

FROM TITLE TO ENTITLEMENT: THE STRUGGLE CONTINUES AT DWESA-CWEBE

By

Robin Palmer,

Associate Professor, Department of Anthropology, Rhodes University

Abstract

Located on the 'Wild Coast' of the former Transkei, Dwesa-Cwebe consists of a nature and marine reserve bounded by eight underdeveloped Xhosa-speaking communities that depend on local forest, grassland and shellfish resources. Formerly divided physically by the Mbashe River (into Dwesa and Cwebe) and administratively into two districts (Willowvale and Elliotdale) the area now falls under the single Mbashe Municipality, itself subject to the Amatole District Municipality. This administrative shift is but one of the changes confronting the inhabitants of Dwesa-Cwebe in recent years. Up till 1995 they had no rights to either their communal land or the adjacent nature reserve. Following a successful protest action and a long period of negotiation, title to the communal land was transferred to seven Community Property Associations (CPAs), and title to the reserve was transferred to the Dwesa-Cwebe Land Trust, on which the CPAs are heavily represented. The inhabitants, through the Trust, have also been the beneficiaries of some R14 million in compensation and grants. As this was only the second successful restoration of indigenous ownership of a protected area in the country, and it was the outcome of local initiative to a large extent, the residents and particularly the leadership find themselves in an unusual and empowering position vis à vis the administration. On the one hand, they are landowners, and important investors in their own development; on the other, they are residents in a handful of coastal sub-wards within an administrative structure. The paper suggests that this contradiction is the source of a new struggle for special recognition and entitlement that has replaced the old struggle for title of the communal and protected land. If not resolved, the new struggle could seriously jeopardise development outcomes for this resource-rich but poverty-stricken area.

Introduction

On 17 June 2001, the Vice-President of South Africa, Jacob Zuma, supported by other dignitaries and before a thousand local witnesses, formally signed the deed of settlement that transferred the Dwesa-Cwebe Nature Reserve to the Dwesa-Cwebe Land Trust (DCLT). This rite marked the completion of only the second successful land claim on a protected area in South African history.¹ The ‘package’ transferred included, besides the major natural asset of the reserve, lease- and employment-generating tourism infrastructure and a financial settlement amounting to over R14 million. The way seemed clear at last for the tourism-led development that had been presaged in previous plans but was held up by the land claim. As Zuma declared in closing his address: “Prepare yourselves, people of Dwesa and Cwebe – development is coming your way” (Palmer *et al.* 2002).

Witnessing the signing of the Deed of Settlement and listening to this encouraging rhetoric, most of the residents present probably believed that the long struggle waged by their leaders against the authorities was over. Instead, as the subtitle of this paper asserts, the struggle over issues of power and access to resources continues. The difference is: there are new players among the *power*-holders; and the DCLT is now seeking *access* to different kinds of resources. As the main title infers, I contend that ‘entitlement’ has a lot to do with the continuation of the struggle since the settlement. Entitlement was of course a feature of the pre-settlement phase of the struggle (see below). Derick Fay (2002a,b) has shown, how the quest for power and control over land in the Dwesa-Cwebe area was of longer-standing than the collective, formal and very public campaign for restitution of the nature reserve – it was also manifested locally and informally in resistance to ‘betterment’ in particular locations such as Hobeni (cf. De Wet 1995). Under the drastically altered conditions of the post-settlement period, however, a new and different form of entitlement, closer to the vernacular understanding, perhaps, than the land-focussed scholarly understanding, appears to be driving the struggle.

The paper is thus concerned empirically with the very recent history of Dwesa-Cwebe and analytically with why conflict persists and whether an expanded definition of ‘entitlement’ is useful in understanding it. Because the paper addresses a situation that has been a hundred years in the making, and the history is known,² it is necessary to commence with a summary introduction to the area and its pre-settlement history.

¹ The first was the Makuleke Land Claim on a portion of the Kruger National Park (De Villiers 1999).

² This is covered in two editions of the book *From Conflict to Negotiation: Nature-Based Development on the South African Wild Coast* (Palmer *et al.* 2002a,b: Part 2), and with particular attention to the Cwebe side, in Derick Fay’s doctoral thesis (2002a) and papers (Fay 2001, 2002b).

Dwesa-Cwebe

Dwesa-Cwebe comprises a nature reserve and the villages that are associated with it, and it is found roughly half way between East London and Port St. Johns. The hyphenated name draws immediate attention to the paradoxical nature of Dwesa-Cwebe: it is both divided and a single entity. Until recently, the Mbashe river which flows through the area was, in addition to being a natural and cultural boundary, a long-standing administrative boundary as well; one that separated the human settlements (but not the reserve) into two separately administered sections, Dwesa and Cwebe. (While one may speak of the Dwesa reserve and the Cwebe reserve, the two sections of the reserve have long been administered as one.)

The nature reserve, established in 1975, protects some 6 000ha of pristine forest, grassland and coastline. The indigenous forest, extending for 18km along the coast on either side of the Mbashe and between two very scenic estuaries (the Nqbara and the Ntlonyana), is the area's main natural asset. It is the forest that most distinguishes Dwesa-Cwebe from other parts of the Wild Coast – the grasslands, dune forest and coastline that are also included in the protected area are more continuous features of this coast, along with the rural livelihoods, vernacular architecture and other cultural characteristics of the Xhosa-speaking inhabitants (Palmer *et al.* 1997; Naicker 2002).

