

Mutual Gains and Distributive Ideologies in South Africa: Theorizing Negotiations between Communities and Protected Areas

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Published online: 18 January 2007
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Abstract With the rise of joint management of protected areas, community representatives are increasingly involved in formal negotiations with state officials, nongovernmental organizations (NGOs) and other actors. Policy recommendations have commonly idealized “win-win” scenarios. Theoretical work on negotiation from psychology and management studies, however, points to identifiable circumstances under which the goal of a mutually beneficial “win-win” situation may limit the strategies, and ultimately the benefits, available to communities. Instead, an antagonistic, “distributive” approach to negotiations may be more compatible with the pressures on and strategies available to community representatives. The tensions between a “mutual gains” and “distributive” approach to negotiations are evident in two land claims on protected areas in South Africa: the Dwesa-Cwebe Nature Reserves, and the Pafuri Triangle, a portion of Kruger National Park. In each, NGOs that operated with a “mutual gains” strategy, espousing a “win-win” scenario, came to be perceived as collaborating with conservation agencies. Meanwhile, as negotiation theory would suggest, community representatives inclined towards a “distributive” strategy and allied with a second set of explicitly advocacy NGOs. Expecting that communities should embrace a “win-win” scenario from the outset is unrealistic and likely to reduce communities’ power in negotiations.

Key words Negotiation · protected areas · conservation · nongovernmental organizations · land claims · joint management · comanagement

Negotiations in the Makuleke and Dwesa-Cwebe Land Claims

With the rise of joint management of protected areas, representatives of adjoining communities are increasingly involved in formal negotiation processes with state officials, nongovernmental organizations (NGOs) and other actors. With a few exceptions (Glavovic, 1996; MacDonald, 1997; Steenkamp, 2001), the literature on community-protected area relations has seldom made use of theoretical work on negotiation from psychology and management studies.¹ Insights from this literature—which I refer to here as “negotiation theory”²—together with a critical attention to relation of power and meaning, can provide tools to both analyze negotiations over protected areas, and to maximize the benefits to local communities in these negotiations.

While negotiation theory comes from outside of the disciplines that have typically been concerned with community-protected area relations, it offers an analytic lens that supports a growing attention to the role of meaning and the politics of representation in environmental struggles. Such work, often conducted under the broad rubric of

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¹ Conducting literature searches for relevant work is made more difficult by the appropriation of the term “negotiation” in anthropology to refer to an enormous range of practices and situations.

² I use this term as a less cumbersome shorthand to refer to theoretical work on negotiation from psychology and management studies.

Table I External Parties Involved in the Dwesa-Cwebe and Makuleke Claims

	Dwesa-Cwebe	Makuleke
Conservation body	Eastern Cape Nature Conservation (ECNC)	National Parks Board, (NPB), reconstituted midway through the process as South African National Parks (SANP)
Advocacy NGOs	The Village Planner (TVP) and the Transkei Land Service Organization (Tralso)	Friends of Makuleke (FoM) and the Legal Resources Centre (LRC) at Makuleke
Mediatory NGOs	Rhodes University Institute of Social and Economic Research (ISER)'s Dwebe Project	GtZ-funded Training and Support for Resource Management (Transform) project at Makuleke
Other government agencies	Department of Land Affairs (DLA), the Land Claims Commission (LCC), the Department of Water Affairs and Forestry (DWAF), the Department of Economic Affairs and Tourism (DEAT) and the Wild Coast Spatial Development Initiative (SDI)	Restitution and Public Land Management directorates of the DLA, and the LCC
Tourism interests	Haven Hotel, Transdev, owners of private cottages inside Cwebe Nature Reserve, and the Wild Coast SDI	Private sector tourism operators and consultants

political ecology,³ has focused on definitions of resources (e.g., Peters, 1994; Sivaramakrishnan, 1999), categories of “beneficiaries” (e.g., Li, 1996, 2000; Sivaramakrishnan, 1999), narrative justifications for property rights (e.g., Fortmann, 1995; Lentz, 2005), and narrative justifications for environmental interventions (e.g., Leach and Mearns, 1996; Fairhead and Leach, 1996; Campbell, 2002).

I focus here on a set of representations that has not been examined in this literature: representations of the “negotiation game;” that is, the ways in which actors involved in formal negotiations over resources view these negotiations. Negotiation theory is especially useful for understanding the role of representations in struggles over property because it draws attention to the relationships between actors’ structural position and the ideologies that they bring to negotiations. Moreover, it suggests ways in which the tendency of NGOs, policymakers and others to frame negotiations as “win-win” situations from the outset may work to the disadvantage of community representatives in negotiations.

I bring this analytic approach to two recently resolved land claims on protected areas in South Africa: the Makuleke community’s claim on the Pafuri Triangle, a portion of Kruger National Park, and the adjoining communities’ claim on Dwesa-Cwebe Nature Reserves,

on the coast of the former Transkei. These cases are two of the earliest land claims on protected areas to be resolved under South Africa’s post-1994 land restitution program, filed under the Restitution of Land Rights Act (Act 22 of 1994, amended in Act 63 of 1997). While the Restitution Act provided a framework for the claim process, there were no clear national or provincial laws or policies regarding land claims on protected areas; the negotiation processes themselves determined the allocation of land rights. In both of the cases considered, the eventual negotiated settlements resolved the land claims while maintaining the protected status of the land. Since their inception, at least two dozen other protected areas have been subject to potential land claims (Wynberg and Kepe, 1999).

In both the Dwesa-Cwebe and Makuleke cases, a community and a conservation agency were involved in the negotiations, contending over rights to a piece of land (see Table I). In common with most claims on conservation areas, many other parties were also involved (cf. Wynberg and Kepe, 1999, p. 41). Some of these entered with the stated aim of mediating the relationship between the communities and conservation agencies; others entered with their own interests. In each, two constellations of NGOs entered the fray. In addition, other branches of government had various roles, occasionally conflicting or unclear in the wake of the recent political transition. Finally, in each case, tourism interests were involved, whether concerned with existing facilities or future development.

A copious literature exists on the policy issues around land claims on protected areas including Dwesa-Cwebe and Makuleke, the history of these land claims, and the history

³ The term embraces diverse and contested perspectives stretching across anthropology, geography, environmental history, and political science; this paper is not intended to trace out the nuances in these perspectives. Among the works that review and critique the approaches encompassed by the term are Greenberg and Park, 1994; Vayda and Walters, 1999; Escobar, 1999; Little, 1999; Robbins, 2004; and Agrawal, 2005.

of conservation policies and practices in the region and in the claimed protected areas in particular.⁴ While I draw on some of these accounts (as well as many unpublished documents on the Dwesa-Cwebe claim), my primary aim here is to analyze the negotiation processes involved in the early stages of each of these claims. Drawing on negotiation theory, I show how and why, in both of these cases, NGOs that attempted to mediate between the communities and conservation agencies and framed the negotiations as a “win-win” scenario, instead came to be perceived as collaborating with the conservation agencies. This was not a result of deliberate collusion, but because of the way these NGOs’ representations contradicted the pressures on community representatives. As negotiation theory would suggest, community representatives instead inclined towards a view of the negotiations as an antagonistic, “distributive” process, and allied with a second set of explicitly advocacy NGOs.

