

RESEARCH Report 33

eMpangisweni Community Trust Claim

Susan Tilley



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eMpangisweni Community Trust Claim

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This document forms part of a series of reports researched and written by the Sustainable Development Consortium, led by Phuhlisani Solutions, on behalf of the Commission on Restitution of Land Rights and Belgian Technical Cooperation.

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Acronyms

ARC	Agricultural Research Centre
ARDF	Agricultural Rural Development Finance
CASP	Comprehensive Agricultural Support Programme
CLCC	Chief Land Claims Commissioner
CPA	Communal Property Association
CRLR	Commission on the Restitution of Land Rights
CSIR	Council for Scientific and Industrial Research
DLA	Department of Land Affairs
DoA	Department of Agriculture
DWAF	Department of Water Affairs and Forestry
IDP	Integrated Development Plan
ISRDP	Integrated Sustainable Rural Development Programme
MEC	Member of the Executive Council
NGO	Non-governmental Organisation
RDG	Restitution Discretionary Grant
RLCC	Regional Land Claims Commissioner
Section 42D	Section 42D of the Restitution of Land Rights Act 22 of 1994, as amended
SDC	Sustainable Development Consortium
SP	Strategic Partner
SPG	Settlement Planning Grant

Executive summary

This diagnostic study examines the case of the restoration of ten farms in KwaZulu-Natal, in the area of abaQulusi Local Municipality and Zululand District Municipality, to the eMpangisweni Community Trust in 2003. The restored land is 6,025 hectares in extent.

The report outlines the community's attempt to develop and use the land that has been restored to it in terms of the Restitution of Land Rights Act 22 of 1994 ('Restitution Act'). It examines the nature and content of the post-settlement support received and draws lessons from the community's experience that might inform the development of a strategy for post-settlement support provision in future.

At the outset, the report describes the location and physical features of the restored land, the history of ownership and dispossession and the changes in land use that took place in the post-dispossession period. The process of the claim lodgement, verification, negotiations and settlement are then traced. The developments and support provided during the post-settlement phase are then examined.

Current development activities taking place on the land include the following:

- outsourcing of the management of forest plantations (predominantly wattle) in the higher rainfall areas
- intensive irrigated agricultural crops (maize, beans and pecan nut trees)
- communal grazing of cattle
- informal residential settlement.

The study concludes with an analysis of the critical strategic issues, which can be summarised as follows:

- It remains unclear as to who constitutes the claimant community and what their developmental needs are. It also remains unclear as to how the rights and interests

of the restitution beneficiaries are differentiated from those of the broader community. The spatial and social boundaries of the claim have become blurred.

- With the emphasis on one specific business entity, the needs of the broader claimant community have been neglected. The Trust is not simply confronted with the task of managing a business operation but must also address the ongoing governance of a broad geographic area, which contains a number of households across different groupings within the community.
- A clarification of the various roles, powers and responsibilities of different role players such as the Inkosi, the Inkosis, the trustees, the farm manager and the members is necessary. A clear understanding needs to be developed regarding governance, the role, leadership and influence of the traditional authority, and which entity has legal ownership of the land. In addition, the status and identity of the Trust needs to be distinguished from that of the operating company. It would seem that the boundaries between the functions and jurisdictions of these various entities have become blurred.
- It is essential that the various external support agencies clearly define their respective roles and responsibilities, align their services with each other and engage with the planned development activities in a coordinated manner.
- The financial management and lines of financial accountability need to be improved and become more transparent regarding the various business entities. In addition, the various benefit streams need to be identified and agreement needs to be reached on their distribution.

eMpangisweni at a glance

Province	KwaZulu-Natal
Local government	abaQulusi Local Municipality Zululand District Municipality
Date claim lodged	1998
Date settled (Date the memorandum submission in terms of Section 42D was signed)	22 July 2003
Total settlement amount	Total settlement: R16,472,480 with grants allocated as follows: Planning grant x 342 = R492,480 Restitution Discretionary Grant x 342 = R1,026,000
Size of land awarded	6,900 ha (per Settlement Agreement) 6,025.5127 ha (per Section 42D submission)
Type of legal entity	Community trust
Number of members	342 members were identified and verified. These households represent approximately 3,000 potential beneficiaries
Developmental activities	<ul style="list-style-type: none"> • The outsourcing of the management of forest plantations (predominantly wattle) • Intensive irrigated agricultural crops (maize, beans and pecan nut trees) • Communal grazing of cattle • Informal residential settlement



1. Introduction

The eMpangisweni community lodged a claim for the restoration of a number of contiguous farms near Swart Umfolozi in the area under the abaQulusi Local Municipality in 1998. The claim was settled in July 2003. A community trust was established as the legal entity to manage the community's landholding and associated assets and rights.

2. Location, property description, and basic services

Location

The land restored to the eMpangisweni Community Trust is located in northern KwaZulu-Natal in the abaQulusi Local Municipality, within the boundaries of the Zululand District Municipality. The land is located adjacent to the small rural village of Swart Umfolozi, approximately 70 km south-east of Vryheid and 80 km north of Ulundi. The closest rural service centre is Gluckstadt, 34 km from Vryheid on the R34 road to Melmoth.

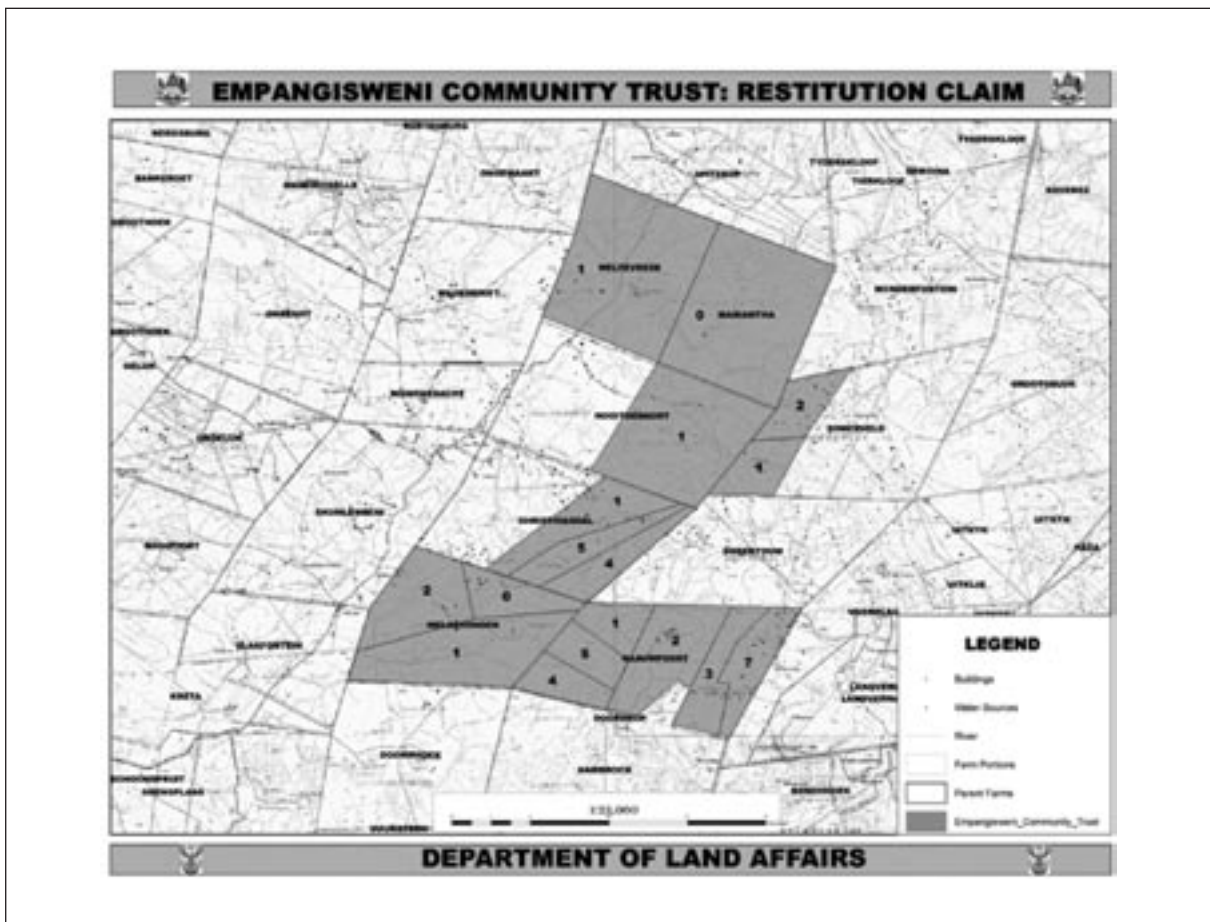
This large tract of land, over 6,000 ha, ranges from the escarpment, where the rainfall is higher and the climate cooler, down to the valley bushveld on the banks of the Swart Umfolozi River, where the irrigated lands are situated.

