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The Dwesa-Cwebe Restitution claim

**A case study as preparation for a field
based learning programme**

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List of abbreviations

AA	Administrative Area
ADM	Amatole District Municipality
CC	Conservation Committee
CMC	Co-Management Committee (Dwesa-Cwebe reserve)
CLaRA	Communal Land Rights Act, Act no 11 of 2004
CMIP	Consolidated Municipal Infrastructure Programme
CPA	Communal Property Associations
CPA Act	Communal Property Associations Act, Act No 28 of 1996)
DBSA	Development Bank of South Africa
D-C	Dwesa-Cwebe
DCLT	Dwesa-Cwebe Land Trust
DEAT	Department of Economic Affairs and Tourism (national)
DEAET	Department of Economic Affairs, Environment and Tourism (provincial)
DLA	Department of Land Affairs
DHLGTA	Dept of Housing, Local Government and Traditional Affairs (provincial)
DWAF	Department of Water Affairs and Forestry
ECDC	Eastern Cape Development Corporation
ECNC	Eastern Cape Nature Conservation
FD	Forestry Department
IDP	Integrated Development Plan (i.t.o. Municipal Systems Act)
ISER	Institute of Social and Economic Research, Rhodes University
LUMS	Land Use Management System
NAD	Native Affairs Department
PLRO	Provincial Land Reform Office (DLA provincial office)
PSC	Project Steering Committee
PTO	Permission to Occupy (Certificates of Occupation)
RLCC	Regional Land Claims Court
RULIV	Rural Livelihoods Programme (GTZ in partnership with Office of the Premier)
SDF	Spatial Development Framework
SDI Spatial	Development Initiative (i.t.o. Municipal Systems Act)
TA	Traditional Authorities
TGLF	Traditional Leadership and Governance Framework Amendment Act, 41 of 2003
TRALSO	Transkei Land Service Organisation
VP	Village Planner
WCSDI	Wild Coast Spatial Development Initiative

1. The case at a glance

The study area is situated on the Wild Coast of the former Transkei, between the Nqabara and Ntlongyana rivers. The area is intersected by the Mbashe River, on each flank of which is situated the Dwesa and the Cwebe Nature and Marine Reserve. Originally two forest reserves from the 1890s, these became, with the adjacent grasslands, dune forest and shoreline, a single reserve in 1975.

The Dwesa-Cwebe area as a whole is 17 386 ha in extent, and comprises the Dwesa-Cwebe Nature Reserve (i.e. the claimed land of 5 278 hectares), and eight adjacent communal village settlements. During the lodgement and negotiations process, the communal villages were institutionally re-organised for land administration purposes into seven land holding entities, or Communal Property Associations (CPAs). The names of these are: Cwebe, Hobeni, (on the northern Cwebe side of the Mbashe River) Mendwane, Ntlangano, Ngoma, Mpume and Ntubeni (on the southern Dwesa side) (see map).

According to the Development Plan (appended), the total population of the Dwesa-Cwebe area is 14 720, and there are 2 382 households present.

Prior to the restitution claim, the area now known as Dwesa-Cwebe was not a composite area. Dwesa and its five associated communities are in the magisterial district of Gatyana centred on Willowvale, and Cwebe is in Xhora district with headquarters at Elliotdale. These were briefly transitional local municipalities, which have since been consolidated into the Mbashe Local Municipality, which in turn falls under the Amatole District Municipality.

Before the "Transkeian Territories" were annexed and incorporated into the Cape Colony in the latter half of the 19th Century Cwebe was occupied by Bomvana people, while the Dwesa area across the Mbashe River has Gcaleka and Mfengu people. In both areas traditional leadership play important social roles. It has always remained a predominantly Xhosa-speaking area; until recently, a major labour reserve with major development needs.

The origins of the amalgamation process can be traced to the beginnings of the struggle against the consolidated nature reserve, in the course of which the villages of Dwesa-Cwebe became a single "imagined community" and lodged their eventual land claim as a single "community claim". Thus the present concept of "Dwesa-Cwebe" as a territorial and political concept or entity is a new one, and does not reflect pre-colonial political borders.

After a ten year period of mobilization and confrontation, on 10 July 1996 the communities of Dwesa-Cwebe lodged a claim for the restitution of land rights according to the Restitution of Land Rights Act No 22 of 1994. The land claim was for the restitution of the reserve area (including the Haven Hotel on the Cwebe Reserve), which, prior to restitution, was regarded as state-owned. The claim was settled out of court in June 2001. The Settlement Agreement is appended.

The restituted land was awarded on the basis of ownership under a community trust, known as the Dwesa-Cwebe Land Trust. The Trust Deed is appended. The restituted area includes the Haven Hotel and land comprising seaside cottages held under Permission to Occupy certificates. The settlement agreement included a third, significant component, namely, the development of the communal areas adjacent to the reserve that are occupied by the claimants.

The settlement agreement incorporates a community agreement to the effect that the restituted land will not be occupied or farmed by the claimants, but will be retained as a reserve, the commercial economic utilization of which will depend primarily on tourism, a spin-off of nature conservation. The waiver of

rights to occupy and farm this land legally entitled the community to a cash compensation consideration (see below). The restituted land was leased (upfront payment, see below) to the Department of Environmental Affairs and Tourism for a period of 21 years, commencing date of settlement in 2001. The community agreement acknowledged that the reserve will be managed jointly in terms of co-management principles between East Cape Nature Conservation¹ and the Dwesa-Cwebe Land Trust. An underlying principle and the socio-legal basis of the co-management agreement is skills transfer to the communities with the view to owner-management after the expiration of the 21 year lease period.

The Amatola District Municipality was appointed as the development agent to implement the settlement. The Project Steering Committee was set up to drive the process and commissioned a Development Plan, drafted in consultation with the community and the Trust in 2003.

The land use of the restituted land continues to be conservation with a view to increasing ecotourism, but this is a contested outcome of the restitution claim. Land use in the adjacent communities continues to be subsistence farming -- crops consist mainly of maize, intercropped with pumpkins and other vegetables; livestock include beef cattle, sheep, goats, pigs and poultry with emphasis on the cattle.

The restituted property (the Dwesa-Cwebe Reserve) has been professionally surveyed and the diagrams approved by the Surveyor-General, as have the seven CPA units of land. The Haven Hotel and resort area has also been surveyed as a subdivision of the Cwebe Nature Reserve. However the properties have not yet been registered in the Deeds Registry and therefore have not been formally transferred to the Trust and CPAs. The CPAs themselves have been registered in terms of the CPA Act.

The total funding identified in the Settlement is R14 276 080, comprising four main components:-

- Consideration funds (R2 100 000 consolidated rental of R100 000 pa) which can be used for development in terms of an approved development plan.
- Compensation funds (R1 600 000 waived land use value) for the development of community and the area.
- Restitution Discretionary Grants (R7146 000) – for agricultural, educational and development projects.
- Settlement Planning Grants (R3 430 000) – for settlement planning, infrastructure, land survey, tenure reform etc

The Amatole District Municipality is the “implementing agent”. The RLCC agreed to the transfer of funds to the Amatole District Municipality (ADM) but a portion was recalled to give time for the Development Planning to reach conclusion. All funding agreements and details are in attached documents.

The post-settlement period has seen delays in the implementation of co-management of the reserves and support for the Dwesa-Cwebe Land Trust. There has also been no discernible physical development beyond reticulated water and a few public works projects, although some projects such as electrification and layout planning (as a precursor to infrastructure development) are in the pipeline. Institutional problems continue, particularly around overlapping roles and responsibilities between different spheres of government (particularly, but not only, around the management of reserves or conservation areas) and between local government, community structures and the Traditional Authorities around responsibilities for development and land administration. Power struggles are therefore still a feature of the Dwesa-Cwebe restitution case, and are likely to continue.

¹ In 2004 the DEAET delegated its nature conservation function to a parastatal set up for the purpose, The East Cape Parks Board, which takes over all responsibilities and functions of the erstwhile ECNC.

Added to land reform and development process specific to Dwesa-Cwebe, there have been numerous Wild Coast-wide community ecotourism initiatives which included Dwesa-Cwebe: when these failed it also had implications for similar development initiatives in the study area.

Land claims on protected areas are rare, and this is the first one to be settled in the Eastern Cape. The agreement only addresses post-settlement support by implication: providing funds for development projects in the area and briefly mentioning capacity-building. To be fair, post-settlement support was not an issue at that time in the way it has become since. Dwesa-Cwebe was one of the earliest and possibly most complex large rural restitution claims. The objective was to reach a settlement in a crisis situation. This was achieved, but hindsight provides a different perspective.

