the re-instatement of the lease without a community gathering to make the decision – without even CPA involvement. So, I’m saying democracy no longer exists in this community.<sup>136</sup>

A villager I spoke to reiterated this view, extending it to include the way in which traditional authorities flaunted their power and position and their autocratic behaviour:

The only institution that is supporting us here at Hobeni is CPA and the ward councillor. In a meeting situation at the chiefs’ place, we are not given a chance to raise our concerns. Instead, when you say something that is against the chiefs’ opinions, you are seen as trying to “overthrow” the chief. As local people, we feel as if we do not enjoy democracy in our areas. The chief called himself a supreme person. He said whatever structure exists at Hobeni, it must listen to his ideas. He said, “I am the supremacy, and I am not subject to listen to any challenges by whoever, whether in the structure.”<sup>137</sup>

It is clear from these accounts that divisions had arisen, with different community members siding with different trusts. Trust B sought legitimacy from chiefs, whose role in trusts was not formally articulated in the official documentation. One can see in this narrative a clear picture of a hunger for power and the autocratic nature of traditional leaders who want to be involved in the collaborative management of the nature reserve and control the money that was to be paid as part of the restitution case, as demonstrated by some chiefs in Dwesa-Cwebe. (Many critics have written about the autocratic characteristics of traditional authorities, as discussed in Chapter Two.)

Another negative result of the creation of the second trust by traditional authorities is that different arms of the state that had been involved in the area, such as the Regional Land Claims Commission and the ECPTA, found it extremely difficult to operate because they are unsure who to work with, and which structure is legitimate, and they do not want to be seen to be taking sides.<sup>138</sup> After many years of working with the communities of Dwesa-Cwebe, TRALSO, which had already scaled down

---

<sup>136</sup> Interview with Kuzile Juza, pril 2012.

<sup>137</sup> Interview with Mthobeli “Jomo” Khuselo, July 2017

<sup>138</sup> Interview with Mazwi Mkhulisi, April 2012.

its work in the area, decided to stop working there to avoid being seen as taking sides.<sup>139</sup> For the ECPTA, there was no clarity as to which resource governance institution was the legitimate vehicle to represent landowners. As Trust B and Trust A litigated against each other, the court threw the counter-claims back to the community to solve the issue in its best interests. The court case between the two trusts forced the ECPTA to stop working with the original Land Trust, and it halted all development programmes that were about to be implemented. Mazwi Mkhulisi of ECPTA explained the agency's hesitation.

As ECPTA, we were told by the lawyers of the new trust to stop working with the old trust, following which, we had no choice but to cancel all development activities that were planned to take place in Dwesa-Cwebe in September 2009. Our partnership was only interrupted by the court interdict. Trust B sent us that interdict in August 2009, telling us that if we continue engaging with Trust A, we will be condemn[ed] after court. Then naturally our partnership was distracted.<sup>140</sup>

These legal battles directed at the ECPTA by Trust B disrupted its efforts at co-management and its interventions designed to bring some benefits to the communities. In 2010, ECPTA was attempting to revisit the provisions for benefit-sharing in the Settlement Agreement, working with Trust A to initiate a long-awaited permit-based system for access to forest resources, beginning with thatching grass. All these initiatives were disrupted because of the threatening letter from the attorneys of Trust B. The conflict also disrupted the running of the nature reserve as the Land Trust was dismantled. Further, as explained in the next section, Trust B was disbanded by the DRDLR in 2011 for not following processes outlined in the Trust Deed, but the court case continued.

This section showed the ability of the chiefs to destabilise the democratically-constituted Land Trust that is the legal owner and manager of the nature reserve and of the hotel within the reserve. Chiefs had taken legal action to stop a state department, the Eastern Cape Parks Board, from continuing to work with Trust A, and to compel it to engage with the chiefs' own Land Trust B. This led to the breakdown of co-management arrangements in the area. Although Trust A had failed people in relation to access to resources, the rival Trust B also failed to facilitate community access to natural

---

<sup>139</sup> Interview with director of TRALSO, Simbongile Kamtshe, April 2012.

<sup>140</sup> Interview with Mazwi Mkhulisi, July 2011.

resources. Instead, co-management was disrupted by the formation of Trust B; it sparked conflict between the institutions and the community, and became a stumbling block in the implementation of co-management arrangements in Dwesa-Cwebe. It also showed that although chiefs hold elected representatives accountable, some members of the community still do not view Trust B as representing them. Thus, as Beyers and Fay (in Kepe, et al., 2016:41) argued, lawsuits against democratically-elected institutions in communal land claims also provided opportunities for power-hungry and discontented traditional authorities to challenge or hold CPAs accountable, “often invoking the terms of the CLARA”.

This section showed that members of the Dwesa-Cwebe community want institutions that were created through democratic procedures, not chiefs, to continue representing them in relation to the co-management of protected areas. It also demonstrated how complex is the task of co-management of protected areas in a context where both democratically-elected institutions and undemocratic traditional authorities exist alongside each other. Thus, the involvement of traditional authorities in the post-land claim co-management of protected areas that are under their jurisdiction cannot be avoided. Since South Africa adheres to the principle of democratically-chosen representatives, as prescribed in Section 19 Subsection 2a of the Bill of Rights of the South African Constitution, the only way that traditional authorities can play a role in the management of protected areas is if they are seen as real partners, and not as guests or disrupters of democracy. The evidence presented in this chapter suggests a more nuanced approach to how elected representatives should be held accountable by both traditional authorities and local communities. Because the Land Trust had entered into a management agreement with the ECPTA, the court case against it negatively affected potential ECPTA support or intervention with regard to the implementation of the co-management agreement in the area, and other initiatives designed to benefit the community. Given these institutional contestations, the co-management agreement has collapsed, and issues of resource management have suffered a set-back. Post-settlement development aspirations of communities have thus been set aside while this contestation persists. In the next section, I discuss the establishment of Land Trust C as an attempt by the state to resolve this institutional contestation in Dwesa-Cwebe.

#### **8.4 Creation of Land Trust C in 2011, impact on the management of DCNR**

With the stalemate and confusion created by the competing trusts, the Department of Rural Development and Land Reform intervened in the case and proposed the election of a new trust and

the abolishment of both Trusts A and B.<sup>141</sup> Thus, on 5 February 2011, Trust C was established through an election process in Dwesa-Cwebe. The Department, working closely with local headmen, set a date for the elections, which department officials would conduct in order to ensure fairness.<sup>142</sup> According to a DRDLR official who I interviewed, the CPAs, chiefs, Trust A and Trust B had been invited and informed about the date of the election for Trust C. The election took place despite the reservations of the Hobeni CPA, which was of the view that there was no proper consultation on the processes that would lead up to the election of the new trustees. Most Hobeni locals, in particular, were disappointed to discover that the date for the election coincided with the long-awaited official opening of a local clinic. A Hobeni villager articulated the problem:

I had personally phoned officials from DRDLR to change the date as it clashed with the official opening of the Hobeni Clinic. But the official concerned was not willing to accommodate local people's concerns about the timing. As a result, most local people were not part of the elections, as they attended the clinic opening event.<sup>143</sup>

Another Hobeni respondent also explained:

Local people even wrote a letter to the Rural Land Claims Commission raising their displeasure about the manner in which the election of the trust was about to happen. They did not receive any formal response except to say the election could not be delayed, as this had to be finalised before the end of 2010.<sup>144</sup>

Commenting on the processes that led to the election of Trust C, the Hobeni CPA chairperson insisted: "There was no proper consultation on the processes... I wrote a letter to the DRDLR raising our unhappiness about the manner in which the election of the trust had taken place in 2010."<sup>145</sup>

This incident illustrates how local people were using their agency in their attempt to ensure that democracy was implemented. It was another way in which they were attempting to hold tribal authorities and even state agents accountable. Despite the fact that the Eastern Cape DRDLR had not

---

<sup>141</sup> Personal communication with two men from Hobeni, 2012.

<sup>142</sup> Interview with two villagers in Hobeni, April 2012.

<sup>143</sup> Interview with a Hobeni villager, David Gongqoshe July 2012.

<sup>144</sup> Personal communication with David Gongqoshe and Khuzile Juze, July 2012.

<sup>145</sup> Interview with Hobeni CPA chairperson, Mr Sithayi Bhunga April 2012.

worked with the chiefs but with elected community leaders during the land claim process, it decided to cooperate with the chiefs to mobilise people for the election. The department intended to create Trust C to resolve conflicts between local chiefs, trusts and community members, and to resume co-management-related projects that had been interrupted by the legal battles between Trusts A and B.<sup>146</sup> The election was duly held but all those elected were not technically from the true claimants to the nature reserve as recognised under the restitution claim by the Restitution of Land Rights Act 22 of 1994. Trust members were supposed to be people who lived closest to the sea, those who had ancestral graves in the reserve, or those whose original homes had been located within the nature reserve.<sup>147</sup> Even if the election of Trust C was overseen by an official institution that could confer legitimacy on the electoral process, the trust lacked legitimacy in the eyes of those it was to represent. One interviewee alleged: “Although Trust C was formed by DRDLR, its members were drawn from Trust B that was formed by chiefs. This trust [C] is the same as Trust B. We do not trust it. Chiefs made sure that their friends are re-elected in Trust C.”<sup>148</sup>

It seems, then, that the traditional authorities again used their muscle to create a situation that empowered them in land management matters in Dwesa-Cwebe. Despite the fact that Trust C was elected through the involvement of the DRDLR, it appeared that the Trust did not represent all land claimants, as most people were attending the opening of the Hobeni Clinic. However, the department, working with the chiefs, proceeded with the elections despite the absence of some stakeholders. Some people said that chiefs supported the department’s decision not to change the contested date for the election because they wanted their supporters to be elected. It was because of this that Trust C was not recognised and welcomed by some villagers. This created challenges for DRDLR in terms of its own relevance and legitimacy in performing its oversight role over Dwesa-Cwebe affairs. Trust C had no legal standing because it was never registered. It was also not recognised by the Dwesa-Cwebe people and their CPAs. Some locals who I interviewed insisted that Trust C would not address the needs of the community, but only of the chiefs.<sup>149</sup> While the motive for the DRDLR to intervene with the creation of Trust C may have been to facilitate representation, the timing and implementation of such an intervention was ill-conceived, especially because it held elections for Trust membership when there was an on-going court case on the legitimacy of already-

---

<sup>146</sup> Interview with DRDLR Official, Mrs Novuyisa Ntanjana, April 2012.

<sup>147</sup> Discussions with five ordinary members of Cwebe and Hobeni villages, 1 June 2012.

<sup>148</sup> Interview with a villager (requested not to disclose her name), June 2012.

<sup>149</sup> Discussions with a group of women and men from Mpume and Hobeni villages, 6 June 2012.



existing trusts. When the responsible DRDLR official, Novuyisa Ntjana, was asked about this, she responded:

The DRDLR decided to intervene and play a leading role in the establishment of the new trust in order for government departments to implement what was agreed to in relation to post-settlement agreements. The election of Trust C would help resolve community tensions in the area.<sup>150</sup>

But the election exacerbated tensions and division in the local communities, and further delayed co-management of the protected area. Some of the newly-elected trust members were also members of the previous trusts whose legitimacy was being contested in court. In terms of the Dwesa-Cwebe Trust Deed, the Trust is directly elected by CPAs, which must be in good standing before they can each elect their two trustees. The CPA register, which was based on a household survey through which each member was registered, had not been updated since the formation of the CPAs in 1999-2000. These discrepancies point to the complexity and institutional messiness of Dwesa-Cwebe representation. As one DRDLR official, Ayanda Nqanda stated:

The conflict started as a result of the fact that the old trust [A] did not want to step down even when their term had expired and development did not take place. The conveyancers [DRDLR] did not know which trust to transfer the Dwesa-Cwebe Nature Reserve to. The Cwebe chief did not involve himself with the tensions. As part of seeking a solution, we went to Nqadu because we did not know which authority to talk to or work with. Firstly, local chiefs and CPAs were also implicated; the moment they saw [state officials] talking to the Land Trust or CPA, you would be associated with them. And then we went to Nqadu to request King Xolilizwe Sigcau to intervene because his people were fighting. We called them all and asked the old trustees to step down. That's how Trust C came about. All chiefs were part of that meeting. Amathole District Municipality (as purse holder of the R14 million) and ECPTA were ready to kick-start development in the area but they were curtailed by these tensions and contestations. The elections were fair and all members of the old trust [A] were

---

<sup>150</sup> Interview with Novuyisa Ntjana, June 2012.

part of the elections. Now we want to make sure they are registered so the CMC can continue working in Dwesa-Cwebe.<sup>151</sup>

This official response made it appear as if the state was playing its oversight role. However, communities asked where the department had been for many years after the expiry of the term of office of Trust A. Furthermore, the holding of the election by DRDLR had been rushed and CPA members were not given time to organise for it.

Former Trust A member Kuzile Juze made a crucial observation.

Trust C was never established by the community. I mean the vision for the establishment of Trust C, which is not legally registered, was an initiative of DRDLR. DRDLR was trying to intervene to solve community problems, but the manner in which it was intervening was never correct because it should have been informed by the community members. I think the reason for Trust B's establishment was because people were unhappy about the level of delivery of the co-management agreement from the old trust [A]. They were complaining that this trust does not implement any development from the restitution fund [of R14 million held by the Amathole Municipality] and they did not facilitate access to natural resources inside the reserve.<sup>152</sup>

Chief Jonginkosi Geya from Cwebe added his voice to the issue of Trust C:

Local people are in trouble because their needs are not really considered by Trust C, as it is not legally registered yet. Even the ECPTA does not recognise this new Trust C, although they participated in its formation. We need Trust A here at Cwebe; we do not want Trust C because we were not part of it. Even co-management is no longer working. Local people and people from other areas are stealing our natural resources.<sup>153</sup>

The DRDLR's oversight role appeared to have been exercised belatedly and caused further tensions among Dwesa-Cwebe communities, with different institutions making counter-claims of legitimacy

---

<sup>151</sup> Interview with DRDLR official responsible for Land Restitution in East London, Ayanda Nqganda June 2011 and April 2012.

<sup>152</sup> Interview with Khuzile Juze, April 2012.

<sup>153</sup> Interview with Chief Jonginkosi Geya from Cwebe, April 2012.

over each other. The department cited disputes with the Land Trust as a major stumbling block to implementing settlement and co-management agreements in terms of tourism development in Dwesa-Cwebe. This has impacted negatively on local democracy and co-management of protected areas. Local people, for example, felt that their democratic right to elect their own institutions was violated by the DRDLR and traditional authorities. They were shocked that state officials who were accountable to an elected government prevented local people from exercising their democratic rights of electing their own representatives. It was established that the department did not follow proper consultation processes regarding the setting of the election date, and people, particularly by those who were attending the opening of the local clinic, perceived the Land Claims Commission, which hastily organised the election of Trust C, as having failed dismally in terms of South African standards of transparency, consultation, fairness, due process and proper participation.