Property description

The restored land includes ten portions from the following farm areas, as described in the Section 42D submission:¹

1. The Remainder of Nooitgedacht No. 427
2. Remainder of Portion 1 of Christinasdal No. 480
3. Portion 4 of Christinasdal No. 480
4. Portion 5 of Christinasdal No. 480
5. Portion 1 of Welgevonden No. 136
6. Portion 2 of Welgevonden No. 136
7. Mariantha No. 845,
8. Portion 1 of Weltevrede No. 540
9. Naauwpoort No. 556
10. Zommerveld No. 277.

Map1. The Boundaries of the eMpangisweni Community Trust Claim



¹ It is important to note that the Settlement Agreement does not describe the various portions of land which make up the property being claimed.

Water supply and management

The Swart Umfolozi River winds through the south-western corner of the property and is the primary source of water for the project, including irrigation. The Mpongoza River rises from a catchment area to the north of the property where the rainfall is higher. The Mpongoza winds through the Mariantha, Weltevreden and Nooitgedacht portions to join the Swart Umfolozi on the farm Christinasdal. The Sikwebezi River rises in the north-eastern corner of the property but is not a significant source of irrigation water (Development Unlimited 2003). A tributary of the Swart Umfolozi, the Nhlanyane River, also runs through the land. There are two dams on the land, the larger dam, the iThemba, and a smaller one that is filled from the river and used for farming operations and for drinking water. Water is also obtained for irrigation directly from the rivers. There are several electric pumps used to feed the dams from the rivers. The project is currently engaged in discussions with the Department of Agriculture (DoA) about setting up a gravity-feed system from the top dam.²

Inkosi Douglas Zondo, the chairperson of the eMpangisweni Community Trust, outlined the situation regarding water and rainfall on the farm:

When I bought the farm the dam was there already. The Swart Umfolozi River is running well and so is the Nhlanyane River, which runs through these lands, but the rain has not been enough this year. We approached the DoA to make another dam so that we can have water throughout the year – in winter there is a problem with water and we can't rely on the rain alone. Hail is also a problem in this area. The hail almost destroyed our whole potato crop. We spent R1,5 million on planting the crop but the hail damaged it and we had a loss of over R400,000.³

According to the farm manager, Mr Albers, the rainfall and water supply should be adequate for the farming operations, but the lack of storage capacity on the farm leads to a very limited water supply during low rainfall periods:

The rainfall is about 650 mm per annum in a good year.⁴ We are surrounded by high rainfall areas. The Swart Umfolozi River goes through this area and we are high up in the river and so get flash floods. If we could store water in summer we'd not have the problems we have in winter. Storage is a problem and the winters are very

dry. Sapekoe built a dam previously and we have plans for an additional dam on eMpangisweni land. This will help the project and the beneficiaries and also those down river. The proposed changes to the irrigation system will help with water usage.⁵

Some existing settlements on the land have piped water, but the supply system is frequently severely compromised and is sometimes not available for three months at a time. Farm residents then fall back on water from the rivers and dams.

Topography

The altitude of the property varies from 530 m above sea level in the south to 1,250 m in the north. There are five bio-resource zones covering the property, according to the CEDARA Agricultural College's land-use classification system (Smith and Guy 1998). These zones vary in height above sea level and include broken terrain on steep slopes (above 12%), rolling and partly broken terrain on generally steep slopes (above 12%) and some moderate slopes of 5% to 12%. These different bio-resource zones allow for a range of land uses including intensive and extensive farming systems, dryland and irrigation farming, annual cropping, timber and indigenous forest areas, pastures and grassland grazing for wildlife, with some areas being non-arable. In some of the steeper areas, appropriate contour protection is essential (Smith and Guy 1998).

Soil and vegetation

Approximately 2,000 ha of the farmland is suitable for grazing and consists of thornveld and sourveld, which is well suited to game farming. The north-eastern corner of the property is taken up by the Ngome State Forest.

When asked about soil management, the Inkosi indicated that the trust had been assisted in managing the prevention of soil erosion: 'The DoA came and helped with this and told us about the carrying capacity of the land and the right number of cattle to prevent erosion.'⁶

The farm manager indicated that the soil has been well maintained and allows for year round planting:

The soil is very good. Sapekoe put lots of chemicals into the soil to balance it. We can plant in summer and

² While water supply issues should more appropriately be discussed with the Department of Water Affairs and Forestry (DWAF), it would seem that these discussions have been held with the DoA and that DWAF has not been involved.

³ Interview: Zondo, April 2006.

⁴ Development Unlimited records the annual rainfall as varying from 700 mm to 1,124 mm across the various topographical zones of the property (Development Unlimited 2003).

⁵ Interview: Albers, April 2006.

⁶ Interview: Zondo, April 2006.



in winter. The only problem is the water availability in winter.⁷

The following issues regarding soil and vegetation management were noted during the site visit:

- A high potential exists for soil erosion due to fragile soils.
- A number of the existing and proposed settlements are on erosive soils.
- Existing eroded areas are not rehabilitated or fenced.
- There is bush encroachment on grazing lands.
- There is no coordinated grazing management evident.
- There is a prevalence of invasive species.
- There are no fire breaks or controlled burnings despite high fuel loads, thus creating a very high risk of fires in winter.

Energy

According to the Inkosi, trees are chopped down for firewood but he said, 'we are in control and the collecting of firewood is discussed in our trust meetings.'⁸

The current arrangements for the electricity supply that feeds the irrigation pivots are uneconomical. A consultant is

currently assessing the existing system and is approaching Eskom about the rationalisation of the system. This should reduce the electricity bill of the project by approximately 50%.

Basic services

There are at least two clinics in the vicinity of the project. One of the clinics, which is located on the farm, is run by the Inkosi's wife. The community apparently received support to establish a clinic from the Provincial MEC for Health at the time that the project was initiated. The project has employed security from the area to look after the clinic and each member of the community who is not employed has a turn to work as a security guard and to maintain the clinic and its garden.

The community has a very high incidence of HIV/AIDS. Four in five women tested positive at antenatal clinics in the area (Developmental Services 2006). Home births increase the risk of mother to child transmission, as the necessary drugs and treatment are not available to mothers at home.

There are primary schools on the nearby farms. There is no high school that goes beyond Grade 9. The community has approached the government to establish a high school.

There is no formalised transport system and the farm residents rely on local farmers and people with vehicles to stop and give them lifts. From Gluckstadt there are taxis into Vryheid and the other towns. A return trip by taxi to Vryheid costs R32. Children often walk long distances to school – as much as 10 km to 20 km per day. There is a need for a transport service that links the more remote settlements, and access to certain settlements needs to be improved by the construction of additional roads and bridges.

There is a pension pay-point in the area, and identity documents and birth and death certificates are available at the tribal court. The nearest police station is in Gluckstadt and the closest hospital is at Ceza.

⁷ Interview: Albers, April 2006.

⁸ Interview: Zondo, April 2006.

3. History of ownership, dispossession and changes in land use

The eMpangisweni community occupied the land under indigenous tenure for an unknown length of time prior to dispossession. They enjoyed beneficial occupational rights to arable, residential and grazing lands, as assigned by the Inkosi. Members of the community derived their livelihood from the land.

Factors which led to dispossession

As a result of the introduction of a series of laws and policies, the community was forced to join the ranks of the rural proletariat. Their rights to land were gradually eroded until such time that they exercised no rights and were forced to live elsewhere. A number of pieces of legislation impacted on rural dwellers in general, and in this instance on the eMpangisweni community.

With the introduction of the 1913 Land Act, the eMpangisweni clan were prevented from purchasing, accessing or acquiring land other than that in a scheduled 'native area'. The Act also prevented independent tenancy, on white-owned farms. The Master and Servant Law Amendment Act of 1926 regulated and controlled labour tenancy by binding labour tenants to particular white farmers, and their contracts generally lasted from three to six months. These contracts were known as *isithupha*. Labour tenancy thus became regulated and enforced by the state and the vast majority of the members of the eMpangisweni clan became labour tenants.

In addition, the Native Service Act of 1932 drew all Africans who lived outside the reserves into the agricultural economy. It extended existing controls over labour tenancy and bound the entire household into the labour tenancy contract, thereby empowering the landowner to evict the entire family if any one member defaulted on his or her labour obligations to the landowner.