The broad, fast-flowing Mbashe helped maintain the separate identities of distinct populations of Xhosa-speakers on each side of the river – Bomvana and the Gcalecka before the mid-19th Century; Bomvana and Mfengu, for the most part, thereafter. So did the post-Annexation administrative boundary: Cwebe fell in Elliotdale (Xhora) Magisterial District; Dwesa in Willowvale (Gatyana) District (Palmer and Fay 2002). (Since the reorganisation of the districts into rural municipalities in 2001, the approximately 15 000 residents of the villages of Cwebe and Dwesa, i.e., those that share a boundary with the nature reserve, have been incorporated as wards or subwards of the new Mbashe Local Municipality under the Amatole District Municipality with headquarters in East London.)

Long-neglected and relatively unknown beyond the region, the Dwesa-Cwebe area came to public prominence and hence major official attention following the protest action of 1993-4. Between the 1890s and 1930s, the state had removed black residents from the demarcated forest area to make way for the white-owned holiday cottages and hotel. The former residents of the reserve settled among those already living in the villages adjacent to the forests, and retained, in common with all black residents of the area, some access to natural resources and grazing within the protected area, subject to a permit-based system of regulation (Fay *et al.* 2002a). The advent of 'independence' for the Transkei motivated the state to revisit the status of the reserve: it fenced off the area between the major forests and the sea, stocked it with game and cancelled access for harvesting and grazing purposes (Fay *et al.* 2002b). As Fay (2001: 8) has remarked:

In closing the reserves, the state contributed to the eventual constitution of Dwesa-Cwebe as a sociopolitical entity and imagined community. It was not a clear-cut process of Aterritorialization@; no official designated Dwesa-Cwebe as a Acommunity@ or sought to create an administrative structure for the region. Rather, the actions of the state created a population of dispossessed people with a shared experience of exclusion and a basis for future solidarity.³

On this basis of new unity of purpose, local residents, championed by the Umtata-based NGO Transkei Land Service Organization (Tralso), began a protracted struggle to restore their rights to the protected area. In the context of the lawlessness of the early 1990s in Transkei (cf. Donaldson *et al.* 1992) and in the midst of a severe drought, residents of the villages entered the reserves on several occasions in 1993-94 to harvest natural resources in a mass, co-ordinated and destructive protest. The conservation authorities could not contain the protesters, the army was summoned in support and footage of villagers removing buckets full of shellfish appeared on the national television news. This challenge to the newly formed Eastern Cape provincial government was met by an immediate restoration of permit-based access to the protected area and the formation of locally-elected 'Community [i.e. village-based] Conservation Committees' to work towards joint management of the reserves with the conservation authority. Not long afterwards, the same local leaders who sat on the Conservation Committees (CCs) worked with Tralso (and especially its former staffer, now consultant, Andre Terblanche, trading as The Village Planner) to prepare and submit a formal land claim in terms of the new ANC government=s land restitution legislation (Terblanche and Kraai 1996). At the same time they were also looking to the improvement of land tenure in the communal area through the conversion of the eight villages into seven Community Property Associations.⁴

³Fay and I elaborated on the particular construction of 'community' at Dwesa-Cwebe in a joint paper (Fay and Palmer 2000), characterising its basis as a *denial of diversity* more than the shared spatial, economic or cultural interests that normally define community, and ascribing it to the particular circumstances of local history in which far-flung and disparate elements became 'organised around a common goal of access to natural resources and the benefits accruing from land ownership' (Fay and Palmer 2000: 196). Correspondingly, an important qualification for membership of this imagined community is participation in the protest actions of 1994 (*ibid.*).

⁴ CPAs were introduced to Dwesa-Cwebe in 1996-7 through the state=s tenure reform process. The seven CPAs are headed by elected committees and represent all the residents of their defined territories. The five CPAs on the Dwesa side of the Mbashe represent the sections of pre-existing administrative areas, adjacent to the nature reserve, that contributed to the protest action in 1993-4 and that have subsequently participated in

The CCs became known as ‘land committees’ during this protracted phase of the struggle (for which there was no precedent in policy or legality) and they made strenuous efforts, employing creative tactics, to expedite their claim. Eventually, in 1997, the former Minister of Land Affairs Derek Hanekom agreed to the restitution of land rights in the protected area, provided that it continued in to have a conservation role and function. For their part, the local leaders accepted that conservation was the only feasible land use if the goal of tourism-led development were to be realised. That the settlement was delayed for a further three years was not therefore a consequence of any obstructions on the part of local people, but rather internecine disputes between the responsible government departments over issues such as: ownership of and compensation for the existing tourism infrastructure at Dwesa-Cwebe; issues of legal tenure for the land and legal frameworks for the joint management agreements; and the division of management responsibilities between the central and provincial tiers of government. (Palmer *et al.* 2002; Fay 2001).

Meanwhile, Dwesa-Cwebe was increasingly involved, as a prospective ‘development node’ in the Wild Coast Spatial Development Initiative (WCSDI), a development framework that superseded the Reconstruction and Development Programme (RDP) after 1996 and was destined to go the same way (Palmer *et al.* 2002).

Entitlements

To return to the issue of ‘entitlement:’ To entitle was originally simply ‘to name or designate’, but through the derived meaning of conferring title to an estate it acquired the secondary meaning of giving rights of ownership or access, or holding them or indeed *claiming* rights – over practically anything! (Shorter Oxford English Dictionary). It would have suited the predatory Normans, who introduced the originally French concept into English, to keep the meaning of the term vague and general so they could lay claim to anything they coveted; and it has been a ‘catch all’ term ever since.