One member of Trust A, Kuzile Juza asserted that the lack of commitment and respect by the state towards local people and their elected leaders was one factor that led to the creation of Trusts B and C, and the collapse of the CMC. However, he added, despite the formation of Trust C, community members continue to be arrested, assaulted, shot, and even killed by ECPTA rangers because they entered the Dwesa-Cwebe Nature Reserves. The CMC, which is supposed to facilitate development in the protected area, no longer exists, and no co-management meetings have been taking place in the area since the establishment of Trust B<sup>154</sup>.

In the meantime, Trust C was working, albeit without having been registered. I attended some community meetings while conducting research between 2012 and 2017, and Trust C appeared to me not to be welcomed or recognised by the local land claimants (the original group that had fought against the state in the 1990s and had won the restitution of Dwesa-Cwebe in 2001). Most members of communities around the reserve professed ignorance of even the existence of Trust C. Local people no longer trust any institution in the area because of the conflicts between community institutions. They do not know which institution represents their concerns and with which they can work regarding the management of DCNR. From the narrative in this section, it seems that none of the three Land Trusts have popular support, whether they were created through election by communities, through support from traditional authorities, or by the DRDLR. This demonstrates how

---

<sup>154</sup> Interview with Kuzile Juza, April 2012

the state has failed to facilitate development in rural areas where both traditional authorities and elected community representatives co-exist.

### **8.5 Establishment of new interim CPA (2013), reinvigorated traditional authorities**

As explored in the forgoing section, although the DRDLR held elections for a land trust, the results were not recognised by local communities, their legitimate CPAs and existing land trustees from Trust A. Nevertheless, Trust C did commence work. However, the DRDLR intervened again and announced that all land trusts were to be dissolved because they were not best suited to work for communities due to their autonomy laws, and were not easily held to account. As the DLDLR official Novuyisa Ntjana noted, the use of a trust “is unique and the capacity it affords to replace trustees with better ones more attuned to beneficiary interests quite specific”. Since the creation of the Dwesa-Cwebe Land Trust, a land reform policy review has recommended against the further use of trusts, and is in favour of CPAs because of the additional supervision they allow (and in some cases oblige) the Department of Land Affairs (Sustainable Development Consortium, 2007:262–263, 270, 272–275), and in favour of measures to strengthen the accountability of CPAs that enter into contracts with investors (ibid.:276). In 2013, then, all three trusts were dissolved by the RLCC and DRDLR, and an interim CPA was elected. During this process, as will be shown in this section, traditional authorities pushed ahead to gain the upper hand in the elected management institutions for the restituted land. The elections of the CPA were held at traditional authorities’ places across Dwesa-Cwebe, in itself an indication of their importance in the process. This was despite the determination of the people to keep the traditional authorities out of the governance of the protected area.

Mcedi Mhlanga of Cwebe village related:

The DRDLR/RLCC, together with the ECPTA, had advised the Dwesa-Cwebe people to draft the Communal Property Association’s constitution as stipulated in Section 28 of the CPA Act of 1996. We agreed to do that by April 2013 and the constitution was adopted on 22 May 2013. Chiefs are part of the CPA with no power to manage natural resources in the nature reserve. However, with regard to the land outside the nature reserve, sub-headmen are

the only authorities who allocate land to the people here in Dwesa-Cwebe, with the approval from chiefs.<sup>155</sup>

What followed was captured well by Mthobeli “Jomo” Khuselo, from Elalini, a village under Chief Phathisile’s sub-headman of Hobeni, which is situated on the Cwebe side of Dwesa-Cwebe community:

In 2013, Trust C was removed and, in its place, a CPA was formed on instruction from the DRDLR. The CPA worked for two years as per the agreement that it would serve only two years in its first term and then five years in subsequent terms. Unfortunately, the CPA did not stop working even though their term had come to an end.<sup>156</sup>

Some people indicated that, in September 2016, they went to the DRDLR offices in Midrand, Gauteng to receive the title deed for the nature reserve. Nokuzola Dolly Ganase, People and Parks Manager for the ECPTA, allegedly told the CPA to continue functioning in spite of its term having ended. The extension of the term of the CPA was to be kept secret, a deal to which, some people claim, Chief Phathisile Fudumele was a party. A villager from Elalini, Mthobeli “Jomo” Khuselo, related:

When we enquired about these things from our chief, he threatened to unleash the local anti-crime vigilante group called *Masifunisane* because what we were saying about the CPA’s end of term was not true, and DRDLR had verbally told us they would come to elect a legitimate CPA but was turned away by the same chief because of his sinister motives. We are told that the role of chiefs in CPA is to serve as ex officio members, but our chief seems to dictate to the CPA and does not want anything to be done without him despite his [ex officio] status in the CPA. We also went to Chief Jonginkosi [Geya] to ask if he knew about this extension of the CPA term, and he said he did not know. When we went to our own chief, he insulted us saying he does not know what *amaqaba* [uneducated people] like us want from him.<sup>157</sup>

---

<sup>155</sup> Interview with Mcedi Mhlanga, a villager from Hobeni, June 2017.

<sup>156</sup> Interview with Mthobeli “Jomo” Khuselo, June 2017.

<sup>157</sup> Interview with Mthobeli “Jomo” Khuselo, June 2017.

When rural people tried to exercise their democratic right of choosing their own representatives to the CPA, they were given short shrift by the chiefs, who have been accused of wanting to control the election of the CPA, as they had done when Trusts B and C were created. However, the Hobeni chief Phathisile Fudumele stated that chiefs across Dwesa-Cwebe had not facilitated the establishment of the CPA. He explained:

The Land Claims Commission and Department of Rural Development and Land Reform advised us to elect it because there was Trust one, two and three and that would stall processes. So, a CPA was established since it would be more suited to work with the department and make progress in development.<sup>158</sup>

Bongani Dumemzweni from Hobeni said something similar: “Trust C was then dissolved by DRDLR because they said it had too much power. It was replaced with a CPA, and we do not have a CPA member here in Elalini.”<sup>159</sup>

This sentiment was also shared by a ward committee member, who explained:

Trust C did resume working but, later, the DRDLR/RLCC intervened again and advised that trusts are to be dissolved because they are not best suited to work for communities due to their autonomy laws and are not easily held to account. People bought into this advice and became vocal in calling for the dissolution of the trust and wanted a CPA to replace the trust.<sup>160</sup>

Although chiefs distanced themselves from the creation of the CPA, Mr Batshise “Dingatha” Mase revealed:

The chiefs deliberately appointed Mr Sithayi Bhunga<sup>161</sup> as their [representative in the] CPA, and we don’t have a problem with that as long as he is their CPA [representative] and does not cross the Mbanyane River [that separates Hlobeni from Elalini]. Here we want to elect

---

<sup>158</sup> Interview with chief Phathisile Fudumele, June 2017.

<sup>159</sup> Interview with Bongani Dumemzweni from Hobeni, June 2017.

<sup>160</sup> Interview with ward committee member (he requested not to disclose his name), June 2017.

<sup>161</sup> Mr Sithayi Bhunga was one of the members who had been elected in the original CPA that was formed between 1997 and 1998. He had publicly criticised chiefs in the past, but now seems to be on friendly terms with them. He resides in Hobeni.

our own CPA members in our own land. We are united with Cwebe, and are in constant contact with others across the river. We say to them, “This is our bottom line.” Even in Cwebe they did not elect CPA members. A chief is not supposed to be politically partisan...I always say this, even in meetings at the great place.<sup>162</sup>

These utterances by local people seem to suggest that chiefs used every technique possible to regain complete control in the management of people and resources in protected areas at Dwesa-Cwebe. In addition, it seems that traditional authorities wanted to control elections of the CPA in order to ensure that their supporters were elected to the CPA committees, to serve their interests. On the other hand, some local groups, especially from Hobeni, did not want traditional authorities to be involved in the elections of the new CPA. They wanted to elect people who would be responsible and accountable to the people, not to chiefs.

After the initial two-year term of the new CPA ended, there was to be an election for the second, five-year, term. However, according to one ward committee member:

After the end of term of office of this CPA, DRDLR/RLCC said they would come to elect a new CPA, but when they came, they only went to the traditional leaders’ place and did not come down here to us. The Department of Rural Development and Land Reform did not come down to the people while, according to the petitions, DRDLR/RLCC was told to come and elect down here.<sup>163</sup>

The DRDLR/RLCC ignored the demands of the people and decided to work through the chiefs. This is more striking in the degree to which these government departments had forgotten or ignored the history of their not working through chiefs during the Dwesa-Cwebe land claim process (see Chapter Five). Following a delay in the election of the new CPA because of the DRDLR/RLCC and ECPTA, local people marched to the Cwebe Nature Reserve to hand over a petition to these government institutions. One Hobeni local involved in the march, Mthobeli “Jomo” Khuselo related:

We marched from Ngubenyathi to Cwebe Nature reserve main gate where we handed over our petitions to DRDLR, ECPTA, and Mr Grant Miller. We have documented proof of the

---

<sup>162</sup> Interview with old man Mr Batshise “Dingatha” Mase, June 2017.

<sup>163</sup> Interview with a ward committee member (he requested not to disclose his name), June 2017.

march, such as photos and videos. On 15 May, DRDLR was supposed to arrive and elect a new CPA, but the chief requested the meeting to be rescheduled for another date since that date clashed with his other commitments.<sup>164</sup>

In the petition, residents demanded that the CPA be elected on 15 May, as Miller's lease was also coming to an end, and local people wanted a new CPA in place before the end of the lease.<sup>165</sup> However, according to Mthobeli "Jomo" Khuselo,

Chief Phathisile Fudumele deliberately delayed the election of the CPA so that Mr Grant Miller, who had given him money, could extend his [lease]. We are going to record our meeting on the 15 June and send them to DRDLR because, in the current situation, we don't want people who come from Phathisile to participate in our CPA. Let them allow us to do our "stupid thing" because that [is] how he refers to us. He is calling us *amaqaba* [illiterates]. We have photos as evidence that his people have not been part of our attempts to sort out things and nobody from Hobeni appears on those photos.<sup>166</sup>

It appears from this narrative that the current CPA is working closely with chiefs and with Miller on issues of the protected area. The local people complained that the chief from Hobeni, Phathisile, delayed the process of electing the CPA because the current one is working closely with him. Working with the DRDLR, the chief unilaterally changed the date for the election of the new CPA. This illustrates the confusion on the side of state officials who preferred to work with unelected institutions, such as chiefs, while elected institutions were already in place. One villager told me:

Our chief managed to change the meeting to the 21 June instead of the agreed date of 15 June. Mr Bhunga was elected as Chair of the interim CPA and we ask ourselves if a CPA must always have this person who acts as a captain and be present in all CPAs that are elected. Mr. Bhunga from Thunzini was a member of the original CPA elected in 2001. Mr Mayenzeke Mpukwana was also from Thunzini and was also elected, and here we have no representative in that institution. On 22 and 23 June 2017, we went [to *Komkhulu*] to recall

---

<sup>164</sup> Interview with Mthobeli "Jomo" Khuselo, June 2017.

<sup>165</sup> Group conversation with seven local people, June 2017.

<sup>166</sup> Interview with Mthobeli "Jomo" Khuselo, June 2017.



our sub-headman, and we want him to control the CPA as he had already done. That CPA will only operate in his area.<sup>167</sup>

It is clear that people want a legitimate institution that will be made up of leaders of their choice. They question the decision to re-elect people who had served in the CPA that had been established in 2001. According to the people, the chief deliberately did not want the DRDLR to elect a new CPA because it would remove the current lessee of the Haven Hotel, Grant Miller, who had allegedly built the chief's house. An old man from Elalini put it this way: "His house with a water tank opposite the clinic was built using community funds. It is the same money that we are demanding from the white man. This chief is corrupt."<sup>168</sup>

However, Chief Phathisile Fudumele countered: "They cannot remove Mr Grant and the only institution that can do that is the CPA. They are playing; it's the CPA which has the powers to remove him when his lease agreement expires."<sup>169</sup> One young man, Mthobeli "Jomo" Khuselo who was involved in the march that took place in April explained that he and others were subsequently targeted by the chief.

On 12 April, we embarked on a march. This march was a culmination of a campaign to unite the Dwesa and Cwebe youth to fight these things. We wanted to call upon DRDLR to intervene, precisely because our elders were being overwhelmed by the chiefs, and, as youth, we were more likely to succeed, as we were vigilant. This has caused us to be targeted by the traditional leader as troublemakers. You can go anywhere and even at Guse, our names are on everybody's lips. The chief even went to our local municipality and police station to ask for advice on how to deal with us. In March, we had met with people from Willowvale and we agreed on the date for the march. We agreed that the march should not be too confrontational but to deal with issues, including the chief who was behind stalling the re-election of a new CPA. Our march would be peaceful.<sup>170</sup>

This respondent represents a new kind of stakeholder in Dwesa-Cwebe. These are young people who had not previously been involved in the land restitution affairs or the land claim who are showing

---

<sup>167</sup> Interview with Mthobeli "Jomo" Khuselo, June 2017.

<sup>168</sup> Interview with old man (he requested not to disclose his name), June 2017.

<sup>169</sup> Interview with Chief Phathisile Fudumele, July 2017.

<sup>170</sup> Interview with Mthobeli "Jomo" Khuselo, June 2017.

interest in these matters that concern them and their future. They challenged the ECPTA and traditional authorities because of their attempt not to elect a new CPA whose members would be elected by the community and not appointed by the traditional authorities.

Chief Phathisile expressed his irritation about this group:

It is a certain group of young people who want the new CPA to be elected. Its term had come to an end and we had to elect a new CPA due to the troublesome youth we have here. Actually, it's not youth because youth is someone 35 years and below. A person who is 40 years [old] is not a youth; that's why I say these people abuse the law.<sup>171</sup>

There were also allegations that CPA members whose terms in office had expired were receiving community money and that its chairperson, Andile Mgedezi, was abusing these funds. Among the allegations against him is that he would give loans to some members from CPA funds, and the repayments would be deposited into his personal account.<sup>172</sup>

There are also other divisions in the community, including one that emanates from the fact that some people from Elalini wanted the meeting to elect the CPA to take place at the school hall, not at the chiefs' place. On the other hand, the chief and some people from Hobeni wanted the meetings to take place at the chiefs' place, as was the case when the old CPAs and Land Trusts were elected. The Dwesa-Cwebe villagers seem to continue holding their traditional authorities and elected members to account in relation to the management of the DCNR and the control of restitution funds and funds from the Haven Hotel and cottages. Chief Phathisile expressed his anger at, and perspective of, these divisions:

What is happening here [is that] we are fighting with boys who don't know what they [are] fighting for...Everything must take place here at the royal house, and that applies to Lalini people. The CPA must be elected here in the same manner that the trust was. They want to elect the CPA at their school and exclude people from here. They are going up and down holding their own meetings down there. This is creating confrontation because here people

---

<sup>171</sup> Interview Chief Phathisile Fudumele, June 2017.

<sup>172</sup> These allegations were uttered by all local people I interviewed, June to July 2017. But those accused denied them.

say, “Should that happen, that will be declaration for civil war because we are also beneficiaries.”

