Traditional authority, democracy and protected areas: a quandary for African states

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ABSTRACT

This article examines the role of traditional authorities around protected areas in Africa, engaging with debates regarding the efficacy of traditional authorities in contemporary governance in Africa. Some scholars have supported such authority as epitomising African customs and practices, and thereby offering continuity and relevance. Others have questioned the usefulness and relevance of such authority in democratic spaces given their hereditary nature. The article considers these debates in relation to the challenges that arise due to protected areas being spaces of bifurcated governance, in contrast to other rural areas, utilising two case studies: Gwayi Forest in Zimbabwe and Dwesa-Cwebe Nature Reserve in South Africa. Protected areas pose challenges for post-colonial African states regarding how they should be governed. The article argues that it is time for states to bring finality over the governance of such areas. State institutions should be restricted to an advisory role in protected areas. Local populations should be able to choose their own leadership and governance over these spaces.

KEYWORDS

Traditional authorities; protected areas; Africa; local populations; Zimbabwe; South Africa

Introduction

The role of traditional authorities on the African landscape and their place in contemporary polities conjures up furious debates (Mamdani 1996; Ntsebeza 2006; Nuesiri 2012). In this contribution we focus on the role of this authority around protected areas in southern Africa. Colonial and post-colonial states in the region have grappled with this authority for centuries, beginning with colonial settlers in the nineteenth century who incorporated traditional authorities into the administration of populations in rural areas...
that they had set aside for them. We argue that colonial states went on to create special spaces around protected areas whose governance regimes still confound states to this day. In examining their role around protected areas, we thus interrogate the issue of legitimisation surrounding traditional authority (see Ake 1993). In so doing we attempt to advance debates between processes of legitimisation and notions of democracy around this form of authority. The two cases from Zimbabwe and South Africa highlight the quandary of traditional authority around protected areas by bringing out the nuances and intricacies of how this institution retains legitimacy and relevance. In Zimbabwe, traditional authority is formally incorporated in the state forestry governance structure as communities live inside the protected area along clan village lines. In South Africa, the protected area formally works with elected representatives and moves away from traditional authority through communal property associations (CPAs) and land trusts. Such nuances help shed light on the complexity surrounding traditional authority as an institution.

This contribution reflects on the work of Lungisile Ntsebeza, especially his questioning of, and campaign for, democratising governance in rural areas. We engage with Ntsebeza’s notion of combining participatory elements of pre-colonial indigenous institutions and representative aspects of liberal democracy (Ntsebeza 2002). This form of democracy may end the issue surrounding bifurcated governance that prevails around protected areas in Mahmood Mamdani’s conception (1996), in which in rural areas a two-tier system of direct and indirect state rule is effected through elected representatives and traditional authorities. Our contribution focuses on how direct and indirect systems exist side by side around protected areas.

The article is arranged as follows. We first discuss theoretical debates about traditional authorities in a democratic dispensation, on which our argument is grounded. We then critically discuss the different theories of democracy to encourage conversations between processes of legitimation and notions of democracy around this form of traditional authority. We then interrogate the challenges of protected areas in southern Africa, drawing on two cases to examine the role of traditional authorities in protected areas that face challenges of bifurcated governance, unlike other areas. The emerging insights are then used to advance the argument that protected areas pose a quandary for African states as they are unsure which direction to take regarding their governance. It is long overdue for African states to end the uncertainty over the governance of such areas.

A theoretical discussion on democracy

In examining the role of traditional authorities around protected areas, we interrogate the issue of legitimisation surrounding traditional authority as advocated by Claude Ake (1993) and other scholars. In so doing we attempt to foster conversations between processes of legitimisation and notions of democracy around this form of authority. Mamdani and Ntsebeza join the view of minimalist theorists such as Samuel Huntington (1991) and Joseph Schumpeter (1976), who believe that elements such as participation, representation and accountability form the foundations of a liberal democracy. The role of elections is highly important in advancing these aspects, including responsive leaders (Schumpeter 1976; Huntington 1991). It is through this that Ntsebeza challenges the recognition of ‘unelected’ authorities in a democratic liberal constitution based on multi-party principles.
and representative governments, because they are contradictory to democracy. Schumpeter characterises 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 1976, 269). Schumpeter (1976) 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’. In this regard, democracy that emphasis in elections, means 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). According to Huntington:

> 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 1991, 50, cited in Nwosu 2012)

In this framing, traditional authorities are understood to be unaccountable because they are occupied by leaders who are not subject to electoral sanctioning.