Mutual Gains and Distributive Negotiation Ideologies

Rubin’s (1994, p. 1) invaluable literature review identifies two models of negotiation: a “mutual gains” model and a “distributive” or “concession-convergence” model.⁵ The former, made famous in Fisher and Ury’s (1981) best-selling *Getting to Yes*, focuses on finding outcomes that all sides find acceptable and which are mutually beneficial. Rather than regard conflict as a “zero-sum” or “fixed-pie” game, the mutual gains approach espouses “creating value” and finding “win-win” solutions (Rubin, 1994, p. 2). When negotiations are conceived according to a “mutual gains” model, negotiators are imagined as partners, working towards an optimum solution for both. Harmony is valued, while confrontation is seen as disruptive or antisocial.

The “distributive” or “concession-convergence” model, on the other hand, represents negotiation as an agonistic, competitive process. It is termed “distributive” in the sense

that each side is aiming to get as a large a piece as possible of a fixed pie. It can be envisioned as analogous to bargaining in a marketplace, where each side names a price and negotiators gradually converge on an acceptable medium (hence “concession-convergence”). Negotiators are imagined as fundamentally opposed, aiming to cut their losses and maximize their gains. Conflict is part and parcel of the process as each party works towards its own interests.

I refer to both of these approaches as ideologies because each encompasses an implicit and sometimes explicit morality (Rubin, 1994, p. 2); once a negotiation game is defined by one set of terms or the other, certain courses of action are no longer seen as legitimate. Controlling these definitions is itself a political act, which circumscribes the possible options of one’s opponents; as Bourdieu (1977, p. 165) puts it in another context, “the specifically symbolic power to impose the principles of construction of reality...is a major dimension of political power.” The imposition of a particular ideological definition of the “negotiation game” can serve to legitimate or delegitimize negotiation strategies and thereby open up or close off options for negotiators.

Rubin (1994, p. 2) writes of the morality associated with the mutual gains ideology that “the possibility that everyone wins is not only appealing. It carries with it a sense of moral rectitude and fairness that many of us want to believe in.” It also gives a moral charge to negotiators’ positions: actions which create consensus, uncover shared interests or are “constructive” are positively valued; on the other hand, dissent, concealment and self-interested action are negatively valued. Herein is the power of the definition of the game: once a negotiation situation is defined as a mutual gains scenario, actions which may be sensible and advantageous in terms of the interests of one party can be represented as immoral and uncooperative. When negotiations are viewed as a distributive contest, on the other hand, the behavior and tactics that may be considered appropriate or legitimate are quite different: self-interested, confrontational, antagonistic, deceptive and/or adversarial behavior, aimed at maximizing gains and minimizing losses.

The mutual gains ideology permeates discussion of land reform and conservation in South Africa, exemplified by Wynberg and Kepe’s (1999) *Land Reform and Conservation Areas in South Africa: Towards a Mutually Beneficial Approach*. Likewise, Glavovic’s (1996, p. 496) analysis of the Richtersveld land claim (now seen to have resulted in few benefits to local residents) insisted that “it is essential that participants share a commitment to finding mutually acceptable solutions.”⁶ Indeed, I would argue that in the post-1994 “culture of negotiation” (Sparks, 1996) in South

⁴ Wynberg and Kepe (1999) and Kepe *et al.* (2003) provide overviews of issues around land claims on protected areas. On Dwesa-Cwebe, see Vermaak and Peckham, 1996; Terblanche and Kraai, 1996; Palmer *et al.*, 1997; Vaughan, 1997; Palmer *et al.*, 2002b; and Palmer, 2003. Tropp (2002) and Palmer *et al.* (2002b) discuss the history of forestry and conservation in the region in more detail. Timmermans (2004) and Fay (2003, 2005) discuss the local dynamics responsible for demand for building materials from the Cwebe sector of the reserve. On Makuleke, see Steenkamp, unpublished manuscript; de Villiers, 1999; Steenkamp, 2001; Steenkamp and Grossman, 2001; Reid, 2001; Steenkamp and Uhr, 2000; and Turner, 2002. Harries (1987) provides historical background on the Makuleke community, while Carruthers (1989, 1994, 1995) describes the history of conservation in the northern Transvaal and the establishment of Kruger National Park.

⁵ Pagination in Rubin, 1994, refers to the electronic version.

⁶ On negative outcomes in the Richtersveld, see Kepe *et al.*, 2003, Boonzaier, 1996, Isaacs and Mohamed, 2000.

Africa, there has been a tendency to uncritically celebrate a mutual gains ideology.⁷ A mutual gains approach to negotiation, however, is not always the best one for all involved; as Rose (1991) has shown with respect to land disputes in Swaziland, a situation that preserves the appearance of harmony can nevertheless have clear winners and losers.

Despite the appeal of the mutual gains ideology, Rubin has identified certain circumstances under which a distributive approach may be more likely, appropriate, and/or successful. Here, negotiation theory can illuminate the power relations involved in negotiations over joint management, for many of the circumstances which Rubin identifies characterize the positions of community representatives involved in negotiations over conservation areas.

First, a distributive approach is likely simply because the strategic approaches that parties take are determined by their experiences with other parties in the negotiations (cf. Bazerman *et al.*, 2000; Wynberg and Kepe, 1999, p. 42). In the case of conservation land in South Africa, these relationships have typically been negative: communities have often lost residential, arable and grazing land, seen outsiders hired while they remain unemployed, been shut out of forest or veldt resources, been ignored and marginalized, been deprived of livestock, etc. Given such histories, it is unlikely that they would immediately embrace a proposal to build on common interests with their past antagonists.

Distributive approaches are also advantageous when negotiations are being carried out by representatives, because of the tensions created by the expectation that representatives will be accountable. Again, as Rubin (1994, p. 4) puts it, this approach “lends itself better to [reporting back] than the more convoluted mutual gains approach. Each concession I manage to ratchet from you is another success story worthy of report,” while lengthy analysis of interests to determine potential mutual gains may give

representatives few concrete accomplishments on which to report. The pressures of representation are particularly acute for community representatives who need to live among their constituents; they represent family and neighbors, with whom they have multistranded social ties, and who often have high expectations.⁸

In contrast, the pressures on government and NGO officials to take a distributive approach may be less acute; they can go home at the end of the day: while their careers may be affected by negotiation outcomes, they are likely to ultimately have less at stake, or at least have a wider range of livelihood and residential options to turn to in the event that they fail in negotiations. Finally, distributive approaches give a particular advantage to parties who have threats available (for example, a threat to occupy a protected area, as at Dwesa-Cwebe); “negotiators may find that threats can be used to force the other side to yield, as when one side threatens to walk away from the table unless a concession is made” (Rubin, 1994, pp. 3–4).⁹ In a mutual gains scenario, however, “threat would make little sense, since the shared objective is to solve the problem.”

In the Makuleke and Dwesa-Cwebe claims, the tensions between the mutual gains and distributive ideologies appear clearly in the practices and statements of the NGOs and community leaders involved. In each case, community leaders’ preferences for a distributive approach led to the involvement of two NGOs, one explicitly linked with the communities and committed to a distributive approach, and another perceived as allied with the conservation authority and committed to a mutual gains approach.

