

# Landless in limbo

The contest between the AmaSwazi people, other black groupings, and white agricultural and tourist interests for land in the Drakensberg area around Winterton in Natal is one of hundreds of land disputes in South Africa. JEROME NGWENYA and CHARLES TALBOT examine the roots of this contest and offer some suggestions on how attempts at resolution might be approached.

The group of people under consideration refer to themselves – and are known to others – as the AmaSwazi. This in itself is of significance. Although the general perception is that the African people of modern KwaZulu and Natal are simply 'Zulu', the names of specific clans and chiefdoms still give people social identity and often indicate a particular history. This is so in the case of the AmaSwazi.

Such evidence as exists indicates that at the beginning of the 19th century they lived on the border of the Zulu and Swazi kingdoms, related to the Swazi royal house but giving political allegiance to the Zulu royal house under Shaka.

In the middle of the 19th century they were driven from their land by the Swazi king. Some sought refuge in the Free State, some in Lesotho, and some fled to the foothills of the Drakensberg in Natal. Here they settled, probably under Langalibalele of the AmaHlubi tribe, who had been appointed chief of the area by the Natal government.

In 1873 the Natal government accused Langalibalele of rebellion and broke up the Hlubi settlement. It is probable that it was in the aftermath of this that the land on which the AmaSwazi were living was sold to white farmers.

The AmaSwazi remained in the region as labour tenants, however, living on the land in return for giving a period of labour to the white owner (it is remembered as six months per year). While members of the tribe underwent a range of economic experiences – as rural producers, labour tenants, labourers on the roads and railways, migrant workers – their community was a close-knit one, with their Chief Shabalala playing a crucial role in insuring that they retained a particular identity.

As a result, the AmaSwazi can trace an unbroken history of land occupation in the

area of Bell Park and Kilfargie (these are farms in the vicinity of Winterton, on the way to Champagne Castle). They point to particular historical markers and grave sites, to an unbroken chiefly line, and to a reputation for reliability, hard work, and responsibility. They identify closely with clearly defined pieces of land and perceive them as theirs.

In 1962 the AmaSwazi were the victims of



*Droogspruit: barren temporary home of the AmaSwazi.*

a forced removal – uprooted and relocated to a temporary site called Connistan, which falls under the control of the AmaNgane tribe. The AmaSwazi managed to remain on this land peacefully until the mid-1980s, when conflict broke out between the two tribes.

***'A solution seems remote and the people, the youth in particular, are increasingly restive'***

The AmaSwazi appealed to the authorities for relief. The response in 1987 was relocation to a site called Droogspruit – barren, devoid of basic social services, and belonging to the powerful AmaHlubi tribe.

The AmaSwazi now find themselves in a

very difficult position. The likelihood of their continued occupation of the area known as Droogspruit is tenuous, to say the least. Any faith they might have had in the state is long gone. Their chief remains the chief, imposing discipline, appealing for order while he and his advisers seek restitution. But a solution seems remote and the people, the youth in particular, are increasingly restive.

Over the past 30 years the AmaSwazi have made representations to a series of land commissions, and sent representations to the heads of both regional and national government departments dealing with land affairs. Nevertheless they remain on a temporary site.

During 1992 they began a civil disobedience campaign to draw attention to their plight. This has fed existing tensions between the AmaSwazi and establishment interests in the area – the Natal Parks Board, the timber industry, local farmers and the tourist industry.

A resolution of this emotion-laden conflict, which exists not only between the needs of different groups of human beings but also between humanity and nature herself, will be immensely difficult. Nevertheless, it is essential that it be attempted.

The attempt will have to be a non-legalistic one, not least because of the unbridgeable gap between Western and African concepts of ownership and debt. It has been pointed out repeatedly that support for the Western notion of the sanctity of current ownership of land will simply entrench the injustices of the past.

Idasa and the Community Conflict Resolution Service of the Independent Mediation Service of South Africa (IMSSA) were called in to assist in the search for a resolution of the AmaSwazi conflict in the second half of 1992.



During initial meetings it became clear that an escalating conflict in the area would not serve anyone's interests, and that it was imperative that mechanisms be created to address the different issues. Establishment interests in the area realised that unless the fundamental issue of land for the tribe was addressed, the area could become conflict-ridden and dysfunctional.