However, other scholars are critical of the liberal democracy argument which gives too much weight to the incompatibility of African traditional institutions with democracy (Fayemi 2009; Nwosu 2012). Robert Dahl (1971) argues that democracy should not only entail one aspect such as elections, representation or participation, but should include many other aspects to entrench it. Democracy should entail basic civil liberties, maximum inclusivity and freedom of expression, with people empowered to participate in an informed and independent manner. Bernard Nwosu (2012) argues that democracy that does not translate elections into socioeconomic conditions that improve the lives of citizens is not true democracy. While free and fair representative and participatory elections are a necessary feature of democratic regimes, a procedural definition risks ignoring informal practices that could assist democratic processes. Archie Mafeje makes the point that attempts to reproduce Western liberal democracy in post-independence Africa failed because they only produced ‘one-party dictatorships under a layer of European bureaucratic structures and procedures’ (Mafeje 2002). Scholars are thus critical of the view that elections in a liberal democracy produce good and responsive leaderships while adding value to democratisation processes and outcomes (Ake 1993; Diamond 1996; Martin 2011). Such scholars assert that electoral processes never brought democracy to Africa. Instead, they created corrupt, non-representative, unaccountable and undemocratic leadership while contributing to the loss of legitimacy.

Ademola Fayemi (2009) criticises liberal democracy that involves a multi-party system of politics, in which the party that wins the most seats at the election forms the government. In such a political set-up, there is no representation of all citizens as is claimed. Instead, the minority representatives’ votes are dominated by the votes of the majority. The implication is that the participation of minority representatives and their voters in decision-making processes is perceived to be not as important (Fayemi 2009). Ake (1993) argues that Africa needs a democracy that embraces certain democratic values and principles in traditional African culture which are disregarded in liberal democracy. The type of democracy African theorists advocate transcends electoral principles of liberal democracy and places emphasis on improved socioeconomic conditions for the electorate. Ake (2000, 75) maintains that ‘the feasibility of democracy in Africa will depend crucially on how it relates to the social experience of Africans and how far it serves their social needs.’ Democracy should
encompass traditional authorities as they constitute values that include patrimony, communalism, participation and standards of accountability (Ake 1991). ‘Chiefs were answerable not only for their own actions but for natural catastrophes such as famine, epidemics, floods and drought’ (Ake 1991, 34). This emphasises that in African society, decision-making tended to be based on consensus and not on the choices of a ‘representative’ as is the case in liberal democracy.

Fayemi argues that ‘many traditional African societies were democratic, even in their monarchical social organisations, 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). Along similar lines, Ntsebeza argues that a form of democracy that will work in South Africa and elsewhere is to bring in the participatory element that is embedded in traditional democracy (Ntsebeza 2006). These scholars disagree with the view that traditional authorities are autocratic, personalised and corrupt, and therefore cannot provide appropriate historical and cultural foundations for democracy in modern societies: ‘in contrast, traditional African societies’ governments are open and inclusive’ (Adetula 2011, 12). Kojo Amanor (2022) points out the complicit roles that traditional authorities play in resource governance in Ghana that date back to the colonial administration. The authorities have waded in with the ruling elite to extract benefit from natural resources, especially those related to land and forests, at the expense of the rural populations they administer. Horman Chitonge (2022, 43), on the other hand, raises the issue of ‘competing legitimacies between the state and traditional leaders’, particularly over governance and administration of customary land.

While protected land may officially fall under the state, in practice, and as will be discussed in the cases that follow, such land’s jurisdiction is disputed by dispossessed populations and traditional authorities, creating the conundrum that we address in this contribution. Chitonge (2022, 55) notes that chiefs asserted they ‘owned the land before the state was established’ which creates tenuous relations between the state and traditional authorities in land administration and management across many territories in Africa. Perhaps it is less important to locate whether the locus of governance is vested in either the state or traditional authority, and more important to establish how processes of democratisation and responsiveness to popular needs might be enhanced around protected areas.