The Makuleke Claim

My primary sources on the Makuleke claim are the writings of Conrad Steenkamp, an anthropologist who was also a consultant directly involved in the Makuleke negotiations. I draw both on his accounts of events and his analysis, concentrating here on the period from roughly 1994 to the

⁷ The reasons for the rise of this ideology in post-apartheid South Africa are multifarious and deserving of further investigation, particularly given the emphasis on distributive approaches in the labor struggles of the 1980s (Steenkamp, 2001, p.172). In the context of land disputes, one (of many), might be a kind of “elective affinity” between the mutual gains ideology and indigenous land management practices in rural southern Africa, in the sense that both espouse harmony over overt conflict. The best illustration of this is Rose’s (1991) study of land disputes in Swaziland, *The Politics of Harmony*. Reviewing the regional literature, she notes that researchers examining land disputes in rural southern Africa commonly find that people are rarely willing to discuss conflicts directly (Rose, 1991, p. 2; cf. Fay, 2003). Her analysis focuses on the reasons for this apparent reticence, drawing attention to the way people instead invoke a “harmony ideology” (Rose, 1991, p. 80), for offensive or defensive claims, in order to further their interests while maintaining the appearance of social unity (p. 192).

⁸ Insofar as taking a distributive approach helps community representatives in their relations with their constituents, it may work to maintain the viability of the negotiations. If community representatives come to be perceived as “sell-outs” or ineffective at representing community interests, and their local credibility or legitimacy is undermined, any leaders who step up to take their place are likely to be more extreme in their demands and/or to reject negotiations altogether. Such was the case at Dwesa-Cwebe in late 2004 (after the period considered in this paper): frustrated by their representatives’ apparent inability to win concessions from the reserve management, a group of local residents took matters into their own hands, cutting the reserve fence and harvesting wood and shellfish.

⁹ Such threats have proven effective at a number of points in the Dwesa-Cwebe negotiations, before and after the period covered in this paper (Palmer *et al.*, 2002a, 139–141).

resolution of the land claim in mid-1998. Steenkamp's own analysis of negotiators' strategies makes use of the distinction between mutual gains and distributive approaches to negotiation (e.g., Steenkamp, 2001, pp. 172–174); I aim to build on this analysis by drawing on Rubin's explication of the relationships between social position and negotiation strategies.

The Makuleke claim focuses on an area known as the Pafuri Triangle, in the northernmost corner of the Kruger National Park (KNP), bordering Zimbabwe and Mozambique. Bounded by the Limpopo River in the north and the Levhuvu River in the south, it contains up to 75% of KNP's biodiversity (Steenkamp and Uhr, 2000, p. 2). Prior to being evicted in 1969, the Makuleke community and their ancestors drew on a range of resources, cultivating maize and sorghum on the rivers' floodplains, grazing their livestock in diverse ecozones, hunting, fishing, and foraging (Steenkamp, 2002, pp. 31–32). Grazing in the area was particularly rich and drought-resistant; as late as the mid-twentieth century, stockowners from up to 200 km would come to the area to request access to emergency grazing in drought years (Steenkamp, 2002, p. 34).

The area was originally demarcated as a protected area in 1904 under the British colonial regime, but was degazetted in 1913 as the nearest warden resided 130 km away and conservation regulations were unenforceable;¹⁰ the land then fell under the administration of the Native Affairs Department (Steenkamp, 2002, p. 38). When Kruger National Park was created in 1926, the Pafuri Triangle was not included within its borders.¹¹ By 1931, however, the park management began to seek to acquire the Pafuri Triangle; rebuffed by the Native Affairs Department, which tended to see conservation as inimicable to African interests, the park sought the support of the Transvaal provincial government, which proclaimed the area a Provincial Game Reserve. After several decades of uncer-

tain tenure and increasing restrictions on subsistence activities (Steenkamp, 2002, pp. 39–44), the Makuleke were finally forcibly removed in 1969 to an area 60 km south.

The Makuleke community began organizing a land claim in the early 1990s. The land claim did not include demands for the residential or subsistence rights the community had lost in 1969 and prior years (Steenkamp, 2002, pp. 111ff.); instead, from the outset, the claim was tied to aspirations for economic development through an ecotourism initiative: "in 1994... a private sector game lodge operator approached the Makuleke with a proposal for a joint venture in the Pafuri Triangle. The basic idea was that they could use the possibility of a land claim as leverage to gain consent from the National Parks Board (NPB) for access to the land" (Steenkamp and Uhr, 2000, p. 5). The land claimed also encompassed the Madimbo corridor, an area then being prospected for diamonds by a private firm (Steenkamp, 2001, pp. 110–131). No tourism facilities existed in the area at the time of the claim, although its location adjoining Kruger National Park and its rich and scenic environment made it a high-potential site.

With the support of an NGO (the Group for Environmental Monitoring), and the Minister of Land Affairs, the planning and training components of the game lodge proposal received funding in 1995 from the German development agency (GtZ), as the "Makuleke Ecotourism Project," under the auspices of its "Transform" project. At this stage, Transform was conceived as a land restitution support program.¹² While planning and training began to move forward, the land subject to the claim and investment proposal was still under the control of the NPB, which had initially appeared tentatively receptive to the game lodge proposal. But in early 1995, the NPB adopted a more "hard-line position on the Makuleke" (Steenkamp and Uhr, 2000, p. 11). The NPB wanted to:

- Settle the claim 'without setting a precedent.'
- Maintain NPB control over the Pafuri Triangle because of its high conservation value and its strategic location on the intersection of the South African, Zimbabwean and Mozambican borders.
- Restrict community interests (and commercial development) to the periphery of the KNP, preferably to buffer zones...and to maintain the Pafuri Triangle as a 'wilderness area' (Steenkamp and Uhr, 2000, p. 8).

Over the course of 1995 and early 1996, the GtZ became wary of involvement in potential conflicts over the game lodge, and hesitant over its support. The DLA's

¹⁰ These regulations focused on conservation of huntable game, not biodiversity conservation; predators such as lions—a centerpiece of later tourism marketing at Kruger—were considered "vermin" and actively eradicated (Carruthers, 1995, p. 32).

¹¹ As Carruthers has shown, the history of conservation and protected areas in the Transvaal region, and the creation of Kruger National Park, draw on a range of concerns and sources including Afrikaner and British concerns over declining game populations (Carruthers 1989, p. 191), American influences (Carruthers 1989, p. 203), efforts to unify diverse white populations in the decades following the South African War (Carruthers 1994), efforts to control Mozambican labor migration (Carruthers 1995, p. 95), and aesthetic shifts in literary and artistic understandings of "nature" in both English-speaking and Afrikaner communities (Carruthers 1989, p. 212). The park's history remains contested; Afrikaner nationalist histories ascribe Afrikaner nationalist hero Paul Kruger (for whom the park is named) a significant role in conservation, while revisionist accounts that downplay Kruger's role have proven controversial (Carruthers 1994).

¹² Unofficially, it was also seen as a means for the ANC-controlled DLA to influence the NPB, then controlled (as part of the Environmental Affairs and Tourism portfolio) by the National Party under Government of National Unity (Steenkamp, unpublished manuscript, p. 4; 2001, p. 114).