The Development Trust and Land Act of 1936 determined that Africans could only hold and/or occupy land in the

scheduled and released African areas. Chapter 4 of this Act provided for Africans residing in rural white areas if they were registered as labour tenants.

In 1956, the 1936 Development Trust and Land Act was amended so as to further tighten control over labour tenancy. The advantages of labour tenants being able to keep cattle and access land to cultivate (thereby enabling them a degree of unregistered land use and economic independence) were eroded by the amendments.

The Prevention of Illegal Squatting Act of 1951 was followed in 1959 by the Trespass Act, which restricted the rights of Africans on farms and allowed for the criminalisation of farm dwellers at the discretion of farm owners, thereby also allowing evictions without state sanction.

In 1968 the Abolition of Labour Tenant Act forced labour tenants to choose either to remain in full-time employment on the farms or to leave the farm and seek residence in nearby tribal areas and townships. If they chose the latter option, their sheep and cattle had to be sold. If they chose the former, they were required to work in full-time service for minimal wages. In the event that farm dwellers resisted the selling off of their livestock or becoming employed workers, landowners usually evicted them by force. Removals in the area where the eMpangisweni community lived occurred over a period of time, from the 1950s until the 1990s.

Inkosi Zondo outlined the situation faced by many members of the community as a result of being evicted:

During apartheid, from the 1950s onwards, people were evicted from the farms. They went to other amaKhosis' areas. They had no say there and were treated badly. They were not given land for ploughing and the number of their livestock was restricted. They were treated like newcomers. When people were dispossessed, they went to areas such as Mhlabatini, Eshowe, to Hlobane to work on the mines, and to other areas around here.⁹

⁹ Interview: Zondo, April 2006.

4. Claim lodgement, verification, negotiations and settlement

Lodgement of the claim

In 1996 the community, represented by the eMpangisweni Tribal Land Committee, approached the Department of Land Affairs with a view to accessing the tenure reform programme. Thereafter the community lodged a restitution claim on 10 October 1996. These approaches resulted in there being two land reform initiatives for the eMpangisweni community on adjacent land – a labour tenant claim on approximately 3,000 ha and the restitution claim on approximately 6,000 ha.¹⁰ The focus of this report is on the restitution claim.

Inkosi Zondo explained how the various land reform processes were initiated:

When I finished matric, people approached me and asked me if I could bring them back to their forefathers' land. I approached the DLA and was given seven farms and had to pay 5% through the willing buyer/willing seller process. This was not through restitution but through the land reform programme. This land was not enough for my people and so I went to the Land Claims Commission, which lets traditional leaders and landless people claim land. Through restitution we got ten farms including Welgevonden, Nooitgedacht, Christinasdal, Mariantha, Weltevrede, Naauwpoort and Zommerveld.¹¹

Gazetting of the claim

A notice in terms of Section 11(1) of the Restitution Act was published in the *Government Gazette* Number 23125, in notice number 243 of 2002. Copies of the notices were also published in local newspapers and letters were sent to the affected parties advising them of the claim. A number of meetings were held in the locality to discuss the claim.

Verification of members

The Regional Land Claims Commissioner (RLCC): KwaZulu-Natal undertook a verification exercise and 342 members of the community were identified and verified (CRLR 2003). According to Inkosi Zondo, these members represent approximately 3,000 beneficiaries (including dependants).

Clause 5.3 of the Section 42D submission states that:

The community constitutes a 'person' as described in terms of section 2(1) of Act 22 of 1994, which premises the entitlement of a person or the descendent of such a person (or a community) to restitution of a right in land (CRLR 2003).

Negotiations

The claimed property was privately owned at the time of the claim being lodged. The previous landowners were as follows:

- A & T Africa Trading 200 cc
- El Toro Cattle Co (Pty) (Ltd)
- Sapekoe Estates (Pty) (Ltd)
- Viva Elizabeth Durno Trust
- C.L. Craig
- Nooitgedacht Family Trust.

The Section 42D submission sets out the issues for which approval by the minister were being sought as well as other details regarding the claim. These include the history of dispossession, description of the land being claimed, the claimant community, acceptance criteria, interested parties, notification, the involvement of the abaQulusi Local Municipality, summary of the settlement package, details of indemnity, financial implications, and a recommendation for approval by the minister.

Clause 4 of the Section 42D submission does not define who the members of the community are or the criteria for their selection or inclusion in the claim. This clause states that:

The CRLR [Commission for the Restitution of Land Rights] undertook a number of comprehensive claimant verification exercises, 342 claimants were verified. The claimants are represented by Inkosi D.V. Zondo in his capacity as a Chairperson of eMpangisweni Community Land Claim (CRLR 2003).

Other interested parties to the negotiations are listed as including the 'claimants' as represented by Inkosi Zondo, the landowners, the local authorities (the abaQulusi Local

¹⁰ While the two land reform claims were lodged separately, the boundaries between them appear to be socially and spatially blurred.

¹¹ Interview: Zondo, April 2006.

Municipality and the Zululand District Municipality, and the state as represented by the RLCC: KwaZulu-Natal.

Clause 8.1 of the Section 42D submission (CRLR 2003) outlines the involvement of the abaQulusi Local Municipality: 'It has been agreed that the RLCC shall engage with the claimants, abaQulusi Local Municipality on future development of the alternative land'. It is unclear as to what is meant by 'the alternative land' as the Section 42D submission recommends only the restoration of the land lost by the community.

According to Clause 8.2, 'The provision of basic services in the project area shall be the subject of an agreement to be drawn between the state and the abaQulusi Local Municipality' (CRLR 2003). This is re-stated in Section 9.3:

With regard to basic needs, the involvement of abaQulusi and Zululand municipalities has been solicited. It is recorded here that the RLCC's Implementation and Development Facilitation Unit (otherwise known as the Post-settlement Support Unit PSS) has engaged with the claimants and abaQulusi Local Municipality on future developments of the claimed land including the provision of basic services related to the claimed land once restituted. The abaQulusi Local Municipality will facilitate development in the claimed land and will assist the claimants in terms of applying for the Department of Housing subsidy scheme. This will be done in terms of the agreement to be signed by all the parties (CRLR 2003).

Furthermore, Clause 9.4 of the Section 42D submission states:

The Zululand District Municipality has also agreed in principle that the project will be supported and the CRLR-KZN will continue to advocate for the District Municipality to incorporate the project into its IDP (CRLR 2003).

To date, there is no evidence of such an agreement having been drawn up.

Clause 9.2 of the Section 42D document states that the 'current land use (timber, irrigation agriculture, beef cattle, game) will remain as is except rezoning the game and grazing land to allow for increased agricultural land and semi-commercial, subsistence and residential use,' (CRLR 2003).

The negotiations process for the acquisition of land in the abaQulusi Local Municipality's district (one of four Integrated Sustainable Rural Development Programme (ISRDP) nodal areas in KwaZulu-Natal) proved to be protracted and arduous due to the opposition posed by some of the landowners, in particular the Nootgedacht Family Trust. As a result, the RLCC provided special support, and the involvement of the regional land claims commissioner, Ms Thabi Shange, was drawn upon.¹² After lengthy negotiations, all parties agreed to sell and the negotiations were concluded.

Settlement

The Settlement Agreement was signed on 14 February 2004, and community members who were not already living on the land and had indicated that they wished to return, began to move to the farm in the same month. Clause 3.1 of the Agreement states that 'the acquired land for the claimant community shall be used for residential, commercial and subsistence farming and related activities' (DLA 2004).

At the time of the Settlement Agreement being signed, portions of the claimed land owned by the Nootgedacht Family Trust and Sapekoe Estates had not yet been transferred to the community, but portions owned by Viva Elizabeth Durno Trust, Africa Trading company and C.L. Craig had been transferred (DLA 2004).

Financial settlement

According to Section 6 of the Settlement Agreement, the total monetary value of the claim (including grants) was R16,472,480. The land area is reported as 6,900 ha, but this is contradicted by the Section 42D submission which states that the extent of the land is only 6,025 ha. The land purchase price was R14,954,000 and the balance (R1,518,480) was made up of planning grants and discretionary grants. Grants were allocated as follows:

- Settlement Planning Grant x 342 = R492,480
- Restitution Discretionary Development Grant x 342 = R1,026,000.

The RDG was paid into Ithala Bank, which acted as the fund manager.