2. Institutional backdrop to the claim

2.1 Introduction

The protracted struggle to resolve the Dwesa-Cwebe land claim legally, and the ongoing struggle to deliver tangible developmental outcomes to the claimants, can to some extent be explained by the broader institutional complex in South Africa. The Dwesa-Cwebe case came to the fore during the period of intense institutional and organisational restructuring in the country. Consequently constraints that affected the restitution settlement and post-settlement support, were often outside the control (and sometimes the cognisance) of the participants, and were not taken into account in plans, conditions and time frames.

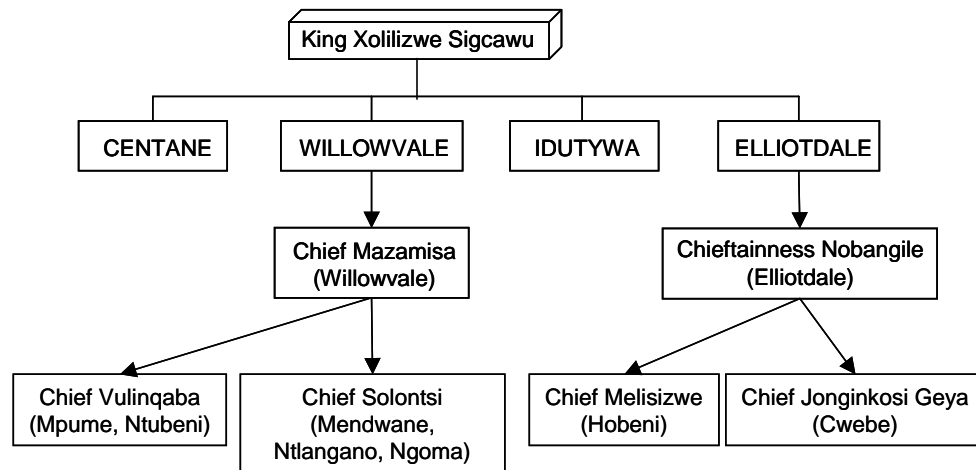
2.2 Familiar Rural Institutions in 1994

In the early period of mobilisation pre-1994, the local institutions were familiar to all rural residents of the area. Government's representative at district level was the Magistrate and his associated District Commissioner, successors to a hundred years of colonial Cape and apartheid Pretoria administration. Everything that happened in government terms passed across his desk: tax, permits, boundaries, disputes, appointments of chiefs and headmen, roads, forests. Close by was the district office of the Department of Agriculture and Forestry, responsible for integrated land management and planning, physical development, as well as purely agricultural matters.

In an ambiguous relationship with the Magistrate, were the traditional leaders, chiefs, headmen and sub-headmen, representing their communities to government, but also government to people; organised then into Tribal Authorities (TA) (Chief and his Headmen) and Regional Authorities (Paramount Chief and Chiefs). Boundaries of the headmens' locations or Administrative Areas (AA) had been surveyed and gazetted for a century. The legal basis for these structures came from the Transkei Administrative Authorities Act, Transkei Agricultural Development Act, Proclamation 26 of 1936 and similar longstanding or derived legislation.

In terms of the traditional hierarchy for the Xhora area Chieftainness Nobangile is the highest in the order of authority in that particular area. On the Willowvale side (Dwesa) the highest order of authority is Chief Xolisizwe Sigcau.

Figure 1.1 Traditional Order of Authority Structure



The Hobeni and Cwebe areas each have their own traditional chiefs. Each village has a headman who is responsible for managing the affairs of the village e.g. land allocation.

In 1996 the Magistrate's role was drastically altered by the national Department of Justice decision that this office should no longer carry out functions other than legal, court related. Shortly after, the Eastern Cape passed an Act 7 of 1998 repealing the development functions of the traditional leaders under the Administrative Authorities Act. Unfortunately no co-ordinating post or structure has replaced the historical role of the magistrate.

These issues continue to be contested at national and local level, most recently in the context of the Traditional Leadership and Governance Framework Act, 41 of 2003 (TGLF), and the cross-linked Communal Land Rights Act (Act No. 11 of 2004). Locally they have stimulated increased interest in the new ownership and management arrangements in Dwesa-Cwebe the traditional leadership.

2.3 Local Government

In terms of Mbashe Municipal land demarcation, the area Dwesa Cwebe falls under 3 of the demarcated wards of the Municipality being Wards 2, 19 and 20. There are 3 Ward Councillors working with ward committees acting as Municipal representatives in the area.

- Councillor Mavonyela for Hobeni
- Councillor Gwebindlala for Cwebe
- Councillor Savu for Mpume, Ngoma, Ntubeni, Mendwane and Ntlangano

Municipalities are responsible for both urban *and* rural areas, providing for the basic needs of *all members* of the local community on an *equitable* basis. The new municipal 'wall-to-wall' boundaries were deliberately disruptive of previous structures, especially at local level as ward boundaries overlaid formal administrative boundaries but also customary and social boundaries. In the case of Dwesa-Cwebe this added a third layer to the village/CPA reorganisation already achieved as part of the mobilisation of the late 1980s early 1990s. Ward councillors were consequently faced with resentment and tensions before they started work. The developmental role of local government clashes with some traditional roles for development. Co-operative governance and power sharing remains ill-defined. The following challenges therefore persist:

- Even after the amalgamation of municipalities in 2000, the new municipalities struggled to get to grips with their new rural responsibilities. Even when funding is available, lack many of the other resources to do so. Land owners and land occupiers in urban areas have clear relationships with municipalities through rates, development controls, services, etc. Occupiers and owners of rural land still have an ambiguous relationship with local government (Atkinson, 2005). At Dwesa-Cwebe as in many rural areas, rates on communal land are still an unresolved issue, the municipality would not deliver services to CPAs because the land was legally private, and the town planning ordinance does not apply to rural areas. Municipal Integrated Development Plans (IDP), Spatial Development Framework (SDF), and Land Use Schemes, though intended to address the past imbalances and to be “participatory”, in reality tend to be planned in a “top-down” manner.
- The CPAs, which, although conceptualised as property holding vehicles, have ill-defined development responsibilities in terms of the Constitutions that were drafted for the seven village communities; and have land use responsibilities without clearly defined co-operative governance arrangements with local government for land use management.
- The familiar roles of the Traditional Authorities, which previously had development and land administration functions are challenged by local government roles and by CPAs (and vice versa). The TA's continue to allocate land as in the past. Their initial resistance to the new land ownership and land administration arrangements in the form of the Land Trust and CPAs has abated given that (a) the land has not been transferred to these entities and (b) and some of their former powers are to be reintroduced in terms of Traditional Leadership and Governance Framework Amendment and the Communal Land Rights Act.
- Parastatals such as the Eastern Cape Development Corporation (ECDC) and the Development Bank of Southern Africa (DBSA) still attempt to control the course of development, for example, concerning the future of the Haven Hotel at Dwesa. They are not accountable to the Municipality.

2.4 Lack of Government Co-ordination

The Dwesa-Cwebe case is complex also because an unusually large number of government departments at different spheres of government (with linked parastatals in some cases) have *key* functions and interests in many factors critical to the restitution case, viz, three national departments have an interest in the reserve (including the marine reserve), namely, the Department of Water Affairs and Forestry (DWAF), the Department of Land Affairs (DLA) and the Department of Environmental Affairs and Tourism (DEAT) and Sanparks; several provincial departments with their parastatals, notably the Department of Economic Affairs, Environment and Tourism (DEAET) with parastatals Eastern Cape Development Corporation (ECDC) and Eastern Cape Parks Board; and the Department of Housing, Local Government and Traditional Affairs (DHLGT); and at local government level, the District Municipality (Amatole) and Local Municipality (Mbashe). The latter, what is more, services an area divided between two district magistracies and previously two Transitional Local Councils (TLCs).

Examples of some current stakeholders and organisations are:

- **Water Provision - Amanz'Abantu** - putting in extensive water supply scheme in the Dwesa-Cwebe areas using local labour where possible.
- **Community Based Public Works Programme** - Dept of Public Works: Road Upgrading - Local labour employed to resurface roads and undertake road maintenance
- **Wild Coast Spatial Development Initiative (SDI) - CIMEC, ECDC** - Promoting investment in the Wild Coast, especially in Ecotourism. This program is currently under review
- **Department of Land Affairs (DLA) Provincial Land Reform Office (PLRO)** – Land tenure (e.g. oversight for surveying and conveyancing of land).