**Theoretical debates on traditional authorities in relation to democracy**

In this section we examine some of the theoretical debates around the institution of traditional authorities, beginning with scholars who situate it within customary practices. One view is that there is no place for traditional authorities in a democratic state and such authorities should be replaced with democratically elected institutions supported by the state (Maloka 1995; Bank and Southall 1996; Mamdani 1996; Ntsebeza 2002, 2006). These scholars argue that the involvement of traditional authorities in contemporary governance inhibits any attempts by African governments to democratise rural governance (Mamdani 1996; Ntsebeza 2006). They see no co-existence of autocratic, oppressive and unelected traditional authorities with democratic systems of governance that guarantee individual liberty and basic human and civil rights. Mamdani (1996, 48) states that chiefs
are an embodiment of ‘decentralized despotism’. Chiefs were upwardly accountable to the colonial state while being used against rural communities to enforce indirect state policy.

Ntsebeza (2006) explores traditional authorities and their relation to land in the context of democracy using the case of Xhalanga, Eastern Cape in South Africa. He interrogates two critical questions. The first relates to the survival of traditional authorities into the post-colonial era and the second concerns how such authorities obtain their authority and legitimacy. He also raises a critical question how, despite their despotic role as an extension of the colonial state, traditional authorities not only received constitutional recognition in democratic South Africa but have been granted unprecedented powers over rural governance. He draws attention to the tension in the South African Constitution, that it enshrined democratic principles in the Bill of Rights while at the same time recognising traditional authorities whose incumbents are unelected and unaccountable to rural residents (Ntsebeza 2006). He insists that central to the concept of liberal democracy is the people’s right to choose their leaders. Ntsebeza looks at both participatory and representative forms of democracy to argue that both are crucial principles of democratic decentralisation (Ntsebeza 2006, 36).

Ntsebeza then argues that traditional authorities are undemocratic as they do not meet the principle of representative democracy, which gives people the opportunity to choose a candidate to represent their interests. Ntsebeza asserts that, if traditional authorities want to play a role in politics and development, they need to subject themselves to the will of the people, which will make them directly accountable to their communities and make them conform to democratic principles (Ntsebeza 2006, 35). However, Ntsebeza argues against the dismantling of traditional authorities 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). Overall, he argues for a new form of democracy that combines the participatory elements of pre-colonial indigenous institutions and the representative aspects of liberal democracy. This form of democracy will eliminate the division between citizenship (urban) and subjects (rural areas) that Mamdani so articulately connected with colonialism (Ntsebeza 2006). Although the reality is more nuanced, the questions raised by Ntsebeza inspired us to integrate and discuss other forms of democracy to understand the role of traditional authorities around protected areas in southern Africa.

The contrary perspective to Ntsebeza asserts that chiefs are compatible with Western democratic systems of governance because historically they possess elements of democratic principles such as inclusive decision-making processes (Oomen 2005; Logan 2013). Such scholars point to a broad understanding of democracy beyond election to office, but enshrining democratic and inclusive decision-making practices. George Ayittey (1992) and Christiaan Keulder (1998) point out that chiefs practise democracy through community issues being discussed in public platforms where community members are encouraged to articulate their views. Pearl Sithole and Thamsanqa Mbele (2008, 9) maintain that chiefs represent a different, real and grassroots form of democracy that is not necessarily a ‘compromise or contradiction’ of democracy. These scholars demonstrate that chiefs co-exist in contemporary democracy by supporting inclusive governance. Their view is strengthened by the fact that traditional authorities continue to have an influence on land relations and forest use and management interventions across Africa (Sklar 1994; Ray 1996; Williams 2010). This is the case in South Africa, where traditional authorities continue to manage
access to land by local people in the former homelands (Kompi and Twala, 2014, 988). Hasting Okoth-Ogendo (2008) concurs that chiefs are entrenched in the cultural practices of the people they govern by placing emphasis on mutuality and downward accountability. Barbara Oomen (2005) argues that a chief’s authority is not solely based on tradition, but on their ability to perform and being accountable, as well as state recognition. Oomen further states that rather than abiding by neatly separate legal domains of ‘legal pluralism’, chiefs and ‘their’ subjects mix and match rules that refer to tradition, state regulations, customary law and common sense in resolving disputes and making judgements, as will be shown in the two cases. ‘A prerequisite here’, she concludes, ‘is abandoning the notion that customary law and human rights, tradition and modernity, chiefly rule and democracy, would somehow be antithetical’ (Oomen 2005, 250).