¹² The following comment from Ms Shange is included in the Section 42D submission: 'This claim is located in the Zululand District Council, abaQulusi Local Municipality Vryheid which is one of the four ISRDP areas in KwaZulu-Natal. It is one of the most difficult regions ... where most of the farmers oppose restitution. The negotiations are normally very tough and protracted. It is a principle for this office that referring the cases to the court should be the last resort ... A favourable deal has been reached with all but one extremely hostile landowner. This office would prefer to fast-track the purchase of the farms to avoid frustrating the farmers with whom a fair deal has been reached' (CRLR 2003).

Condition of settlement

Clause 4.1 of the Settlement Agreement states that:

The claimant community through its registered land holding entity, shall not acquire the right to dispose of its title to the land restored by way of sale, donation, exchange nor to alienate in any way or to any person, institution, nor encumber the title in a manner that will result in any form of dispossession and loss of such title (DLA 2004).

5. Legal entity, ownership, membership and rights

Establishment of the legal entity

The community members set up a land and assets holding entity in the form of a community trust with nine trustees. The trust deed was registered with the Master of the High Court on 2 September 2003 at Pietermaritzburg (Number IT983/03). The trust deed outlines and regulates the rights and obligations of members, the process and election of trustees, the powers of trustees, and other rules and processes relating to the administration of the Trust and the property (eMpangisweni Community Trust, 2003).

A lawyer was contracted to draft the trust deed after having held one meeting with the Inkosi and other community representatives. The Inkosi indicated that members of the community had made suggestions about the structure and content of the trust deed but that these were not included in the final document.¹³ According to the deputy chair of the Trust, the trustees were asked to sign the trust deed without being clear about its content or implications.¹⁴

The concerns raised about the process of establishing the Trust may in part have something to do with the required procedures for setting up such an entity. In this instance, it is illustrative to compare the establishment of a Trust with that of a communal property association (CPA). The Trust Property Control Act 57 of 1988 contains no procedures to ensure an inclusive and democratic process for drafting the constitution and for establishing the entity. By way of comparison, the steps set out in Sections 5 to 7 of the Communal Property Associations Act 28 of 1996 (CPA Act) require that all the 'members' of the 'community' must participate in a carefully monitored and guided process for the adoption of the constitution.¹⁵

The members of the eMpangisweni Trust are represented in most matters by Inkosi Zondo in his capacity as the chairperson of the eMpangisweni Community Trust Project. He is viewed as the founder of the Trust, but is not himself a trustee. The founder, in terms of Clause 26 of the trust deed, plays the role (which is no longer required) of making the

initial donation to establish the Trust. According to clause 16.6 of the trust deed, the founder or chairperson has the power to exercise a second or casting vote.

The trustees are:

- Jackson Nyandeni
- Thengukufa Thomas Mthethwa
- Sibongile Elda Ndaba (deputy chair of the Trust)
- Boy Wilfred Nxele
- Florah Babekile Mtshali
- Mzayifani Phillip Zikode
- Zayonke Muntuwakithi Masondo
- Mtungani Philip Mnguni
- Khubekile Jesline Nxele.

Trustees were apparently selected so as to obtain a fair representation across all the different areas overseen by the various Inkosis.¹⁶

Powers of trustees

Section 6 of the trust deed outlines the powers of trustees. These are very general and grant trustees virtually unlimited powers, more especially as stated in Clause 6.5.2, which includes provisions usually included in a standard format commercial trust that vests wide and unchecked powers in the trustees. These wide powers of trustees become even more entrenched and protected by the provisions included in Clause 30, which states:

Save as herein stipulated, where discretions are vested in the trustees hereunder, such discretions shall be complete and absolute, and any decision made by them pursuant to such discretionary powers shall not be challengeable by any member or any person affected thereby, provided the trustees conform to the main objects of the Trust, and to the other terms, conditions and principles of this Trust Deed (eMpangisweni Community Trust 2003).

It is difficult to see how these powers are compatible with the principles of a democratic and participatory body designed for the equal benefit of all its members.

¹³ Interview: Zondo, April 2006.

¹⁴ Interview: Ndaba, April 2006.

¹⁵ Personal communication: Pienaar, May 2006.

¹⁶ Interview: Zondo, April 2006

Managing and running the Trust

The trustees work closely with the Inkosis who play a co-management role, more specifically regarding land-use rights and resource management. The trustees meet with the Inkosis to allocate sites, define fencing boundaries and determine who gets employment, with an emphasis on the fair distribution of job opportunities on the farm. In reality, the real power of the Trust appears to reside with the Inkosi and Inkosis.

Inkosi Zondo is of the opinion that the Trust is effective:

*The trustees respect me because I am the Inkosi. We come together and we work one hundred percent well together. The Trust meets twice a month and we discuss progress and difficulties. We talk about fencing and livestock and how many cattle people can have on the grazing land. We talk about when, where and how much firewood people can gather. We also talk about finances and how things are working.*¹⁷

The Trust has established an account and has appointed a chartered accountant, but to date no financial statements or books have been prepared for the Trust. Views on the financial management by the Trust reveal conflicting perspectives on how and what money is managed by the Trust. On the one hand, some of the trustees say that there is no money to manage, but on the other hand grants have been received by the Trust and the income from felling the timber is paid to the Trust. A lease and a loan agreement are supposed to be in place between the Trust and the operating company (see below), but neither have been developed or agreed upon. The company is supposed to lease assets from the Trust, but according to Trust members, no such monies have been received (Developmental services 2006).

Besides the Trust not adequately managing its own finances, it has not received or viewed any financial statements from the operating company. It seems that the accounts are prepared by the farm manager and given to the Inkosi and then to the accountant, without the Trust having the opportunity to scrutinise them.

This situation is compounded by the fact that two of the trustees cannot read or write and are therefore unable to read minutes or documents relating to the Trust, such as the financial statements. The infield training programme revealed that no training or support has been provided to trustees.

Meetings

Clause 18 of the trust deed deals with the issue of annual general meetings. To date, no formal annual general meetings have been held even though the Trust should have convened two such meetings since it was established. No financial statements have been prepared or presented to an annual general meeting. There are, however, general meetings of the community held every six months, but these cannot be said to be Trust meetings or annual general meetings.

The quorum constituting a general meeting is 70% of the members recorded in the membership register of the Trust at the time. This is stated in Clause 19.6 of the trust deed. In the event that no quorum is present, the adjourned meeting requires a quorum of 60% of the recorded members. These stringent quorum provisions are likely to make it difficult for the Trust to function efficiently or lawfully.¹⁸

Membership

Membership is not clearly defined in the Section 42D submission. Section 1 of the Settlement Agreement provides definitions for the following (DLA 2004):

- The claimant community is defined as 'the restitution claimants who lodged a claim in terms of the Restitution of Land Rights Act 22 of 1994 as amended.'
- The term 'direct descendant' shall 'have the same meaning as assigned in Section (1) of the Act, and therefore includes the spouse or customary law spouse/s of an original family head.'
- 'Beneficiary families' means 'any family belonging to the claimant community which has been accepted by the Regional Land Claims Commissioner: KwaZulu-Natal, in terms of the provision of the Act, and is therefore entitled to the benefits under this agreement. Such a family is identified for the purposes of this agreement either by the name of the original family head at the time of dispossession or where the original family head is deceased, by the names of the representative family members.'
- In turn, 'representative family member/s' is defined as 'the direct descendant/s of an original family head, which direct descendants have been identified and accepted by the RLCC.' It is worth noting that the task of approving or accepting beneficiary families or representative families is granted to the RLCC and not to a community structure.

¹⁷ Interview: Zondo, April 2006.

¹⁸ Clause 22.2 requires a two-thirds majority of all members in the event of amendments being made to the deed of trust. For this stipulation in the trust deed to be amended, it will probably require a High Court application.

Clause 7.2 of the Settlement Agreement states that:

The list of original members of the claimant community who were removed from the land claimed or their direct descendants less outstanding families and the list of the current labour tenants attached to this Agreement reflect the total number of beneficiary families of this settlement (DLA 2004).

The labour tenants, who have their own claim process, are thus viewed as being beneficiaries of this claim as well.

Members are defined in Section 3 of the trust deed as beneficiaries of the Trust, being such persons, and categories of persons, designated as such in terms of Clause 7. Clause 7 states that:

The first members of the Trust are those persons mentioned in Annexure A. These shall be registered in the membership register as such for whose benefit the state has undertaken to purchase the land (eMpangisweni Community Trust 2003).

For all intents and purposes, no clear definition of membership is provided – only the names of members are provided, without establishing criteria or clear reasons as to why they have been defined or determined to be members. In terms of the Restitution Act, defining the members of a community is a pivotal issue. As such, it is not adequately addressed in the trust deed.