I do not know how this will end. They even sabotaged the meeting here by holding their own meeting on the same day. They had written a letter to government terminating the Dwesa-Cwebe CPA. Even here we terminated powers of CPA members until the election of a new CPA. When it came to re-election of a new CPA, they say it must be elected down there. The Department communicated with the traditional leader and told me they are coming to elect. I advertised the meeting by posting notices everywhere telling people about the date and purpose of election of a CPA. They did not come but, instead, held their own meeting down there. You must understand that this is not the entire Hobeni. [The Department of] Land Affairs and ECPTA arrived, and we elected an interim CPA, and they left. Now they are complaining and we are listening. We are waiting for the outcomes of their actions, as it is alleged that they even went to the regional council to lay a complaint that we elected a CPA in an illegal way. I will not answer that now until I am called to answer it.<sup>173</sup>

The chief himself was not idle. He claimed that the people of Elalini had held illegal meetings at Ngubenyathi School and that he had approached the Department of Education to query what types of meetings were allowed to take place at the school. The school principal has a policy of allowing various kinds of community events to take place at his School. “What will happen to learners should that school catch fire?” asked the chief. He also threatened Elalini activists.

If they think they can have their own autonomous structure, we are going to go down there and assault them. According to documents, when TRALSO and Mvula Trust conducted a household survey, all Hobeni people were included. You can’t just decide to say they are not beneficiaries. That is a call for a fight because even the compensation settlement amount was calculated on the basis of all Hobeni households. It is alarming to me if some people want to exclude others, and certain NGOs can give such advice. We are going to fight this out even in

---

<sup>173</sup> Interview with Chief Phathisile Fudumele, June 2017.

courts because this land belongs to the entire Hobeni community, not to a certain section of the community.<sup>174</sup>

Chief Phathisile Fudumele agreed that the matter had divided the community. He insists that there are community members who “do not want this. Older people, for example, do not support this.” He claimed these people wanted the CPA election to be held at the chiefs’ place, not at the school hall. The reason that old people did not want to be “part of this thing”, he said, was because the leadership of the Elalini groups “are all useless people”. He also blamed the United Democratic Movement, a political party active in the area, for the division. “You see, when I look at it, there is an element of politics in this thing. UDM boys are leading this. That is bad, they have found an opportunity. Even at Cwebe, the organiser is a *mhlangala* of UDM.”<sup>175</sup>

Chief Phathisile Fudumele opposed the idea that there should be a new CPA in Dwesa-Cwebe, saying that the interim CPA was busy investigating money that had been invested by the old trust.

We traced the money as far as Durban where it was invested by the former trust. This is what the last CPA was investigating. The CPA was resolving things one by one: the money and the title deed. That is why we did not want to disturb its work even though its term had expired. The only money that was rented [sic] to the CPA was for the Haven Hotel lease. The cottage owners decided to open a separate account into which they pay rentals. They will then pay over the money once we have a legitimate institution. Because of these disputes, they are concerned, and you know how white people are. The money for compensation as per the Settlement Agreement is still with Amathole [District Municipality], and these are some of the monies we hear are invested in Durban. All this was investigated by the last CPA. The last CPA even requested the Mbhashe municipality to intervene. Why did the Mbhashe money go to Amathole? We cannot blame our municipality because it’s we who agreed on that. Our mayor has intervened but now there is this emerging nonsense from down there.<sup>176</sup>

In addition, he said, chiefs worked very closely with Mr Sithayi Bhunga, and the CPA had no issues with the traditional leadership. “The CPAs know that they have nothing to do with land outside the

---

<sup>174</sup> Interview with Chief Phathisile Fudumele, June 2017.

<sup>175</sup> Ibid.

<sup>176</sup> Ibid.

nature reserve. Their focus is land that was claimed inside the nature reserve,” he said.<sup>177</sup> Thus, he insisted, there were no conflicts around issues of land.

Unfortunately, Mr Sithayi Bhunga refused to be interviewed by me about anything regarding Dwesa-Cwebe. He said he could not respond to my questions. He did make one comment, however.

I am no longer a member of the CPA because its term has expired. I am therefore a former member of the CPA. I was in the CPA but it has been told to stop working. I have no problem with your questions; my only problem with your questions is the fact that I am not in a position to talk now. If you could come back once everything is settled, I would answer all your questions and give you detailed information about inside and outside the nature reserve.<sup>178</sup>

Mr Sithayi Bhunga, and others like him, had been known to despise and stand against authoritarian practices in the past. More recently, in order to maintain some relevance, they decided to join the chiefs. Many others who had stood against undemocratic practices and the authoritarianism of the chiefs, such as Khuzile Juze, Mthobeli “Jomo” Khuselo and Mr Batshise “Dingatha” Mase, have either been forgotten or have been portrayed as enemies of the chiefs.

The statement by the Hlobeni chief that the CPA had “nothing to do with land outside the nature reserve” is not consistent with the decision taken when the CPAs had been created. They had been created as investment vehicles for the land outside the nature reserve, to enter into contracts with investors (see Chapter Five and Settlement Agreement, 2001). As seen above, the people of Dwesa-Cwebe have been requesting the ECPTA and the DRDLR to respect the terms of their Land Claim Settlement and to recognise the community as the rightful owners of the land. This has not happened and government departments continue to work with chiefs instead of local people as far as the election of the CPA is concerned. The question of why this is happening is important for this study.

Despite community members presenting a petition to the DRDLR and ECPTA in April 2017 requesting that a legitimate CPA be elected to manage the protected areas, no election has taken

---

<sup>177</sup> Interview with Chief Phathisile Fudumele, June 2017.

<sup>178</sup> Comment from Mr Sithayi Bhunga, former CPA member, July 2017.

place, and the local people have, therefore, requested the conservation authority to leave the nature reserve.<sup>179</sup> They insist that the land in the reserve is theirs and they will manage the reserve themselves if the management authority and the DRDLR refuse to recognise them and to include them in the election of the new CPA. The Dwesa-Cwebe community currently has a dysfunctional CPA for its resource governance institution, and all management interactions and development projects have been suspended until the creation of a new, elected Dwesa-Cwebe CPA.<sup>180</sup> On 20 September 2017, local people had a meeting with the Chief Land Claims Commissioner, Nomfundo Gobodo, during which they demanded that the department conduct elections for the new CPA within a period of 14 days.<sup>181</sup>

This demand was not met. Dwesa-Cwebe people then demanded that the ECPTA not meet with the existing CPA since this committee had no standing. They alleged that the DRDLR had worked with the chiefs to delay the CPA election. Moreover, locals also requested that Miller not sign any agreement or sit in any meeting with an “invalid CPA” and not give that body a venue inside Haven Hotel for meetings until elections for a legal CPA were conducted. They declared that the lease agreement for Haven Hotel needed to be reviewed. Again, chiefs played a leading role in manipulating the DRDLR to delay the process of electing the new Dwesa-Cwebe CPA. The position of chiefs in the election of the CPA has shown that they are not committed to democratic ways of doing things as their supporters claim (see Chapter Two).

However, one can argue that the refusal of the traditional authorities to elect a new CPA while the current one is busy investigating the community funds that had been lost under the old Dwesa-Cwebe Land Trust is a reasonable position to take. Although the role of traditional authorities seems disruptive (as critics such as Ntsebeza argue), it seems that they want to correct matters and to ensure that democratically-elected members of the Land Trust and CPA are held accountable for their alleged corruption. This study shows that the tendency to dismantle old and rebuild new institutions, and its demoralising effect on local people, has created a complex situation where chiefs have begun to adopt strategies to regain control over local people and resources in the Dwesa-Cwebe Nature Reserve. However, there was no functional CPA at the time of the study due to reasons related to

---

<sup>179</sup> Interview with Mcedi Mhlanga, April 2018.

<sup>180</sup> Interview with Nokuzola Dolly Ganase, July 2017.

<sup>181</sup> Telephonic interview with Mcedi Mhanga, September 2017.

internal conflicts, maladministration, mismanagement of funds and corruption, in which elected members of the Land Trust were also implicated. As this chapter demonstrates, local traditional authorities used various avenues to regain and assert control over institutions that operate according to democratic principles, including fair and inclusive decision-making processes. It seems as if state departments have no problem with that; they continue to work with traditional authorities while ignoring elected members of the CPAs when they want to operationalise anything in the area. It is a contradiction because, during the land struggles from the 1990s to the resolution of the land claim in 2001, state departments – particularly the DRDLR/LCC – worked with leaders who had been elected onto the original Dwesa-Cwebe Land Trust and the CPAs. These departments had never worked with the traditional authorities during those periods. What does this mean for the future of democracy in rural areas, where communal land in protected areas is returned to the elected CPAs and Land Trusts?

## **8.6 Conclusion**

This chapter covered the period from 2009 to 2017, focusing particularly on the resurgence of traditional authorities. The functioning and legitimacy of Land Trust A and the CPAs had been resisted by traditional authorities, as they believed that these institutions challenged their authority in communal areas. Empowered by two laws – TLGF and CLARA, the traditional authorities launched an attack on the protected area's land management institutions, which has become an ongoing campaign to reassert their power in land matters. To start with, they exploited the weakness of the Land Trust and set the basis for their own re-emergence in Dwesa-Cwebe. They then created their own Land Trust (B) to replace the original Dwesa-Cwebe Land Trust. However, it is notable that one traditional leader from Cwebe village was not involved in the dismantling of the Dwesa-Cwebe Land Trust. He was therefore seen by local people as a leader who respected the will of his people and who believed in democracy.

This demonstrated that traditional authorities were no longer willing to be under the authority of elected communal property institutions (the Land Trust and CPAs); they insisted that they were the appropriate managers of land-related issues both outside and inside the nature reserve. In order to ease the tension between the two trusts (A and B), the DRDLR, after an absence of many years from Dwesa-Cwebe that contributed to a complete shambles with regard to the 2001 Settlement Agreement, returned in 2010 and disbanded both Land Trust A, which it had created at huge expense

around 2000, and Land Trust B that was created by the traditional authorities. A third Trust (C) was then formed in 2011. After it too experienced problems, and following a change in government policy, the trust was replaced by a new interim CPA. However, there was no functional CPA at the time of my visit to the area in 2018 due to reasons related to internal conflicts, maladministration, mismanagement of funds and corruption.

It also became clear that chiefs did not want a new CPA to be elected while the existing CPA was busy investigating community restitution funds that had been transferred to the Trusts and the Amathole District Municipality. This resulted in a situation where local people do not know which institution to consult in cases of grievances and when they want land and natural resources from the DCNR. This chapter noted that it is the preferred approach of government to either destroy or build institutions when called on to act. The dismantling of old and building of new institutions in the area has had a demoralising effect on local people and on the management of DCNR. Despite instruments such as a co-management agreement being in place, a host of resource governance institutions have failed to improve people's livelihoods. Access to natural resources by local people in Dwesa-Cwebe is greatly constrained by conflict between resource governance institutions, which originated from the attempts by chiefs to regain and assert control over local people, resources and the management of the protected area. Local people are unlikely, this chapter showed, to assert their legally-established rights over access to natural resources, for which they had fought since the apartheid era, unless local resource governance institutions such as chiefs and CPAs can work together, trust each other and learn to accept each other. The reality is that the Dwesa-Cwebe people are worse off in terms of actual access to natural or institutional resources than when the land claim was settled in 2001, as chiefs continue fighting elected institutions for power and legitimacy over the management of protected areas. To make matters worse, a once-vibrant, extraordinary, confident and dynamic leadership, Land Trust (A), has become a demoralised, ineffective shadow of institutional defeat and failure.

The resurgence of traditional authorities in Dwesa-Cwebe is not exceptional. As shown in Chapter Four, traditional authorities have also re-asserted themselves in rural areas of KwaZulu-Natal, where they have played leadership roles in land claims, with or without the support of their subjects (Ngubane, 2012; Mathis, 2007). A similar situation presented in the Makuleke case where a resurgence of traditional authorities was reported. In that instance, a traditional leader used the



democratic process of subjecting himself to an election for chairperson of the CPA to gain such power (Robins & van der Waal, 2008:66). I stress that the people of Dwesa-Cwebe and their elected representatives in the CPA and Land Trust found themselves overwhelmed by traditional authorities that want to appropriate the benefits of resources for which local people have struggled so hard to regain control. In conclusion, intra-community tensions and the lawsuit brought by the traditional authorities' new trust against the original land trustees have presented a situation where traditional authorities have an opportunity to hold democratically-elected members of the original land trust accountable for perceived corruption and mismanagement of the nature reserve, which led to their removal from office. This chapter also discussed the tensions that played out in Dwesa-Cwebe, and which led to court battles, and argued that this may present opportunities for an interested group of elites, such as traditional authorities and whites, to attempt to gain more influence over community resources in areas such as Dwesa-Cwebe.

This chapter also concluded that the delays by the state to elect a legitimate CPA contributed to the non-implementation of post-settlement development, and have undermined the integrity of Dwesa-Cwebe residents and elected leaders in the Land Trust. Moreover, the delay in the establishment of a legitimate CPA created more conflicts between residents and their local institutions, and allowed traditional authorities, government departments and other interested groups to exercise their powers, resources and influence. It seems that, regardless of which institution is in place, it is set up to fail, and part of the cause of this is the relationship with the state. This chapter also showed that although there is discord among traditional authorities in Dwesa-Cwebe, they all want to be involved in the co-management of the DCNR. Dwesa-Cwebe is a bitter spectacle of institutional failure that spread from the DRDLR/LCC tinkering with the Settlement Agreement to the gross mismanagement of the Settlement Agreement funds, which still remain idle in an Amathole Municipality account, to the deliberate disruption of DCNR management arrangements by local traditional authorities. Ultimately, the contempt with which the state treated the settlement agreement that it had co-authored, and the disdain for law inherent in this contempt, has caught up with the Dwesa-Cwebe Land Trust (A) and CPAs. Community leadership clings to office and power despite having lost face, is impotent to enforce the terms of the co-management agreement, and is helpless in terms of comprehending institutional solutions.

## **CHAPTER NINE**

### **Re-thinking the role of traditional authorities in post-land claim co-management of protected areas**

#### **9.1 Introduction**

In this chapter, I pick up on the main findings of this study and discuss the insights that emerge regarding traditional authorities and post-land claim co-management of protected areas. These findings highlight a number of critical issues. First, it shows how the people of Dwesa-Cwebe held their traditional authorities accountable for their previous roles and actions in land dispossession and enforcing brutal state restrictions on access to the natural resources in the DCNR. The community excluded traditional leaders from the land claim process and the subsequent democratic land tenure and management institutions, the Land Trust and Communal Property Associations. During the colonial and apartheid eras, traditional leaders had been repressive and had brutally enforced regulations and policies that had been detrimental to their people, with the result that the people perceived them as being on the side of those repressive states. They, therefore, lost legitimacy among their people and were viewed, according to Ntsebeza (2002; 2006), as an extension of those governments. However, despite this history and even without management powers over the protected area, traditional authorities were still accepted and respected in the Dwesa-Cwebe communities.

Second, the state partner in management affairs, the Eastern Cape Parks and Tourism Agency, failed to deliver on its mandate, leaving the Land Trust vulnerable to accusations of mismanagement and even corruption. This led to the traditional authorities, supported by frustrated community members and emboldened by the state through the Traditional Leadership and Governance Framework Act and the Communal Land Rights Act, undermining the Land Trust, which caused its eventual dissolution in 2009. The resurgence in the influence and power of traditional leaders in Dwesa-Cwebe mirrored what was happening nationally.