The supportive view challenges the notion that as chiefs are not elected in most cases, they are not representative or accountable (see also Lutz and Linder 2004). They reject the view that traditional authorities are not responsive leaders because they are not democratically elected (Baldwin and Holzinger 2019; Tsawu 2022). Some scholars have argued that traditional authorities can serve community interests by helping to broker government resources or coordinating collective action (Baldwin 2016; Honig 2019, cited in Baldwin and Holzinger 2019, 1749). These scholars show that traditional authorities are also held accountable by rural residents, while elected institutions can also be unrepresentative and unaccountable to the people, as shown in cases such as Dwesa-Cwebe (Tsawu 2022). Although traditional authorities are not democratically elected, they can be accountable, representative and responsible leaders. As such, traditional authorities can play a significant role in fostering democracy, and in the lives of rural populations by resolving disputes and mediating access to land (Williams 2010).

Despite these two divergent schools of thought, chiefs have re-emerged and their role over governance of natural resources, which was weakened in the past, has been extended in contemporary African states (Englebert 2002; Oomen 2005; Logan 2009; Nuesiri 2012; Tsawu 2022). According to Emmanuel Nuesiri (2012), traditional authorities became central to the governance of natural resources and dispute resolution in rural areas across Africa. He maintains that chiefs are now using their resurgence to consolidate their power over rural communities and resources. Nuesiri demonstrates that, across the continent, these traditional authorities are enjoying unprecedented popular legitimacy, having emerged as a key feature of the contemporary political landscape. African states seem to be torn between supporting traditional authorities, much maligned during liberation struggles, and working through recently created structures that provide room for democracy to take effect in rural areas.

Traditional authorities will continue to co-exist with elected institutions and survive in a democratic Africa as long as the state and its elected institutions fail to perform at the local level (Ribot 2001; LiPuma and Koelble 2009; Williams 2010). The supportive scholars argue the elected leadership is not always representative or accountable to their constituencies but instead to state officials. This view proposes looking beyond the misrepresentation of traditional authorities as authoritarians, and to 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 traditional governance to continue (Tsawu 2022). Despite many efforts to shift the locus of natural resources management to elected institutions and away from traditional authorities, traditional authorities continue to re-emerge in
a democratic Africa. These scholarly debates around democracy and traditional authority offer fertile ground for contemplating the role of traditional authorities in protected rural areas, which we elaborate on in the next section.

The challenge of protected areas

With the establishment of protected areas by colonial, and later apartheid, states, indigenous populations in southern Africa lost their land and access to the natural resources they used to rely on for their livelihoods. In the process, colonial states disrupted local governance and resource management practices that were embedded in a commons culture (Matose et al. 2022). Colonial legislation was promulgated in southern Africa to create more protected areas (Fay, Timmermans, and Palmer 2002; FAO 2007). Previously, natural resources had been ‘owned’ and used collectively by communities under traditional authorities. The latter governed and controlled access rights (Ramutsindela 2003; Walker 2015), playing an important role in the conservation of natural resources. However, when protected areas were formed, African populations were marginalised to the extent that they were regarded by colonial settlers as strangers and ‘poachers’ on their own land. The settlers took over the management of protected areas, initially excluding traditional authorities but slowly incorporating them into the colonial governance systems (Tsawu 2022). They became state agents who enforced measures controlling and prohibiting people from using resources. This was the beginning of bifurcated approaches in the governance of protected areas. The settler colonial state used violence to stop communities’ access to protected areas (Ramutsindela, Matose, and Mushonga 2022). In some cases, people caught inside protected areas were harassed, incarcerated and even killed by state agents. As pointed out elsewhere:

such treatment manifests in the form of subjectification of populations, disregard of their knowledge and resource-based livelihoods, privileging ‘science’ and outside knowledge, denial of rights to resources and land, perpetration of violence and violent acts, as well as imposition of governance systems that are not aligned with the rest of the country. (Matose et al. 2022, 24)

The post-apartheid state required the appointment of a conservation agency that would enter into collaborative benefit-sharing arrangements with new democratically elected institutions that would represent communities whose rights had been restored (Thondhlanza, Cundill, and Kepe 2016). While such arrangements were meant to encourage community participation in the governance of protected areas, in practice they faced challenges (Tsawu 2022). Post-colonial states continued to retain power over and to marginalise traditional authorities in the governance of protected areas (Mapedza 2007; Tsawu 2022), with state agencies continuing to treat local people as strangers and poachers on their own restored land.