An interpretation of the manner in which membership is defined in the trust deed would suggest that membership is understood in terms of descent and in terms of successors being members of the original member's household.

The lack of a clear definition of membership permeates the practice of those involved in the Trust and its activities. The Inkosi indicated that membership is not necessarily defined in terms of previous dispossession, but rather all the people who fall under this (traditional) jurisdiction:

Members are people who are born and bred here, or whose ancestors were born and bred here. All the people in this area are my people and so, as the Inkosi, I must look after them. They are my community. A list of all the members was included in the claim application. The membership list included all those people who were evicted from this land. We went house to house to all the areas where people had moved to. We held a big community meeting and everyone said who had been evicted and where they are now. Everyone was allowed

to come back as long as they were not involved in criminal activities. There are about 300 households and this translates into about 3,000 people who are viewed as beneficiaries. Descendants have a right to live here even if they haven't lived here since the evictions. We as a community move away from the Restitution Act because we are a community and a family and so we don't have to comply with those laws. We have our own way of knowing who belongs to this community or not.¹⁹

There are essentially six different groupings associated with the eMpangisweni settlement, some of whom are members and others who are not. These groupings include:

- labour tenants who were already living on the land and who had their own cattle
- members who returned and who are now employed on the farm
- members who returned and who are residents but not employed on the farm
- residents on the land who are neither members nor workers on the farm
- previous farm workers (non-members) who have continued to live and work on the farm
- members who have not returned to the land.

The Inkosi indicates that there are about 300 households whose members are viewed as beneficiaries. According to Clause 3.2 of the trust deed, 'A household includes a member and all his or her dependants' (eMpangisweni Community Trust 2003). The use of the term 'household' appears at times to be used interchangeably with the term 'member' and/or 'beneficiary'. It remains unclear as to the status and powers of each of these parties and poses a number of questions. When does the viewpoint of a household count, and when does the viewpoint of a member count, and can one override the other? How and when is a household represented and who represents a household? What constitutes a household – the number of families living within an identifiable homestead area and which includes at least one member? This implies that there will be residents living on the farm who are not members. This is confirmed by the statement made by the Inkosi, as cited above, that there may well be residents living on the farm who are not members. Clause 3.8 of the trust deed defines a resident as 'any person who is entitled to reside on the land' (Empangisweni Community Trust 2003). The trust deed does not make provision for the rights and duties of such residents.

¹⁹ Interview: Zondo, April 2006.

Section 8 of the trust deed states that members are to be registered in the membership register, which reflects the name, address, identity number or date of birth and any exclusive rights, interests or benefits of each member in relation to the property, and the category, if any, into which such a member falls. The trustees may create such categories of membership and sub-registers as they may deem appropriate, and there shall be no implied obligation to deal with each member or category of members in the same manner or in any particular manner, subject to the overriding principle of equity referred to elsewhere in the trust deed (eMpangisweni Community Trust 2003). According to the review of communal property Institutions, conducted by the Council for Scientific and Industrial Research (CSIR) in 2005, membership registers and lists are difficult to maintain. They are almost always (especially in restitution cases where membership is usually not closed or fixed) not a reflection of the 'true membership' (CSIR 2005).

Membership rights and the transfer or succession of membership

The trust deed makes no distinction between the procedural and substantive rights of members, and no provision is made for when, how or on which terms substantive rights may vest. The trust deed does not describe the nature and content of different types of substantive rights and does not provide guidelines for establishing the criteria or procedures for the allocation of rights. An inherent danger, and one which is not dealt with in the trust deed, is that membership does not only vest procedural rights, but automatically vests substantive rights to benefit or gain (as of right) from access to assets. The provision for the transfer of certain substantive rights is not provided for.

In practice, members of the Zondo tribe or other residents who are not members enjoy the same rights as the members of the Trust and have the right to a residential site, arable site, grazing and the use of natural resources on the property. Rights to arable land may be reallocated by the trustees and/or Inkosi, if they are not used. In general, the rights are issued by the Inkosi in terms of verbal agreements made at the *iBandla* (tribal council).

Former farmworkers have been incorporated into the Zondo clan but are not identified as members in the trust deed. It remains unclear as to whether they hold equivalent or lesser rights than members of the Zondo clan or formal members of the Trust.

Members are entitled to bequeath their rights in the land and the property to a successor provided that his/her successor is a person who is a member of his/her household and has

reached the age of 18. However, this enquiry revealed that in practice, very few wills have been made by members and that customary inheritance caters for the passing on of the rights acquired by members – the eldest son inherits the rights and other children have entitlements to request sites through the *iBandla*.

The manner in which membership is defined in the trust deed would seem to imply that a community member who was not on the original list of verified members and who does not live in an existing household of a member but who later makes a claim of membership will in all likelihood not be eligible for membership. However, it remains within the discretion of the trustees to evaluate the eligibility of people named as successors in the wills of members in the event that they are not members of existing households.

In terms of Clause 7.2 of the trust deed, the trustees may:

At their discretion and subject to the provisions of Clauses 11, 12 and 13 fill the place of a member who dies, relinquishes or loses his/her membership of the Trust by admitting a person as a new member, provided that if a member who dies has appointed as his/her successor a person who is a member of his/her household and who has reached the age of 18. The Trustees shall admit such a successor as a member (eMpangisweni Community Trust 2003).

Section 12 of the trust deed addresses the transfer of members' rights on resignation. Any member may resign from the Trust at any time. Members who intend resigning must give the trustees written notice of their intention and may then sell their rights of access to grazing and arable land and, if applicable, their rights to a residential site. However, the trust deed does not indicate how such rights arise, how they vest and what the nature and extent of such rights are. It would appear as if each member has such rights but it remains unclear as to how they may acquire such rights in the first instance, if the content and the extent of the rights have not been determined. Clause 12.3.1 states that a member may only sell his/her rights if the prospective buyer has been introduced to the trustees, who are entitled to refuse to admit such a person as a member. The trustees are entitled to refuse admission of up to three prospective buyers of a member's rights and are then obliged to pay to the outgoing member just and equitable compensation for his/her rights in land (eMpangisweni Community Trust 2003).

Clause 12.4 states that the trustees are obliged to pay to the outgoing member just and equitable compensation for his



or her rights. In the case of a dispute over the amount to be paid in compensation the dispute shall be referred to the Master of the High Court.

The tradability of rights

The RLCC has indicated that discussions are to be held about whether there should be share certificates for members and whether their shares should be tradable or not. One idea that has been mooted is that an institution such as Ithala Bank could own a share of the project and provide soft loans to members so as to enable them to engage in further activities.²⁰

²⁰ Interview: Boyce, April 2006.

6. Development activities undertaken post-settlement

Profile of assets at the time of restoration

The existing infrastructure that was handed over to the community included two farm houses, various sheds and outbuildings, fencing, workers' accommodation and irrigation pivots. In addition, the pecan nut plantation and timber forests remained. However, many of the irrigation pivots were vandalised and some were stolen during the time between the purchasing of the land and when occupation took place. The Inkosi then arranged to have security guards located across the farms to minimise theft and vandalism but a great deal of damage had already been done. According to the farm manager, the deployment of these security teams 'helped to stop the free-for-all mentality. The Inkosi would not let anyone move onto the land until he gave permission.'²¹ The DoA was, however, reluctant to pay the wages of the security teams, but the RLCC assisted by providing funds for the basic operations of the project at the outset.²²

The farm manager outlined some of the difficulties the project encountered due to asset stripping when they commenced with the farming operation:

*The farm was in a state when we got it. We planted and didn't expect a major yield. With the low maize price we made a loss but we'd made progress in that the land had been cleared for planting and we used the income to fix the pivots and pump houses. The main electricity cable to the pump house was stolen and cost R30,000 to replace. It meant that we couldn't irrigate for two weeks and so we lost R140,000 in potential yield. The pivots are not new. They are from 1983 and some are about 24 years old. This means that a lot of maintenance is needed.'*²³

The community acquired the land but did not have sufficient resources or funding to begin using the land productively. The previous owner of the dairy had left the cattle, implements, truck and vehicle for the use of the community. Additional assets were bought with the grant funds (Magungwane Farming (Pty) Ltd 2006). The business plan projected that the initial funding required to capitalise

eMpangisweni's operation was approximately R25 million (Environ Dev 2005).