- **Regional Land Claims Commission (RLCC) Eastern Cape:** Responsible for restitution settlement support. (A Settlement Support and Development Planning Unit established in 2003)
- **Amatole District Council:** Implementation agent: Dwesa-Cwebe restitution settlement agreement;
- **Department of Water Affairs and Forestry - Working for Water** - Two teams of 20 employed to clear alien invasive plants in the forests in the nature reserve.
- **Department of Environmental Affairs and Tourism (DEAT) (National):** Policy making; national Marine legislation; **COASTCARE** - Eleven people employed permanently to clean the beaches.
- **Dept of Economic Affairs, Environment and Tourism (DEAET) - provincial, Chief Directorate: Environmental Affairs:** Manage the Dwesa-Cwebe Nature Reserves (through the Eastern Cape Parks Board).
- **Mbashe Municipality:** Responsible for local development, planning, implementation and funding. Mbashe Municipality has, with the assistance of the RULIV Programme established an agricultural implementation programme and Dwesa-Cwebe is one of its priorities. The Agricultural aspects of the plan likely to be implemented or monitored through a structure headed by Councillor Japhta.
- **Department of Agriculture and Land Affairs- Eastern Cape:** Responsible for agricultural advice and veterinary services.
- **Department of Housing and Local Government - Eastern Cape:** Provides assistance to District and Local Municipalities for development.
- **Department of Public Works**
- **Dept of Economic Affairs, Environment and Tourism (DEAET) - provincial Chief-Directorate Environmental Affairs:** FUNDS: Re-fencing of reserves from DEAT Poverty Relief; Upgrading of entrance gate areas from DEAET Infrastructure funds
- **DEAT - Poverty Relief Funds: River Rangers** – Trained local guides take tourists hiking, birding and flyfishing
- **Department of Roads and Public Works – PRPW Poverty Relief funds:** Rehabilitation of internal reserve road from Gate 1 to Gate 5.

The lack of co-ordination between the national, provincial and local spheres of government surfaced to such a degree in the country at large in recent years that government introduced the Intergovernmental Relations Framework Bill in March 2005. Dwesa-Cwebe remains caught in many of the symptoms of competition rather than co-operation between spheres of government influence. There is a notable absence of any single institution to drive an integrated development process.

2.5 Non Government Organisations

A great many organs of civil society became interested in the Dwesa-Cwebe claim due to its varied concerns, including the fact that the claim was to “protected land” valued highly in the environmental sector for reasons of the ‘conservation’ discourse (undergoing its own revision and evolution); and for different reasons and purposes by different actors in the redistributive land sector. The NGO sector attempted to drive a more radical land reform in the face of what was perceived to be the intransigent legacy of the conservation sector. A veritable ‘tug-of-war’ for the soul of the claim and its claimants ensued. Many government role players feel rightly or wrongly that the area has been ‘over-researched and facilitated’, with too many external agendas driving the interests of the claimants.

2.6 Current and Recent Research Projects at Dwesa-Cwebe

During the situation analysis phase of the Development Plan in 2003 it was found that there are at least eighteen research projects being conducted in the area .e.g. natural scientific research as well

technical, social and economic research by the Universities of Transkei, Rhodes and Port Elizabeth as well as Telkom and various other research agencies or institutes.

There is little co-operation or synergy between these initiatives. This leads to certain areas of interest being 'over-researched' while others are not researched at all. In addition, the communities are confused about the different projects, the roles of the different organisations and the overlap between projects and project proposals.

2.7 Land Tenure Reform

The claim coincided with a fraught land tenure reform process in so-called "communal" areas of South Africa. The restitution process at Dwesa-Cwebe was strongly linked from an early stage to the idea of creating new legal entities in the claimant-occupied area to promote land tenure security, democratic governance for land rights administration and management and to clearly identify the new owners of the restituted land as well as the land occupied by the claimants. This entailed extremely difficult socio-legal interventions. Eventually seven Communal Property Associations (CPAs) were defined for the eight villages outside the reserve. Constitutions for these entities were drafted at a time when there were no precedents and few lessons learnt from evaluations of other CPAs.

This was a pioneering effort technically, legally, socially and politically, particularly in an area dominated by traditional leadership with land administration roles. It was a radical departure from the former Permission to Occupy (PTO) system that prevailed and in terms of which the District Magistrates had overarching responsibility for formally issuing land rights, whilst simultaneously challenging traditional leadership roles in land allocation in which TA's provided the "on-the-ground" land allocation functions. It is not surprising that the TAs were initially resistant to the formation of the CPAs in the Dwesa-Cwebe administrative areas. They continue to informally allocate land because the CPAs have not been able to function as land administration entities due the fact that the land has still not been transferred.

This process has since been complicated by the passage of the Communal Land Rights Act (CLaRA) (Act No. 11 of 2004). Though CPAs can legally be retained, there is some thinking in government that all existing legal entities should convert to CLaRA entities. The RLCC is accordingly in favour of "waiting" for the implementation of the CLaRA so that the Dwesa-Cwebe CPAs can be processed through that law, and the land transferred into the new entities (M. Tuswa, interview 19 April 2006). This spells a further long delay before the land is transferred if this route is agreed to, and will open up further community divisions, especially as indications are that the current CPA representatives and many community members would resist this. It would complicate the land administration terrain, since Local Land Administration Committees (LACs) will assume some land administration functions in terms of CLaRA (and some of these will be TAs), with concomitant linkages to local government still very uncertain.

2.8 Land Use Management Reforms

Of further critical importance is the evolving nature of land use management to accommodate decentralised systems. This is a worldwide phenomenon, and of particular concern in (a) nature reserves and (b) communal land. Dwesa-Cwebe has both. The institutional arrangements are consequently in flux. One of the greatest anomalies of the Dwesa-Cwebe settlement, and one that most observers comment on, is that the claimants have even less access to the reserve now than they did previously. Observations include comments that the reserve is run along highly authoritarian and hierarchical lines in contrast with the emerging ideas around co-management and rights of access.

From an institutional angle the situation is made even more complex by the fact that Municipalities have inherited the responsibilities for spatial planning land use management (or what was previously referred to as "land use control"). This is principally regulated through zoning measures in urban areas. Now there is uncertainty how to translate this functional responsibility in rural and especially 'communal' areas where previously land use allocation was regulated through the Agricultural Development Act (a betterment act) in combination with land tenure legislation, viz., PTOs. PTOs were issued for specific "use rights" in the form of residential, arable or trading sites. The formal system, in contrast, favours both a legal and administrative separation of tenure rights from land use management, with the latter the responsibility of municipalities.

There is a drive from civil society to develop decentralised (i.e. local) natural resource management systems in rural areas, but Municipalities have not yet found a way of meshing these new ideas into their more rigid systems. Conventionally, municipalities have relied on the national cadastre (surveyed land parcels linked to ownership records in the Deeds Registry) to implement spatial planning and land use management and are unclear how to translate this mandate in "cadastreless" rural areas under community ownership. They therefore tend to impose the familiar town planning concepts on rural settlements that are inappropriate.

Overlaid on this are previous attempts at regional planning (such as the Spatial Development Initiatives on the Wild Coast) under the authority of provincial authorities. Now municipalities are responsible for integrated planning in the form of Integrated Development Plans (IDPs) and Spatial Development Frameworks (SDFs), with the tenure and management details spelled out in Land Use Management Systems (LUMS). Integrating all these "planning intensive" institutional frameworks into municipal systems for rural areas with new forms of tenure will be an ongoing challenge.

2.9 Conclusion

It is not surprising that the Dwesa-Cwebe case has generated so much "political heat" and legal and administrative delays. The complex institutional environment is reflected in a multiplicity of stakeholders and organisations with a direct involvement in Dwesa-Cwebe, with no "spearheading" structure to drive an integrated rural development strategy. There are some signs that the new institutional arrangements are beginning to mesh with each other, funding from the national level and abroad beginning to flow, and the Development Plan beginning to be implemented. There continue to be problems resulting from overly bureaucratic municipal systems of financial management and implementation of infrastructural development and services. This causes delays. It also consumes settlement funding derived from restitution awards (people's rightful compensation) through expensive delivery mechanisms.

3. The bio-physical environment

3.1 The Study Area

This is how the book, *From conflict to negotiation*, describes the study area:

Descending to the coast from the interior one is struck by the rolling, hilly nature of the landscape and the presence of numerous river systems of varying sizes. There is a notable increase in woody vegetation as one comes within range of the study area – forests reaching their fullest extent at the coast in the Dwesa and Cwebe Nature Reserves...

This is a spectacular resource-rich landscape. Following summer rains the rolling hills are carpeted in a layer of green grass and vast valleys – such as that of the Mbashe river – provide for stunning vistas. Verdant vegetation growth, assorted organic odours and the crescendo of cicadas and a myriad of other insects and birds fill the senses and allude to the fertility of the area. Settlements are normally located on the higher lying ridges, where the humidity is tempered by gentle breezes and visibility is good.

Everywhere there is evidence of a strong link between the people, the land and its resources – thatched roof, mud-walled rondavels blend into the contours of the landscape and much of the agricultural infrastructure such as yokes, maize storage bins and fenceposts is fashioned from naturally occurring products ... (Palmer *et al.* 2002: Ch. 1)

And the traveller has not yet entered the unique forests or reached the coast, with its estuaries, dunes and alternately rocky and sandy shoreline. In less lyrical terms, this section of the case study introduces the topography, climate, rainfall, soils and agricultural potential and practice of the study area.