In Zimbabwe, for instance, the Forestry Commission treats people as illegal settlers in protected forests. Continuities in colonial state violence and militarised practices are witnessed around protected areas. Local people found inside them continue to be arrested, attacked and even shot by conservation rangers (Matose 2016; Tsawu 2022). States continue to see them as ‘natives’ that need to be saved from themselves by outside actors.
Practices prevalent under colonial rule have been brought back through protected area spaces to maintain hegemonic control over natural resources and marginalise local people. These spaces illustrate bifurcation (Mamdani 1996), untransformed in terms of how the state exercises its power, while science is contested by local knowledge and livelihoods. Governance around protected areas treats people who depend on nature as ‘subjects’ rather than citizens. These post-colonial states appear to struggle to deal with the governance of protected areas where both democratically elected institutions of governance and traditional authorities live alongside each other. This will become clear in the following two cases.

**Case one: the Gwayi Forest in Zimbabwe**

There are 24 protected forests in Zimbabwe covering about 832,662 hectares (Forestry Commission 2013, 2). Twenty-two are in Matabeleland North Province, including Gwayi Protected Forest. When Gwayi Forest was gazetted, it was occupied by Ndebele people under the leadership of traditional authorities made up of a chief, headman and amasobhuku (renamed village heads after independence).

The original objectives of state protection of Gwayi Forest were to curb soil erosion and deforestation caused by the logging and timber milling operations of colonial companies including the British South Africa Company, Rhodesia Native Timber Concessionaires and the Matabele Timber Trust (Kwashirai 2008, 161). Gwayi and Ngomo Forests were gazetted in 1930 under the Land Apportionment Act of 1930 (FAO 2007), with the remaining protected forests gazetted in piecemeal fashion up to the 1950s. Prior to exploitation by European logging firms, the forest was ‘virgin’ (Kwashirai 2008, 160), implying that forest management by traditional authorities was effective in the conservation of nature. Ironically the Forest Act of 1949 excluded traditional authorities from forest governance. The current chief revealed that as a result his father, who was then chief, relocated with some of his subjects and resettled in the Jotsholo area in Lupane Communal Land.

The Forestry Commission believed that the presence of local people in the forest would interfere with management plans, and so developed strict criteria for allowing people to stay: they had to be employed by the Forestry Commission or by logging and timber milling companies, mainly to control or extinguish wildfires. Households not meeting these criteria were evicted and resettled in newly created ‘native reserves’ in marginal areas of the country that were overcrowded and difficult for human and livestock habitation. Households that were allowed to stay worked under terrible conditions and inhuman treatment from Forestry Commission officials (Matose 2002, 87). They were later accorded tenant status (Kwashirai 2008). In 1931, the Forestry Service forced every adult male to pay a monthly rent of 10 shillings and a head or poll tax of 50 shillings to legitimise their tenancy (Matose 2002; FAO 2007; Kwashirai 2008). They were given permits which served as a form of identification and authorised them to live within the forest.

The introduction of the tenant scheme was also means of controlling the growth of the forest population (FAO 2007). The Forestry Commission evicted households with goats and herds of more than 20 cattle who were not willing to destock (Kwashirai 2008).
Goat-rearing was not permitted in the forest as officials believed that goats’ hoofs loosened the soil and encouraged erosion. This was a direct assault to the Ndebele culture of livestock rearing, which was ideal for a low-rainfall area like Gwayi Forest. Keeping livestock was a source of food, income and social security, and cattle are used to pay amalobolo (bride price) to this day. Arable lands were reduced in size and settlements were moved from the fertile riverine areas to poor gusu (sandy) soils. Matthew, Halle and Switzer (2002, 251) also note that children of forest tenants were not allowed to stay in the forest after marriage or at attainment of the age of majority, contrary to Ndebele custom which dictated that a married son utshayelwa ihlahla (was allocated land by the traditional leadership close to his parents). The custom enabled perpetration of a symbiotic relationship between a young couple and elderly parents. The young couple would depend on the parents and other relatives who lived close by for such things as marital guidance, food, tools and ploughs, while the elderly parents depended on the young couple for labour and health care.