In current discourse I am aware of two main usages of ‘entitlement’. The first is the more scholarly in origin and application of the two and is central to the environmental entitlements (EE) approach or framework advocated by Melissa Leach *et al.* (1999). The main context of this approach is the interdisciplinary effort to understand the interests and dynamics of the formerly marginalized communities in or near conservation areas. EE’s point of departure is the observation/insight that communities do not participate in community-

the land claim and joint management negotiations. The two CPAs on the Cwebe side coincide with the territory and membership of existing administrative areas (Hobeni and Cwebe), which include residents who were not involved in the protest action, yet still elected to join the CPA (Fay 2001: 9)

based natural resource management (CBNRM) and suchlike as an end goal; they are usually seeking power and control over natural resources (i.e., entitlements) in order to attain other end goals, mainly a source of additional livelihood to reinforce existing, inadequate livelihoods. In order to achieve these goals, communities must acquire relevant ‘capabilities’ (the capacity to use resources effectively) and this is linked to the existence of enabling mechanisms or ‘institutions’ that can catalyse natural resources into ‘endowments’ – natural assets over which local people have rights and which they can use (*ibid.*: see also Fabricius 2002).

The EE understanding of ‘institutions’ has been commended (Peters 2000). It is an approach that places the emphasis on *behaviour* rather than rules; rules are interpreted therefore as ‘rules in use’, underlying structures that regularize behaviour. Fay (2002b) has acknowledged the usefulness of this understanding of institutions but he has expressed reservations about this and other aspects of the EE framework following his applications of the model to the complex situation of Hobeni, a location of Dwesa-Cwebe. He contends that the EE understanding of entitlement ‘conflates legitimacy and effective command’ which are better regarded (operationally-speaking) as separate strategies for access to resources; that ‘differentiated modes of access’ are obscured in the overly homogeneous understanding of ‘community’ to which EE studies are prone; and that the concept of ‘institution’ is too embracive, and is ‘better broken apart into its various components.’ These latter include: the ‘social actors (as individuals, groups, categories and/or networks)’; the ‘settings of action (e.g. fora in which people stake claims for, or make decisions about, access; exchange relationships through which people acquire or dispose of resources)’; the ‘means by which actors make their claims stick (ideological justifications of action, appeals for the legitimacy of their claims whether made in terms of explicit rules, moral precepts or taken-for-granted conventions, repertoires of acceptable argument and modes of argumentation, force, etc.)’; and ‘the outcomes of actions (patterns of behavior, whether [these reflect underlying rules or consist of] tolerated, condemned or rule-changing deviation)’ (*ibid.*: 14-17).

Underpinning these detailed criticisms are Fay’s specific requirement, as an anthropologist, for a frame that does not artificially limit the scope of his rich empirical data to describe the complex social tapestry of grassroots Eastern Cape (or any other rural area anywhere). I am not under the same constraints in this paper, because the empirical case under consideration – the post-settlement struggle since June 2001 – is occurring at a very different level from that of the entitlements process in Hobeni and I am following it at a far greater remove than Fay studied Hobeni; but I do believe that Fay’s amendments to the entitlements framework are transferable to other levels of analysis.

The second usage of ‘entitlement’ is less specialised and hardly scholarly. It too has travelled from the original meaning. This is ‘entitlement’ as used in contemporary South African public-political discourse. Together with tags like ‘accountability’, ‘transparency’ and ‘transformation’, ‘entitlement’ has been a

frequent presence in the media, particularly since 1994. This understanding of entitlement tends to be deployed whenever claims for compensation or redress are made or simply articulated, specifically by the ‘historically or formerly disadvantaged’ (another frequently-heard term in post-Apartheid discourse, meaning Black, in the more general sense). The interesting thing about entitlement in this sense is its generality. Vernacular ‘entitlement’ is not restricted to CBNRM or land claims or the undoing of ‘betterment. It can apply to monetary compensation, employment and housing; as well as to other material possessions with as much symbolic as material value, such as cars and cellular phones. The level at which these entitlements are accessed depends on who is making the claim: it is motivated by feelings of *relative* not absolute deprivation. Another interesting feature of this understanding of entitlement is that, like many vernacular categories, it may be used pejoratively, as in the phrase ‘culture of entitlement’, implying that the claimant is being greedy, demanding more than he, she or ‘they’ are reasonably due.

Although this second usage is far from scholarly, it seems to me that a concept of entitlement that is not closely linked to its original meaning of title to an estate may be more useful in the context of the multifarious needs and wants of the post-settlement emerging landholders and leadership at Dwesa-Cwebe than the more restricted definition of entitlement linked to EE. This paper does not deny the relevance of the EE understanding of entitlements, particularly to the land issues that loom so large in a case such as Dwesa-Cwebe; however it contends that other understandings of ‘entitlement’ that have thus far remained beyond the ambit of scholarship in vernacular usages may be even more relevant to the post-settlement phase of such cases.

Since the Settlement: Reactions of the Trust

In this section I discuss the developments at and concerning Dwesa-Cwebe over the 24 months since the settlement. The most basic facts of the matter may be summarised as follows:

- In terms of the settlement, ownership of the nature reserve and the hotel and holiday cottages it contains have been transferred to the DCLT (Dwesa-Cwebe Land Trust);
- The DCLT has received, in addition to these assets and the leases paid by the hotel and cottages, a financial settlement in two parts:
 1. *A Consideration* of R2.1 million to cover the lease of the reserve land in perpetuity by ECNC (East Cape Nature Conservation);
 2. *Compensation*: R1.6 million for the DCLT’s ceding of the land for conservation purposes; Restitution Discretionary Grants @ R3 000 per household and Settlement Planning Grants @ R1 440 per household totalling R10 576 080.