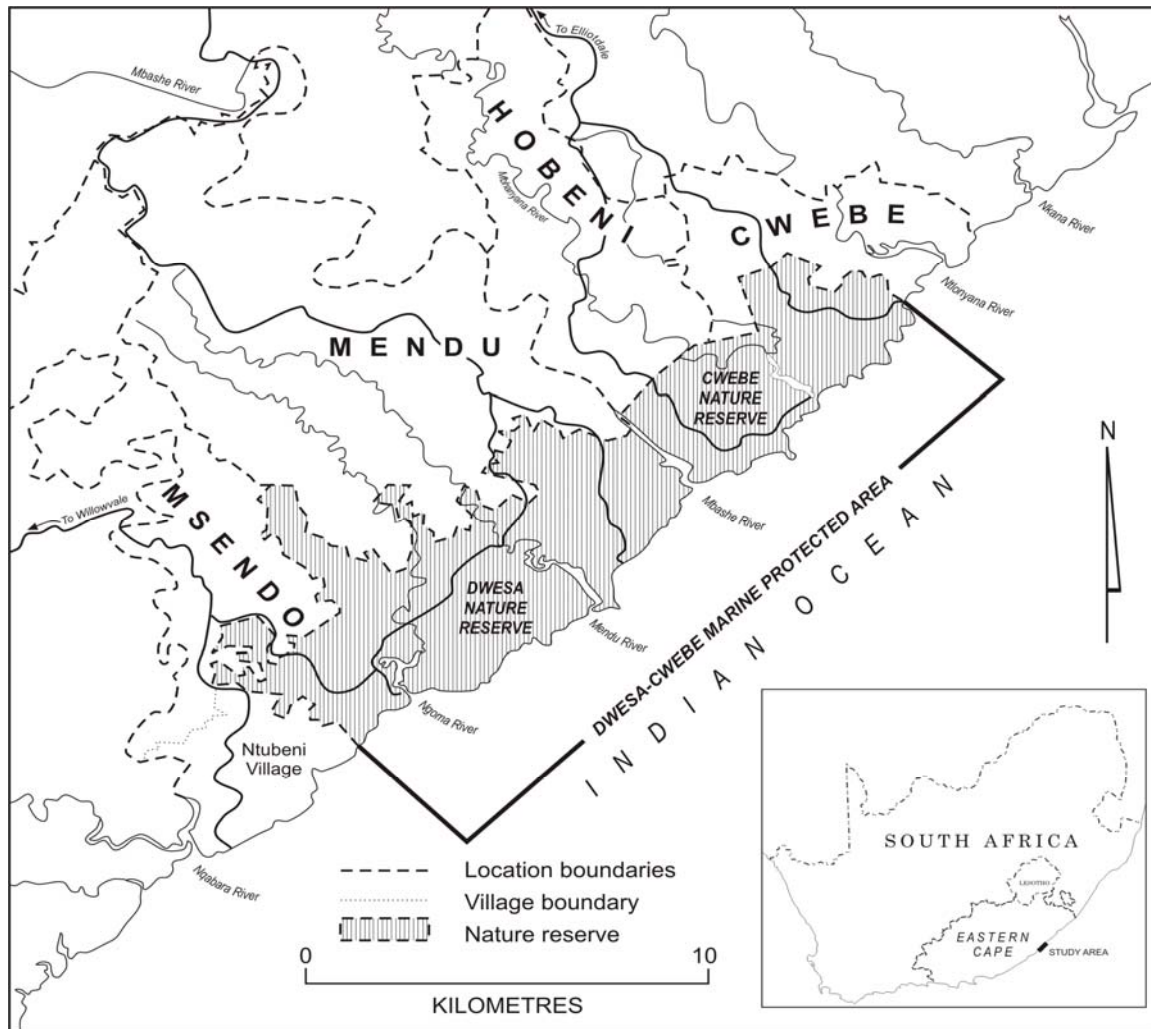


Figure 2.1 - Location of the study area

3.2 Topography

The study area is oriented and defined laterally by the two rivers that bound it - the Ntlonyane on the Cwebe side and the Nqabara on the Dwesa side - and the third that divides Cwebe from Dwesa - the Mbashe: all three run parallel and perpendicular to the Indian Ocean, which defines the third boundary. The inland boundary is formed by the bounds of the villages that abut the fence of the Dwesa-Cwebe Nature and Marine Reserve that occupies the coastal portion of the territory. These major rivers flow from north-west to south-east, and their deeply-incised valleys, their meanders and the ridges between them define the topography of the area. Four smaller rivers – the Kobole, Ngoma, Mendu, Mendwana, Mbanzana and KuBhula – contribute to the incised topography and mark the boundaries of some of the settlements. The ridges vary in breadth from the south-east to the north-west, becoming broader as one moves inland, which means the further the settlement from the forest, the greater the land available for field cultivation. The coastline is characterised by the relative absence of large, active dune fields that are found elsewhere in the Eastern Cape, and a very narrow continental shelf, meaning strong currents and deep water are found close to the shore. The coastline varies between rocky and sandy shores.

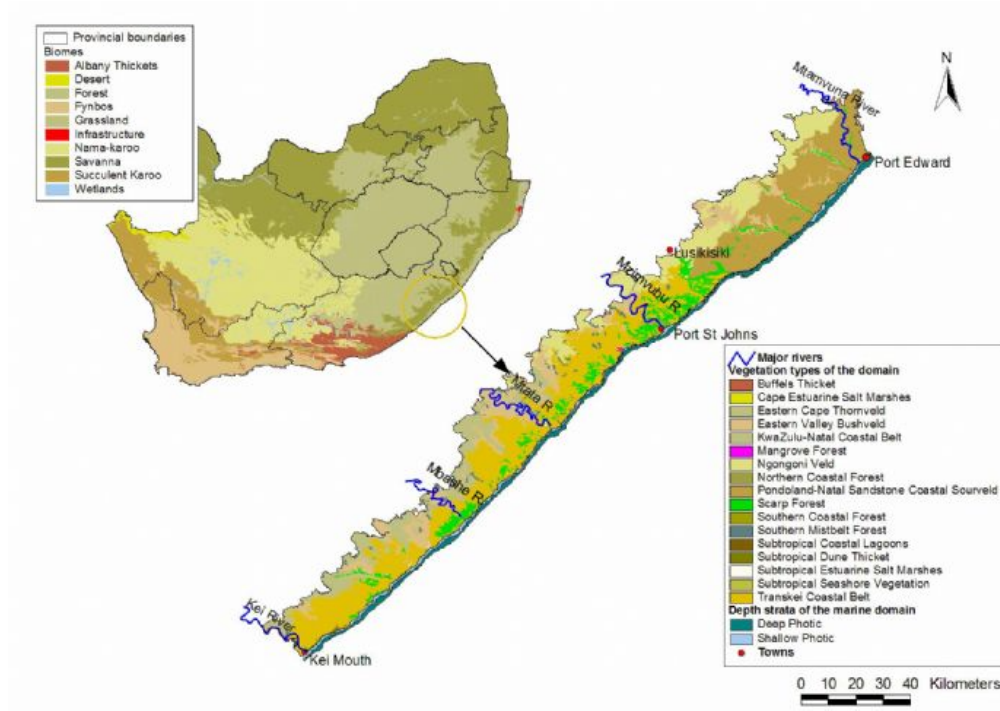


Figure 2.2 Wild Coast biomes

Source: Wilderness Foundation

3.3 Climate

The area lies between the temperate south coast and the subtropical north coast of the Eastern Cape. The temperature is moderate, ranging from an average winter maximum of 21,5 C to 24 C in summer, and it seldom drops below 10 C in winter. Relatively high temperatures and humidity are broken by cool, wet spells associated with the passage of cold fronts in summer. Strong winds and even the occasional tornado are possible in the summer months. Winters are cool and dry, without frost, but also susceptible to cold fronts. There is a susceptibility to cyclical droughts, but these are never as severe along the coast as inland.



3.4 Biomes

The area was formerly defined as falling within the Tongaland-Pondoland Regional Mosaic (Acocks 1975, Moll and White 1978), and consists of open thornveld and coastal forest. Not included in these classifications are the extensive grasslands that occur in the area. While older generations of botanists, including Acocks (1975), contended that forests were the dominant biome until cleared by human residents, more recent research testifies to the antiquity of the mosaic, notably grasslands (see Timmermans and Naicker 2002: 8 for a review of this debate).

The meeting of biomes creates a complex environment with high species biodiversity, a large number of endemic species, rare ecosystems that are of high conservation importance. Nevertheless this environment is not highly productive and is susceptible to over-utilisation, especially of rare species. Its primary habitats are: marine, estuarine, wetlands, coastal forest, coastal grassland, valley thicket.