Third, the study establishes that the destructive actions of traditional authorities – such as the removal of the Land Trust in Dwesa-Cwebe – can be construed as holding the trustees accountable for perceived mismanagement of the nature reserve. During this process, the state, through the DRDLR, attempted to restore the legitimacy of the Land Trust by abolishing the original Land Trust

(A) as well as the form formed by traditional leaders (B) and replacing them with a third Land Trust (C). In the process, however, the state clearly came out in support of the traditional authorities, possibly as a result of the latter flexing their political muscle. In the arrangements for the election of new Land Trusts and CPAs, the DRDLR bowed to the preferences of the traditional authorities regarding the timing and venue for elections. For example, despite appeals by community members that this would disadvantage the participation of various people, the DRLDR went ahead with the Land Trust election based on the submissions of traditional authorities. Land Trust C, therefore, ended up being packed with supporters of the traditional authorities. Finally, the DCNR has witnessed the collaboration of a newly-formed interim CPA in 2015 with traditional authorities in the affairs of the reserve.

Towards the end of this chapter, I will present the contribution of this study to debates around the role of traditional authorities in protected areas. This contribution highlights the problem of reconciling the roles of traditional authorities with that of democratically-elected institutions in the co-management of protected areas. The limitations of the study are also presented. The chapter ends with suggestions for further research, before discussing the overall conclusion of the study.

## **9.2 Summary of findings from the study**

This section summarises the main findings of this thesis, based on its objectives, as encapsulated in its research questions:

1. What is the current role of traditional authorities in the post-land claim co-management of protected areas in South Africa?
2. By what means, and with what consequences in local communities, if any, are traditional authorities in Dwesa-Cwebe asserting their influence and control over co-management of DCNR?
3. What are the implications of these roles for protected areas on restored land in rural areas and more broadly?

### ***9.2.1 The current role of traditional authorities in the post-land claim co-management of protected areas in the rural areas of South Africa***

This sub-section focuses on traditional authorities in South Africa's former Bantustans outside of Dwesa-Cwebe. It is located within debates on the position of traditional authorities in Africa, and in South Africa in particular. A specific conundrum exists in South Africa, brought about by the inception of the democratic state in 1994, which removed much of the power that had been held by traditional authorities since time immemorial, including during the colonial and apartheid eras. The role of these traditional authorities was restricted to the exercise of customary law by both the 1993 interim Constitution and the 1996 Constitution. Particularly significant for this thesis is the power that traditional authorities had exercised as agents of the apartheid state in the control of protected areas and natural resources in the former Bantustans. The post-1994 legal framework is very clear on the management of protected areas on restituted land. Ownership and co-management, with the relevant state departments, of protected areas on land claims are vested in democratically-elected institutions, Land Trusts, and CPAs, in terms of the Restitution of Land Rights Act 22 of 1994 (RSA, 1994). Why then is there currently conflict between the people, as represented by their democratically-elected institutions, and unelected traditional authorities? This study found that the role of traditional authorities in South Africa since the inception of the democratic state has been fluid, which is the basis of the problem.

In 2003, almost ten years after the inception of democracy, parliament passed the Traditional Leadership and Governance Framework Act that opened the way for traditional authorities to have their power legally extended, including in terms of land administration and management of natural resources (Ntsebeza, 2006). The following year, that extended power was granted with the passage of the Communal Land Rights Act, which gave traditional authorities wide-ranging powers, including control over the occupation, use and administration of communal land. (Although CLARA was ruled unconstitutional by the Constitutional Court in 2010, it had been in force for most of the period covered in this study). These two laws resulted in traditional authorities flexing their political muscle and attempting to exercise power (and sometimes succeeding) over protected areas on restored land, even though they have no legal rights in this regard. This is evidenced in Limpopo, Mpumalanga and KwaZulu-Natal (Walker, 2008; Mathis, 2007; Ngubane, 2012). In these provinces, many land claims were lodged on a tribal basis by traditional leaders, many of whom now hold key

positions in CPAs or land trusts as elected chairpersons or as ex officio members, as can be seen in Makuleke in Limpopo. Traditional leaders see these elections as helping them to regain and consolidate their power in their communities. Thus, in many of these places, traditional authorities and democratically-elected institutions exist side-by-side. In Makuleke, tensions have arisen between the local people and the traditional leader who is also the chairperson of the Makuleke CPA. While this thesis has not focused on areas other than Dwesa-Cwebe, one may presume that such unhappiness is more widespread. There are some studies on resolved land claims in protected areas under the jurisdiction of traditional authorities (Mathis, 2007; Kepe, 1997; 2001; 2008; Robins & van der Waal, 2008; Ntshona, et al., 2010; Ngubane, 2012). These shed light on the dynamics regarding co-management arrangements of protected areas where both traditional authorities and elected institutions exist alongside each other. The case study in this thesis is Dwesa-Cwebe, where a systematic, in-depth examination was carried out into the intersection between traditional authorities and post-land claim co-management of protected areas. This is the focus of the next section.

### ***9.2.2 Current role of traditional authorities in the post-land claim co-management of the DCNR***

The success of the land claim of the people of Dwesa-Cwebe in 2001 saw the Dwesa-Cwebe Nature Reserve restored to the community. It also meant that the question of the ownership and management of the DCNR had been resolved under the RLRA. Traditional authorities were not involved in the governance of DCNR, even if customary law gave them oversight over the people, including over members of the Land Trust. Community leaders deliberately excluded traditional leaders from the land claim process and from elections for the Land Trust and CPAs. This exclusion stemmed from the hatred of the people towards the traditional authorities because of their previous role in land dispossessions, betterment schemes and the enforcement of brutal Transkei regulations regarding access to DCNR, as attested to by various respondents (Chapter Five). From interviews conducted with some community members, it is clear that there is a great deal of unhappiness and bitterness related to their mistreatment by traditional authorities during the forced removals of the 1930s, 1950s, 1970s and 1980s (Chapter Five).

Notwithstanding the fact that traditional authorities have no legal standing in the ownership and direct management of the DCNR, they have exercised influence and power in the co-management arrangements of the reserve. They succeeded in side-lining the original Land Trust after it proved ineffectual and its members had been accused of corruption. The traditional authorities manoeuvred

certain community leaders whom they could influence onto the subsequently-formed land trusts. They also placed their superior legal resources at the disposal of these trusts to attempt to shift management power from the original trust. These events and the actions of the traditional authorities are discussed in more detail in the next section. Suffice to say that traditional leaders are now part of the current, still-unregistered, land trust and co-operate more closely with the democratically-elected body, involving them, de facto, in the post-land claim co-management of the reserve.

### ***9.2.3 Traditional authorities in Dwesa-Cwebe asserting control over post-land claim co-management of DCNR***

The involvement of traditional authorities in the post-land claim co-management of the protected area stemmed from the actions of the Eastern Cape Parks and Tourism Agency and, subsequently, the original Land Trust failing to deliver on its mandate and opening itself up to accusations of mismanagement and corruption. This led to the traditional authorities, supported by frustrated community members and emboldened by the state through the TLGFA and CLARA, undermining the Land Trust, resulting in its eventual removal in 2009. This resurgence of traditional authorities mirrored what was happening nationally. As noted in Chapter Seven, traditional authorities then created alliances with community members by standing with people who had grievances against the developmental model that privileges the state over the community. A clear example of this was the election of Mr Sithayi Bhunga to the interim CPA as the representative of the chiefs. Mr Sithayi Bhunga had been the chairperson of the old CPA, elected by the people, and had previously been vociferous in his criticism of the traditional authorities (Chapter Eight). Traditional authorities supported Mr Sithayi Bhunga's election, as he had become "a close friend of such authorities".<sup>182</sup>

The role played by traditional authorities in holding accountable elected members of the original Land Trust earned them respect in the community and some people even viewed them as "saviours". Informants explained that though some people were not happy with the disruptive role of traditional authorities regarding the removal of the Land Trust, they also expressed were dissatisfied with the Land Trust. Many felt that traditional authorities could do better than the Land Trust and CPAs in terms of holding government departments accountable to the Settlement Agreement to deliver on their objectives, as happened in this instance. Indeed, the traditional authorities held the ECPTA accountable by getting their lawyers to prevent the agency from working with the accused trustees of

---

<sup>182</sup> Interview with Mcebisi Kraai, July 2017.

the original Land Trust. Furthermore, they instructed the cottage lessees to pay rents into the bank account of the new trust (B) instead of that of the original trust. The chiefs' actions thus put a spoke in the wheel of development in the area.

My study also revealed that there are people who respect the traditional authorities (Chapter Eight), their role in the customs and traditions of the people handed down through the centuries, their permanence, their status, their role in administering communal land, their availability to settle disputes and to maintain the peace, and even turn to them to sort out problem with their access to natural resources in the reserve. Further, the role of traditional authorities changed over time; from pre-colonial times, through colonialism and apartheid, they now find themselves in a situation of flux as the post-apartheid state wrestles with what their role should be in the current dispensation. The bottom line is that the prolonged conflict over the post-land claim co-management of the DCNR and the involvement of state departments has stalled progress towards joint management objectives.

Mamdani (1996) calls for democratically-elected institutions in Africa to be supported by the state (Chapter Two); this was definitely not the case in Dwesa-Cwebe. The formation of the third land trust, then the abolition of all three trusts through state intervention, leading to the formation of a new CPA, also with the state driving the process, seems to suggest that the state found itself in a double bind in this situation: caught between the requirements of the Restitution of Land Rights Act on the one hand, and the TLGF and CLARA on the other. The state also chose to support traditional authorities instead of democratic institutions, creating even more confusion over the role of the traditional authorities in a democratic South Africa and, in this instance, even about who should manage the protected area. It appears that state institutions are incapable of protecting democracy in the face of the re-empowered traditional authorities. It can be argued that the state's performance, or, alternately, lack thereof, in Dwesa-Cwebe justifies the view of the proponents of inclusion: that a weak state needs traditional authorities to maintain order in rural areas.

In the DCNR we witnessed the collaboration of a new (interim) CPA formed in 2015 with traditional authorities in dealing with the affairs of the reserve. This supports the view that traditional authorities can successfully exist side-by-side with democratically-elected institutions, and accords with the findings of Robins and van der Waal (2008) and Charles (2012). My findings are that the destructive actions of traditional authorities, although they may have acted as disruptive leaders and shown

undemocratic practices in the undermining of the Land Trust, can be construed as holding the members of the Land Trust to account for perceived mismanagement of the nature reserve.

However, consensus among traditional authorities seems to have been lacking, as some chiefs took up the cudgels against the majority of traditional leaders. It is also significant that room was made for chiefs in the constitution of the new CPA. This contradicts Ntsebeza's (2002; 2006) view that the only way that traditional authorities can play a role in a democratic dispensation is if they make themselves available for election to democratic institutions. Indeed, in KwaZulu-Natal, a chief took the route of standing for election, but this turned out to be his strategy to regain power in the protected area's tenure and management, thus weakening Ntsebeza's argument (Mathis, 2007). Furthermore, the example of the successful co-operation of traditional authorities and elected institutions in the protected area in part of the Kruger National Park (Robins & van der Waal, 2008) also contradicts Ntsebeza. This study also shows that traditional authorities can be elected through democratic processes and not only through hereditary means, as it was the case in Kwa-Mayi, when chief Mavana was "democratically chosen" (Charles, 2012). Traditional authorities in Dwesa-Cwebe should collaborate with elected institutions with regard to the post-land claim co-management of protected areas instead of pushing them away.

#### ***9.2.4 Implications of traditional leaders' roles for co-management of protected areas on restored land in rural areas***

Earlier sections dealt with the implications of the recent involvement of traditional leaders on protected areas that have been restored to communities. What follows, therefore, is a brief summary of these. At first, the state appears to have acknowledged that the people's representatives in the co-management bodies of protected areas on restored land are in need of training, guidance and material resources to carry out their mandate, particularly in the development of the areas they co-manage. This is clear in the appointment of the ECPTA as the state collaborator in the DCNR settlement agreement. However, the state failed to deliver such services to the democratically-elected institutions. One could speculate that it was in the interests of the state that these institutions fail, in order for it to ensure continuity in the developmental model and its control over protected areas. Traditional authorities stepped into the gap, starting a process that eventually led to them working more closely with these institutions, despite not having been elected to, or having voting rights in,



the Land Trust. It was seen, however, that there is no consensus among traditional authorities, with some of them continuing in their despotic attitudes and actions.

This experience makes it clear that unless the state supports fledgling democratic bodies so that they can successfully co-manage the protected areas, instead of favouring the traditional authorities in these matters, the people's institutions will likely continue to fail, leaving democracy in rural areas to flounder and possibly be eliminated in favour of traditional authorities. The possible result may be that development and livelihoods of the people are the casualties in this turmoil.

### **9.3 Emerging insights from this study**

According to the two main and opposing scholarly perspectives on this matter, there is either: 1) no place for traditional authorities in a modern democratic state and they should be replaced by democratically-elected institutions supported by the state (Maloka, 1995; Bank & Southall, 1996; Mamdani, 1996; Ntsebeza, 2002, 2006), or 2) traditional authorities should continue to exist alongside democratically-elected institutions. Proponents of the second view argue that traditional authorities remain important in the lives of many rural people. They also believe that some facets of the traditional authorities 'principles are not as contradictory to democratic principles as commonly understood. This view is supported by the findings of this study. People turned to traditional authorities to sort out matters in the post-land claims co-management of Dwesa-Cwebe when procedures were not correctly followed and expectations were not met. Furthermore, traditional authorities continued to be accepted and respected by both community leaders and villagers, as evidenced by the comments of some respondents who expressed their continued respect for, and confidence in, the traditional leaders to co-manage the affairs relating to the nature reserve. Other people of Dwesa-Cwebe continued to put their trust in elected community representatives to look after their resources and land in the DCNR. Dwesa-Cwebe thus represents these two dissenting camps.

Another emerging insight is that, in some rural areas, the belief remains strong that chiefs have always been, and will always be, present and playing their role in the community, and that traditional authorities can continue to regulate access to natural resources while maintaining order in their villages. This study suggests that, even in restored land claims in protected areas, where traditional authorities do not have power over co-management, chiefs and headmen continue to be respected and accepted. Traditional authorities assisted the community to access natural resources within the

nature reserve after the elected members of the original Land Trust had failed to do so. They helped the community to hold accountable their elected leaders who had been implicated in corrupt activities. They even used the courts to remove “corrupt” leadership in the Land Trust. In this way, true to their history of changing roles over time, most traditional authorities are reforming by incorporating into their practice some democratic principles such as accountability to their people. This notwithstanding the fact that they are not democratically elected, as Ntsebeza (2006) and other scholars have pointed out. This study thus challenges the view that only elected institutions can be held accountable by local people, as suggested by Robins & van der Waal (2008); Ntsebeza (2002, 2006) and Nuesiri (2014). The nuanced role of traditional authorities in the post-land claim co-management of protected areas on restored land that has emerged from this study is significant in that it highlights a situation where traditional authorities act side-by-side with democratically-elected institutions, albeit in a largely antagonistic way, for the benefit of their communities. This, then, raises the possibility of traditional authorities collaborating with democratic institutions in the post-land claim co-management of the DCNR. This perception talks to the findings of Baldwin and Holzinger, (2019), Logan (2011) that the popular support some traditional authorities are enjoying can be attributed to the weak leadership of democratically elected institutions.