Restitution Research directorate also released a research report (the Mouton report) which suggested that the Makuleke land claim would be unsuccessful if brought before the Land Claims Court (Steenkamp, 2001, pp. 132–133). These concerns led to a major shift: “in 1996, 1 year after the launching of the project, the nature of Transform’s support to the Makuleke project changed dramatically” (Steenkamp, unpublished manuscript, p. 6), from a focus on supporting land restitution to a focus on facilitating negotiations. This reorientation enabled the NPB to engage with Transform. The GtZ embraced the NPB’s involvement, taking an explicitly “mutual gains” view of the situation, favoring dialogue and participation over the representation of community interests. In March 1996, Transform undertook a planning process which, for the first time, incorporated the NPB as a “stakeholder” (Steenkamp and Uhr, 2000, p. 13). “In what was described as a ‘positive move’ by the GtZ project manager, the NPB became part of the Transform steering committee” (Steenkamp, unpublished manuscript, p. 6). Rather than advocating for the Makuleke, Transform invited all parties to participate as “stakeholders.” This commitment to incorporating the perspectives of all parties meant that Transform was ill-positioned to take an advocacy role for any one party.

The NPB began to use its engagement with Transform to press for its own interests, proposing the creation of a “buffer zone” along the western edge of Kruger National Park (KNP). As Steenkamp explains, “the issue of the buffer zone, now on the development agenda at Makuleke, clearly reflected the KNP’s interests in the region and was repeatedly rejected by the Makuleke” (Steenkamp, unpublished manuscript, p. 6). Transform’s funding for the ecotourism project and the associated training were to be “shelved ‘until after the land claim,’” which Transform now viewed as “uncertain” (Steenkamp and Uhr, 2000, p. 13). Faced with a situation where they were expected to report back on tangible gains (cf. Rubin, 1994, p. 4), the delays and changes in the agenda compromised the position of the Makuleke leadership. Gibson Maluleke described his frustration at a meeting with the GtZ in April 1996: “Minister Hanekom told the people he wants to see the ecotourism project ready in November this year.... Now... there are delays with the ecotourism project that was initially given first priority. It seems we will keep on talking for centuries.... When the people begin to doubt the leadership they lose confidence” (Steenkamp and Uhr, 2000, p. 15). Under pressure to proceed with securing benefits, the prospect of protracted negotiations with an old enemy was not appealing to the Makuleke leadership as, it had the potential to undermine their standing in their communities.

Transform, on the other hand, represented the changes in the process as a success, invoking a “mutual gains” ideology. Reporting a November 1996 planning workshop, the GtZ

project manager wrote that “a lot of mistrust existed between the different stakeholders, especially the communities and the people from the conservation agencies.... Now they are all considered as partners and are sitting around the same table” (Steenkamp and Uhr, 2000, p. 14). This positive assessment ignores actions that were taking place outside the Transform-facilitated process. As Steenkamp explains, even as Transform and the GtZ were encouraging the NPB and the Makuleke to approach the land conflict from a mutual gains perspective, the NPB was taking a distributive approach to the land issue: they were setting specific positions from which they refused to back down, rather than presenting their interests in an open-ended process. In the same week as the planning workshop referred to above, the NPB made a submission to the Land Claims Commission (LCC) opposing the land claim and recommending that the Makuleke be granted commercial rights on the periphery of the claimed area, not in the Pafuri Triangle itself. Given this approach on the part of the NPB, Steenkamp argues that the Makuleke’s early concession, a commitment to maintaining the conservation status of the land even if the land claim were successful, may have been a mistake. In effect, this move swung the balance of the distributive game in NPB’s favor:

given the fact that the NPB was following a distributive bargaining strategy, it was inappropriate of the Makuleke negotiation team to concede immediately on the conservation status of the land. [In] distributive bargaining...one should hide one’s true objectives for as long as possible while trying to clarify the position of the opponent (Steenkamp and Uhr, 2000, p. 15).

As the negotiations went on, “in spite of the Makuleke’s initial concession on the conservation status of the land the NPB negotiators were unwilling to budge on key issues such as land ownership” (Steenkamp and Uhr, 2000, p. 16).

For a period after the shift in Transform’s approach, the Makuleke leadership continued to participate in Transform activities, motivated in part by the perception that Transform could still deliver some benefits. Eventually, however, they requested that Transform no longer take a role in the land claim process, feeling that Transform constituted a threat to the claim. By rejecting Transform’s role in planning, they opted against a process that was being represented as an attempt to find the solution that best satisfied all parties, in favor of an approach that would “[leave] room for the give and take of a distributive bargaining process” (Steenkamp and Uhr, 2000, p. 16). Rather than deny or attempt to minimize the conflicts that had become evident from the actions of the NPB, the Makuleke leadership instead turned to a harder strategy, and to another set of NGOs: the Friends of Makuleke, a consortium of consultants who had

worked at Makuleke in various capacities, and the Legal Resources Centre. These NGOs, together with the Land Claims Commission, came to be the primary sources of support to the Makuleke land claim. Two aspects of these NGOs' approach fit with the concerns and experience of the Makuleke: first, they explicitly made resolution of the land claim a central priority. Second, they recognized the existence of conflicts between the NPB and the Makuleke community, and were willing to treat the NPB as antagonists.

The process that followed, leading up to the agreement signed on 30 May 1998, has been characterized as "18 months of tough distributive bargaining" (Steenkamp, unpublished manuscript, p. 3). The eventual outcome was an agreement on land restitution and the joint management of the Pafuri area as conservation land. Specifically, the agreement stipulates that "the land will be used solely for conservation and related commercial activities," with no mining, agriculture, or residences (other than those required for ecotourism), and grants the SANP right of first refusal in the event that the land is ever offered for sale. Although diamond prospecting had proven fruitless in 1996, the Makuleke had included mining rights among their demands; this was dropped in the final agreement, creating the appearance of a concession (Steenkamp, 2001, p. 186). Under the agreement, the land is managed jointly by SANP and Makuleke representatives as a contractual national park (de Villiers, 1999, pp. 60–61; cf. Reid, 2001; Reid *et al.*, 2004).

Despite the 1998 agreement, subsequent relations between the SANP and Makuleke have revealed ongoing conflicts of interest and tensions over what constitutes appropriate forms of ecotourism. Steenkamp and Grossman (2001) have argued that the SANP's approach remains focused on maintaining as much control as possible over development in Pafuri, and that the continued representation of these as mutually beneficial situations is unrealistic and potentially detrimental to the claimant communities' interests. Assertions of "harmony" rather than recognition of conflict, they argue, "hark back to the semi-feudal patron and client characteristics of predemocracy people and park relations" (Steenkamp and Grossman, 2001, p. 8). The ideology of mutual gains, they suggest, continues to be invoked to mask ongoing conflicts and attempts by SANP to continue to restrict the rights of the landowners.