- Ownership thus excludes both land uses other than conservation and management responsibilities: ECNC continues to manage the reserve including the Dwesa bungalows and camp-site; the ECDC (East Cape Development Corporation) manages the Haven hotel; and the ADM (Amatole District Council) manages all of settlement funds and is the designated implementation authority for the settlement (i.e., responsible for investing the funds in local development).
- When the DCLT was set up in the 1990s it was mandated with a development as well as a landowning function, and this understanding has never been explicitly rescinded; though both the ADM has direct development responsibilities for Dwesa-Cwebe and the area falls within the ambit of MLM's (Mbashe Local Municipality) IDP (Integrated Development Plan) – and there are numerous other players charged with developing the general area, including Dwesa-Cwebe (see below).
- The 14 local 'trustees' are, for the most part, significant leaders in their own home areas who are veterans of the struggle for access and restitution, and the Chairman of the DCLT has, in addition, financial and organisational capacity, economic power and a regional network through his other role as a prominent local trader;
- The villages the trustees represent have been transformed into seven CPAs (Community Property Associations), but they are also wards and sub-wards of the recently formed MLM (Mbashe Local Municipality), which in common with all the new local municipalities, has its obligatory IDP (Integrated Development Plan);
- Besides development specifically targeted for Dwesa-Cwebe in terms of its own development plan (Tshani *et al.*) and coverage by the MLM's IDP, the area is already receiving development inputs from more general government programmes, some of these supported by overseas funders (Palmer and Timmermans 2002).

From this list and from the general orientation the paper has provided above, it should be evident that the conditions of the settlement and other unconnected developments in and around Dwesa-Cwebe have generated a complex and ambiguous situation characterised by a plethora of jurisdictional issues and uncertainties. On the one hand, the settlement has formally empowered local residents via the DCLT as never before; on the other their autonomy has been considerably curtailed by (i) the conditions of the settlement agreement, and (ii) the shift by which the incremental consolidation of the Dwesa-Cwebe communities into a single overarching community has been recently matched by the consolidation of the administration of the area at the local level by the Mbashe Local Municipality (MLM) and at district level by the Amatole District Municipality (ADM). In as much as the DCLT was defined from the outset as a body with a development as well as land-holding responsibilities, it was bound to have jurisdictional problems with

the encompassing MLM (with its own obligation to prioritise local development); in as much as the settlement agreement tasked the ADM to be the implementing agent of the settlement, and hence the holder of the purse strings, there is a relationship with district level independently of that with the MLM and this also introduced ambiguity and the potential for potential.

The only continuity in all this has been the relationship of the local leaders with the reserve management and by extension ECNC (East Cape Nature Conservation) and beyond to the DEAT (provincial Department of Economic Affairs, Environment and Tourism), along with other long-standing 'stakeholders' from the earlier period such as the Department of Land Affairs and the regional Land Commission (the latter having an obligation of 'after care' for successful claimants such as the DCLT). Even in this familiar sphere there was initial difficulty. Legislative delays in the passage of jurisdiction over the reserve from DWAF (the national Department of Water Affairs and Forestry) to ECNC caused the first meeting of the Co-Management Committee (CMC) to be postponed until June 2002.

Without the enabling legislation, the reserve manager had no clear mandate for managing large species, restocking the reserve and dealing with the poaching that had already eliminated the blesbuck and was threatening the bushbuck and eland, which were included in the assets now owned by the DCLT. In its other, informal role as 'very local government,' the DCLT needed the joint forum to share concerns about how the poaching was being handled and issues of access. (While reserve management preferred the reserves should only be open for major harvesting between May and August, the communities, backed by the Trust, wanted the open season to last until the end of November; but with no forum to settle this difference, hostilities and infringements multiplied and reserve management's next measure to control access – a five-fold increase in the gate fee to R5 per visit, for tourists and residents alike – sparked outrage.) In the opinion of the DCLT's Chairman, reserve management issues of such obvious community concern as prosecuting poaching beyond the reserve and imposing prohibitive gate fees should have been shared with the DCLT whether the CMC was in place yet or not. However, it was not long before, on 12 June 2002, representatives of most of the interested parties – DEAET, DWAF, ECDC, MLM, AMD, and long-standing researchers such as the marine biologists of the University of the Transkei, Herman Timmermans and me – met to launch the CMC at Dwesa. At a carry-over meeting, a month later, office bearers were elected. The outcome of these initial meetings was the appointment of the regional Director of ECNC and the Chairman of DCLT co-chairmen of the CMC, which incidentally placed the latter at a structural advantage over the reserve manager, with whom he would have day-to-day dealings. The substantive issues between reserve management and the DCLT had not yet been discussed, but at least there was now a forum, and most importantly, the DCLT was receiving due recognition for the first time since the hand-over ceremony. CMC meetings proceeded regularly (weather permitting) and constructively from thenceforth.

The positive outcome on the CMC front was particularly welcome to the trustees in the light of their perceived neglect by other stakeholders in the aftermath of the settlement. This came out in a meeting we had with them in that same month, June 2002 (Palmer and Timmermans 2002). They had been accustomed to a relatively high level of consultation with the ‘external stake-holders’ in the past, and were unimpressed by the conduct of the new players in this regard, which was tantamount to contempt, in their eyes. They saw the role of the ADM as supportive more than administrative, particularly through the Project Steering Committee (PSC) that had been set up between the ADM and the regional Land Claims Commission (RLCC) to drive development at Dwesa-Cwebe. Already they were feeling that the ADM and PSC do not consult enough and intended to bring this up at a forthcoming meeting. They particularly resented the fact that the ADM had not yet opened an account to cover DCLT running expenses and were deducting sums, such as the cost of attending meetings, from the general account without consultation. In the same vein, the trustees expected that they would be consulted by the MLM about matters pertaining to the seven CPAs at Dwesa-Cwebe, but they contended that the MLM simply deals with these wards and sub-wards on the same basis as others in their jurisdiction, i.e., directly.