In contrast to the scholarly literature, which mostly paints these authorities as undemocratic remnants of indirect rule under colonial and apartheid states (Mamdani, 1996; Ntsebeza, 2006), the nuanced role of traditional authorities in rural areas where land in protected areas was restored to the community opens up possibilities for the recognition of traditional authorities that have been ignored in the scholarly literature. Notwithstanding the views that traditional authorities are either complementary or obstructive to democratic principles, this study argued that the accommodation of roles for such authorities in the post-land claim co-management of protected areas is, nevertheless, unavoidable. Whether elected or not, I propose, the participation of traditional authorities in post-land claim co-management of protected areas seems to emerge as critically important for a solution to the successful co-management of protected areas in rural areas such as Dwesa-Cwebe.

The Restitution of Land Rights Act marginalised traditional authorities in the co-management of protected areas – despite their having played this role before protected areas came into being, during the colonial and apartheid eras when protected areas were created and maintained by the state, and until the inception of the democratic South African state. In many rural communities, Land Trusts

and CPAs, with democratically elected members, are the landholding institutions (Keep, 2005). However, traditional authorities are provided more powers over land administration and management of natural resources on communal areas by legislation such as the Traditional Leadership and Governance Framework Act and the Communal Land Rights Act (Ntsebeza, 2002; 2006).

These laws have caused confusion since they say nothing about the roles and responsibilities of traditional authorities in the co-management of protected areas under their jurisdictions. This has led to conflict between traditional authorities and democratically-elected institutions in rural areas. In some rural areas, traditional authorities have used these Acts to undermine the authority of democratically-elected entities (Mathis, 2007; Walker, 2008; Ngubane, 2012). This has badly affected the co-management of many protected areas in the former Bantustans and hindered progress there. My study argued that the continued legal extension of the power of traditional authorities and the unresolved legal question of their roles and powers in land administration in rural areas will have negative implications for the post-land claim co-management of protected areas in areas such as Dwesa-Cwebe. Moreover, traditional authorities, who continue to see themselves as legitimate in land administration in rural areas, may dissuade local residents from cooperating with elected institutions so that the latter could become or be seen as ineffective.

Interestingly, some traditional authorities were included as *ex officio* members in the CPAs, suggesting that traditional authorities are not always interested in power as Ntsebeza (2006) asserts. I argue that, with the formation of the CPAs and the Land Trust, Dwesa-Cwebe residents reinstated themselves as the rightful authority over the land that would be restored in 2001. This constitutes continuity from the pre-settlement land claim situation because they represent Dwesa-Cwebe claimants, but is also a break with traditional authorities regarding the post-land claim co-management of protected reserves in particular.

This study also demonstrated the inefficiency and/or lack of political will on the part of the state to support democratically-elected institutions as per the RRLA. In the case of Dwesa-Cwebe, the ECPTA, which had been named as the co-operating state body by the Settlement Agreement, failed to provide the resources needed by members of the Land Trust and CPAs to co-manage and develop the reserve. The resulting challenges around post-land claim co-management of protected area generated resentment towards elected members of the Land Trust and CPAs. These elected local land institutions were unable to force the state departments to deliver on their objectives as set out in the

Settlement Agreement; indeed, the agreement did not allow the possibility for them to hold state departments accountable. The state did not step up to the plate, particularly after the TLGF and CLARA came into force. In fact, in the mini-coup by the traditional authorities to orchestrate the ousting of the original Land Trust, the “election” of another trust and subsequent developments, the state body supported traditional authorities in the organisation of elections. And when they were called in to help resolve the conflict between the original Trust members and the traditional authorities, they summarily arranged the election of a third trust without regard for the fact that there was a court case in progress to ascertain which of the first two trusts was the legal one. This action suggests that the state did not have a clear idea on how to deal with the situation with regard to the status of traditional authorities flowing from the legislation.

A further insight is that democratically-elected leaders are not necessarily always accountable to their constituencies at local level as suggested by Ribot (2001). My study demonstrated that the community will malign and turn against anyone who works with the state while claiming to represent communities, as evidenced by the accusations that the Land Trust was accountable to the state and not to the people. This was also the case during the colonial and apartheid eras when those states co-opted traditional authorities. As shown in this study, the South African government is using similar practices with elected members of the Land Trust and CPAs in Dwesa-Cwebe. I have argued that the state’s approach to nature conservation from the colonial era to the democratic era perpetuates mainstream development models that privilege profit over community livelihoods. The development model, in fact, marginalises communities and creates tensions that are exploited by traditional authorities for their power to be recognised. This causes further tensions within communities, which, in turn, stalls progress towards joint management objectives.

Evidence from this study suggests that involving traditional authorities in the post-land claim co-management of protected areas on restituted land could benefit communities despite these traditional leaders not having been elected. Indeed, considering all the evidence, it seems safe to make that assertion. When the original Dwesa-Cwebe Land Trust failed in its objectives to facilitate access to the reserve and development in the area, the chiefs exploited the disgruntlement of people and fanned the flames through their vociferous negative criticism of the trust. They orchestrated the formation of Trust B in an attempt to oust the original Land Trust, which had failed to deliver on its mandate. Intra-community tensions and the lawsuit brought by the traditional authorities’ new trust against the

original trust created a situation where traditional authorities gained an opportunity to hold democratically-elected members of the original trust accountable. Traditional authorities acted as catalysts to mobilise the community to take action against the Land Trust elected by the community. In these circumstances, traditional authorities had to find ways of making themselves relevant, while challenging elected institutions that were engaged in counter strategies to legitimise themselves as well. Even though some informants reported that certain people were unhappy with the disruptive role of traditional authorities in the removal of the Land Trust, they also expressed dissatisfaction with the original trust. Many felt that traditional authorities could do better than the Land Trust and CPAs in terms of holding government departments accountable to the Settlement Agreement and its objectives. Some traditional authorities had been absorbed into the democratically-elected institutions. Some CPAs had traditional authorities as ex officio members and, later, chiefs were constitutionally included in the interim CPA in 2015, but without the power to co-manage land in the reserve.

Since 2015, the protected area has been managed by a newly-formed interim CPA working more closely with traditional authorities. Whether this arrangement will deliver positive results is yet to be seen because the local people have obstructed the functioning of this institution and demand guaranteed transparent democratic processes in the formation of a new CPA. Contrary to Ntsebeza's view and minimalist view (Chapter Two), this demonstrates a degree of compatibility between unelected traditional authorities and democratically elected institutions. Thus, the possibility of involving traditional authorities in the co-management of resource access around protected areas may be meaningful, considering their historical experience and knowledge in the management of forest resources on communal land. The exclusion of traditional authorities from the land claim process and their initial exclusion from the post-land claim collaborative arrangements of the protected area in Dwesa-Cwebe can be seen as their being held accountable for their past actions by the people, they "govern".

Based on the above findings, to bring back the concept of democracy here, I have seen a gap in principle and in the practice of the electoral form of democracy. The assumption running through the views of the Ntsebeza' Mandani, and minimalists such as Schumpeter (1942); Huntington (1991), that traditional authorities are not democratic, accountable, and representative because they are

hereditary rather than elected is a narrow interpretation of democracy. Participatory and representative forms of liberal democracy have been seen by Ntsebeza as critical characteristics in a democratic system (Ntsebeza, 2006). However, findings of this study confirm the view of the maximalists and African scholars (Baldwin and Holzinger, 2019) that election of leaders does not necessarily give way to representation, good leadership and therefore accountability. In Dwesa-Cwebe, the opposite appears to be true. Traditional authorities were held accountable by people in the affairs of protected areas, while elected members of the Land Trust were regarded as non-representatives and unaccountable to the people, but the state department in the Settlement Agreement. The findings also align with the argument that traditional authorities are not always regressive, while democratically elected institutions are not always democratic (Baldwin and Holzinger, 2019). This suggests that there are many situations in which traditional authorities govern practically well, regardless of the absence of electoral incentives to do so (Baldwin and Holzinger, 2019). It is also demonstrated that even though elections are presumed to result in good leadership because they enable people to select the best individual from multiple options and because they allow them to get rid of poorly performing leaders (Baldwin and Holzinger, 2019), this is not always the case as demonstrated by this study.

The findings of this study have shown that there have been major community frustrations towards the Land Trust and CPA, whose members were democratically elected (Chapter Seven & Eight). Most of them were about lack of access to resources, unaccountability, non-representative, and corruption among members of the Land Trust or CPA. The findings of this study also illustrated that counter to assertions that liberal democracy gives people the rights to hold accountable their leaders whom they elected to any leadership position (Schumpeter 1942; Huntington, 1991). This also suggests that democracy is not only about one aspect of it, but it should transcend beyond electoral principle of liberal democracy, to make it strong (Dahl, 1971; Ake, 1991; Nwosu, 2012). I argue along these lines that democracy that fails to facilitate community access to natural resources around protected areas is not a true democracy for Africa (Ake, 1991; Nwosu, 2012). Democratically elected community representatives were not responsive to the needs of the Dwesa-Cwebe local people and even provide accountability to them (Chapter Seven). Instead of representing Dwesa-Cwebe local people, elected institutions represented their own interests or those of state-led ECPTA. It also emerged from this study that state have failed to provide significant powers to members of Land Trusts to allow them to represent their people and negotiating for the interests of the people promised

in the Settlement Agreement. Ribot (2011) argues that without providing elected local authorities of governance with sufficient and meaningful discretionary powers to enable them to represent their populations, there will be no local democracy. In Dwesa-Cwebe case, traditional authorities were able to represent the community interests which eventually made them de facto co-managers of the protected area. Even when the elected leaders in the Land Trust were asked to step down because they were not performing and were also implicated in corrupt activities, they refused to do so. This contradicts the viewpoint made by minimalists that, through elections, people have a freedom to force out leaders who are not performing and area abusing them (Baldwin and Holzinger, 2019).

Notwithstanding questioning the representivity of traditional authorities by the scholars such as Ntsebeza, Mandani, Ribot and others, the evidence from this study shows that state departments such as ECPTA and the DRDLR bypass the Land Trust and CPA whose members were democratically elected to work with the traditional authorities. The view that traditional authorities are not democratic may suggest an unrealistic view of traditional authorities of the past (see Ake, 1991; Adetula, 2011; Mafe, 2011; Nwosu, 2012), but the crux of my argument is that democracy cannot be meaningful unless it includes democratic aspects such as ‘patrimony, communalism, participation, and standards of accountability, traditional authorities renowned of. These democratic aspects of such authorities must not be neglected in the post-colonial/apartheid project of building democracy across Africa. This could prevent the conflict between traditional authorities and democratically-elected institutions that has tormented rural areas, especially around protected areas. The findings in this study may not be a general reflection of the entire population of Dwesa-Cwebe or other rural areas but they shed light that people in certain areas still support the existence of traditional authorities.

#### **9.4 Contribution to scholarship**

This study contributes to the debates related to the role of traditional authorities in the post-land claim co-management of protected areas of the former Bantustans in post-1994 South Africa. Its contribution is through providing empirical evidence of roles played by traditional authorities in co-managing protected areas. This thesis also contributes to the literature about traditional authorities’ use of the land restitution reform process to reassert their authority over land through potentially gaining control over co-management committees of protected areas, such as nature reserves and game reserves, in the former Bantustans (Mathis, 2007; Kepe, 2008; Robins & van der Waal, 2008;

Ntshona, et al., 2010; Ngubane, 2012). At an empirical level, while I challenge the position put forward by the critics – that traditional authorities should be abolished in democratic states, the overall argument of this thesis is that traditional authorities cannot be regarded as simply guests in their areas of control; instead, a nuanced understanding of their role in the post-land claim co-management of protected areas such as Dwesa-Cwebe is required. The nuances demonstrated that traditional authorities can play an important role in the post-land claim co-management of protected areas on behalf of their rural communities and in holding accountable both government officials and elected institutions that were implicated in corrupt activities. The traditional leaders too are held accountable by the people of Dwesa-Cwebe, despite their hereditary status. In examining the actions of traditional authorities in Dwesa-Cwebe, this thesis provides a rare, if not unique, picture of the interactions between traditional authorities, the legal and democratically-elected institutions for co-managing the nature reserve, and the communities affected. A search of extant literature failed to reveal any studies on the interaction of traditional authorities and local communities in respect of post-land claim co-management of protected areas in South Africa. This case study raises the question about whether the motivation for the actions of traditional leaders is self-serving or in the interests of the people, which provides more than one possible lens through which traditional authorities' actions in other similar situations may be analysed.

The role of state authorities in the DCNR co-management debacle (Chapters Five, Six & Seven) was exposed in this study, addressing a gap in the literature regarding state support and guidance of democratic institutions that is needed in order for them to succeed. The evidence from this study suggests a more nuanced situation regarding accountability: it demonstrates that traditional authorities were held accountable by the people through the exclusion of these authorities from the affairs of the protected area, while, at the same time, traditional leaders could be seen to be holding democratically-elected institutions accountable.

Another contribution of this thesis is its challenging the view that the authority of traditional authorities is mainly based on their power to control access to critical resources such as land, which forces rural people to cooperate with traditional authorities (Ntsebeza, 2002, 2005; Ribot, 2001; 2002). Even without powers to manage the nature reserve, traditional authorities have been respected by some residents within certain parameters, and the state continues to empower them, despite their not being elected. Traditional authorities have been reinvigorated by the Traditional Leadership



Framework Act and the Communal Land Rights Act, and they used the problems experienced by democratically-elected members of the Land Trusts and CPAs to launch their resurgence in Dwesa-Cwebe.

Beyond this study, there is a need for in-depth research on the role of CPAs and Land Trusts in protected areas on communal land where traditional authorities continue to be respected by some people. This is crucial as state departments continue to work with unelected traditional authorities in rural communities at the expense of democratically-elected institutions such as the CPAs and Land Trusts, as seen in Dwesa-Cwebe.

This thesis raises serious and unavoidable questions about the state of democracy in rural areas of the former Bantustans; this issue should be the focus of further research. The following are some of the questions that require further attention. What do the findings of this study mean for the co-management of protected areas on communal areas where democratically-elected CPAs and Land Trusts are in place to co-manage those resources? Does it mean that rural peoples' protected areas will be under the control of traditional authorities even though the restitution programme has given their elected representatives the authority to co-manage those resources? What does it mean for the role of rural communities' democratically-elected landholding institutions in the co-management of natural resources around protected areas, on land acquired through the restitution policy where traditional authorities continue to be empowered by the post-1994 South African democratic government? How do African states deal with traditional authorities or indigenous systems of governance in a situation where authority over co-management of natural resources in restored protected areas is given to democratically-elected community representatives in the form of the CPAs and Trusts, as in the case of South Africa?

## **9.5 Limitations of the study**

Because this study is based on a single case study area, its findings cannot be generalised. However, the data collected from respondents provide rich evidence with valuable insights into the dynamics of the involvement of traditional authorities in the post-land claim co-management of protected areas in South Africa. A further limitation related to the attitude of the ECPTA towards this study. On my first visit, ECPTA officials expressed fear that my research might create further polarisation between affected government agencies and the communities in question. According to them, this could complicate any reasonable efforts to remedy the stalemate in Dwesa-Cwebe. This negative attitude

affected my study in many ways. Another limitation was the lack of funds to continue the research, resulting in my not being able to interview people in all seven villages of Dwesa-Cwebe.