Labour

There was a degree of continuity in that many of the farm workers who were already working on the farm at the time of transfer continued to be employed. Some of the workers were not retained, but it seems that most continue to live on the farm and are viewed as part of the community, if not as actual members of the claimant group. The farm manager (who had been the manager prior to transfer) was responsible for selecting the workers who would be retained or dismissed. A total of 85 workers are registered as permanent employees. During harvest seasons, up to 350 casual workers are employed for periods of three months at a time. It seems that an attempt is being made to rotate the available employment during harvest time so as to provide as many farm dwellers with an opportunity to work. The workforce is made up of approximately 80% women, but elderly women are generally not employed in the commercial operation.

According to Inkosi Zondo:

*Farm workers were here when we got the land back and we carried on using them because they had skills and knew the systems for running the pivots; they were good drivers and had been given training. We brought Barlow World in to help with giving them skills for farming. Most of the farm workers were kept here – we knew their forefathers. Even if they were from other areas and weren't beneficiaries, we kept them on and they were included in the list of claimants. Some of them are labour tenants. When the community met at the beginning, we said that the claim was on behalf of everyone – the labour tenants, the farm workers, the claimants etc. We didn't differentiate.'*²⁴

Business operating entity

Once the land had been transferred, the community, through the Trust, set up a company known as Magungwane Farming

²¹ Interview: Albers, April 2006.

²² Interview: Boyce, April 2006.

²³ Interview: Albers, April 2006.

²⁴ Interview: Zondo, April 2006.

(Pty) Ltd in order to manage the business enterprise. The farm manager outlined the need for a separate company to be established:

To do business as a Trust is a nightmare and so we formed the company which has directors – Inkosi Zondo and Mrs Ndaba. This makes business dealings easier. A (Pty) Ltd company was set up. The company was founded in October of 2005.²⁵

Figure 1, below, shows the structure of relationships between the company, the community and the Trust.

The farm manager described the nature of his contract with the Trust:

I was initially employed by the Trust until September 2006 on a two-year contract. I get a salary and a percentage profit sharing, but we have had no profit yet. We had a bit of a profit on the beans but ploughed it back into the project.²⁶

The nature of the profit sharing remains unclear and it would seem that no formalised agreement exists in this regard.

Land-use profile and changes that have taken place since restoration

At the time of the claim being settled, the land use was as follows:

- timber farming in the higher rainfall areas (predominantly wattle)
- intensive irrigated agricultural crops (maize, beans and pecan nut trees)

- beef cattle ranching
- wild game farming.

Once the land was restored to the community, it was agreed that the current land use would be continued, with the exception of rezoning some of the grazing and game land so as to increase the amount of land available for commercial, semi-commercial, subsistence and residential use (CRLR 2003).

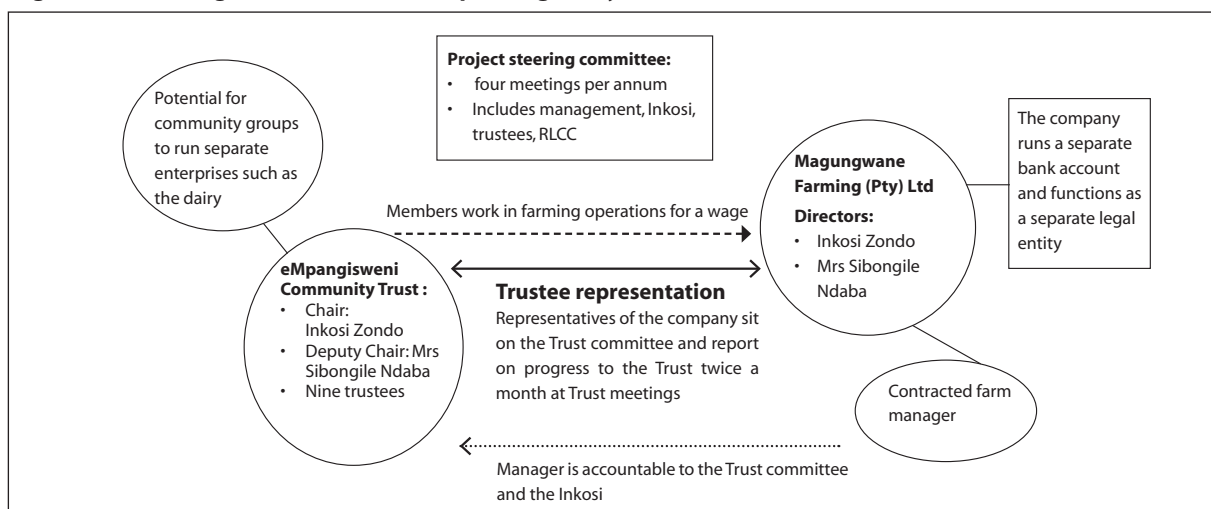
This is confirmed by the Inkosi:

The commercial farms were kept as they had been and they carried on as commercial operations. On the land without potential, we planned to use that land for housing, so that people could be closer to work.²⁷

The farm manager outlined the farming initiatives undertaken during the early phase of the farming operations, and highlights the challenge of accessing financial and other support:

I started working here as the manager in October 2004. The Inkosi and I went to Thabi Shange (RLCC) and said we've got land but we have no equipment and no working capital. This claim came to R17,5 million but the DLA kept out R600,000 for two years to run the project. We were told that we just had to get on and farm. We couldn't get a loan, even from the Land Bank because we had no collateral. Why did DLA spend the full budget on the land? They should have spent half on the land and half on the running costs. We went to Mr Zenda at the DoA in Nongoma and he gave us a grant for the mielies,

Figure 1: The management and business operating entity



²⁵ Interview: Albers, April 2006.

²⁶ Interview: Albers, April 2006.

²⁷ Interview: Zondo, April 2006.

*for planting 160 ha. This arrangement worked very well and we worked according to our budget. The suppliers had order numbers and the deliveries were made and Zenda paid the suppliers within two weeks. We planted and we had a good harvest and then we did 200 ha of dried beans. Then the maize price dropped dramatically and we lost our expected profits.*²⁸

The office of the RLCC confirmed that when the land was transferred there were insufficient funds to plant the first crop. The Inkosi was approached directly by the head of the DoA in the region who suggested that the project plant maize. This was before the project had clearly defined its activities. The DoA released the funds prior to coordination having been clarified. These funds were from the Comprehensive Agricultural Support Programme (CASP)/Siyavuna Fund.

It was then decided that a project steering committee be established to which all players reported in order that coordinated planning could take place. This steering committee met four times per year with random focus meetings held with management, the Inkosi and the Trust.

In 2005, potatoes and green beans were planted. The hail destroyed much of the potato crop but the bean crop did well.

The farm manager commented on the available markets as follows:

*AFGRI [an agricultural marketing company] has been keen to take the mielies this season. Last year our yellow mielies were exported to New York. The dry beans were sold to Natal Dry Beans in Pietermaritzburg. The potatoes are sold to local vendors and were sent to Durban and Hoofstad market but these take agent's fees and there's the cost of transport and we got paid late by them. It was not worth our while to send to these markets. The Inkosi got in touch with the local markets and they come with their own transport to collect the produce.*²⁹

Forest land

Areas of the farmland are under forests, more particularly the previous farms of Mariantha and Weltevrede. The forests have largely been left unattended. Initially, a partnership agreement was signed with Natal Co-operative Timber (NCT), which was to maintain the forest and was contracted to fell trees. In addition, NCT was to set up a charcoal-making

business. However, this arrangement was not well managed and was run at a loss for eMpangisweni. The Trust is now negotiating with Mondi for it to lease the land and to impart skills to the community on forestry management. There is no clear outcome as yet.

Livestock and dairy

Beneficiaries have access to grazing land for their own cattle. The number of livestock and the carrying capacity of the land appear to be monitored on an ongoing basis.

The eMpangisweni Community Trust also operates a small dairy with approximately 30 head of dairy cows. These were given to the Trust by the previous owner at the time of settlement. The dairy provides a limited number of jobs for community members who are paid by the Trust. In time, it is intended that this activity will be handed over to a community group to manage and operate as an independent entity. They will generate their own income/profits from the project but will pay a levy to the Trust for the maintenance of roads and provision of basic services.

Wild game

Natural game is found in different zones of the project and can be managed in conjunction with the Nguni cattle. KwaZulu-Natal Wildlife has been informed about this arrangement and has been invited to become involved.

Pecan nut plantation

The project's limited pecan nut plantation is currently managed by the project and community members are paid to maintain it. It is also intended to become a self-managed entity by a group of community members who will then pay a levy to the project.