This litany of neglect and non-recognition from the DCLT was also extended to the development and poverty relief projects coming into the area. Group 5, responsible for bulk water supply in the area, had changed its business plan and schedules without consulting the trust, placing it in an invidious position when communities sought information about the project. The black empowerment consortium responsible for the construction of a ferry or pont across the river at its mouth repeatedly postponed the date of its formal hand-over to the DCLT without satisfactory explanation.⁵

River Rangers, the canoe-based ecotourism and fly-fishing venture that has entered this and other coastal areas, deals only with the MLM even though its emphasis on the estuaries places it within the ambit (though not of course the formal jurisdiction) of the trust. And whereas the DCLT had been initially given to understand that they would administer the important income-generating project, Working for Water, in the local forests, each team of workers is administered by an independent ‘contractor’ paid by the Independent Development Trust.

There were only two exceptions to this pattern that the trustees cited: CoastCare and the European Union’s Community Tourism project (Palmer *et al.* 2002; Palmer and Timmermans 2002). CoastCare, an initiative of

⁵ This project involved the construction of access roads with hairpin bends down the precipitous sides of the Mbashe gorge and the provision of a motorised pont large enough to carry a truck or bus, and other related infrastructure. As the nearest bridge was 30 kms up river, it was regarded as a worthy project that would connect the two reserves and facilitate tourism development as well as local people. Unfortunately, the pont was washed out to sea in the floods of September 2002 and has not been seen – or replaced – since.

the national Department of the Environment that employed local people to clean the beaches, has had a long record of involvement at Dwesa-Cwebe; and the local consultant for Pondo-CROP, one of the two NGOs implementing the EU project, is Andre Terblanche, The Village Planner (TVP), virtually a fixture at Dwesa-Cwebe since 1992 and midwife to the settlement. That these two should be singled out as examples of the kind of working relationship the trustees value and perhaps expect came therefore as no surprise; that any other more recent arrival on the stakeholder scene, let alone any with formal responsibility for Dwesa-Cwebe and/or the DCLT and bound by the stringent conditions of the settlement and bureaucratic procedures, could match the record of especially the TVP, was highly unlikely.

While rehearsing their complaints at the meeting with us, the trustees did not acknowledge (because they were most likely unaware of it at the time) the fact that national and provincial government were already responding to the vexed issue of releasing funds to grassroots organisations such as the DCLT. Just a couple of months before, in April 2002, the National Development Agency, the Land Bank and the Land Claims Commission had entered into a trilateral agreement to assist communities with restitution implementation, i.e. to train them in management, especially financial management. At a PSC meeting in December that no Dwesa-Cwebe member attended, a capacity building plan for the trustees was outlined and a 'structured intervention from NDA in the Dwesa-Cwebe project especially for the urgent financial management' was requested. At the same meeting a formal request from the DCLT for advance payments for administrative expenses was turned down, for technical reasons. But this may have been a delaying tactic, for it was already known that funds would not be disbursed until the training scheme had been put out to tender and implemented (PSC Minutes, 10 December).

At the that time the ADM was preparing another tender on behalf of the DCLT, that of the Dwesa-Cwebe Development Plan (DCDP); but this was proceeding much more speedily. By September 2002 consultants had been appointed, and had conducted five workshops at Dwesa-Cwebe as part of the 'situation analysis', and they had already produced a working draft of the DCDP. The consultants were included in a Technical Committee (TC) that was to meet regularly at ADM Headquarters in East London, the week before each PSC meeting, to which it would report. By the second meeting, following three further workshops and a meeting with the DCLT, the consultants were seeking more involvement with the MLM, ADM and the other interested parties, and had requested the MLM to convene a Stakeholders Forum, which was agreed and set for a date at the end of January, 2003, at Willowvale/Gatyana, for the convenience of local delegates.

As recipients of the minutes of the PSC, the trustees would have soon become aware of the decisions of the meeting of 10 December – soon enough to lose all interest in the impending Stakeholders Forum, and it had to be cancelled at short notice. Yet the trustees continued to co-operate with the consultants: during February the consultants presented the draft DCDP to all seven CPAs and had it accepted; very much aware of the

frustrations of the trustees, the consultants also met with the EU representatives and the ECDC to try to expedite the training of the trustees so that the funds for their expenses could be released (TC minutes 7 March 2003).

The face the trustees presented to the PSC was, however, very different. The Chairman of the DCLT attended the meeting in early February accompanied by two senior trustees. Their 'legal advisor' (actually the RLCC-appointed attorney who is handling the conveyancing at Dwesa-Cwebe but who has been very sympathetic to the DCLT's cause) was also present. The trustees requested detailed information on the administration fee the ADM was deducting from 'their' settlement; they wanted to know why the R75 000 advance payment for six months' expenses had not yet been paid. The condition of their prior training decided at the previous meeting was explained to them, as well as the reasons for the delays in its implementation, but they were not impressed, and one trustee formally requested that 'at the next PSC meeting the capacity plan should be presented, i.e. the time frames and it has been started.' The trustees also declared themselves 'unhappy about the pace of the land registration and transfer' and 'the Trust may take it upon itself to pressurize for the conveyancing to be fast-tracked.' They also did not like the fact that the cost of the conveyancing was being met from their Settlement Planning Grant. (PSC Minutes, 4 February 2003).

The consultants responded to the trustees' 'unhappiness' by scheduling meetings with not only the EU and ECDC again, but also with the LCC and the consultants that were handling a major development project in the area. They were assured that the CPAs were about to be registered, that it was only the passing of the enabling legislation that was delaying progress. When 'top up' funds were requested for the conveyancing, the DLA declined. At the next TC meeting the consultants were also reporting that the DCLT was threatening to withdraw from the project, and the Chair of the PSC had met them to 'clarify certain matters' (TC minutes 29 April 2003). She must have thought that she had reassured the Trustees because a PSC meeting was scheduled for 6 May. Included in the agenda was a power-point presentation of Phase 2 of the DCDP by the consultants, so it would be well attended. (Timmermans and I also went.) To mollify the trustees (but to the major inconvenience of the other members) the meeting was to be held in Idutywa, the point to Dwesa-Cwebe on the N2, and the trustees were booked in at the hotel for the night before, to ensure an early start for the meeting in case of bad weather or transport problems.