On my second field visit to the area, some CPA members refused to talk to me about the CPAs and traditional authorities. Some government officials too refused to talk about Dwesa-Cwebe, claiming it was “complex”. Greater willingness and openness from the CPAs and government officials might have enriched this thesis.

Overcoming such limitations in future research could result in the collection of much richer data, leading to further and more profound insights. However, despite these limitations, the data collected for this study were adequate to reach the conclusions set out in the next section.

## **9.6 Overall conclusion**

The involvement of traditional authorities triggered sustained challenges to their actions by the representatives of the people and the people themselves, leading to division within communities. This resulted in the co-management and development of the protected area grinding to a halt. People are still not enjoying the benefits of access to the natural resources in the reserve or of the promised development to promote eco-tourism there. While traditional authorities and the democratically-elected leaders of communities have been at loggerheads, some benefit has accrued to the communities in that traditional authorities can be seen to have held the representatives on the Land Trust accountable for their failure. On the other hand, the people have attempted to hold the traditional authorities accountable through their defence of the lawsuit brought by them. The view that traditional authorities are not democratic may suggest an unrealistic view of traditional authorities of the past, but the crux of my argument is that democracy around post-land claimed protected areas cannot be meaningful unless it includes traditional authorities who continue to act side-by-side with democratically-elected institutions, albeit in a largely antagonistic way, for the benefit of their communities.

What, then, are the implications of the roles of traditional leaders for protected areas on restored land in rural areas? The dynamics around the Dwesa-Cwebe land settlement and subsequent co-management agreements that resulted from the negotiated deal paint a picture of the entangled nature of the relationship between communities and traditional authorities. One possible solution would be for roles of traditional authorities in the co-management of protected areas to be spelt out in the

Constitution and relevant legislation. The government should also consider including traditional leaders in the CPAs, with accountability to the local communities rather than to the Minister, a situation that can create problems, as in the case of the Cala reserve (Ntsebeza, 2006).

The co-existence of elected institutions with unelected traditional authorities in the post-land claim co-management of protected areas needs to be encouraged and become a reality. This, however, will only transpire when the role of traditional authorities in the co-management of protected areas in the former Bantustans is recognised by both the state and elected community representatives. This study established that the institutional landscape for post-land claim co-management of protected areas is complex and characterised by disagreement and conflicts. If government departments continue to fail to support democratic institutions and favour traditional authorities instead, they will perpetuate the chaos and lack of progress in protected areas' management, as they have done in Dwesa-Cwebe, where they created another set of institutions with diverse interests through traditional authorities, adding more complexity to the co-management of the Dwesa-Cwebe Nature Reserve. Hence, research and scholarship need to pay more attention to the workings of traditional authorities in protected areas so as to better understand how they maintain authority and legitimacy in areas where they have no powers.

As long as traditional authorities are given powers by the state, and enjoy popularity in rural communities such as Dwesa-Cwebe, their role in the post-land claim co-management of protected areas will remain relevant.

## REFERENCES

- Adams, W.M. & Hutton, J. 2007. People, parks and poverty: Political ecology and biodiversity conservation. *Conservation and Society*, 5(2). 147-183.
- Adetula, V. 2011. Measuring democracy and ‘good governance’ in Africa: A critique of assumptions and methods.
- Amathole District Municipality. 2003. Dwesa-Cwebe development plan. Mbhashe Local Municipality document.
- Ainslie, A. & Kepe, T. 2016. Understanding the resurgence of traditional authorities in post-apartheid South Africa. *Journal of Southern African Studies* 42(1):19-33.
- Ake, C. 1991. ‘Rethinking African democracy’. *Journal of Democracy*, 2 (1): 32-44.
- Anyanwu, C.S. 2005. *Is the African traditional institution (chieftiancy)[sic] compatible with contemporary democracy?: a case study of Bochum in Limpopo Province of South Africa*. Unpublished Masters Thesis, University of KwaZulu-Natal.
- Ayittey, G. B. N. 1992. *Africa betrayed*. London: Macmillan Press Ltd
- Bank, L. & Southall, R. 1996. Traditional leaders in South Africa’s new democracy. *The Journal of Legal Pluralism and Unofficial Law* 28(37-38). 407-430.
- Baldwin, K. & Holzinger, K. 2019. Traditional political institutions and democracy: Reassessing their compatibility and accountability. *Comparative Political Studies*, 52(12):1747-1774.
- Beinart, W. 1982. *The political economy of Pondoland 1860–1930*. Cambridge: Cambridge University Press.
- Beinart, W. 1992. Transkeian smallholders and agrarian reform. *Journal of Contemporary African Studies* 11(2):178-199.
- Beinart, W. 2002. Environmental origins of the Pondoland revolt. In *South Africa’s environmental history: Cases and Comparisons*. S. Dovers, R. Edgecombe & B. Guest (eds). Athens: Ohio University Press. 76-89.
- Beinart, W. 2003. *The rise of conservation in South Africa: Settlers, livestock, and the environment 1770–1950*. Oxford: Oxford University Press.
- Beinart, W. & Bundy, C. 1987. *Hidden struggles in rural South Africa: Politics and popular movements in the Transkei and Eastern Cape, 1890-1930*. Berkeley: University of California
- Bennett, J., Ainslie, A. & Davis, J. 2013. Contested institutions? Traditional leaders and land access and control in communal areas of Eastern Cape Province, South Africa. *Land Use Policy* 32. 27-38.
- Berkes, F. 2002. Cross-scale institutional linkages: perspectives from the bottom up. In National Research Council. 2002. *The Drama of the Commons*. Washington, DC: The National Academies Press. 293-321.
- Berkes, F. 2008. *Sacred Ecology*. New York NY: Routledge.
- Bhattacharjee, A. (2012). Social science research: Principles, methods, and practices. [https://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1002&context=oa\\_textbooks](https://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1002&context=oa_textbooks). Accessed 21 August 2017.

- Blaikie, P., 2006. Is small really beautiful? Community-based natural resource management in Malawi and Botswana. *World Development* 34(11). 1942-1957.
- Blore, M.L., Cundill, G. & Mkhulisi, M. 2013. Towards measuring the transaction costs of co-management in Mkambati Nature Reserve, Eastern Cape, South Africa. *Journal of Environmental Management*, 129. 444-455.
- Boonzaaier, C.C. 2012. Towards a community-based integrated institutional framework for ecotourism management: the case of the Masebe nature reserve, Limpopo province of South Africa. *Journal of Anthropology*, 2012.1-11
- Borrini-Feyerabend, G., Farvar, M.T., Nguingiri, J.C. & Ndangang, V. 2000. *Co-management of natural resources: organising, negotiating and learning by doing*. Yaoundé, Cameroon: IUCN.
- Breakfast, N., Mekoa, I. & Maphazi, N. 2015. Participatory democracy in theory and practice: A case study of local government in South Africa. *Africa's Public Service Delivery & Performance Review*, 3(3). 31-51.
- Brockington, D. 2002. *Fortress conservation: the preservation of the Mkomazi Game Reserve, Tanzania*. Indiana University Press.
- Brockington, D. & Igoe, J. 2006. Eviction for conservation: a global overview. *Conservation and Society* 4(3). 424-470.
- Campbell, B. & Shackleton, S. 2001. The organizational structures for community-based natural resources management in Southern Africa. *African Studies Quarterly* 5(3). 87-114.
- Carlsson, L. & Berkes, F. 2005. Co-management: concepts and methodological implications. *Journal of Environmental Management* 75. 65-76.
- Carruthers, J. 1995. *The Kruger National Park: a social and political history*. Pietermaritzburg: University of Natal Press.
- Centre for Law and Society, 2015. Communal land tenure policy and IPILRA: The Constitution's promise.  
[http://www.cls.uct.ac.za/usr/lrg/downloads/Factsheet\\_CommunalTenure\\_IPILRA\\_Final\\_Feb2015.pdf](http://www.cls.uct.ac.za/usr/lrg/downloads/Factsheet_CommunalTenure_IPILRA_Final_Feb2015.pdf). Accessed 26 July 2018
- Centre for Law and Society, 2015. Communal Property Associations (CPAs): Where do CPAs come from? CLS Fact Sheet.  
[http://www.cls.uct.ac.za/usr/lrg/downloads/Factsheet\\_CPAs\\_Final\\_Feb2015.pdf](http://www.cls.uct.ac.za/usr/lrg/downloads/Factsheet_CPAs_Final_Feb2015.pdf). Accessed 26 July 2018
- Charles, T. 2012. Peculiar places and legitimate chiefs?: An exploration of the role of traditional authorities in the titled locality of kwaMeyi village, Umzimkhulu district, South Africa. Doctoral dissertation, University of Cape Town.
- Chellan, N. & Khan, S. 2008. Contesting ecotourism development in the iSimangaliso Wetland Park in KwaZulu-Natal. *Alternation* 15(1). 268-289.
- Claassens, A. 2001. *'It is not easy to challenge a chief': Lessons from Rakgwadi*. Institute for Poverty, Land and Agrarian Studies, University of the Western Cape.
- Claassens, A., 2005. Women, customary law and discrimination: The impact of the Communal Land Rights Act. *Acta Juridica*, 2005(1). 42-81.

- Claassens A. & Cousins, B. (eds.) 2009. *Land, power and custom: Controversies generated by South Africa's Communal Land Rights Act*. Cape Town: UCT Press.
- Clark, M. & Luwaya, N. 2017. *Communal land tenure 1994-2017. Commissioned report for High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change, an initiative of the Parliament of South Africa*. Land and Accountability Research Centre, University of Cape Town.
- Commission on the Restitution of Land Rights. 2007. Restitution briefing session: Chief Land Claims Commissioner Thozzi Gwanya, September 2007, Pretoria.
- Commission on the Restitution of Land Rights. 2013. Presentation of Progress on Land Claims in Protected Areas by Deputy Land Claims Commissioner (Mr Mdintswa) to the Parliamentary Monitoring Group. 20 August.
- Conservator of Forests. Circa 1932. In CAD FCT Box 311/8 File H2000/5 – Headmen's Forests 1931 – 1945.
- Constant, N. L. & Bell, S. 2017. Governance, participation and local perceptions of protected areas: Unwinding traumatic nature in the Blouberg Mountain Range. *Environmental Values* 26(5). 539-559.
- Cousins, B. 2008. Characterising 'communal' tenure: Nested systems and flexible boundaries. In *Land, power and custom: Controversies generated by South Africa's Communal Land Rights Act*. A. Claassens & B. Cousins (eds.) Cape Town: UCT Press. 109-137.
- Creswell, J.W. 2011. *Designing and conducting mixed methods research*. 2nd ed. Los Angeles: SAGE.
- Cundill, G., Thondhlana, G., Sisitka, L., Shackleton, S. & Blore, M. 2013. Land claims and the pursuit of co-management on four protected areas in South Africa. *Land Use Policy* 35. 171-178.
- Dahl, R. 2003. Polyarchal democracy. In *The democracy sourcebook*. R. Dahl, I. Shapiro I J. Cheibub, Eds. Cambridge, MA: MIT Press. 48–54.
- Dahlberg, A., Rohde, K. & Sandell, K. 2010. National parks and environmental justice: Comparing access rights and ideological legacies in three countries. *Conservation and Society* 8(3). 209-224.
- De Koning, M. 2010. Returning Manyeleti Game Reserve to its rightful owners: Land restitution in protected areas in Mpumalanga, South Africa. *Unasylva* 61(236). 41-46.
- De Koning, M. 2009. Co-management and its options in protected areas of South Africa. *Africanus* 39(2). 5-17.
- Delius, P. 2008. Contested terrain: land rights and chiefly power in historical perspective. In A. Claassens & B. Cousins (eds.) *Land, power and custom: controversies generated by South Africa's Communal Land Rights Act*. Cape Town: UCT Press. 211-237.
- Denzin, N.K. & Lincoln, Y.S. 1994. Introduction: entering the field of qualitative research. In N.K. Denzin & Y.S. Lincoln (eds.) *Handbook of qualitative research*. Thousand Oaks, CA: Sage. 1-17.
- Department of Environmental Affairs. 2010. National Co-Management Framework.

- Department of Land Affairs (DLA). 1997. White Paper on South African Land Policy. Pretoria: Department of Land Affairs.
- Department of Land Affairs. 2001a. Dwesa-Cwebe Community Agreement. PO Box 1375 Caxton House East London. Unpublished.
- Department of Land Affairs. 2001b. Monitoring and evaluating the quality of life of land reform beneficiaries, 2000/2001.
- Department of Water Affairs and Forestry (DWAF). 2004. Policy and strategic framework for participatory forest management. Pretoria: Department of Water Affairs and Forestry.
- De Villiers, B. 1999. *Land claims and national parks: The Makuleke experience*. Pretoria: HSRC Press.
- De Villiers, B. 2003. Land reform: Issues and challenges: A comparative overview of experiences in Zimbabwe, Namibia, South Africa and Australia. Konrad Adenauer Foundation.
- De Villiers, B. 2008. People and Parks: Sharing the benefits. <https://research-repository.uwa.edu.au/en/publications/people-and-parks-sharing-the-benefits>. Accessed 26 July 2018
- De Wet, C.J. 1995. *Moving together, drifting apart: betterment planning and villagisation in a South African homeland*. Johannesburg: Witwatersrand University Press.
- Duffield, M. 2005. Getting savages to fight barbarians: Development, security and the colonial present. *Conflict, Security & Development* 5(2). 141-159.
- Dwesa-Cwebe Community Consultation. 2003. Submission to the Portfolio Committee on Agriculture and Land Affairs on the Communal Land Rights Bill, November 10. [http://www.lrc.org.zaDocsPapers2003\\_Nov10\\_DWESA\\_Community\\_Submission.doc](http://www.lrc.org.zaDocsPapers2003_Nov10_DWESA_Community_Submission.doc). Accessed 26 July 2018
- Eastern Cape Nature Conservation. 1995. Minutes of Mendwane Meeting held on 4 December 1995.
- Eastern Cape Parks Board. 2007. Dwesa-Cwebe Integrated Reserve Management Plan. Unpublished.
- Economic Commission for Africa (Southern Africa) (ECA). 2007. Harnessing local governance in southern Africa. Economic Commission for Africa (Southern Africa). Ref. ECA/SA/TPUB/GOVERNANCE/2007/1.
- Emdon L. 2013. Gender, livelihoods and conservation in Hluleka, Mpondoland c.1920 to the present: Land, forests and marine resources. Doctoral dissertation, University of Cape Town.
- Encyclopaedia Britannica Online. <https://www.britannica.com/place/Transkei>. Accessed 26 July 2018
- Englebert, P. 2002. Patterns and theories of traditional resurgence in tropical Africa. *Mondes en développement* (2). 51-64.
- Fabricsius, C. 2004. The fundamentals of community-based natural resource management. Rights, resources and rural development: Community-based natural resource management in southern Africa. In C. Fabricsius, E. Koch, H. Magome & S. Turner (eds.) *Rights, resources and rural development: community-based natural resource management in Southern Africa*. London: Earthscan. 3-43.