The Dwesa-Cwebe Claim¹³

The Dwesa and Cwebe Forests are situated on opposite sides of the Mbashe River, on the southeast coast of South Africa. The forests span approximately 18 km of coastline,

and extend inward for 3–5 km, encompassing over 5,700 ha. They were first demarcated in the early 1890s, under the Cape Colony's 1888 Forest Act, which reserved all forests over five acres to the Cape Government. The forester who oversaw the demarcation, the German-trained Caesar C. Henkel, hailed the forests' potential for commercial exploitation and the possibility of plantation agriculture in the grasslands within the demarcated area. Commercial exploitation never went ahead on any significant scale. Nevertheless, despite complaints from the Native Affairs Department, which occasionally took the side of local residents (cf. Tropp, 2002), between the 1890s and 1930s, the Forest Department forcibly state had removed the African residents of Dwesa and Cwebe forests and brought an end to the cultivation of crops in the grasslands at the margins of the demarcated forest. During the same period, the administration allowed while allowing whites to establish the Haven Hotel and holiday cottages within the forests (Fay *et al.*, 2002a).

The displaced people settled in the grasslands outside the forests, and until the 1970s they retained restricted access to forest produce (wood for construction of houses, livestock and garden fences, thatching grass, and a range of medicinal plants for humans and livestock), marine and riverine resources, and grazing in the large open glades within the reserve boundaries. In 1978, however, responding in part to lobbying by domestic and international conservation NGOs, the Transkei homeland¹⁴ government formally established the Dwesa-Cwebe Nature Reserve, and subsequently fenced the Dwesa and Cwebe forests, stocked them with wild animals, and cancelled all local harvesting and grazing access. The newly-created reserve was the largest protected area on the Transkei coastline (Fay *et al.*, 2002a, b). The Haven Hotel continued to operate, although it has often run at a loss, relying primarily on seasonal domestic tourism and dependent upon unreliable and expensive diesel generators for electrical power. The holiday cottages remained under private control, and have never been commercial ventures.

The land claim at Dwesa-Cwebe began with a locally-initiated distributive process explicitly aimed at reclaiming a "piece of the pie" by extracting concessions from the conservation authority. Beginning in the early 1990s, local residents began a protracted struggle to restore their rights to the forests. Leaders from two villages on opposite sides of the river met through contacts with an NGO, the Transkei Land Service Organization (Tralso). Tralso and the Village Planner (TVP), an NGO established by former

¹³ My account of the Dwesa-Cwebe land claim is based primarily on unpublished documents, informed by 22 months of ethnographic fieldwork in the region in the years following the events described.

¹⁴ "Homelands" were political entities created by the South African government to defuse criticism of apartheid; the Transkei homeland was granted "self-government" in 1963 and "independence" in 1976, but Pretoria maintained tight control over its budgets and policies.

Tralso staff member André Terblanche, would provide ongoing support to the land claim over the following years.

Other initiatives went on without NGO support. In keeping with a distributive strategy (Rubin, 1994, pp. 3–4), threat was part of Cwebe residents' strategy from the outset, most notably in the form of training camp for Umkhonto WeSizwe (the military wing of the ANC), where cadres drilled with automatic weapons on a former soccer field within a few hundred meters of one of the Cwebe Nature Reserve gates. The situation never came to violence. Residents of the Cwebe and Dwesa communities launched a coordinated mass protest inside the reserves in the midst of a severe drought in 1993–1994, aiming both to directly extract forest resources, and to extract concessions from the conservation authority. Immediately afterwards, following a visit by Eastern Cape Minister of Agriculture, Tertius Delpont, the reserve management opened negotiations with locally-elected Village Conservation Committees.

These defused the immediate volatility of the situation, as the conservation authority made several critical concessions, on a temporally-unspecified interim basis: establishing a permit-based system for use of forest products and making the grasslands within the reserves available for grazing until drought conditions abated.¹⁵ Relations also improved in September 1995, when responsibility for the reserve was transferred from the Umtata Office of Eastern Cape Nature Conservation (ECNC) to its Central Region District Office in East London, increasing its logistical and managerial capacity.¹⁶ One consequence was the replacement of nearly all the on-site management, “eliminating personal antagonisms that had existed between some managers and community leaders” (Palmer *et al.*, 2002a, p. 116).

Over the same period, local leaders invited Tralso to return, in order to prepare a formal land claim. Tralso enlisted the Village Planner “to design and implement a

participatory research process in support of the land claims” (Terblanche and Kraai, 1996, p. 28). The Tralso/TVP project documentation clearly anticipates a distributive negotiation process, and places these NGOs unequivocally on the side of the claimants. Its stated aims included, “to assist the affected communities in *maximizing restitution possibilities*, within the framework of the land claims court processes, and with the proviso that proposed solutions/options result in sustainable development and land use” (Tralso, 1995, unpublished document, p. 5, emphasis added) and “the preparation of land use management plans to challenge official and other views of externally planned use of the land” (Tralso, 1995, unpublished document, p. 6).

In the meantime, plans were underway for a second NGO intervention in the area. Christo Fabricius, then Head of Scientific Services in the ECNC and “an early champion of community involvement in conservation” (Palmer *et al.*, 2002a, p. 115), organized a workshop with WWF-SA sponsorship to develop a project aimed at cooperative management of the reserves; this initiative eventually led in early 1996 to the Dwebe Project, based out of Rhodes University's Institute for Social and Economic Research (ISER).

In the view of Gerry Pienaar of ECNC, the Dwebe Project “[was] precisely aimed at building a platform for proper negotiation between ECNC and local villagers.”¹⁷ In the months that followed, however, it became clear that community leaders took a more cautious view of Dwebe. As Terblanche explained, “ECNC viewed the Dwebe Project as its (credible and independent) vehicle for effecting negotiations...the problem is that the communities will very clearly not permit the Dwebe Project such a role.”¹⁸ There were various reasons for the Dwesa-Cwebe leadership's mistrust of the Dwebe Project at this time, including some negative experiences with Dwebe fieldworkers, particularly an environmental education consultant who contributed to the overall perception that Dwebe was drawing community leaders' time and energy away from the goal of the land claim.

The situation was complicated by the fact that ECNC was unable to take a firm position on the land claim, not so much because of opposition but because of uncertainty. Given the fluid state of provincial conservation policy, Pienaar commented that “we do not now have a mandate to negotiate final agreements on policy issues.”¹⁹ He also expressed concern that “national stakeholders will demand

¹⁵ The permit system remained in place throughout the period covered in this paper; it was unilaterally cancelled by the reserve management following the restitution agreement in 2001. Analyses of the quantities and uses of material removed can be found in Lieberman, 1997, Timmermans, 2002, 2004. However, “the actual biological dynamics of the Dwesa and Cwebe forests are relatively unknown” (Palmer *et al.*, 2002c, p. 310), making realistic assessments of the biological sustainability of local harvesting impossible. More recently, Timmermans (2004, p. 160) has suggested that “the Dwesa and Cwebe forests may be of sufficient size to sustainably meet the domestic and agrarian resource needs of neighbouring residents, and potentially to provide the basis for a limited amount of commercial activity.” Unpublished research on unprotected forests in a neighboring community (Nqabara) by Dylan McGarry of Rhodes University's Department of Environmental Sciences has also suggested that forest biodiversity and reproductive viability remain intact, with some forests increasing in size, after at least a century of local use.

¹⁶ Gerry Pienaar, ECNC fax to André Terblanche of 11 April 1996. Personal files of André Terblanche, Umtata (AT files).