3.4.1 Forests

These cover a 14 km strip just inland of the coast which is up to a km in breadth, and are 2 200 ha (Dwesa) and 1 286 ha (Cwebe). Their closest botanical relatives are in the Lubombo mountains, more than 600 kms to the north. The Dwesa forest has 170 woody species; the Cwebe forest is assumed to be the same (Moll 1974; Cawe 1995). They are diverse and complex and not very well studied. Even less well described are the smaller forest patches that extend along the water-courses inland from the main forests and beyond the reserve. In addition, there are sporadic dune forests on those dunes that are stabilized, though buffalo grass also forms a margin with the sea in many places. Annual productivity of the forests has not been established at D-C, but the research of MacKenzie in a similar environment, indicated that traditional forest use, for example of building poles, is sustainable. At D-C that is not possible because there is no access.

3.4.2 Grasslands

In common with other moist grasslands, these are sour to mixed-sour in character. They are robust enough to withstand the high stocking rates of the area, but do not provide very good winter grazing. The high botanical diversity of the grasslands (documented in some detail by Timmermans and Naicker 2002:10) has led to their inclusion in the protected area. The large number of grassland endemics, especially bulbous species, depend, like the grassland habitat itself, on regular burning for regeneration, and are also heavily utilised for traditional medicines.

Older residents recall that these grasslands yielded excellent forage, but that was before they were included in the reserve, when they were subject to community management by grazing and seasonal burning. The grasslands are no longer of such good quality, but especially for the pressured herders of Cwebe, any seasonal relief is better than none.

3.4.3 Terrestrial wildlife

After the nature reserve was established in 1975, white rhinoceros, zebra, buffalo, eland, reedbuck, blue wildebeest, red hartebeest, blesbuck, warthog and crocodile were introduced. Only buffalo, eland and reedbuck were truly indigenous to the area, along with smaller species have continuity in the area, including tree hyrax, samango monkey, blue duiker, the greater red musk shrew, the rare giant golden mole – and 209 species of birds, along with innumerable small amphibians and insect species. In addition, there are species that the residents regard as vermin for their threat to crops and stock: bush pigs, vervet monkeys, cane rats, yellow-billed kites and other raptors.

3.4.4 Marine life

The marine biome here is also transitional – between the subtropical waters of Kwazulu-Natal and the temperate waters of the Cape. The warm Agulhas current brings tropical fish species into the area in the summer, and a cold counter-current can bring in species associated more with the Western Cape. The transitional character of the area accounts for the richness of the marine biome. In addition to the mixing of the currents, nutrient-loaded sediments from the rivers attract fish to the area, including the white and red steenbras, so popular with anglers in the past that they are almost extinct. The inter-tidal zone supports at least 10 edible species of shellfish, including the commercially prized crayfish and abalone, and the same flat rocks that support these species provide exceptionally easy access for harvesters. Scientists at the University of the Transkei (now the Walter Sisulu University) have been researching the ecology of the inter-tidal zone over many years (e.g. Fielding et al. 1994).

3.4.5 Estuaries

Estuaries and temporal lagoons are found at the mouths of the four rivers out of the eight flowing through the area that are permanently or occasionally open to the sea. These are crucial nurseries for the juveniles of many species of marine fish. The Mbashe and the Nqabara support 12 and nine ha of mangrove swamp respectively, and these are also habitats that encourage biodiversity. All but two of the estuaries are protected.

3.4.6 Discussion

Clearly, Dwesa-Cwebe in its various natural dimensions is a biodiversity hotspot. Up till now it has been spared from the ribbon development that afflicts the rest of the province and most of the South African coast. There is no mono-agriculture, no industrial pollution, no urban development and no coastal highway – just the sheltering forests, grasslands, rocky shore and estuaries. However, there has long been hunting and recreational and subsistence fishing and harvesting in the area, both legal and illegal, and it has increasingly taken its toll of the indigenous and introduced species.

The large non-indigenous introduced herbivores have affected the terrestrial biome, as have alien plants such as gum, wattle and lantana. 'Working for Water' has successfully controlled much of the latter as well as providing an additional temporary livelihood for some of the poorest residents.

However, the most threatened element in the biome remains certain species of fish. This is why the marine reserve at Dwesa-Cwebe has been included in a blanket ban on fishing in marine protected areas instituted in January 1995 by Marine and Coastal Management (MCM) of DEAT. The local developmental and socio-economic implications of this ban are discussed below.

3.5 Rainfall and water resources

Dwesa-Cwebe enjoys a mean rainfall of just over 1 000 mm a year, which is about 200 mm greater than the regional average and accounts for the luxuriance of the biome, especially the forests. It can rain for more than 15 days out of a month during the five wettest months, and 172 mm has been recorded in a single 24-hour period (Moll 1974). The extent and pattern of the rainfall has implications for communications: dirt roads become impassable by conventional vehicles; flooded low bridges block all traffic; in 2005 the new ferry connecting Cwebe and Dwesa was swept out to sea and not seen again.

3.5.1 Rainy season

Unlike the Western Cape, where the warmest and driest weather coincides with the South African tourist season (October to April), the driest weather on the Wild Coast is in the off-season, from April to October. However, this is also a period of cooler sea and night temperatures, less suitable for bathing, and when most grasses are dormant, so the scenery is less attractive. These considerations have clear implications for tourism development, and we return to them below.

3.5.2 Droughts

Despite the high average rainfall, the study area is not immune to seasonal fluctuations and cyclical droughts. The onset of the rainy season may be early or late such that ploughing or sowing may be mistimed, causing crop failure. The cyclical drought of the period 1983-93, though less disastrous on the coast than inland, nevertheless affected livelihoods at Dwesa-Cwebe and was one of the factors behind the demand for access to the reserves for emergency grazing in the early 1990s (whose denial led to the uniting and mobilising of the communities against the conservation authorities and the organising of the protest action discussed below).

3.5.3 Water sources

From the point of view of the residents, the main source of water for household purposes at the present time is the communal tap. A major reticulation project to supply the settlements on both the Cwebe and Dwesa sides (in accordance with government policy to supply 25 litres of water per person per day within 200 m of every household) was finalised about two years ago. Most of the time the two pumping stations supply filtered water from the rivers nearest to them without any breakdown in supply or reduction in quality. In a commissioned study, Hughes *et al.* (1997) have calculated that water flow volumes in the area should withstand even a one-in-50 year drought. This is just as well as the area is not very suitable for boreholes (*ibid.*:96). An investigation of local use and perceptions of water sources prior to reticulation in the same study reveals the difficult and dangerous situation with regard to water supply before reticulation (Hughes *et al.* 1997: 100-104).

3.6 State of the environment

Besides the relatively slight alien infestation in the forests, the clearance of a large site for the Haven Hotel in the 1930s, and the depredations resulting from the illegal extraction² of game, fish and shellfish, the protected area is virtually pristine. In the communal areas there is still visual evidence of contour ploughing to counter erosion in the past, when there was more field agriculture. Now that field agriculture has declined in favour of large gardens closer to the homestead, there is very little risk of erosion through insensitive agricultural techniques, and almost no evidence of it. Sandmining on the coast and erosion as a result of poorly engineered road run-off are the main ways that the landscape becomes scarred. Pollution is limited to slight littering (the residents are too commodity-short to engage in major littering) and very primitive sanitation. Many households lack toilets altogether and rely on the services of pigs and dogs to dispose of solid waste, which is why the main endemic diseases in the area, besides HIV/AIDS, are worm-related.

3.7 Agricultural potential

The topography favours the traditional settlement pattern of scattered homesteads with adjacent gardens, more distant fields and free-ranging livestock. The relatively high rainfall facilitates a continued interest in agriculture even if flat land is scarce, the soil is neither particularly fertile nor deep, the grazing is 'sour,' inputs are expensive and not locally available, extension services are lacking and labour is being depleted through urbanization and education. At least the risk of uncontrollable fire is reduced in this relatively damp environment; and flooding only occasionally affects the fields on the Mbashe floodplain. Poverty drives the continued exploitation of available local livelihoods, especially the traditional one of subsistence agriculture, even if returns are marginal.

3.7.1 Soils

Geologically speaking, Dwesa-Cwebe is dominated by the Beaufort and Ecca series of the Karoo system, with many doleritic intrusions. The soils of the study area are not well studied (but see McKenzie and Cowling 1979; Moll 1974; Shone 1985; Timmermans and Naicker 2002). Comprising generally fine-grained sandstones, mudstones and shales of the Fernwood and Nomanci forms, the local soils vary considerably in colour, structure and composition. These soils are relatively shallow, seldom achieving depths greater than one metre. Local farmers favour the patches of black soil over the red, yellow and white soils, probably because these are less prone to seasonal or cyclical desiccation and erosion than the light, sandy and loamy soils that are ostensibly more suitable for cultivation, and were recommended in a Transkei Agricultural Development study (cited in Timmermans and Naicker 2002: 7). All local soils need fertilizer, but the only readily available and affordable source is cow manure.