Natural resources in Gwayi Forest thrived after gazetting due to adequate funding and the strict implementation of repressive legislation (FAO 2007). The downfall of the Forestry Commission’s management was witnessed during the liberation struggle in the late 1970s when the local communities who had been forcefully removed from the forest returned and reoccupied their former land, after Forestry Commission staff left due to security reasons. Local communities participated in the war, under the rallying slogan ‘mwana wevhu/umntwana womhlabathi’ (child of the soil), because the liberation freedom fighters promised that their land would be returned (Nmoma 2008, 375). However, after independence, the government did not reinstate forest property rights to the former occupants, but instead retained the inherited forest legislation from the settler colonial regime (Mapedza 2007). In 1981, the population of local people within the forest had grown so large that the Forestry Commission felt that it interfered with forest management operations. It therefore declared all occupants, including tenants, illegal settlers and attempted to evict them, but failed to garner political support from the government. The Forestry Commission then resolved to co-exist with the local population, informally allocating land to local people along the northern boundary of the forest and reinstating certain roles and responsibilities to traditional authorities.

These roles and responsibilities were designed by the Forestry Commission to enable traditional authorities to control local people to prevent forest destruction but also help perpetrate repressive forest policies to exclude local people from decision-making and access to forest resources. The local chief confirmed in an interview that such an arrangement existed. He emphasised that the roles and responsibilities of traditional leadership in Gwayi Forest were a dilution of those in Communal Lands as stipulated in Section 282 (1) of Constitution of Zimbabwe which directs them:

(a) to promote and uphold cultural values of their communities and, in particular, to promote sound family values;
(b) to take measures to preserve the culture, traditions, history and heritage of their communities, including sacred shrines;
(c) to facilitate development;
(d) in accordance with an Act of Parliament, to administer Communal Land and to protect the environment;
(e) to resolve land disputes among people in their communities in accordance with the customary law and
(f) to exercise any other functions conferred or imposed on them by Act of Parliament.3

Traditional leadership plays an important role in protecting the environment. They organise fire-fighting teams in liaison with local councillors. The teams are trained annually by the Environmental Management Agency at the beginning of the fire season. Traditional leadership also encourages local people to conserve the environment by refraining from unnecessary cutting down of trees, poaching for forest products, or extending their arable lands and stream bank cultivation, and to report any unauthorised users of forest resources, including new forest occupants.4

The Forestry Commission officer said that traditional leaders were always invited to officiate on important occasions, such as the national tree planting days. An elderly man from the Strip Road area adjacent to Gwayi Forest stated that although village heads within Gwayi Forest were authorised by the Forestry Commission to allocate land to married children whose parents lived in the forest, they now corruptly allocate land to anyone prepared to pay a bribe.5

The local chief found it difficult to train his subjects in protected forests to uphold cultural values, tradition, history and heritage:

The Forestry Commission does not permit some of our cultural rituals. I am expected once in a while to lead my subjects in cultural ceremonies in which I would kill an antelope and an eland for consumption by the people as part of the ritual. The Forestry Commission regards that as poaching. I cannot conduct ancestral worship ceremonies in sacred parts of the forest where my ancestors are buried as I have to go through a rigorous process of applying for permission, yet I am the custodian of the land and a go-between for my subjects and ancestors. We cannot propose any development through the village and ward assemblies as that would be a violation of the Forest Act.6

An elderly village head asserted that the village and ward assemblies had no authority over development at the local level. The assemblies also had no authority to assist the rural district council in collecting taxes. As the traditional leadership, however, they had courts where they resolved disputes among local people.7

Case two: the Dwesa Cwebe Nature Reserve in South Africa

The Dwesa and Cwebe forests form the bulk of the nature reserve surrounding the Mbashe River as it meets the Indian Ocean on the eastern coast of South Africa. The nature reserve is just under 6,000 hectares, occupies a small coastal strip of approximately 14 kilometres long and extends three to five kilometres inland. The reserve is arguably important to the state in meeting its biodiversity obligations under international conventions. Local residents had enjoyed access to diverse natural resources such as land, wood for fuel and construction, wild grasses, reeds for weaving, and medicinal and edible plants. Before colonialism, Dwesa-Cwebe communities were under the jurisdiction of successive Xhosa traditional authorities who governed land and resources as the centre of local governance (Fay, Timmermans, and Palmer 2002; Tsawu 2022). However, the power of traditional
authorities was systematically eroded from the 1800s onwards, as most of their roles were transferred to the magistrates who had jurisdiction in the various districts of the Eastern Cape (Palmer, Timmermans, and Fay 2002), marking the beginning of the bifurcation of state power (Matose et al. 2022). From the 1890s, with major events in the 1930s and 1970s, successive colonial powers removed residents from homesteads within the forests, establishing racially segregated holiday accommodation. Until the 1970s nearby residents had access to the forests for wood, medicinal plants and fishing on the coast. Such local access ended when the forests were fenced off in the early 1980s, after their designation as the Dwesa-Cwebe Nature Reserve (DCNR) (Fay, Timmermans, and Palmer 2002; Matose 2009). Throughout the years, although traditional authorities were marginalised in the management of the DCNR, the colonial settler state used the same authorities to advance their conservation objectives while prohibiting local access to the protected area (Tsawu 2022).