When the other members of the PSC arrived at the Idutywa hotel, they found the trustees had never checked in. An hour into the scheduled start of the meeting, they still had not arrived. Then the acting Chair of the PSC announced that the trustees were not coming but had sent their 'legal advisor' in their place. He read out a statement from the DCLT Chair to the effect that as the trustees had not been taken through the DCDP prior to the meeting, they would not be in a position to participate effectively in a meeting of this nature and so had

decided not to attend. Besides, he continued, they did not have funds available to attend; the Chair has already spent R600 on cellphone calls without recompense.

The PSC Chair looked to the consultants for confirmation. It was technically true, they admitted, that while they had taken every CPA through the draft DCDP, they had not arranged a special workshop for the DCLT itself, because each and every trustee would have been involved – and more conveniently – in the workshops at CPA level. Had the trustees wanted their own workshop, the consultants would have been happy to comply, but this had not been requested – until today. The PSC Chair and other members present voiced incomprehension and annoyance at the discourtesy and the waste of money and time; for which the Legal Advisor duly apologised, but reiterated that the trustees didn't feel they understood the DCDP well enough and were also concerned that the DCLT should find itself funding the government (in the matter of the conveyancing). There was further discussion, but the meeting resolved to permit the DCLT their workshop and suggest a date. At this point the MLM representative expressed impatience with having to return to an issue that he thought was resolved and walked out of the meeting. The PSC Chair commented, somewhat gratuitously, that the MLM was very frustrated with the DCLT and the way it behaved. The chief consultant then testified to the fact that the trustees expenses issue was raised at every encounter with them, whether at PSC meetings or in the field and should be resolved urgently. They are not against receiving training, but in the meantime they have to pay their phone bills and buy petrol. The ADM administrator proposed that the funding issue be resolved before the workshop was held, and the chief consultant seconded the proposal. In the absence of the DCLT and a DLA representative to report on the progress of the land transfer, the meeting was adjourned and the DCDP power point never shown.

Meanwhile, the CMC was scheduling regular meetings at Dwesa, but attendance was falling off (only three members of the DCLT at the March 20 meeting, and incomplete representation of other stakeholders, though DEAET and the reserve manager were there). The meeting reported serious co-ordination problems following the cancellation of the Stakeholder Forum in January and sought another in June. Re-titled a 'Role-Player Meeting,' (to dispel the bad luck that had dogged the last attempt?) it went ahead over two days, and was well attended with all stakeholders represented (including Timmermans and me). Following a comprehensive session of updates and progress reports (including the long-postponed presentation of the DCDP), three 'commissions' were identified, which subsequently went into parallel session before reporting to the plenary session (for details see Proceedings, Dwesa-Cwebe Development Role-Players Workshop, Dwesa 17-18 June 2003). In summary: The first recommendation was that an overall plan should be drawn up that would include but go beyond the DCDP and would encompass all programmes and projects in the general area, and would mesh with the MLM's IDP. The Proceedings included: a tight timetable covering submission of details to a MLM councillor present; follow-up workshops and meetings; the training of the trustees and the acquisition of offices, equipment and an administrator for the DCLT with a programme for ongoing

mentorship and development. The second recommendation was to integrate specifically natural resource and tourism projects, which were by now proliferating. The third recommendation was to convene an urgent workshop to resolve tensions between key role-players, specifically, the DCLT, Traditional Authorities, MLM and AMD.

For the convenience of CMC members who also attended the Role-Players Workshop, the next meeting of this committee was scheduled for the next day. Smaller and more focussed and coming after the resolutions of the Role-Players Workshop, the meeting addressed especially the implementation of the resolution about training of the trustees. After hearing about the bureaucratic obstacles that had delayed implementation thus far from the RLCC and EU representatives, the Chairman offered training by DEAET in the legislation and policy aspects and the RLCC offered to release DCLT funds for this purpose. A structure was agreed whereby the DCLT would take responsibility for the training, with parallel sessions on the Dwesa and Cwebe sides, with the DCLT Chairman responsible for the former and another trustee the latter. Interestingly, when it was suggested that others than trustees – notably MLM ward councillors – also attend and benefit from this training, a trustee objected to such outsiders being subsidised by settlement funds. Thus there was movement following the landmark June Role-Players workshop, but whether it was towards termination of the struggle or elevation to yet another site of struggle it is too soon to tell.

Analysis

The assertion of my subtitle (that the struggle continues at Dwesa-Cwebe) has been demonstrated in the events of the last two years. As when a stone is thrown into the pond, the initial local contestation increasingly involved a wider and wider circle of outsiders in various relationships to local leaders and their land claim. The eventual settlement of the land claim was supposed to alter the power balance between the ‘internal and external stakeholders’ to the advantage of the former, but this remained theoretical so long as there was no material or symbolic changes in the DCLT’s status. At the same time significant shifts in the administration and delivery of development of this part of the Wild Coast were threatening such local power and autonomy as the trustee’s had acquired through the earlier struggle. Their response was to resort to a strategy that had proven successful against the authorities in the past.

We had cause to reflect on the strategising of the local leaders (not yet trustees) when documenting the first phase of the struggle (see summary above and Palmer *et al.* 2002). In our analysis of that phase we identified *three main tactics* (mobilisation, withdrawal and involvement) and *three main resources* (non-government support, legislative support and institutional support). These appeared to be the key elements of the strategy that the community leadership employed to defend and advance their interests in the earlier phase.