3.7.2 Cultivation

Despite the reasonable soils and high rainfall, field cultivation has declined overall, and there is no sharecropping. Reasons cited in a survey in 1998 included: damage by bushpigs emanating from the nature reserve; absent male labour; children (who formerly scared away the birds from ripening crops) in school; and the high cost of ploughing and inputs (Fay and Palmer 2002: 164-5).

There is more interest in cultivation on the Cwebe side than on the Dwesa side. Fay reports that, in 1998, of the 72.5 percent of homesteads in Hobeni (and 84.5 percent in neighbouring Cwebe) that had access to fields, "90 percent of people in Hobeni with fields had cultivated them in the previous year."

² That is, in terms of terrestrial and marine protected area legislation.

Ninety-one percent of homesteads in Hobeni (and 98 percent in Cwebe) had attached gardens, and 88 percent of homesteads with gardens had cultivated in the previous year. Overall, 95 percent of homesteads in the sample were cultivating in fields and/or gardens, and 64 percent were cultivating in both (Fay 2003:54)

Heavy population pressure, a lack of other economic opportunities, the proximity of very fertile land (on the Mbashe flood plain), and the greater availability of female labour explain the continued interest in field cultivation in Hobeni. On the Dwesa side, where these conditions do not obtain, the shift from field cultivation to gardening has been more evident. Inter-household co-operation (work parties, ploughing companies and hired labour) still involve about a quarter of the active population, but the nature of the co-operation has changed according to local priorities. Thus, neighbours who formerly helped with ploughing are now to be found more frequently helping with making bricks or building (Fay and Palmer 2002: 169-172).

3.7.3 Livestock

There is no official data on livestock ownership in Dwesa-Cwebe, because it is not recognised officially as an area, falling between Elliotdale and Willowvale in the old system, and falling within Mbashe municipality in the new. But we have data on ownership from two surveys undertaken in the villages of Cwebe and Ntubeni in 1998 and again in 2002 and 2003 (Table 2.1). The data supports the impression held by “experts” that cattle numbers are increasing in the area despite inadequate extension and dipping programmes against the major tick infestation on the coast (A. Ainslie, pers. Comm.).

Livestock in the study area, as in all the coastal districts, shows a dominance of cattle and goat numbers, reflecting the wetter environment, which is less suited to sheep, and the thornveld which favours goats. Cattle numbers rise and sheep numbers fall during spells of wet years but long-term livestock numbers have been stable since the 1920s., reflecting the adaptation to the carrying capacity of the area over at least 300 years. The Xhora district tends to higher land use pressures than the Gatyana district, but also comes closer to self-sufficiency in food production at household level. (Hawkins Associates, 1980). Although only a small sample Table 3.1 supports this view.

Table 3.1 Stock ownership in Ntubeni and Cwebe

	2003	Cattle	1998	Number of cattle owners (2001)
Dwesa	155		156	21/39
Cwebe	155		138	24/37
		Goats		Number of goat owners
Dwesa	136		109	16/39
Cwebe	101		123	14/37
		Sheep		Number of sheep owners
Dwesa	0		5	0/39
Cwebe	125		248	9/37
		Pigs		Number of pig owners
Dwesa	141		144	32/39
Cwebe	63		94	27/37

3.8 Bio-cultural significance of the protected area

The agrarian activities of the residents of Dwesa-Cwebe have always been focused mainly inland from the forested area, but this does not mean that the forests, coastal grasslands and sea-shore have no economic or other significance for them. Where there is communal tenure and the livestock is free-ranging, the only way to secure a crop is to fence the field or garden, and the traditional – and, for most, the only affordable – way of doing that is by setting fence-poles and weaving the sides with laths, which are cut in the forests. The same goes for the frames of wattle-and-daub huts (the roof timbers are usually gum poles from the woodlots, not the indigenous forests). The best thatching grass also comes from the reserve, as do reeds for sleeping mats, wild vegetables and healing herbs.

As one shifts from practical use to customary and ritual significance (and the two are not necessarily separable), another level of the significance of the protected area emerges:

- If brides are denied access to reeds so that they cannot make the correct mats and strainers, then they cannot pay their prospective mothers-in-law the respect that is their due (hlonipha); it is not unusual for marriages to be postponed until this observance can be made.
- Twins need to be dipped in a section of the river to be recognised by the 'river people' (ancestral spirits). If this cannot be done because the pool falls within the reserve, misfortune is believed to follow.
- Dwesa Point, a rocky prominence in the reserve, has always been a major sacred site, important for the initiation of *amaqhira* (diviners), yet access to this site has frequently been denied.

Demarcating the forests, and later the entire area, for conservation may or may not have been in the interests of biodiversity. Whether the presence of humans and their domesticated animals limits or stimulates biodiversity in a given situation is a highly controversial topic, and it remains unclear in the Dwesa-Cwebe case. But it certainly was not in the interests of the residents, for the reasons given. It took a hundred years for them to become desperate enough and sufficiently empowered to wrest back their piece of wilderness, but in the end they have done so with a highly qualified outcome.

As we shall see, it is not the victory many of the residents envisaged, because it has led neither to radically improved *access* to the reserve in spite of the new collective ownership model, nor the compensation of increased economic opportunities that would allow them to purchase alternatives to the materials they obtained from the forests, grasslands, rivers and sea for free. Even then, no increase in income can compensate for access denied to site-specific customary uses and ritual activities.

4. History of prior ownership and dispossession³

4.1 Introduction

The Land Restitution Act of 1994 is a means of restoring land to those who have lost it, but it has two restrictions. The land had to be lost through racially-discriminatory legislation, and this had to have taken place since 1913 (the year of the first Land Act). Accordingly, a case study of restitution such as this one of Dwesa-Cwebe only really needs to take account of the removals of people from land that occurred after 1913. It is certainly true that only these kinds of removals in the period since 1913 could

³ The historical section of the case-study is based mainly on the book *From conflict to negotiation* (Palmer *et al.* 2002), including the many sources cited in that book.

be used as grounds for restitution in any case to the Land Claims Commission, but all removals have a context. There is a *deep* historical context of removals or events that would lead to removals that began long before 1913; besides explaining what happened later, the history also supports the legitimacy of the claim that indigenous people have been occupying the land for a very long time. Then there is the more *recent* historical context of events and influences within and beyond the study area that *favoured* both official and unofficial racial discrimination that promoted removals after 1913.

Thembela Kepe (1998) has noted the tendency of administrators and NGOs to treat 'the community' in any designated area as if it was uniform and united, made up of uniform and undifferentiated individuals and households. Of course the many settlements of the area and their inhabitants are not like that, even if they are nearly all composed of black African people who speak isiXhosa. Dwesa-Cwebe is in fact ethnically, culturally and socially diverse. The unification of the areas for the purpose of the land claim is therefore all the more remarkable, as people had to struggle to overcome major differences.

Another historical theme of the area is the presence of those who were not black Africans but still lived in or visited the area: the white administrators, soldiers, missionaries, traders and holiday-makers who have occupied their seaside cottages or the hotels or camped here long before tourism became an industry and the focus of development policy for this coast and the country as a whole.

4.2 The historical ties of the claimants to the land

4.2.1 History of land occupation and the extension of colonial authority

Among the many shell middens to be found along the Wild Coast, there is one at Dwesa that is more than 4 000 years old. This proves that Indigenous Africans have been living on the Wild Coast and supplementing their diets with shellfish for thousands of years. The earliest contributors to the middens at Dwesa and elsewhere along this coast were not Xhosa-speakers or even Nguni, but Khoisan, and even earlier populations. Early Iron Age settlement in the major river valleys commenced at least by 400AD. Late Iron Age people followed a thousand years later in the course of the gradual westerly migration down the eastern side of southern Africa, adding shellfish consumption to their cattle- and cultivation-based economy.

Rise of the amaXhosa, arrival of the Bomvana

From the 1600s until the 1800s the Xhosa chiefs established themselves – Ngconde had his Great Place near the Mbashe River. The schism between the sons of Phalo, Gcaleka and Rharhabe, led to the movement of Rharhabe out of the area and the ascendance of Gcaleka's heirs – until the first three frontier wars and the Cattle-Killing movement of 1856-7 decimated and displaced the Gcaleka. In the interim, the Bomvana, fleeing the expansion of the Zulu kingdom, had purchased land from the Gcaleka and settled at Cwebe. The Bomvana had not joined the Cattle-Killing, but they provided shelter for Sarhili and his followers when they were fleeing the British during the 1877-8 Frontier War. Later most Gcaleka returned to 'their' side of the Mbashe, but settled further down the coast, because Mfengu were moving into Dwesa.