Community struggles for access rights to the DCNR

In the early 1990s, the people of Dwesa-Cwebe came together to fight for the return of their land in the protected area. The changed political landscape in South Africa and unbanning of the African National Congress (ANC) and other struggle political movements gave the people of Dwesa-Cwebe the courage to confront conservation authorities and chiefs (Tsawu 2022). In their fight for the return of their land, local people chose their own representatives from among themselves. These were either members of the recently unbanned political parties and/or former members of trade unions before they had been retrenched from mines (Ntshona et al. 2010; Tsawu 2022). During this period, traditional authorities still regarded themselves as state employees, so chiefs refused to support local people’s struggles for land. Instead, they worked with the Transkei Land Service Organisation (TRALSO), a Mthatha-based land non-governmental organisation. According to an official from TRALSO:

Traditional authorities 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.8

The severe drought of 1993–94 prompted local people to request conservation authorities for permission to access the nature reserve for emergency grazing, but their requests were ignored (Fay 2007). Led by their local leaders, more than 2,500 people held a protest outside the reserve demanding their rights (Ntshona et al. 2010). The Eastern Cape provincial government promptly responded and granted local people temporary permit-based access to the forest. This led to the establishment of village-based conservation committees to facilitate management of the reserve by communities and the provincial conservation agency (Palmer 2003). Traditional authorities were not involved in the process that led to the election of village-based conservation committees.

In early 1997, community representatives threatened mass action, which compelled the national Minister of Land Affairs to visit the area in August to assure them that ownership of land rights would be restored on condition that a programme of management arrangements of the reserve be developed with the provincial administration (Fay and Palmer 2000). In preparation for the restitution of the claim, the Department of Land
Affairs, as provided by the Restitution of Land Rights Act 22 of 1994 and Community Property Association Act of 1996, created elected resource governance institutions in the form of CPAs and land trusts. Although some communities elsewhere included traditional authorities in their CPAs, traditional authorities were marginalised by local leaders in these elected institutions. In 2001, through a Settlement Agreement, the people were given access rights to the protected area. The Restitution of Land Rights Act of 1996 stipulates that returned protected areas be managed by local communities through elected land trusts and CPAs. The legislation excludes traditional authorities from running for elected office, but only to be co-opted as ex-officio members. They were given no role by the local people in any management arrangements.

The resurgence of traditional authorities in the joint management of DCNR

The protected area management was taken over by the Eastern Cape Parks and Tourism Agency (ECPTA) in 2007. This provided an opportunity for traditional authorities to reassert their influence and regain control of elected community representatives, as well as subvert legally established community rights and state-originated democratic procedures. When the ECPTA became responsible for the management of the reserve, it implemented restrictions that limited fishing and gathering food and wood in the forests by local people. Since 2007, a complex process of community politics in relation to the control of access to natural resources in the conservation areas has unfolded. Local people have been frustrated by the failure of their elected representatives in the Land Trust, who had been involved in the struggle for access to the protected area in the 1990s, to assist them to gain access to natural resources in the protected area, and by the lack of overall development opportunities and ecotourism revenue, all of which had been promised in the joint management agreement of 2001.

From 2008, local people viewed the Land Trust as an ineffective institution which failed to facilitate community access to natural resources in the protected area. This disaffection opened a window for traditional authorities to re-emerge and become involved in co-management issues (see Fay 2013; Tsawu 2022). Claiming corruption in the Land Trust’s administration of land and financial resources, the chiefs got the Trust dissolved and established a replacement. After the second trust was declared to have been illegally constituted a third one took over (Fay 2013).

As the two rival trusts were created, the state continued to work with traditional authorities who mobilised local communities for the establishment of an interim CPA in 2015 that replaced all three land trusts. Since then, traditional authorities have become co-managers of the DCNR, working closely with the newly formed CPA and the state department (Tsawu 2022). We argue that chiefs strategically inserted themselves into the management of the protected area over which they have no authority. In these circumstances, chiefs found ways of making themselves relevant, while challenging elected institutions that in turn engaged in counter strategies to legitimise themselves. We also argue that although critics claim that traditional authorities are disruptive, in the case of Dwesa-Cwebe they regained respect and influence in the joint management of a protected area. They did this by fighting for the interests of local people against corrupt elected members of the Land Trust.