Chronologically the first tactic, *mobilisation* began in 1992 around some Cwebe residents' application for emergency grazing in the reserve and snowballed to become the united protest action of 1994. Ever since this dramatic manifestation of the community's capacity for mobilisation, and their leaders' successful exercise of the leverage it gave them, there has not been the need to employ tactical mobilisation again. *Withdrawal*, the second tactic, involved temporary withdrawal from negotiation processes. This tactic is less demanding and drastic than mobilisation and thus more capable of repetition from time to time. On two occasions the communities withdrew from negotiations, citing frustration with the slow pace of the land claim process or discontentment with the lack of recognition given to their land claims by the conservation authority. The first time, they 'stood up' the country's leading marine biologists who had travelled to Dwesa-Cwebe in an effort to resolve the perennial conflict over access to shellfish; the second time, they withheld their support from the co-management negotiations in 1997, provoking the visit of Minister Hanekom and the breaking of the administrative-legal log-jam. The last tactic, *involvement*, helped to dramatise and reinforce withdrawal, but it was also a tactic in its own right. Ever since 1992 the communities have promoted their case through attendance of all manner of meetings and workshops (except those from which they tactically withdrew, of course), whether these were held at Dwesa-Cwebe or elsewhere. It is worth recalling, since 'training' has been such an issue of the recent period, that 10 years of such involvement was of itself a valuable form of training and would have given even the least educated participants who had been involved from the outset a perspective on the process that some of the more recent stakeholders, for all their formal qualifications and seniority, lack.

Regarding the three resources: *Non-governmental support* was, like mobilisation, chronologically prior, but unlike mobilisation, which only had to be employed once, recourse to the support of sympathetic NGOs has been continuous. Beginning with the communities' first contact with Tralso in 1993, and continuing to this day through the relationship with the consultancy, *The Village Planner*, now implementing community tourism for PondoCROP, NGO support has provided the communities with legal advice, information, networks and logistical advice and continue to do so. Initially, when improved access to the reserves and environmental education were the stated goals of community leaders, co-operation with conservation-orientated outsiders such as the various researchers also made sense, and co-operation persisted so long as it the researchers' agendas did not conflict with their own (as in the case of the marine biologists, above). *Legislative support* came through democratic South Africa's Constitution and Bill of Rights and the associated bills and acts, replacing legislative oppression and providing formerly disadvantaged communities such as those at Dwesa-Cwebe with unprecedented access to government. The co-optation of the land claims conveyancer is only the latest indication of the importance local leaders attach to legislative support as a resource. A related resource is *institutional support*. In the 1990s this was but an aspiration, a work-in-progress; now that the communities have legal title to the communal land in the form of CPAs and to the reserves via the DCLT, they have two powerful forms of institutional support that are further consolidating

the position of the communities and the trustees – *three* if you include the LCC, which was midwife to the agreement and has been wet-nurse over the months and years of its implementation.

In the new phase of the struggle, after June 2001, the ultimate tactic of *mobilisation* remained in the background, an implicit threat for those with long memories; *withdrawal* (from the original Stake-Holders Workshop and from subsequent PSC meetings) proved as effective as at any stage in the past; especially where *involvement* (with the CMC, the new development initiatives and even the MLM ward committees) continued to be deployed. For their part, the trustees gained confidence from the continued presence and, latterly, reinforcement of resources from which they had always drawn strength. Not only have they enjoyed continuous NGO support from the TVP and his increasingly powerful sponsors, but they have also become close, through co-operation, with the consultants preparing the DCDP, especially during the early months of 2003 when their conflict with the ADM/RLCC was at its most intense. Other resources that came to the fore in the recent period were those of legislative and institutional support. The DCLT has never been stronger in respect of these resources than in the post-settlement period. As ‘landlords’ the trustees have an entirely transformed relationship with their ‘tenants’, ECNC and by extension the DEAET, as witness the success of the meetings of the CMC and the Role-Players workshop the CMC mediated and held at Dwesa. At the same time, the trustees have been constrained and deeply frustrated by the conditions of the settlement agreement and the slow process of their implementation. Their co-optation of the conveyancer appointed by the RLCC, using him in the role of their informal and unpaid ‘legal advisor’ as a weapon against his employers, was perhaps the trustees greatest resource innovation of the post-settlement period.

By comparing tactics and resources before and after the settlement, it is apparent that the struggle has not only broadened but also intensified in the last two years, with only recent signs (but no guarantees) of future resolution. In another way, too, comparing the phases before and after the settlement can be illuminating. After reviewing the strategy employed in the first phase we observed:

[T]he communities of Dwesa and Cwebe have employed effective tactics and new resources to gain, retain and develop a position of considerable power vis-à-vis government. This, in turn, has elevated their status to one in which constructive engagement with government commenced early and has become a routine matter. At the same time, however, they have found themselves in the same ‘intercalary’ dilemma that beset headmen in the past. They are caught between government, on whose actions their own authority partly depends, and their constituents in the villages, who frequently press them with demands and complaints that are beyond their power to address. The slow pace of delivery has meant that some committee members have been suspected of ‘eating’ the money of the government, as rural villagers do not always comprehend the many reasons for the delays ... In effect, the legitimacy of the CPA committees and Trust has become dependent

on the ability of [government] to deliver meaningful benefits; if government fails, it is the committee members who will bear the brunt of local anger (Palmer *et al.* 2002a: 140; 2002b: 141).