Lease to Bio-Swiss

The Trust leased a portion of its land to a company called Bio-Swiss for the planting of handpicked green beans. This created employment and provided an income stream to the farm. The Inkosi viewed the involvement of Bio-Swiss as a positive intervention:

Bio-Swiss has been helping us. We offer them some hectares to plant green beans and then they employ our people. Also, some of the kids who have lost both their parents are given the opportunity to work in the green beans project when the school is closed. I know that it is illegal for kids to work but they are crying and they need money and there is no one to support them. Since we have

²⁸ Interview: Albers, April 2006.

²⁹ Interview: Albers, April 2006.

*been involving the kids we have had no more damages on the farm and the kids are learning skills too.*³⁰

Income from the lease of land to Bio-Swiss was paid into the company account and was used to replace damaged sprays and irrigation pivots. Some of this income, combined with a loan from Ithala Bank, enabled the Trust to purchase two new tractors, implements, a potato washing and sorting system and planters.

Profit sharing and benefits

The intention at the outset was to first get the business operation up and running and to aim at a return on investments in five to nine years. The benefits to date for beneficiaries include access to jobs, and social spin-offs such as improved health standards and access to better nutrition as a result of having land to grow crops and being able to buy cheaper vegetables and milk from the project. Some of the smaller entrepreneurs are involved in the business units such as the dairy.

The Inkosi indicated that:

*One of the benefits enjoyed by members is that some of them get jobs in the project. At the moment there is not enough money because the project is for the community and we have not made profits yet.*³¹

The farm manager said:

*In the past year and a half we have paid a total wage bill of R1,4 million. This means that this money has gone into the pockets of this community, which is good. In terms of benefits, there is no cash or money in terms of dividends or payouts but wages have led to a big upliftment and a benefit to this community.*³²

While the stated intention is to create job opportunities, a tension exists between mechanisation and the creation of labour intensive operations. The project has acquired a number of hi-tech pieces of equipment. This would seem to undermine the intention of creating work opportunities for members of the community. For example, the seven-row planter machine significantly reduces the number of workers required.

Members have access to grazing land for their animals and arable land for cultivating their own crops. Each household

has access to 'piece lands' for their own cultivation, but these are not always near to where people actually live. Many of these do not have access to the available irrigation infrastructure either. The community has access to approximately 22 ha of high value land to use for their own purposes. All previous labour tenants have grazing rights.

There are three sets of cattle-owning groups:

- The labour tenants/members/beneficiaries/residents
- The project's business enterprise.
- An Nguni revitalisation project, co-managed by the DoA and the eMpangisweni Community Trust. The project operates as a 'nursery' for Nguni cattle. The DoA provided fencing and 100 Nguni cattle in the form of a one-off grant to the project. As the herd increases, cattle will be moved to other communities and members are to be trained in Nguni cattle farming.

The emphasis to date has been on job creation and direct access to natural resources by community members who live on or close to the restored land. The many members of the community who are not living or are not employed on the farm have effectively seen no benefits to date, and it is not clear what benefits they might receive, if any, in the future.

Non-business activities

Community members expressed concern that there has been too much emphasis on the large-scale commercial agricultural enterprise to the detriment of small-scale agriculture and non-business activities on the land.³³ The focus of the RLCC, the Inkosi and the Trust has been on the business operation and less on the needs of community members ('beneficiaries') who are not involved in this activity.

According to the RLCC:

*The initial focus has been to get the business operation up and running and to create stability there – this will also create jobs in the project. Now that this is starting to operate more independently, we are going to start focusing more on the other aspects of the project and the needs of the broader community.*³⁴

The non-business activities appear to function within a traditional communal system. There is a need to extend

³⁰ Interview: Zondo, April 2006.

³¹ Interview: Zondo, April 2006.

³² Interview: Alberts, April 2006.

³³ Interviews: Community members, April 2006.

³⁴ Interview: Boyce, April 2006.

support so that the more peripheral small-scale activities can be assisted and can co-exist alongside the large-scale commercial core activities.

Residential settlement

People who live on the restored land have generally built their own houses. Some houses were already on the land and people, such as the existing farm workers and labour tenants, were living in them. From recent aerial photographs, it would appear that there are approximately 50 dwellings or *umuzi* currently located on the different farms that make up the eMpangisweni property. Most of these are located on Nooitgedacht, Christinasdal and Naauwpoort. The majority of these houses belong to farm workers. The RLCC indicated that approximately 300 families will come to live on the farm over time (Development Unlimited 2003).

The land-use plan identifies a rural settlement arrangement with villages within three planned settlement areas, each with a community centre. This facilitates the provision of bulk supply and electrification. Providing these services to the current dispersed settlements increases the cost of supply and services. Another motivation for village settlement was articulated by the Inkosi who suggested that it would be easier to transport workers to the commercial farming operations if they lived closer together in one area of the farm. However, existing residents have expressed reluctance about moving to any new settlement. In addition, sections of the community indicate that different community groupings should not be mixed as this will potentially create friction and suspicion.³⁵

The project has planned a meeting with the Department of Housing and architects have been brought in to design 'indigenous housing' and to create housing clusters. The construction of houses would include the use of natural resources such as thatch found locally. Indications from

members are, however, that they do not want to live in 'agri-villages' but prefer to stay living according to the existing 'indigenous housing' and dispersed settlement patterns typical of this region of the country.³⁶

The RLCC and the trustees have contacted the Department of Housing on a number of occasions but little progress has been made. This is because the Department relies on the municipality to prioritise projects. The Department then follows up on these. The local municipality does not appear to have prioritised development on the eMpangisweni farms, and the Department of Housing does not appear to be exerting pressure on it to do so.

Sustainability

By all accounts, eMpangisweni is effectively run and managed by Inkosi Zondo and the farm manager. The level of dependence and reliance on these two individuals places the entire farm and its associated community in a vulnerable position. It is necessary for more community members to become involved at a management level and for a more broad-based and capacitated management team to be developed. As stated by the farm manager:

*The Inkosi is the lynchpin in this project. Without him and us, the project would fall apart. The project is dependent on him being around. A big problem is finding someone to become the next manager because most people are not literate and couldn't work with the government and don't have a sense of responsibility.*³⁷

The office of the RLCC suggested that in order to improve sustainability, the project needs to define a profit centre and requires an entity to maintain the entire infrastructure of the land area, including roads, fencing, soil erosion prevention and so on. Levies from the various productive entities should be paid to this profit centre in order to maintain the infrastructure of the entire project.³⁸

³⁵ Interviews: Community members, April 2006.

³⁶ Unlike many other provinces, the settlement patterns in KwaZulu-Natal indicate that people live in scattered homesteads and not in more densely populated settlement areas.

³⁷ Interview: Albers, April 2006.

³⁸ Interview: Boyce, April 2006.

7. The provision of post-settlement support

Financial support

The services of Ithala Bank were critical to the community and its activities, more particularly in the early stages of the restoration of the farm and the establishment of its development activities. The bank covered the initial costs through granting the community a mechanisation loan of R1,5 million. The mechanisation loan unlocked the potential of the farm and provided for the purchase of the necessary basic initial equipment.

The DoA made a number of financial contributions to the agricultural development and business operation on an ad hoc basis, as the need arose.

Mentoring and capacity development

Clause 9.2 of the Section 42D submission indicates that Steven Durno of Viva Elizabeth Durno Trust had 'expressed interest in assisting the claimants with management of the businesses on the claimed land and negotiations are under way in terms of a management or/and partnership contracts for the mentoring of claimants' (CRLR 2003). It would seem that this arrangement did not come to fruition and the members did not receive this mentoring or support from the previous owner of a portion of the restored land.

The existing farm manager is employed on a contract basis and is required to play a mentoring role. However, it seems that little mentoring is in fact taking place and the manager's emphasis is on managing the farm and production. The Inkosi indicated that very little transfer of skills was taking place and that he has approached the DoA to provide mentoring through the employment of a mentor based in Vryheid who has been identified. In addition, the DoA has been requested to train community members at CEDARA Agricultural College.

Over time, it is hoped that a new layer of members of the community will gradually develop skills and come forward to take on more responsibility. However, the lack of mentoring and skills transfer remains a challenge.

Role of local government

As indicated earlier, the Section 42D submission states that the involvement of the abaQulusi and Zululand municipalities was solicited to assist with the provision of basic services (Clause 9.3)(CRLR 2003). It was agreed that the abaQulusi Local Municipality would assist with the development of the restored land and would help the claimants in terms of applying for subsidies through the Department of Housing. However, from all accounts, it seems that the municipality has shown very little interest in engaging with the project, with party-political differences being sited as the underlying reason.