- Fabricius, C. & de Wet, C. 2002. The influence of forced removals and land restitution. *Conservation and Mobile Indigenous Peoples: Displacement, Forced Settlement, and Sustainable Development* 10. 142.
- Fabricius, C., Koch, E., Magome, H. & Turner, S. (Eds.) 2004. *Rights, Resources and Rural Development: Community-based Natural Resource Management in Southern Africa*. London: Earthscan.
- Fay, D. 2007. Struggles over resources and community formation at Dwesa-Cwebe, South Africa. *The International Journal of Biodiversity Science and Management* 3(2). 88-101.
- Fay, D. 2009. Land tenure, land use, and land reform at Dwesa-Cwebe, South Africa: Local transformations and the limits of the state. *World Development* 37(8). 1424-1433.
- Fay, D. 2013. Neoliberal conservation and the potential for lawfare: New legal entities and the political ecology of litigation at Dwesa-Cwebe, South Africa. *Geoforum* 44. 170-181.
- Fay, D. & Palmer, R. 2000. *Prospects for Redistribution of Wealth through Land Reform in Dwesa-Cwebe*. In B. Cousins (ed.). *At the crossroads: Land and agrarian reform in South Africa into the 21st century*. Belville: University of the Western Cape Programme for Land and Agrarian Studies and the National Land Committee. 194-210.
- Fay, D., Timmermans, H. & Palmer, R. 2002a. Competing for the Forests: Annexation, Demarcation and their Consequences from c1878 to 1936. In D. Fay & H. Timmermans. *From Confrontation to Negotiation: Nature-Based Development on South Africa's Wild Coast*. Pretoria: Human Sciences Research Council. 48-77.
- Fay, D., Timmermans, H. & Palmer, R. 2002b. Closing the forests: segregation, exclusion and their consequences from 1936 to 1994. In D. Fay & H. Timmermans. *From Confrontation to Negotiation: Nature-Based Development on South Africa's Wild Coast*. Pretoria: Human Sciences Research Council. Pretoria: Human Sciences Research Council. 77-109.
- Fay, D.A. 2003. "The Trust is Over! We Want to Plough!": Land, Livelihoods and Reverse Resettlement in South Africa's Transkei. Ph.D. dissertation. Boston University.
- Fay, D.A. 2007a. From Enslavement to Environmentalist Politics on a Southern African Frontier. *International Journal of African Historical Studies* 40(1). 189-191.
- Fay, D.A. 2007b. Mutual Gains and Distributive Ideologies in South Africa: Theorizing Negotiations between Communities and Protected Areas. *Human Ecology* 35(1). 81-95.
- Fay, D.A. 2011. Post-Apartheid Transformations and Population Change around Dwesa-Cwebe Nature Reserve, South Africa. *Conservation and Society* 9(1). 8-15.
- Fay, D.A. 2012. "The Trust is Over! We Want to Plough!": Social Differentiation and the Reversal of Resettlement in South Africa. *Human Ecology* 40(1). 59-68.
- Fayemi, A.K., 2009. Towards an African theory of democracy. *Institute of African Studies Research Review*, 25(1). 1-21.
- Fraser, A. 2007. Land reform in South Africa and the colonial present. *Social & Cultural Geography* 8(6). 835-851.
- Funda, X.N. 2013. Challenges of a Post-Land Settlement Process: The Dwesa-Cwebe Nature Reserve in the Eastern Cape, South Africa. In K. Mulale, C. Matema, X. Funda, S. Slater-Jones,



- D. Njovu, G. Kanguuehi, D. Hay & V. Crookes. (eds.) *Community-based Natural Resource Management in Southern Africa: An Introduction*. Bloomington IN: Authorhouse.
- Fuggle, R.F. & Rabie, M.A. (Eds.) 1983. *Environmental concerns in South Africa: technical and legal perspectives*. Johannesburg: Juta.
- Goodenough, C. 2002. *Traditional leaders: A KwaZulu-Natal study, 1999-2001*. Independent Projects Trust.
- Goosen, M. & Blackmore, A.C. 2019. Hitchhikers' guide to the legal context of protected area management plans in South Africa. *Bothalia-African Biodiversity & Conservation*, 49(1). 1-10.
- Government of South Africa. 2007. Memorandum of agreement between the Minister of Agriculture and Land Affairs and the Minister of Environmental Affairs.
- Guyot, S. & Dellier, J. (Eds.) 2009. *Rethinking the Wild Coast, South Africa: Eco-frontiers vs livelihoods in Pondoland*. VDM Verlag.
- Hansen, M. 2014. Struggles over conservation space: Social justice in the iSimangaliso Wetland Park, South Africa. Doctoral dissertation, Lund University.
- Huntington, S. 1991. *The third wave: Democratization in the late twentieth century*. Norman, OK: University of Oklahoma Press.
- Huntington, S. P. 1993. *The third wave: Democratization in the late twentieth century* (Vol. 4). Norman, OK: University of Oklahoma Press.
- Jara, M. 2011. Changing landscapes of democracy, rural governance, traditional power and degraded commons in a former apartheid homeland. Paper presented at "Sustaining Commons: Sustaining Our Future", the Thirteenth Biennial Conference of the International Association for the Study of the Commons, Hyderabad, India. 10-14 January. 1-22.
- Jones, B.T. & Murphree, M.W. 2004. Community-based natural resource management as a conservation mechanism: Lessons and directions. In B. Child. (ed.) *Parks in transition: Biodiversity, rural development, and the bottom line*. London: Earthscan. 63-103.
- Kangwana, K. & Mako, R.O. 2001. Conservation, livelihoods and the intrinsic value of wildlife: Tarangire National Park, Tanzania. In D. Hulme, D. & M. Murphree (eds.) *African Wildlife and Livelihoods: The Promise and Performance of Community Conservation*. Oxford: James Currey Ltd.
- Kawalya-Tendo, C. 2019. Democracy in Africa. *Democracy*, 12. 12.
- Kepe, T. 1997. Communities, entitlements and nature reserves: The case of the Wild Coast, South Africa. *IDS Bulletin* 28(4). 47-58.
- Kepe, T. 2001. Waking up from the dream: The pitfalls of 'fast-track' development on the Wild Coast of South Africa. Research report no. 8. PLAAS, University of the Western Cape.
- Kepe, T. 2004. Land restitution and biodiversity conservation in South Africa: The case of Mkambati, Eastern Cape Province. *Canadian Journal of African Studies/La Revue Canadienne des Études Africaines* 38(3). 688-704.
- Kepe, T. 2008. Land claims and comanagement of protected areas in South Africa: Exploring the challenges. *Environmental Management* 41(3). 311-321.
- Kepe, T. 2009. Claassens, A. and Cousins, B. (Eds.) 2009. *Land, Power & Custom: Controversies generated by South Africa's Communal Land Rights Act*. Athens, OH: Ohio University Press.

- International Journal of the Commons*, 3(1). 148-150. DOI: <http://doi.org/10.18352/ijc.197>. Accessed 26 May 2017
- Kepe, T. & Scoones, I. 1999. Creating grasslands: Social institutions and environmental change in Mkambati area, South Africa. *Human Ecology*, 27(1). 29-53.
- Kepe, T. & Whande, W. 2009. Ambiguous spaces: natural resource management buffer zones and rural livelihoods in Pondoland, South Africa. In S. Guyot & J. Dellier (eds.) *Rethinking the Wild Coast, South Africa: eco-frontiers vs livelihoods in Pondoland*. VDM Verlag.
- Kepe, T., Wynberg, R. & Ellis, W. 2005. Land reform and biodiversity conservation in South Africa: Complementary or in conflict?. *The International Journal of Biodiversity Science and Management*, 1(1). 3-16.
- Keulder, C. 1998. *Traditional leaders and local government in Africa: Lessons for South Africa*. Pretoria: HSRC Publishers.
- Kompi, B.H. 2018. The evolution of traditional leadership in South Africa, 1996-2012: traditionalism versus modernism. *Unpublished Ph. D. thesis. Bloemfontein: University of the Free State*.
- Kompi, B. & Twala, C. 2014. The African National Congress and traditional leadership in a democratic South Africa: Resurgence or revival in the era of democratisation? *The Anthropologist* 17(3). 981-989.
- Kostauli, M. R. 2011. Assessing the complexity of a post land settlement process in protected area management: An example of Dwesa-Cwebe Nature Reserve in the Eastern Cape, South Africa. Unpublished Master's thesis, Centre for Environmental Management, University of the Free State, Bloemfontein.
- Khan, F. 2000. Environmentalism in South Africa: A sociopolitical perspective. 9(1). 11. <http://digitalcommons.macalester.edu/macintl/vol9/iss1/11>. Accessed 26 July 2018
- Khunou, S.F. 2011. Traditional leadership and self-governing Bantustans of South Africa: Through the eye of the needle of constitutional democracy. *International Journal of Business and Social Science* 2(18). 237-52.
- Kvale, S. 1996. *Interviews: An introduction to qualitative research interviewing*. Newbury Park CA: Sage.
- Lahiff, E. 2001. *Land reform in South Africa: Is it meeting the challenge?* PLAAS, University of the Western Cape.
- Leach, M., Mearns, R. & Scoones, I. 1999. Environmental entitlements: Dynamics and institutions in community-based natural resource management. *World Development* 27(2). 225-247.
- LiPuma, E. & Koelble, T.A. 2009. Deliberative democracy and the politics of traditional leadership in South Africa: A case of despotic domination or democratic deliberation? *Journal of Contemporary African Studies* 27(2). 201-223.
- Logan, C. 2008. *Traditional leaders in modern Africa: Can democracy and the chief co-exist?* Cape Town: IDASA. <https://afrobarometer.org/sites/default/files/publications/Working%20paper/AfropaperNo93.pdf>. Accessed 28 April 2016

- Logan, C. 2011. *The roots of resilience: exploring support for African traditional authorities*. Afrobarometer.  
<http://afrobarometer.org/sites/default/files/publications/Working%20paper/AfropaperNo128.pdf>.  
 Accessed 28 April 2016
- Logan, C. 2013. The roots of resilience: exploring popular support for African traditional authorities. *African Affairs* 112(448). 353-376.
- Lutz, G. & Linder, W. 2004. Traditional structures in local governance for local development. Berne: University of Berne.
- Madzwamuse, M. 2010. Rights-based approaches to conservation in protected areas: What are the issues for southern Africa? *Policy Matters*. 17.
- Mafeje, A., 2002, April. Democratic governance and new democracy in Africa: Agenda for the future. In *Africa Forum for Envisioning Africa, Nairobi*. 26-29.
- Mafeje, A. 1981. On the articulation of modes of production. *Journal of Southern African Studies*, 8(1). 123-138.
- Magome, H. & Murombedzi, J. 2003. Sharing South African national parks: Community land and conservation in a democratic South Africa. In W. M. Adams & M. Mulligan (eds.) *Decolonizing Nature: Strategies for Conservation in a Post-colonial Era*. London: Earthscan. 108-134.
- Maloka, E. 1995. "Traditional" leaders and the current transition. *The African Communist* (141). 35-43.
- Mamdani, M. 1996. *Citizen and Subject*. Princeton: Princeton University Press.
- Manyara, G. & Jones, E. 2007. Community-based tourism enterprises development in Kenya: An exploration of their potential as avenues of poverty reduction. *Journal of Sustainable Tourism* 15(6). 628-644.
- Mapoma, X. 2014. The effect of land restitution on protected areas: An analysis of the co-management model in operation at the Mkambati Nature Reserve. Master's dissertation, University of Cape Town.
- Martin, G. 2011. Revisiting Fanon, from theory to practice: democracy and development in Africa. *Journal of Pan-African Studies*, 4(7).
- Masuku Van Damme, L.S. & Meskell, L. 2009. Producing conservation and community in South Africa. *Ethics Place and Environment*, 12(1). 69-89.
- Mathis, S.M. 2007. The politics of land reform: Tenure and political authority in rural KwaZulu-Natal. *Journal of Agrarian Change* 7(1). 99-120.
- Matose, F. 2009. Knowledge, power, livelihoods and commons practices in Dwesa-Cwebe, South Africa. *Development Southern Africa* 26(4). 627-637.
- Matose, F. 2011. Nature, villagers and the state or capital: Quotidian politics from protected areas in Zimbabwe. Paper presented at ISS conference on "Questioning the Market Panacea in Environmental Policy and Conservation", 30 June-02 July, The Hague.
- Matose, F.M. 2002. Local people and reserved forests in Zimbabwe: What prospects for co-management? Doctoral dissertation, University of Sussex.

Mbeki, G. 1984. *South Africa: The peasants revolt*. London: International Defence and Aid Fund for Southern Africa.

McAllister, P.A. 1989. Resistance to 'Betterment' in the Transkei: A Case Study from Willowvale District. *Journal of Southern African Studies* 15(2). 346-368.

Mdontswa, T. 2013. Progress report on land claims in protected areas: Presentation to the Portfolio Committee on Tourism, 20 August. <https://pmg.org.za/committee-meeting/16216/> . Accessed 17 July 2020.

Medvey, J. 2010. Benefits or burden?: Community participation in natural resource management in the Greater Kruger Park area. MSc Environment and Resource Management thesis, Institute for Environmental Studies (IVM), VU University, the Netherlands.

Minister of Water Affairs and Forestry, MEC for Economic Affairs, Environment and Tourism (Eastern Cape) and the Trustees of the Dwesa-Cwebe Land Trust Community Agreement, dated 17 June 2001

Mkhulisi, M. 2009. Aligning ecological and social objectives for community based natural resource management: A case study of post settlement cases on ECP protected areas: Dwesa-Cwebe and Mkhambathi. Unpublished.

Mkhulisi, M. 2010. Ongoing land restitution and management processes on the Eastern Cape Parks and Tourism Agency protected areas: Is it Co-Management? Unpublished.

Mkhwanazi, N. S. 2018. Synergy between protected conservation area and community development: The case of Hluhluwe-Imfolozi Game Reserve, KwaZulu-Natal. Unpublished Masters Thesis, University of Pretoria.

Mnwana, S. 2016. Chiefs, land and distributive struggles on the platinum belt: A case of Bakgatla-ba-Kgafela in the North West Province, South Africa. [https://www.ru.ac.za/media/rhodesuniversity/content/iser/documents/Sonwabile\\_Mnwana\\_Working\\_Paper\\_Final.pdf](https://www.ru.ac.za/media/rhodesuniversity/content/iser/documents/Sonwabile_Mnwana_Working_Paper_Final.pdf). Accessed 26 July 2018.

Naguran, R. 2002. Property rights and protected areas: The case of Ndumo Game Reserve. Paper presented at the research seminar on "Property Rights and Environmental Degradation" organised by the Beijer Institute of Ecological Economics, 27-30 May.

Ncapayi, F. 2013. Land and changing social relations in South Africa's former reserves: The case of Luphaphasi in Sakhisizwe Local Municipality, Eastern Cape. PhD thesis, University of Cape Town.

National Co-Management Framework. 2010. <https://www.news.uct.ac.za/images/archive/dailynews/2014/National%20Co-Management%20Framework.pdf>. Accessed 28 April 2016

Nelson, F. & Agrawal, A. 2008. Patronage or participation?: Community-based natural resource management reform in sub-Saharan Africa. *Development and Change* 39(4). 557-585.