Local accountability – that is, of the DCLT to its Dwesa-Cwebe ‘constituency’ – always was, and still is, of critical importance. After June 2001 this constituency experienced increased problems with the reserve management over the length of the close season and the increase in the entry fee, as we have seen, and looked to the trustees for leadership. With the launch of the CMC in mid-June, the DCLT had at least a locally driven forum that it co-chaired to address such issues and a transformed relationship with the ECNC (see below). The reserve-community relationship was no longer as pressing as it had been, for at last a viable institution for co-management had been set up. The trustees could focus most of their attention on other more pressing problems that came to the fore in 2002-3.

As we have seen it was the *impasse* over the release of funding for running expenses, linked to the training the trustees, that predominated in the post-settlement period. So long as the DCLT had no budget and no infrastructure it could not signal the quantum leap from the trust-in-waiting of the earlier years, to a landowning body with considerable development funds – I almost wrote ‘at its disposal,’ but of course they were not, and that was the nub of the whole issue. The intensity of the struggle of recent months in spite of the DCLT’s unassailable legal-institutional position since the settlement and the relative lack of qualified contenders for the role of trustees suggests that there was more to it than the legitimacy issue – at least, legitimacy in the eyes of the Dwesa-Cwebe community. The conflict has also been about legitimacy – or at least credibility – of the trustees in their own eyes, and in those of the widening circle of outsiders they increasingly have to deal with – government people and would-be investors, who take high standards of personal transport, attire and accessories for granted. The settlement agreement, tantalisingly, supplied the means not only of developing the considerable landed assets the DCL acquired on behalf of the community, but also of raising their profile. With more than R14 million available, the DCLT could at last become the modern, credible organisation it needed to become if partnerships and investments to extend the financial settlement were to be obtained. It had been a long haul from protest leaders to conservation committees, then land committees, then a trust-in-waiting; during this time the trustees had evolved into a sort of micro-municipality democratically representing the Dwesa-Cwebe imagined community that they had largely created. From the outset of the trust idea, they had internalised the idea that they would be more than landlords, that they would also play an active role in local development of Dwesa-Cwebe. Small wonder, therefore that they were not content with their landed entitlements and were impatient for delivery of their entitlements in the other sense.

The other sense, of course, is the popular one discussed at the outset and that is encapsulated in the tag ‘to the victor the spoils.’ Without some of the expected accoutrements of their new status in the community and

beyond, the trustees self-respect as well as their credibility was at serious risk. To their credit, the trustees have not been campaigning for more than their due, simply the means to discharge their role and duties – a fairly modest R75 000 over six months to cover expenses, an office and an administrator. And it looks like, through the good offices of their allies, especially the ECNC/DEAET, they might achieve this before the end of 2003.

Another intensifier of the trustees' continued struggle for non-landed entitlements and recognition has been their perceived rivalry with the MLM. On paper, the DCLT is but a landowning trust, emasculated by a host of escape clauses, representing a few wards and sub-wards on the coastal periphery of the only officially-recognised local authority, the MLM. The new municipalities, perhaps especially one such as the MLM that was concocted from two former magisterial districts reporting to two former district councils, experienced all kinds of teething problems and initial distractions, but after their first few months of existence, that is, from the second half of 2002, they were exercising their powers and the MLM and DCLT were experiencing jurisdictional clashes, not least because the DCLT's jurisdiction was an imagined jurisdiction that was no match for the official powers of the MLM. Most particularly, new players such as River Rangers and RULIV/Gtz that lacked foreknowledge of the unusual history of the coastal wards and the leadership role of the DCLT could in all innocence ignore its existence in the shadow of the increasing profile of the MLM.

Conclusion

More than two years since the settlement, Dwesa-Cwebe's landowning bodies and local leadership, the CPAs and the DCLT, are still in the ambiguous terrain between title and entitlement. Having title, or course, means they are entitled in the literal and scholarly sense that we reviewed above, suggesting that it is entitlement in the other, popular, sense that they continue to struggle for. However, the record of the last two years also provides insight into any struggle over rights, whether landed or otherwise. Thus, following Fay's (2002) amendments to the environmental entitlement (EE) approach mentioned above: Any conflation of legitimacy and effective command that might be a characteristic of EE understanding of entitlement would certainly have been misleading if applied to the case in hand, given that tactical withdrawal was never part of the settlement agreement. Given my limited exposure to 'the field' over the last two years, I certainly have been guilty of projecting the 'overly homogeneous understanding of "community" to which EE studies are prone' as far as the CPAs and the DCLT is concerned, but hope to have exhibited a less embracing and static concept of 'institution' than the EE understanding in this paper. Following Fay again, I have cited the 'social actors', some as individuals, certainly as groups and categories and in relation to their networking; I have dwelt as long as I dared on the 'settings of action', the various meetings in which trustees or their spokesman have engaged in 'exchange relationships through which people acquire or dispose of resources'; I have discoursed (perhaps insufficiently) on the 'means by which actors make their claims stick' which have less to do with the

‘ideological justifications of action, appeals for the legitimacy of their claims ... moral precepts or taken-for-granted conventions, repertoires of acceptable argument and modes of argumentation ...’ than with straight forward lobbying and tactical withdrawal. As far as ‘the outcomes of actions’ is concerned, these both reflect the underlying rules, i.e., the conditions of the settlement, but have also entailed ‘[both] tolerated [and] condemned [but not] rule-changing deviation’ in the DEAT-negotiated way forward following the Role-Player’s Workshop of June 2003 (see entitlements’ subsection above and Fay 2002: 14-17).

There are indications here that the ‘old wine’ of landed entitlements in the EE contexts, including Fay’s amendments of them could be accommodated in the ‘new bottles’ of the very different kinds of entitlement sought in post-settlement quests for legitimacy, empowerment and recognition. The work-in-progress that this paper on the contemporary situation at Dwesa-Cwebe represents suggests that there are sufficient continuities between the two kinds of entitlement to make such a synthesis worth pursuing.

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