A number of interviewees commented on the extent to which party-political dynamics have impacted on the project and its progress. According to the Inkosi:

Politics affects the project. We got land through the government of the day, i.e. the ANC, and those not in power try to jeopardise, [the project] and don't help. Also, the local municipality is not a party of the government, i.e. it is controlled by the IFP and they think that because the ANC gave us this land, that we are ANC and that they should not help us to progress. We have received nothing from the municipality. There is a problem with the municipality and there is internal fighting. The municipality has been dissolved and is being administered by the province now.³⁹

The Zululand District Municipality initially agreed in principle that the project should receive support and that the RLCC should motivate for the project to be incorporated and prioritised in the IDP. After numerous presentations to the executive committee, of the municipality, the project has received little attention and is yet to be included in the IDP, even though the RLCC offered initial planning funding. The DLA has more recently refused to supply the district municipality with a list of projects because they saw the municipality as only paying lip service to these projects in the IDP, without allocating any real resources to them. This suggests a serious breakdown in relations between spheres of government.

³⁹ Interview: Zondo, April 2006

The lack of support from local government is compounded by the fact that there are tensions between the local and district municipalities and that the abaQulusi Municipality is under the administration of the province.

Role of Department of Agriculture

The farm manager outlined some of the difficulties they encountered, more specifically in terms of the lack of support from government departments and the challenges generated by changes in the procurement process:

*The DoA said they'd help us for three seasons but this past year we haven't got support in any real way and this means that no long-term planning is possible. In June 2005, DoA suggested that we plant potatoes under 50 ha. We worked out a budget and gave it to DoA. However, the payment arrangement had been moved away from Nongoma to Richards Bay and was run from there by different people. We approached them and ordered seed and waited for a long time for fertiliser. There was no answer from Richards Bay. We waited a month. The procurement officer in Richards Bay said the process had to go out on tender – i.e. to get the fertiliser. Finally, we got desperate and used the maize budget to buy the fertiliser. On R30,000 per ha we had a budget of R1,5 million but the DoA unilaterally cut the budget to R700,000 and by then we had already used up the whole budget for buying seed. This caused a huge problem. We couldn't get the chemicals we needed and fortunately for us, the crop grew without any diseases because we couldn't do any preventative spraying. There is a real problem with procurement. Before these changes in the procurement process, we had initially got such a lot of support from our suppliers because we paid on time and we'd established a relationship with them. Now our suppliers for the potatoes have only been paid ten months later and it's embarrassing for us because we have to face these people and talk to them and bump into them. The people in Richards Bay don't have to deal with them and feel embarrassed.*⁴⁰

However, according to the Inkosi:

The DoA has been helping a lot. We have a big history with them. They came to the farm and advised us with

*a way forward from the beginning. The pivots had been vandalised and the DoA renewed all the pivots and gave money for planting mielies and beans and potatoes. They also got rid of the alien trees. The Siyavuna Fund was used for monetary support.*⁴¹

The RLCC said that the DoA has 'come to the party by providing financial assistance but has not brought with it much strategic thinking to assist the community with the way forward'⁴²

Role of the Regional Land Claims Commissioner (RLCC)

Besides negotiating the settlement and providing the grants and some initial funding, according to the RLCC its initial focus has been on establishing the business operation so as to develop a benefit stream and prevent the land from degenerating. It intends becoming more involved in supporting broader developmental activities amongst the broader community in the near future. It has convened a project steering committee to which all players reported and assisted with the co-ordination and planning during the initial stages of the project.⁴³

Clause 7.3 of the Settlement Agreement states that:

The State undertakes to do everything in its powers on a co-operative basis to elicit the commitment and support of other departments at national, provincial and local spheres for the implementation of the Integrated Development Management Plan in relation to the land claimed (DLA 2004).

Thus far, the RLCC's main role has been to facilitate contact and engagement between the various parties. Effort was invested in involving the municipalities and the Department of Housing, but these have not borne results. The RLCC assisted the Trust with establishing various contracts for the management of the forests on the farm. The RLCC has also played a role in mediating any tensions that have arisen.

⁴⁰ Interview: Albers, April 2006.

⁴¹ Interview: Zondo, April 2006.

⁴³ Interview: Boyce, April 2006.

⁴³ Interview: Boyce, April 2006.

8. Conclusions

This study has described the key characteristics of the eMpangisweni restitution project and identified areas in need of attention by a range of role players. These can be summarised as follows.

- There is a need to clarify who are the beneficiaries of the claim and the grounds on which membership is defined. It remains unclear as to who constitutes the claimant community and what their needs are. How the rights and interests of the restitution beneficiaries are determined and differentiated from those of the broader community is also unclear, as the spatial and social boundaries have become blurred.
- With the emphasis on the business entity, the needs of the broader claimant community have been neglected. The benefits that could potentially accrue to beneficiaries remain unclear and it would seem that beneficiaries can only access and realise the available benefits if they work in the business operation. Limited benefits are also available to those who live on the property and engage in their own agricultural production.
- Clarification is required of the roles, powers and responsibilities of different role players such as the Inkosi, the Inkosisi, the trustees, the farm manager, the members and residents. In the absence of a clear definition of roles and a general lack of accountability and transparency there is a danger that the interests of individuals or a minority may override those of the broader community. The status and identity of the trust needs to be distinguished from that of the company. It would seem that the boundaries between the functions and jurisdictions of these two entities have become blurred.
- It is critically important that a clear understanding is developed regarding governance, the role, leadership and influence of a traditional authority, and the legal ownership of the land. While these are complex and connected issues, the lack of demarcation and of role definition impacts on the sustainability and progress of the community's undertaking. The restored land is not owned by the traditional authority but by a specific legal entity, which has a specific membership and constituency to which it is accountable, but is administered as if it is part of a tribal area. There is a need to define and/or harmonise the existing landholding entity with local governance arrangements or the traditional authority. This will require the establishment of defined boundaries and must ensure the protection of individual and gender rights.
- The Trust is not simply confronted with the task of managing a business operation but must also address the ongoing governance of a broad geographic area that contains a number of households across different groupings within the community. As suggested in the business plan, 'the eMpangisweni trustees and management, including the operating company directors, will have to perform the functions of a small municipality as well as those of a very large intensive commercial agricultural operation' (EnvironDev 2005). Increased attention needs to be paid to the efficient control and management of social relationships, residential arrangements, and the business operations of the farm, which should include building the capacity of Trust members.
- It is necessary for the roles and responsibilities of the various external agencies to be appropriately aligned with their support services and for these agencies to engage with the developmental activities being planned or undertaken in such a way that a contribution is made towards the long-term sustainability and coordination of the community's developmental activities.
- The financial management and lines of financial accountability need to be improved and become more transparent regarding information about the various business entities and their outputs and expenditure. In addition, the various benefit streams need to be identified and agreement has to be reached on their distribution.

9. Source documents

Primary sources

Note: These documents were obtained from the office of the RLCC: KwaZulu-Natal or from the named consultants.

Commission on the Restitution of Land Rights (CRLR). 2003. Submission in terms of Section 42D. 22 July.

Department of Land Affairs (DLA). 2004 Restitution Award in terms of Section 42D of the Restitution of Land Rights Act 22 of 1994 as amended – Memorandum of Agreement between Ms T.A. Didiza, Mr D. Makhaye, Mrs E. Moolman, and Mrs S. Ndaba and Inkosi D.V. Zondo. 14 February.

Department of Land Affairs (DLA): Public Land Support Services Directorate. 2006. Title deed report created using WinDeed. Deeds and Companies Office. June.

Developmental Services. 2006. Presentation to infield training, May.

Development Unlimited. 2003. Development plan – Investigation and assessment of development options for the land claim lodged at eMpangisweni, KwaZulu-Natal.

eMpangisweni Community Trust. 2003. Deed of Trust establishing the eMpangisweni Community Trust. 27 August.

EnvironDev. 2005. eMpangisweni Enterprises – A business plan. May.

Magungwane Farming (Pty) Ltd. 2006. List of assets – Farming equipment. April.

Secondary sources

Community Agency for Social Enquiry (CASE). 2005. *Report on the eMpangisweni Restitution Project*.

Council for Scientific and Industrial Research (CSIR). 2005. *Communal Property Institutions Review*. April.

Power M. 2004. This land is your land, let it yield its bounty – Community receives first land claims award in Northern KwaZulu-Natal. *Sunday Times*, 7 March.

Smith, J. and Guy, R. 1998. *A land classification system for KwaZulu-Natal*. CEDARA Report Number N/A/98/2.

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