The role of traditional authority around protected areas

Since the establishment of protected areas, states have been unsure of what form their governance should take. The history of the creation of protected areas in southern Africa is replete with examples of dispossession and forced removals that remain unresolved in the post-colonial era. Since colonialism, these areas have been governed by state organs such as national parks or forestry departments or other technical bodies such as ECPTA. Such bodies lack the capacity for the governance of human populations in areas protected for conservation (Matose et al. 2022) and lack mechanisms for creating accountability to local democratic governance (Kepe 2009); instead, technical departments tend to establish parallel structures without ensuring representativity and accountability. The creation of such quasi-states within states, not only in relation to spaces set aside for conservation but also the movement of resources from and into these spaces, alienates democratic rights, accountability and common resources. In these protected areas, traditional authorities gain legitimacy as they seem to campaign for local rights and have played a nuanced role as they help local residents to hold accountable their elected officials who were implicated in corruption and maladministration of community monies (Tsawu 2022).

In Dwesa-Cwebe, traditional authorities became involved in the joint management of the protected area after they removed the original Land Trust from the office and replaced it with their own alternative Land Trust (Tsawu 2022), ensuring the traditional authorities retain legitimacy and relevance. In the Gwayi case, different forms of leadership including traditional authorities are accountable to chiefs outside the forest. This demonstrates that protected spaces pose a quandary to African states – unsure which direction to take about their governance. Through these cases we observe that post-colonial African states have failed to transform protected areas to incorporate the needs of local populations. Local populations work with both elected representatives and traditional authorities around such areas. The traditional authorities currently gain legitimacy not only from tradition, but also from their activities in the lives of local populations. The relationship of tradition to the institution of chieftaincy does not make chieftaincy undemocratic, as Ntsebeza and Mamdani argue. Rather, as proponents of the institution have stated, traditional authorities still play a role in the lives of the local populations in other ways that foster democracy and service provision, especially around protected areas. Perhaps the quandary faced by states might be mitigated through the existing traditional authorities and the facilitation of democratic practices, as argued by scholars who suggest a broader sense of democracy.

Conclusion

In this article, we illustrated how protected areas in southern Africa continue to be spaces of bifurcated governance. While the post-colonial state disempowered traditional authorities in the management of protected areas, it continues to recognise these authorities in other rural spaces outside of protected areas. As the cases presented here show, traditional authorities retain legitimacy and relevance around protected areas where technical arms of the state work with other institutions. In Dwesa-Cwebe, they forced themselves into collaborative management arrangements after they held to account elected representatives
recognised by the state when these were implicated in corruption. While in Gwayi Forest, headmen in the forest are accountable to chiefs outside the forest area. In both cases, the state continues to apply restrictions that prohibit local people’s access to the protected areas. The quandary for the state manifests itself in the exercise of its power in controlling territory and populations in spaces far from the centre, leading to bifurcated outcomes.

This contribution reflected on Ntsebeza’s work, especially on governance in rural areas and on his campaign for a new form of democracy in African countries that would combine participatory elements of pre-colonial indigenous institutions and the representative aspects of liberal democracy. The overall point we make is that it is time for African states to end the uncertainty over protected area spaces governance by ending bifurcated approaches regarding traditional authorities’ role. We draw on Ntsebeza’s phrase, ‘kufuneka ubemvoco’ (Ntsebeza 2004, 71), meaning that there is a need for flexibility in the way in which authorities are set up to govern protected areas, going with what works rather than imposing altogether new institutions. Local populations should be allowed to choose their own leadership to govern such spaces, with the state limited to providing technical advice.

**Notes**

1. Interview with District Development Coordinator, Lupane District, on 27 August 2018 at Lupane Business Centre.
2. Interview with the local chief on 28 August 2018 at Lupane Business Centre.
3. *Ibid*.
4. Interview with Forest Commission officers on 27 August 2018 at Forest Hill Forest Commission Office.
5. Interview with Sibanda on 8 August 2018 at Strip Road.
6. Interview with the local chief on 28 August 2018 at Lupane Business Centre.
7. Interview with an elderly village head on 28 August 2018 in Gwayi Forest.
8. Interview with Simbongile Khamtshe on 12 April 2012.

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