¹⁷ G. Pienaar fax to Dwesa-Cwebe villages of 27 Nov 1995, cited by A. Terblanche in fax to G. Pienaar, 30 January 1996. AT files.

¹⁸ A. Terblanche fax of 30 January 1996 to G. Pienaar. AT files.

¹⁹ As I and colleagues have argued elsewhere, events at Dwesa-Cwebe have “generally [been] ahead of national and provincial government as the new regime struggled with the implications of the transition and the new policies” (Palmer *et al.*, 2002a, p. 143).

that we strongly contest any land claim, expending considerable energy and cost on this issue rather than on constructive development.”²⁰ Community leaders, on the other hand, wanted a tangible gain and stronger negotiation position; they took the position in February 1996, that resolution of the land claim was a precondition to further negotiations over such issues as joint management of the reserves.²¹

While community representatives were insecure of their victory in the land claim, Dwebe was trying to invite them into a “win-win” mutual gains process, in which they would face pressures to cooperate in the name of development rather than concentrate on succeeding in the land claim. In the early months of 1996, the Dwebe project organized a series of meetings with the aim of drafting an interim constitution for a joint management committee (JMC). Uncertainty over the status of the land claim, however, led the community leadership to withdraw from participation in April 1996. The morality of the mutual gains ideology is evident in Dwebe staff’s reply to the communities’ withdrawal. The Dwebe project team reiterated their support for the claim, noting their contribution to documenting evidence of past occupation of the forests by local residents and cooperation with the LCC. They then articulated the role they envisioned for the project: “to encourage the upgrading of the existing reserves so as to ensure their contribution to the local economy,” citing similar ISER experience elsewhere in the province. The final paragraph of this letter both represents the claim as a “problem,” and upholds a collaborative model of the process: “we hope that problems like the land claim will be resolved so that we can put our minds to the economic development of your communities.”²²

When the community leaders withdrew from Dwebe’s negotiation process, ECNC found themselves in a bind, as they lacked the “jurisdiction and authority” to respond to the land claim.²³ The challenge facing ECNC was, in effect, how to concede the claim (and thereby allow negotiations to go forward) without putting the conservation status of the land at risk. Their response was to agree not to challenge the claim provided that the reserves continued to remain a protected area under a joint management

system. In a position paper of 24 April 1996, ECNC stated that it “[recognized] and accept[ed] the *moral* grounds for a restitution claim” (emphasis in original), and accepted that some form of restitution was appropriate, with the content of this restitution to be negotiated among “all the stakeholders.”²⁴ By nominally conceding the claim (even while leaving the *content* of restitution open), ECNC was making a move that implied the hope of a mutual gains-type negotiating process; they expressed the hope that rather than putting forward competing positions, “all the stakeholders” would now sit down and figure out what exactly had been conceded. At the same time, like the SANP in the previous case, even as they aimed to participate in a collaborative process, ECNC held onto a fallback position. The ECNC statement did not deny the legal validity of the claim, but it maintained an implicit threat that its representatives would reiterate during the negotiation process that “our understanding of the documented evidence is that a strictly legal restitution claim could be difficult to substantiate.”²⁵ The ECNC statement was prepared for a negotiating meeting held on the following days (25–26 April 1996), where the community leadership concurred that the land would continue to be used as a Nature Reserve, and agreed to resume its participation in the joint management negotiations.²⁶

Nevertheless, as negotiations went on towards a Deed of Settlement for the land claim, TVP clearly and the Dwesa-Cwebe leadership continued to anticipate a distributive negotiating process, taking some positions that might be seen as compromising the reserves’ protected status. In strategic planning meetings prior to the claim, Terblanche enumerated a set of positions; which can be seen as a set of “extreme” positions that might be conceded over the course of the negotiations including:²⁷

- (1) Setting 21 years as the upper limit for the duration of ECNC’s lease
- (2) Providing for compensation if the lease is terminated

²⁰ G. Pienaar letter to A. Terblanche of 13 Feb 1996. AT files. Nevertheless, Pienaar was concurrently cooperating with the DLA, providing feedback to the DLA via TVP on the land tenure arrangements that might be put in place if the claim succeeded. G. Pienaar to A. Terblanche fax of 8 March 1996. Documents provided by the Land Claims Commission to the Dwesa-Cwebe Land Trust (LCC files), binder II:M.

²¹ AT fax to Pienaar of 15 Feb 1996.

²² H. Timmermans, K. Ralo, R. Kingwill, P. McAllister fax of 16 April 1996 to Dwesa-Cwebe conservation committees. AT Files.

²³ G. Pienaar fax to A. Terblanche of 16 April 1996. AT Files.

²⁴ “Land Claim against the Dwesa and Cwebe Nature Reserves: Position Statement by [ECNC], 24 April 1996.” In LCC binder II-AA.

²⁵ “Land Claim against the Dwesa and Cwebe Nature Reserves: Position Statement by Eastern Cape Nature Conservation,” 24 April 1996. LCC files Gerry Pienaar of ECNC, the author of the statement, also made both of these points to me in an interview at the ECNC offices in East London, 10 June 1998. Fay, 2001, and Fay *et al.*, 2002a consider some of the disputed points and highlight additional archival evidence that substantiates the claimants’ case; this material was submitted to the Land Claims Court as evidence on behalf of the claimants.

²⁶ Minutes of Negotiation Meeting, Dwesa-Cwebe Land Claim, 25–26 April 1996. In LCC binder II:K.

²⁷ A. Terblanche fax of 20 May 1996 to Tralso/Dwesa-Cwebe leadership. AT files.

- (3) Providing training and education as part of the agreement
- (4) Management capacity building
- (5) Formalizing a “50/50 basis” for the joint management of the reserves
- (6) Fixing a time frame for the resolution of land/resource use questions
- (7) Granting residential rights in the reserve to the descendants of families who were actually removed
- (8) Investigating the possibility of removing the fence altogether and extending the present conservation zone to include present residential areas on a “biosphere” model
- (9) Giving priority to local people in employment.

This style of negotiation gave rise to the perception among some observers that Terblanche was extreme in his demands; as one put it, “André won’t be happy until he sees cows swimming in the ocean.”²⁸ Over the course of the negotiations that led to the initial Deed of Settlement, points 2, 7 and 8 were dropped. Whether or not they were ever serious proposals, this approach gave a strong position from which the claimants could appear to be making concessions.²⁹ The claimants’ strategy was clearly based on a “distributive” model of the negotiations. In the run up to the signing of the deed of settlement, Terblanche provided both the communities’ “fallback position,” and relayed an implicit threat:

In our experience, economic restitution, as opposed to the restoration of full land property rights, would not under any conditions be acceptable to the claimants... The claimants recognise that the only authority that they presently bring to the Joint Management Committee, the structure to jointly regulate and control the reserves, is the power to disrupt.³⁰

A Deed of Settlement was finally signed in June 1996, making the transfer of land contingent on the continued conservation status of the land under joint management, although this was not the end of the land claim process. Under the terms of this agreement, Joint Management planning resumed under the auspices of the Dwebe Project

²⁸ Duncan Peltason, personal communication, 1998.