Annexation and the Mfengu

The conventional view of the origin of the "Fingo" group attributes their presence in the Eastern Cape to expansion of the Zulu polity, though this view is subject to ongoing revision and a more nuanced understanding is emerging. They later moved across the Kei River and into the Colony, where they were granted land in return for loyalty. Later still, the British created the territory of Fingoland in the Transkei, following the defeat of the Gcaleka. It stretched from Butterworth to the coast and included Dwesa. Fingoland was joined with Idutywa, Willowvale and Kentani, to become the first Chief

Magistracy of the annexed Transkeian Territories. It also included the first territory across the Mbashe to be annexed, Bomvanaland. By 1903 all the Transkeian Territories had been annexed and placed under the Chief Magistrate now based in Umtata.

Red and School

The Gcaleka and groups continued to be wary of change and cleaved to their traditions. In contrast, the Mfengu, who had been thoroughly missionised, including exposure to western farming methods during their sojourn in the Colony, persisted in a more Westernised orientation despite their poverty and isolation in Dwesa-Cwebe. These were precisely the differences in background, experience and outlook that gave rise to the long-standing ideological difference between the *amaqaba* (Red people) or conservatives, on the one hand, and the *amagqoboka* (School people) or progressives, on the other.

4.2.2 The nature of occupation, ownership and use of the land prior to dispossession

Land use and livelihood practices

Male household heads managed frequently large, polygynous households whose women hoed and tended the small stock and boys herded the cattle which, then as now, were not so much a source of food as the households' principal patrimony (capital and savings). The Mfengu, in contrast, who had converted to Christianity, had frequently converted also to agricultural aspirations beyond subsistence, and they had the techniques and implements (notably the plough) to advance them. From the 1880s, Dwesa-Cwebe had representatives of both traditional and peasant approaches to agriculture.

The success of both forms of livelihood depended on two principal environmental factors (besides sufficient rainfall to provide for cultivation and grazing). Natural resources were required for building and maintaining homesteads and fencing fields and gardens against the free-ranging stock; and sufficient land to accommodate demographic increase and the tendency of polygynous households to generate fission: as sons of the junior 'houses' grew up they usually needed to move on. Neither of these requirements was to be met after annexation: the forests at Dwesa-Cwebe and elsewhere would be preserved by the colonial administration, and land would become scarce.

Markets and the restructuring of administrative and property systems

Commencing with the Glen Grey Act of 1994 the Cape Government passed legislation incrementally to reduce competition between blacks and whites for land and markets for agricultural produce and to increase the supply of cheap black labour on farms and in the mines. There was no assistance analogous to the Land Bank provided for white farmers – only restricted market access and disadvantageous terms of trade - and competition so stacked against them - that even the most enterprising of the commercially-inclined soon failed. Migration to the mines and the drift to the white farms and to the cities accelerated accordingly, and rural poverty intensified.

Administratively, rural Transkei was reorganised into Districts and Locations under a system of 'direct rule' The Native Administration Act of 1927 consolidated and strengthened the scope of the Native Affairs Department (and provided for a complete separation of all black administration) and authorised continued "rule by proclamation". Proclamations issued in terms of this Act introduced new forms of local authority and land tenure, mainly through PTO legislation, but moulded on the back of customary systems. The PTO system placed responsibility for land tenure with District Magistrates (who were also Native Commissioners), assisted by headmen and sub-headmen, to allocate residential and arable land supported with written records maintained in the Native Commissioner's office. Every adult resident was entitled to a residential plot, a garden and a field; but these had to be registered with the magistrate and an annual tax paid. A widow could inherit the land, but it could not be sold, subdivided or leased. There is some evidence that land allocation in the Willowvale district evaded the strict provisions of recordal

and control through the Magistrate's office and hence manifested a less systematic break with customary land tenure practices.

The 1936 Native Trust and Land Act brought all provinces within the ambit of racial segregation in respect of land ownership and occupation. Tribal Authorities were refurbished with increased administrative and judicial powers; and 'development' of land was transferred to a state agency in the form of a Trust. The Trust also henceforth became the landowning entity of all demarcated black occupied areas and 'released' land.

4.2.3 Extension of state control over indigenous forests

A particular focus of white control of the economy of the locations and reserves was the indigenous forests of the annexed territories. These were an important potential source of revenue for the administration, regarded as under threat from the residents and companies of travelling sawyers. The Cape Government's Proclamation 140 of 1885 made the laws of the Cape applicable to Gcalekaland and Bomvanaland as well; thus the subsequent Forest Act of 1888, reserving all forests over five acres in extent for the state, also covered the forests at Dwesa and Cwebe, and these were placed under the first Conservator of Forests for the territory, C.C.Henkel.

A struggle ensued between the more monopolistic and commercially-oriented Forestry Department (FD) and the Native Affairs Department (NAD) that sought harvesting rights for the natural resource-dependant residents. The outcome was the reservation of the larger and more valuable forests for the FD, leaving the smaller and poorer forests under the control of the magistrates for local use. The FD demarcated, proclaimed and surveyed 'their' forests but not the others, which is why the important forests were officially termed *demarcated* forests, the lesser ones *undemarcated* forests.

4.3 Removal of the residents from the forests and coastal area

4.3.1 First Removals

The main forests at Dwesa and Cwebe fell into the 'demarcated' category -- from the outset anyone living within their surveyed boundaries was to be removed. In practice, some residents continued to live in the forests, and some were removed only to return. Mixed farming as a mode of production generally emphasizes open country, but some poorer households without many cattle of their own could make a living by herding the cattle of others in the forests, and establishing orchard-like gardens on the forest margins.

Compromises were worked out for the first 30 years of demarcation, and removals were not forcefully implemented, but as commercial exploitation of the forests by whites intensified, so did the fear that residents in or near the forests might damage the resource by harvesting or fire, and removals intensified especially with the re-demarcation of the forests in the 1920s.

Another factor in the removals was linked to the increase in the presence of white administrators, missionaries and traders in the Transkei following annexation. They established holiday cottages at scenic points on the coast, notably at Cwebe. The founding of the Haven Hotel, around 1930, was another response to the recreational demands of whites in the Transkei. Proclamation 26 of 1936 permitted the Minister of Native Affairs to give whites 'permission to occupy' land on the commonage of black locations, which meant whites could continue to hold cottages along the coast, and the following year the Elliotdale magistrate expanded the landholdings of the cottages and hotel at Cwebe.

While the presence of whites in the coastal side of the forests offered some new employment and commodity production opportunities to local blacks, it also provided an additional source of pressure for the removal of any remaining homesteads in the area and the imposition of stricter limitations on grazing and harvesting in the forests.

There is evidence of removals from 1913-1950 in the form of records and oral evidence. The main consultant for the Land Claim, the Village Planner, conducted hundreds of interviews in the villages, revealing a 'remarkable consensus' concerning the history of removals. According to this oral record, 14 villages had been destroyed and their residents moved. There is also physical evidence of homesteads and grave sites in the demarcated area, confirmed by aerial photographs.

The removed households had to be absorbed into the communities beyond the forests and there is little evidence of compensation for the later removals. By 1950 the protected areas had been cleared of human habitation, but residents were still allowed to enter the reserves to *theza* – to collect a shrinking range of permissible resources.

5. The land under claim and the land use changes that took place after dispossession

The land that was claimed in terms of the Land Restitution Act in 1994 included the extended reserve area described below.

5.1 Extension of the Protected Area: the shift from demarcated forest to nature and marine reserve

After 1950 the protected area had been extended beyond the forests to include a nature and marine reserve that stretched from the landward edge of the forests to the shoreline and six nautical miles into the Indian Ocean, incorporating the tidal estuaries and the inland waters. It was not a change in the land use of the forests, which had been conservation ever since they were demarcated. It was an extension of conservation land use to include the grasslands, shore-line estuaries and into the sea. This extension of the protected area was to have dire consequences for the residents, and hearken another round of removals – this time from the fence line of the reserve, to create a buffer zone

The Bantu Authorities Act of 1951 created the Bantustans, while subsequent legislation led to self-government and then 'independence' for the Transkei in 1976. In the course of the gradual conversion of the territory, the forests were transferred to the Transkei's own Department of Agriculture and Forestry (1963). Later the Transkei government passed its own Nature Conservation Act (1971). It was in terms of this legislation that the Dwesa-Cwebe Nature Reserve was established in 1975, on the eve of 'independence'.

An ecologist, Ken Tinley, was commissioned to produce a management plan. The plan was progressive for its time, emphasizing the low impact development – a camp site with log cabins and a restaurant near the gate at Dwesa, with only over-night hikers' huts elsewhere; and opportunities for interaction with the community for tourism purposes. The Haven Hotel and Cwebe Cottages continued as before.