A short-term committee was set up with representatives from the AmaSwazi and establishment interests to deal with the day to day issues of the situation, while an approach had to be developed to address the core issue – land.

The first complicating factor is the absence of any clear policy on land disputes. At present the only mechanism for channeling land claims is the Advisory Committee on Land Affairs (Acla) which, apart from its purely advisory status, has severely limited terms of reference.

Acla's brief is merely to advise on the allocation of South African Tribal Trust lands. This puts the AmaSwazi in a corner because all the Tribal Trust land in the region is already subject to claims and counter-claims from other tribes, while the land that they claim is not Tribal Trust land.

This situation is further complicated by the fact that at present there are approximately 63 landless tribes in South Africa, all of whom are waiting for some indication on how they might go about pursuing their land claims.

As a result of these two factors, Idasa and IMSSA have been working on developing a multi-disciplinary programme which could assist the interested parties to resolve this dispute. Idasa has facilitated the creation of a

multi-disciplinary team to work on the project, with skills including agricultural planning, legal advice, environmental assessment, history, agricultural economy, development planning, facilitation and mediation.

## *'Support for the Western notion of the sanctity of current ownership of land will simply entrench the injustices of the past'*

As a result of the complexities surrounding the land claim and the variety of levels at which it will have to be tackled, the following combination of approaches will have to be used:

- issue-based – to enable identification of the most realistic and appropriate options which may be pursued;
- integrated – to ensure that key sectors and actors are involved at the appropriate levels;
- participative – involving local groups and individuals from inception to ensure capacity building and ownership of the process;
- strategic – to optimise opportunities.

The modus operandi must involve identifying key actors and interest groups and the issues which they tend to protect. It is at this level that alternative options for dealing with the land claim may be introduced and debated, and common ground established.

However, common ground on its own is often not sufficient to bring groups together around an emotive issue such as land. Additional incentive is likely to be required. This may be identified by linking common-ground issues to vested interests in order to achieve a sustainable balance between the

different groups.

Part of the strategy is likely to involve tackling issues surrounding the land claim on a variety of fronts, including, for example:

- engaging with all the major interest groups, particularly the AmaSwazi, and working through what they perceive to be the central issues and the resolution;
- identifying alternative land for settlement;
- establishing ownership, cost and past claims to the land;
- reaching agreement from all major groups on which block of land could be used for the permanent settlement of the affected tribe;
- locating possible sources of funding for land purchase, including possible compensation from a Supreme Court case and investment from major sub-regional interests (farmers, tourism groups, timber companies, and so on);
- gaining provincial approval for the establishment of a township on the land purchased that might be more informal or more closely settled than normal;
- undertaking a farm planning exercise and establishing different agricultural and non-agricultural enterprises that could be pursued on a viable basis;
- locating funding for capacity building, training and the establishment of a serviced settlement and a number of viable economic enterprises.

It is our local belief that, in the absence of a statutory mechanism to address problems of this nature, it is necessary to develop programmes and processes that can allow the different interest groups to create their own solutions.

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## Local courts proposal gets good reception

By DANIEL NINA

Is there a need to establish community courts in the 'new' South Africa? Apparently such a need does exist, and the Eastern Cape branch of the SA National Civic Organisation (Sanco) launched its proposal on this issue at a recently held conference in Port Elizabeth which was hosted

by Idasa.

What is a community court? A community court – in terms of the Sanco proposal – represents a step beyond the organic mechanisms of dispute resolution currently in operation, like people's courts and street committees. The community court would be organised in a formal way under the Department of Justice in a new political dispensation.

The court would consist of a panel of judges which would be elected by the community itself. The judges would be guided by the principles of the bill of rights of the new constitution, the proceedings would be conducted in the local language, and matters would be resolved by common sense.

How did this idea develop? In February this year, the Eastern Cape region of Sanco decided to reorganise its existing anti-crime committees (ACCs). The ACCs are community-based bodies of voluntary members, which deal with crime prevention and intervention. The ACCs investigate criminal activities in the community and hand over alleged culprits to the police. In addition to the reorganisation of the ACCs, Sanco realised that the communities of the Eastern Cape also need to put into operation adequate mechanisms of dispute resolution.

A community courts workshop series was started in March with the support of Idasa. The intention was to work out a proposal for