²⁹ They also used these points strategically later in the negotiations; for example, in the 1999 negotiations with the owners of private cottages in the reserves (discussed in Palmer *et al.*, 2002b; Fay, 2001) they argued (to paraphrase) that “we who used to live in the reserves have given up our rights to live there—but the cottage owners want to keep their homesteads there—they should compensate us for being able to keep rights which we have conceded.”

³⁰ A. Terblanche fax of 27 May to H. Winkler, DLA. Personal files of Kuzile Juza, Dwesa-Cwebe Land Trust, Hobeni.

in October 1996. Tellingly, in the light of Steenkamp’s analysis of the Makuleke case, Dwebe contracted a facilitator previously employed by GtZ/Transform to conduct a LogFrame analysis.³¹ The comments of then-Dwebe fieldworker Herman Timmermans give a sense of the tension between the community leadership’s focus on tangible benefits, and Dwebe’s focus on the LogFrame process. A follow-up evaluation meeting

revealed frustration on the part of community participants regarding the workshop process... [C]ommunity representatives would have preferred to grapple in detail with issues rather than simply rearrange and organise them... Community representatives did not necessarily share the project team’s enthusiasm regarding the performance of the professional facilitators. It was felt that the project team could have facilitated such a workshop just as effectively and that calling them in had been an unnecessary expense. Some people felt that little progress had been made as old outstanding issues had been raised and listed but not actually dealt with (Timmermans, 1997, p. 11).

While Dwebe was pushing for a recognizable “participatory process,” anticipating an audience of donors and development professionals (cf. Mosse, 2001, p. 28), and aiming to show progress through the creation of a forum for mutually beneficial negotiations, community leaders were more concerned with the demands of their local constituents for material concessions.

Joint management planning went ahead under the understanding that the land claim would not be part of the JM process, and would be addressed by the communities in partnership with Tralso/TVP. For various reasons, including the question of whether ECNC actually was in a legal position to negotiate regarding the land claim, and uncertainty about the legal validity of the claim raised by

³¹ LogFrame analysis involves collecting lists of potential project objectives, arranging them in a hierarchy, and identifying “killer assumptions” that may lead to project failure. The developers of the LogFrame methodology themselves (Team Technologies, a Virginia-based consulting firm) note among its limitations that LogFrame is “policy-neutral on questions of income distribution, employment opportunities, access to resources” (documentation provided by Team Technologies, LogFrame training session, Family Health International, Arlington, VA, 1992). My own experience with LogFrame comes from about 2 years of employment with a USAID-funded contractor which made use of LogFrame for project planning and evaluation. Other critics have argued that LogFrame relies upon a “segmented view of causality” and views “development as akin to a scientific experiment” (Crewe and Harrison, 1998, p. 97). Mosse (2001, p. 28) observes that it aims that it aims to “convey to outside decision-makers the idea of manageability;” Cooke (2001, p. 119) goes further, suggesting that LogFrame is fetishized as “a talisman that will ensure our survival.”

the Legal Resources Centre, the Department of Land Affairs (DLA) did not respond to community leaders' queries regarding the claim in late 1996 and early 1997. Given this lack of response and the resulting uncertainty about the state of the land claim, early in 1997 the community leadership again withdrew from the JMC negotiation and the Dwebe Project. In March of that year, the Dwesa-Cwebe leadership issued a memorandum calling for:

- (1) Immediate enforcement of existing agreements between the communities, DLA, and ECNC
- (2) Immediate referral of the land claim deed of settlement to the Land Claims Court
- (3) Immediate suspension of JMC meetings until final settlement of the land claim and simultaneous statutory recognition of the JMC
- (4) An urgent face-to-face meeting between community leaders and a number of senior government officials
- (5) The immediate suspension of the Dwebe Project's activities and their withdrawal from the negotiation processes and the Nature Reserves³²

This tactic led to plans for a meeting (eventually held in August of that year) with then-Minister of Land Affairs, Derek Hanekom, to clarify the status of the claim. In preparation for this meeting, Terblanche prepared a statement representing the positions of the Dwesa-Cwebe leadership. Terblanche's account summarizes the existing agreements, articulates the leaders' support for the Deed of Settlement, and reiterates two of the circumstances that Rubin argues make a distributive strategy appropriate: the position of the leaders as *representatives* and their possession of *threat* as one of their major bargaining chips:

The existence of signed but unhonoured agreements, and the failure of tangible changes to materialise threatens the long-term credibility of existing leadership structures. It is highly improbable that such good agreements will ever again be negotiated, should present negotiations collapse (Terblanche, 1997, p. 7).

The situation was resolved, in a sense, by Hanekom's visit in August 1997. During this visit, he assured the claimants that he supported their claims to restitution and that the state intended to transfer property rights either through the Restitution Act or the State Land Disposal Act (which would allow direct transfer of state-owned land), subject to the agreement of cabinet colleagues, the creation of

necessary legal entities and clear guarantees for future conservation (Palmer *et al.*, 2002a, b). The claimants' bargaining position was strengthened substantially as a result: if ECNC or other parties challenged the legal validity of the claim, they could turn to the Minister's pledge to use the State Land Disposal Act.

Since Hanekom's visit, and the Land Claims Court's decision that restitution would be contingent upon continued conservation at Dwesa-Cwebe, joint management returned to the local policy agenda, with ECNC taking the lead in preparing management plans for the reserves. Intergovernmental discussions concerning the appropriate legal tenure form for the reserves and adjoining land, the future of formerly state-controlled (the Haven Hotel) and private (the holiday cottages) tourism facilities, proposed tourism development under a high-profile program that ultimately failed to attract investors (the Wild Coast Spatial Development Initiative), and the relationship between ECNC and the Department of Water Affairs and Forestry, all contributed to delays in the eventual resolution of the claim (in July 2001). From this point, however, community leaders were able to proceed from an unprecedented position of confidence in the ultimate outcome of the land claim.

I conclude the narrative of negotiation covered in this paper, in parallel with the account of Makuleke above; the ongoing story of Dwesa-Cwebe is told elsewhere (Palmer *et al.*, 2002a, b; Palmer, 2003). The reserve management has continued to play a "distributive" game: after the resolution of the land claim in 2001, the reserve management unilaterally cancelled all local harvesting rights, leading to ongoing discontent and conflict. Likewise, the representation of local government and communities as "partners" in development have worked to communities' disadvantage: control of development funds acquired through restitution has turned into a new arena of struggle at Dwesa-Cwebe, as the landowning trust has seen local government spend substantial funds from their restitution award without their consent (on meetings and planning consultants) while their own operating expenses went uncompensated (Palmer, 2003).

Discussion

In this paper, I have aimed to show how explicit attention to "mutual gains" and "distributive" negotiation ideologies can illuminate the statements and actions of the various parties involved in negotiations over protected areas at Makuleke and Dwesa-Cwebe; by doing so, I have aimed to show that negotiation theory can be a fruitful resource for the ethnographic analysis of community-protected area relations, and for understanding the relationships between

³² 18 March 1997 handwritten note by André Terblanche, signed by W. Siyaleko, E.S. Mbola and other Dwesa-Cwebe community leaders. AT files.

representations and power in environmental negotiations more generally.