Ngubane, M. M. 2012. Land beneficiaries as game farmers in the "new" South Africa: Land reform in relation to conservation, the hunting industry and chiefly authority in KwaZulu-Natal. Doctoral dissertation, University of the Free State.

- Nhira, C., Baker, S., Gondo, P., Mangono, J.J. & Marunda, C. 1998. *Contesting inequality in access to forests*. London: IIED.
- Ntsebeza, L. 2002. Structures and struggles of rural local government in South Africa: The case of traditional authorities in the Eastern Cape. Doctoral dissertation, Rhodes University.
- Ntsebeza, L. 2003. Land Rights and Democratisation: rural tenure reform in South Africa's former bantustans. *Transformation* (52). 68-95.
- Ntsebeza, L. 2004. Democratic decentralisation and traditional authority: Dilemmas of land administration in rural South Africa. *The European Journal of Development Research* 16(1). 71-89.
- Ntsebeza, L. 2006. *Democracy compromise: Chiefs and the politics of land in South Africa*. Cape Town: Human Sciences Research Council.
- Ntsholo, L. 2014. Biodiversity conservation in land reform: The continuities and discontinuities of colonial thought and practice: A case study of the Dwesa-Cwebe Nature Reserve. Master's thesis, University of Cape Town.
- Ntshona, Z., Kraai, M., Kepe, T. & Saliwa, P. 2010. From land rights to environmental entitlements: Community discontent in the 'successful' Dwesa-Cwebe land claim in South Africa. *Development Southern Africa* 27(3). 353-361.
- Ntshona, Z., Kraai, M., Tsawu, S. & Saliwa, P. 2009. Rights enshrined but rights denied?: Post-settlement struggles in Dwesa-Cwebe in the Eastern Cape. Eastern Cape Socio Economic Consultative Council.  
<https://ecsecc.org/documentrepository/informationcentre/160909115823.pdf>. Accessed 28 April 2019
- Nuesiri, E. O. 2012. *The Re-emergence of Customary Authority and its Relation with Local Democratic Government*. Dakar: CODESRIA.  
<https://portals.iucn.org/library/sites/library/files/documents/RFGI-WP-006.pdf>.
- Nwosu, B. U. 2012. Tracks of the third wave: democracy theory, democratisation and the dilemma of political succession in Africa. *Review of African Political Economy*, 39(131):11-25.
- Okoth-Ogendo, H.W. 2008. The nature of land rights under indigenous law in Africa. In A. Claassens & B. Cousins (eds.) *Land, power and custom: Controversies generated by South Africa's Communal Land Rights Act*. Cape Town: UCT Press. 95-108.
- Olanipekun, V.O., 2020. Democracy and consensus in traditional Africa: a critique of Kwasi Wiredu. *Inkanyiso: Journal of Humanities and Social Sciences*, 12(1). 1-10.
- Oomen, B. 1998. Group rights in post-apartheid South Africa: The case of traditional leaders. *Journal of Legal Pluralism and Unofficial Law* 44. 73-103.
- Oomen, B. 2005. *Chiefs in South Africa: law, culture, and power in the post-apartheid era*. New York: Springer.
- Ostrom, E. 1992. Community and the endogenous solution of commons problems. *Journal of Theoretical Politics* 4(3). 343-351.
- Palmer, R. 1998. From exclusion to ownership: the continuing transformation of the role of the communities in relation to two adjacent nature reserves on South Africa's "Wild Coast". Paper presented at "Crossing Boundaries", 7th Conference of the IASCP, Vancouver, Canada. 10-14 June.

- Palmer, R. 2003. From title to entitlement: The struggle continues at Dwesa-Cwebe. Presentation at “The Eastern Cape: Historical Legacies and New Challenges” conference. Fort Hare Institute of Social and Economic Research, East London.
- Palmer, R., Kingwill, R., Hamer, N. & Coleman, M. 2006. The Dwesa-Cwebe restitution claim: A case study as preparation for a field-based learning programme. Unpublished paper. Cape Town: Phuhlisani Solutions.
- Palmer, R., Timmermans, H. & Fay, D. 2002. *From Conflict to Negotiation: Nature-based development on the South African Wild Coast*. Pretoria: Human Sciences Research Council.
- Paterson, A.R. 2011. Bridging the gap between conservation and land reform: Communally-conserved areas as a tool for managing South Africa’s natural commons. Doctoral dissertation, University of Cape Town.
- Paterson, A. & Mkhulisi, M. 2014. Traversing South Africa’s conservation and land reform objectives – lessons from the Dwesa-Cwebe Nature Reserve. *South African Law Journal*, 131(2). 365-407.
- Peires, J. B. 1989. *The dead will arise: Nongqawuse and the great Xhosa cattle-killing movement of 1856-7*. Bloomington: Indiana University Press.
- Pennock, J. R. 1979. *Democratic political theory*. Princeton, New Jersey: Princeton University Press.
- Plummer, R. & Fitzgibbon, J. 2004. Co-management of natural resources: A proposed framework. *Environmental management*, 33(6). 876-885.
- Poteete, A. R. 2009. Defining political community and rights to natural resources in Botswana. *Development and Change* 40(2). 281-305.
- Rakner, L., Menocal, A. R. & Fritz, V. 2007. Democratisation's third wave and the challenges of democratic deepening: assessing international democracy assistance and lessons learned. ODI Working Papers.
- Ramutsindela, M. 2003. Land reform in South Africa’s national parks: A catalyst for the human–nature nexus. *Land Use Policy* 20(1). 41-49.
- Ray, D. I. 2003. Rural local governance and traditional leadership in Africa and the Afro-Caribbean: Policy and research implications from Africa to the Americas and Australasia. In D. I. Ray & P. S. Reddy (eds.) *Grassroots Governance?: Chiefs in Africa and the Afro-Caribbean*. Calgary: University of Calgary Press. 1-30.
- Ray, D. I. & LaBranche, S. 2001. Foucault’s chiefs – legitimacy and cultural discourse in chief-state relations in Ghana. *Review of International Affairs* 1(2). 62-82.
- Ray, D. 2004. Traditional leaders promoting rural development and fighting HIV/Aids: Inherent contradictions or actual possibility? Paper presented at the 50th Anniversary Conference “Reviewing the First Decade of Development and Democracy in South Africa”, International Convention Centre, Durban, South Africa.
- Republic of South Africa. 1994. Restitution of Land Rights Act 22 of 1994.
- Ribot, J. 2001. Local actors, powers and accountability in African decentralizations: A review of issues. *International Development Research Centre of Canada Assessment of Social Policy Reforms Initiative* 25. 104.



- Ribot, J. 2002. *Democratic decentralization of natural resources: Institutionalizing popular participation*. Washington DC: World Resources Institute.
- Ribot, J. C. 1999. Decentralisation, participation and accountability in Sahelian forestry: Legal instruments of political-administrative control. *Africa* 69(1). 23-65.
- Ribot, J. C. 2011. *Choice, recognition and the democracy effects of decentralization*. Swedish International Centre for Local Democracy.
- Ribot, J. C. & Larson, A. M. (Eds.) 2008. *Democratic decentralization through a natural resources lens*. Abingdon: Routledge.
- Ribot, J. C., Chhatre, A. & Lankinad, T. 2008. *Institutional choice and recognition in the formation and consolidation of local democracy*. Washington DC: World Resources Institute.
- Ribot, J. C., Chhatre, A. & Lankinad, T., 2008. Introduction: Institutional choice and recognition in the formation and consolidation of local democracy. *Conservation and Society*, 6(1). 1-11.
- Robins, S. & van der Waal, K. 2008. "Model tribes" and iconic conservationists?: The Makuleke restitution case in Kruger National Park. *Development and Change* 39(1). 53-72.
- Robins, S & van der Waal, K. 2010. "Model tribes" and iconic conservationists? Tracking the Makuleke restitution case in Kruger National Park. In C. Walker, A. Bohlin, R. Hall & T. Kepe (eds.) *Land, memory, reconstruction and justice: Perspectives on land claims in South Africa*. Athens: Ohio University Press.
- Rusenga, C. 2017. The socio-economic consequences of the agribusiness model on the land reform beneficiaries in greater Tzaneen municipality, South Africa: The case of Elangeni Project. Doctoral dissertation, University of Cape Town.
- SAFLII. 2010. *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others* (CCT100/09) ZACC 10; 2010 (6) SA 214 (CC) ; 2010 (8) BCLR 741 (CC) (11 May). <http://www.saflii.org/za/cases/ZACC/2010/10.html>. Accessed 28 June 2019
- Sarantakos, S. 1998. *Social Research* 2<sup>nd</sup> ed. New York: Springer.
- Schumpeter, J. 1942. *Capitalism, socialism and democracy*. London: Harper Perennial.
- Schumpeter, J. 1976. *Capitalism, socialism and democracy*. London: George Allen & Unwin.
- Sithole, P. & Mbele, T. 2008. Fifteen year review on traditional leadership: A research paper. Human Sciences Research Council.
- Sithole, M. P. 2005. The secular basis of traditional leadership in KwaZulu-Natal. *Alternation: Interdisciplinary Journal for the Study of the Arts and Humanities in Southern Africa* 2005(2). 102-122.
- Sklar, R. L. 1994. The significance of mixed government in southern African studies: A preliminary assessment. Paper presented at the Wits History Workshop: "Democracy, Popular Precedents, Practice and Culture", 13-15 July.
- Southafrica.co.za (undated). "Formation of Hluhluwe-Imfolozi Park". <https://southafrica.co.za/formation-hluhluwe-imfolozi-park.html>. Accessed 21 April 2019
- Southall, R. 1982. *South Africa's Transkei: The political economy of an "independent" bantustan*. Sandton: Heinemann.

- Southall, R. & Kropiwnicki, Z. D. S. 2001. Containing the chiefs: The ANC and traditional leaders in the Eastern Cape. Paper submitted to the Traditional Authorities Applied Research Network (TAARN). University of Durban-Westville, Durban. November. 1-31.
- Southgate, C. R. 2006. Ecotourism in Kenya: The vulnerability of communities. *Journal of Ecotourism* 5(1-2). 80-96.
- Sunde, J. 2014. Customary governance and expressions of living customary law at Dwesa-Cwebe: Contributions to small-scale fisheries governance in South Africa. Unpublished doctoral dissertation, University of Cape Town.
- Stake, R. E. 1994. Case study: Composition and performance. *Bulletin of the Council for Research in Music Education*. 31-44.
- Sustainable Development Consortium. 2006. Restitution learning on the ground: Dwesa-Cwebe: Towards the delivery of effective post settlement support. Research report commissioned by the Commission on Restitution of Land Rights, East London.
- Sustainable Development Consortium. 2007. A settlement and implementation support strategy for land and agrarian reform in South Africa. Pretoria: Commission on Restitution of Land Rights.
- Switzer, L. 1992. *Power and resistance in an African society: The Ciskei Xhosa and the making of South Africa*. Pietermaritzburg: University of Natal Press.
- Tavener, K. 2018. *Women's hidden harvest: Indigenous vegetables and amaXhosa cultural survival in Hobeni Village, South Africa*. Rome: Bioversity International.
- Terblanche, A. & Kraai, M. 1996. Dwesa and Cwebe: Enduring, democratic conservation after apartheid abuses. Unpublished report commissioned by TRALSO, Umtata.
- The Village Planner. 2000. Strategic planning workshop report. Umtata, South Africa.
- Thondhlana, G., Cundill, G. & Kepe, T. 2016. Co-management, land rights, and conflicts around South Africa's Silaka Nature Reserve. *Society & Natural Resources* 29(4). 403-417.
- Thornton, R. 2002. Environment and land in Bushbuckridge, South Africa. In L. Zarsky (ed.) *Human rights and the environment: Conflicts and norms in a globalizing world*. London: Earthscan. 219-240.
- Timmermans, H. G. 2004. Rural livelihoods at Dwesa/Cwebe: Poverty, development and natural resource use on the Wild Coast, South Africa. Doctoral dissertation, Rhodes University.
- Turner, R. L. 2006. Communities, Conservation, and Tourism-Based Development: Can Community-Based Nature Tourism Live Up to its Promise? UC Berkeley: Global, Area, and International Archive. <https://escholarship.org/content/qt0fq311pw/qt0fq311pw.pdf>. Accessed 21 August 2014.
- Transkei Nature Conservation Act (6 of 1971)
- Trochim, W. M. K. 2001. *Research methods knowledge base*. Cincinnati: Atomic Dog Pub.
- Tropp, J. 2003. Displaced people, replaced narratives: Forest conflicts and historical perspectives in the Tsolo District, Transkei. *Journal of Southern African Studies* 29(1). 207-233.
- Tropp, J. A. 2006. *Natures of colonial change: Environmental relations in the making of the Transkei*. Athens: Ohio University Press.
- Unknown author Dwesa-Cwebe Reserve Management Planning Framework, Undated



- Van Rouveroy van Nieuwaal, E. A. B. & van Dijk, R. A. 1999. Introduction: Chieftaincy in Africa – three facets of a hybrid role. In E. A. B. van Rouveroy van Nieuwaal & R. A. van Dijk (eds.) *African chieftaincy in a new socio-political landscape*. Leiden: LIT Verlag.
- Von Maltitz, G. P. & Shackleton, S. E. 2004. Use and management of forests and woodlands in South Africa: Stakeholders, institutions and processes from past to present. In M. Lawes, H. Eeley, C. Shackleton & B. Geach (eds.) *Indigenous forests and woodlands in South Africa: policy, people and practice*. Pietermaritzburg: University of KwaZulu-Natal Press. 109-135.
- Wadge, M. J. H. 2008. A vulnerability analysis of Hluhluwe Imfolozi Park for the period 1980 to 2000. Doctoral dissertation, University of the Witwatersrand.
- Walker, C. 2008. *Landmarked: Land claims and land restitution in South Africa*. Johannesburg: Jacana Media.
- Weiner, D. & Levin, R. 1991. Land and agrarian transition in South Africa. *Antipode* 23(1). 92-120.
- Whande, W. 2007. Trans-boundary natural resource management in southern Africa: Local, historical and livelihood realities within the Great Limpopo Trans-frontier Conservation Area. Research report. PLAAS, University of the Western Cape.
- Williams, J. 2001. Blurring the boundaries of tradition: The transformation and legitimacy of the chieftaincy in South Africa. PhD Thesis, University of Wisconsin.
- Williams, J. M. 2010. *Chieftaincy, the state, and democracy: Political legitimacy in post-apartheid South Africa*. Bloomington: Indiana University Press.
- Wiredu, K. 1996. *Cultural universals and particulars: An African perspective*. Indiana University Press.
- Wisker, G. 2007. *The postgraduate research handbook: Succeed with your MA, MPhil, EdD and PhD*. 2nd ed. London: Macmillan International Higher Education.
- Wynberg, R. & Kepe, T. 1999. *Land reform and conservation areas in South Africa: Towards a mutually beneficial approach, July 1999*. IUCN South Africa.
- Yawitch, J. 1981. *Betterment: The myth of homeland agriculture*. Johannesburg: SAIRR.