Examining these two cases suggests some tentative conclusions about conflicts between local populations and protected areas. First, the participation of multiple NGOs may be both common and desirable, provided that their roles are clearly defined, with one unequivocally supporting locally-articulated community interests and another taking a mediatory role. To expect a single organization to take both these roles seems unrealistic and likely to breed distrust and/or organizational schisms. The implicit moralities of the mutual gains and distributive ideologies also suggest that criticisms of NGOs may take predictable forms. In each case, observers and other NGO participants suggested that the advocacy NGOs (FoM and TVP) were prolonging the process to serve their own interests. While there may be some truth to these claims, I would argue that these accusations of vested interests reflect a frustration with the perceived “immorality” of distributive negotiation approaches, implying the claimants would naturally come to share the mutual gains perspective if they were not being manipulated by outsiders. Likewise, as I have shown above, the mediatory NGOs which suggested community demands were not “constructive” were accused of being more focused on public and donor relations than the interests of the communities, and of collusion with the conservation authorities (cf. Steenkamp and Uhr, 2000, p. 22).

Second, these cases suggest that a mutual gains scenario, while appealing to many, may not be appropriate at the outset of claims, given the pressures that incline community representatives to a distributive view. An NGO which prematurely promotes a “win-win” scenario is likely to see its initiative backfire, leading to mistrust and the loss of community support. More importantly, a mutual gains approach may undermine the bargaining position of communities. This point can be illustrated by examining Wynberg and Kepe’s (1999) framework for addressing land claims on protected areas, which explicitly promotes a “mutual gains” approach. Given the importance of alternatives to the restoration of land (i.e., “alternative remedies,” in South African legal jargon) in claims on protected areas,³³ one can ask whether the Wynberg and Kepe framework is likely to maximize the benefits to the

claimants. Events in the Dwesa-Cwebe and Makuleke claims suggest that the explicitly “mutual gains” framework may have some aspects that are both unrealistic and potentially disadvantageous to communities. Wynberg and Kepe list the following “responsibilities” for claimant communities:

- (1) Organize and put forward unified positions
- (2) Seek advice on the actions required to proceed with the claim
- (3) Have clear visions of intentions, and minimize the changes in their positions (though it is acknowledged that some change may be necessary)
- (4) Provide as much information as possible (Wynberg and Kepe, 1999, pp. 32–33; cf. Glavovic, 1996, p. 500)

The first recommendation is clearly good advice in terms of reducing complexity and potential conflicts, and useful for both models, though it may be problematic in specific cases where definitions of “community” and claimant groups are contested.³⁴ The second point, as I have suggested above, is likely to lead to the involvement of an explicitly advocacy NGO presence. The third and fourth points are more problematic, in the sense that they ask communities from the outset to commit to a “mutual gains” process which may not be to their advantage. The third recommendation assumes that all parties will start openly and honestly as they would under an ideal mutual gains situation; however, opening with this position may be a mistake: for example, the Makuleke conceded the continued protected status of their land at the outset, and rather than responding constructively to this concession, the NPB countered with a set of hard-line positions. The fourth point, that communities should openly share information, potentially conflicts with strategies appropriate for a distributive process, in which concealment of one’s ultimate objectives may be an effective strategy for maximizing concessions from one’s opponents. In effect, Wynberg and Kepe’s proposal effectively asks communities to give up several potential bargaining chips before they enter the game; this may ultimately weaken the community’s position, for, as Rubin puts it, “judicious misrepresentation may be required and expected if effective agreements are to be obtained through concession-convergence” (Rubin, 1994, p. 3).

³³ As Wynberg and Kepe argue, satisfying both land claimants and conservation interests is likely to depend on the “alternative remedies” provisions of the Land Restitution Act as restoration of land is only one of the possible options for restitution. Others include provision of alternative state-owned land, “just and equitable compensation” and/or “alternative relief” (Wynberg and Kepe, 1999, pp. 43–44). Alternative remedies have been critical in the agreements finally reached in the Makuleke and Dwesa-Cwebe claims.

³⁴ The literature on land restitution emphasizes the difficulties often encountered in defining the “claimant,” and the schisms that exist or emerge among claimant communities (e.g. Brown *et al.*, 1998; Kepe, 1998); for discussions pertaining to these cases see Steenkamp (unpublished manuscript) on Makuleke, and Fay and Palmer (2002) on Dwesa-Cwebe.

I should be clear that I am not arguing against “win-win” scenarios, but aiming to be cautious about what strategies will allow communities to maximize their benefits through negotiations. To this point, I have emphasized the factors that incline community representatives towards a distributive approach, suggesting that this may be nearly inevitable, given the historical and structural circumstances underlying these negotiation processes. The trust that can emerge through interpersonal interaction in the negotiating process is one countervailing force; as relationships between the individuals involved may “soften” through ongoing contact and familiarity. A mutual gains approach is recognized in the negotiation literature as more likely where there is a long-term relationship between the negotiating parties (Rubin, 1994, p. 4).³⁵

Nevertheless, as I have argued here, expecting communities to prematurely adopt a mutual gains approach to negotiations with protected area management and conservation agencies is threatening to the interests of communities because such an ideological framing of the negotiation “game” both undermines some of the most effective strategies available to communities (e.g., threat, concealment, and concession) and places community leaders in a position where their legitimacy may be threatened by the delays inherent in a mutual gains approach.

Acknowledgments This research has been made possible by fieldwork grants from the Research Institute for the Study of Man (New York, USA) in 1998 and the Wenner-Gren Foundation for Anthropological Research (New York, USA; Grant #6329) in 1999. Thanks are especially due to Kuzile Juza and Waphi Siyaleko of Hobeni, the other members of the Dwesa-Cwebe Land Trust, and the residents of the Dwesa-Cwebe communities. The Rhodes University Institute of Social and Economic Research hosted me as a Visiting Scholar, and collaboration with Robin Palmer and Herman Timmermans of Rhodes University has informed my thinking about Dwesa-Cwebe. André Terblanche and Mcebisi Kraai of the Village Planner provided me with information, many valuable documents, and hospitality. Duncan Peltason kindly provided me with several thousand pages of largely unpublished documents delivered to interested parties by the Land Claims Commission. Leslie Bank of the University of Fort Hare was instrumental in arranging a follow-up visit to South Africa in August 2003. Shula Marks provided insightful comments as a discussant of an early version of the paper at the Northeast Workshops on Southern Africa in September 2003. A S.V. Ciriacy-Wantrup Postdoctoral Fellowship at the University of California has provided me time to rewrite the paper; comments from Arielle Levine were particularly helpful. An ad hoc panel at the Anthropology and Environment section meeting in November 2004 was another source of valuable feedback. Finally, I presented the paper at the panel entitled “The Political Ecology of Protected Areas and

Local Communities in Global Perspective,” organized by James Igoe at the Society for Applied Anthropology’s 2005 Annual Meeting, and received valuable comments and encouragement from the panelists and audience there.

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³⁵ In the anthropology of dispute, Gluckman (1955) made a similar point that disputants with multi-stranded, long-standing ties tended to prefer mediation to antagonistic approaches to dispute settlement, although Starr and Yngvesson (1975) point out that in situations of unequal power relations, this generalization is open to question.

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