Over the next few years, the reserve was fenced and stocked with game, some of it large and dangerous, such as the rhinos and the crocodiles. Tinley's liberal plan was over-ridden: The residents

were no longer allowed to *theza* 'for their own safety;' more rangers were recruited and instructed to enforce the new restrictions. The conservation land use of the area persisted up to and through the land claim of the 1990s. However, the changes to the protected area had consequences for the use of space beyond the fence line.

5.2 Compensatory wood lots

Woodlots of exotics such as gums and wattle were established near the Dwesa and Cwebe forests so that the residents would have alternative sources of wood for building and fires, but these were never popular and hardly used. For one thing, the woodlot on the Dwesa side was quite far from most settlements; for another, exotics were not regarded as useful for all purposes. Gum poles work well as roofing timbers, because the covering of thatch or zinc protects them from the weather, but they do not endure out in the open, as kraal or garden posts, unless they are regularly painted with expensive creosote. Residents preferred indigenous poles and laths for these purposes. They also prefer fallen wood from the forests to woodlot wattle. Thus the woodlots hardly compensated for their exclusion from the main forests, and they were certainly no compensation for depriving the local inhabitant of the oldest source of protein on the coast: fish and shellfish when the shoreline was incorporated and the reserve became a marine reserve as well as a nature reserve in 1991.

5.3 Further removals in the form of Betterment and removals from the fence line

It was widely believed in the Native Affairs Department that agrarian practices and not land hunger were the source of the economic decline in household livelihoods. 'Betterment' or 'rehabilitation' was proposed as the solution particularly in response to the perceived threat of widespread soil erosion. This approach, national policy since 1929, was implemented mainly after 1945. It was a form of internal resettlement that concentrated the population into villages, demolishing the scattered homesteads, and creating discrete arable and grazing areas. Research has established that betterment further intensified rural poverty and destruction of customary practices (see De Wet (1994) and Hendricks (1990)).

Betterment was eventually applied to the Dwesa communities in the 1970s and the Cwebe side in the 1980s in spite of the fact that erosion was never bad enough to necessitate it on the well-watered Wild Coast. An aggravating factor was that the administration actually lacked the resources to properly implement and enforce it. The progress of betterment implementation and some of the consequences have been described in detail, particularly for Hobeni, by Fay (1998, 2003). In the Dwesa-Cwebe area villagisation was the pretext for removing homesteads and their fields and gardens from the fence line in order to make it more difficult for the residents to access the reserve. Betterment was disastrous for the local economy at Dwesa-Cwebe, coming after about 20 years of periodic droughts and coinciding with exclusion from the new nature reserve. As before (see previous section), but much less gradually, the eight villages that shared a boundary with the reserve had to absorb the removed, at considerable territorial cost to their communities, in terms of space and thus livelihood.

5.4 Mobilisation of Community Reaction

A coup in 1987 ushered in a new young president, Bantu Holomisa, who halted betterment, encouraged grass-roots representations, and released the liberation organisations. Known at Dwesa-Cwebe as 'the time of politics,' (in contrast to the authoritarian rule of the Matanzima brothers), the five years from 1987 to 1992 was a time of near-anarchy in the territory (Southall *et al.* 1992:278-9). It was a period in which ordinary people felt empowered to lodge protests, but it was also a period in which the formal structures that might represent them were in decline. This was the period in which the residents of Dwesa-Cwebe began their own 'long march to freedom.'

Holomisa had encouraged the grass-roots to make representations (in sharp contrast to his predecessors), and the communities responded, notably at Dwesa-Cwebe where there had been such pressure in the preceding 5 – 10 years due to the fencing and stocking of the reserve. However, the post-coup administration of the Transkei did not seem to have the will or the capacity to deal with such representations. The local leaders consequently sought support from the NGO sector in the form of Traliso. After Holomisa unbanned the liberation organisations, there seems to have been major disjunction with Pretoria and a period of instability up to and including the creation of the Eastern Cape Province and the reincorporation of the homelands. During this time, the residents at D-C were increasingly 'going it alone' including 'undoing betterment' by recreating their former homesteads (and getting away with it). The administrative climate of powerlessness not only frustrated the local residents, but also encouraged them to unilateral action, culminating in the invasions of the reserve in 1994.

The advent of the nature and marine reserve more than any other event in the period after the first phase of dispossession stirred community reaction. Not only did it extend the already long established conservation land use of the forests to the grasslands, shoreline, estuaries and rivers, but it excluded residents from the area even for purposes of limited collecting of natural resources.

6. Enterprises and assets of the protected area

6.1 Introduction

The subject of the claim, and main set of enterprises and assets (still to be formally transferred) consists of the protected area, and everything within its bounds, including the income derived from the economic utilisation of the protected area for tourism purposes.

6.2 Environmental assets

The principal environmental assets of the land include:

- The most scenic part of the local landscape (forests, wooded valleys, cliffs, estuaries, dune forests, shoreline)
- The greatest variety of habitats and the rich biodiversity they shelter, including endemic and introduced fauna and flora in great profusion and variety
- Fish, shellfish, seaweed, sea water and sand
- Navigable rivers (Mbashe and Nqabara)

6.3 Other assets

By far the most valuable asset involved was the land itself, which was valued for the Settlement at a laughable R3.2 million for over 5000 hectares of unique heritage land.

The most elaborate and valuable physical structures are on the Cwebe side. These include:

- The Haven Hotel, occupying a purported quitrent site registered in 1993. It was previously on a PTO site, as was the case with all the other Transkei Development Corporation (TDC) managed hotels within the Cwebe reserve measuring 1,9306 ha. The hotel consists of a main block and guest cottages that can accommodate about 80 visitors, sharing. There are also a manager's house, shop and staff quarters. The extensive grounds overlooking the coast include a swimming

pool, tennis court and nine-hole golf course. Constructed in the 1930s, the hotel was not in very good condition on transfer. In fact the WCSDI plan of 1997 was to replace the hotel altogether. A portion of the settlement funds have been allocated for essential renovations and electrification (due 2006). A condition of the present lease (due to expire at the end of 2007) is that the leaseholder has to re-furnish the guest cottages.

- Three hikers' huts overlooking the Mbashe river
- Formerly white-owned holiday cottages of varying value, but mostly substantial houses – 18 at Ntlonyana and 11 closer to the hotel.

Assets on the Dwesa side, formerly owned and run by the Department of Economic Affairs, Environment and Tourism (DEAET) include:

- Eight long cabins constructed in the 1970s that can accommodate four each, a caravan park and a campsite. A larger log cabin near the gate in conjunction with a new building originally intended as a cultural centre, serve as administration offices and a small conference centre
- Staff quarters, and an administrator's house deeper in the reserve
- Holiday cottages and hikers' huts on an extension of the reserve near the mouth of the Nqabara.

7. The land claim, negotiations and settlement at Dwesa-Cwebe: Process and chronology

7.1. Chronology of the Claim

Administratively the restitution process can be seen as a series of phases, culminating in the approval and implementation of a claim. These are:

- Phase 1: Lodgement and registration (closing date 31/12/1998)
- Phase 2: Screening and categorisation
- Phase 3: Determination of qualification in terms of the Restitution Act
- Phase 4: Preparation for negotiations
- Phase 5: Negotiations
- Phase 6: Implementation, settlement support and development planning

With land restitution cases the actual land restitution process may follow a very different path to the neat outline of phases given above, as evidenced in the Dwesa-Cwebe case, where the case largely lacked precedence with regard to the restitution of a nature reserve, now (but not initially) of national and international significance. The only other case at the time was the Makuleke restitution case which had its own specific historical and cultural legacies that differed from Dwesa-Cwebe.

At Dwesa-Cwebe numerous stakeholders from a wide variety of backgrounds became involved in a long, protracted and traumatic process. Below is a chronological outline of the key moments of the restitution process (summarised from Terblanche, A. 2000)

7.1.1 Mobilisation

1987. Militant mobilisation around land alienation at Cwebe village and repressive reaction by Bantustan authorities.

1990. Intense mobilisation around land issue at Mendwana.

1991-1994. Land claim mobilisation spreads to 6 villages, with broad consensus developed between them.

1992-3. Mendwana, Cwebe and Ntubeni villages approaches TRALSO for assistance with land claim

1993. Crisis meeting at Cwebe attended by 2,500 people demanding grazing access within the reserve.

1994. Land invasion and protest use of resources at Cwebe, while smaller protest actions organised at Dwesa.

1995. ECNC makes crisis management proposals

4 December 1995. Dwesa-Cwebe communities demand the unconditional return of their custodianship of the land and its resources (National Department of Land Affairs, September 1996)

7.1.2 Claim lodged

Claim lodged with Regional Land Claims Commission (RLCC) by Siphon Eutress Mbola (Chairperson of Dwesa Conservation Committee) on behalf of the Dwesa community on 14 September 1995

Claim lodged with RLCC by Waphi Siyaleko (Chairperson of Cwebe Conservation Committee) on behalf of the Cwebe community on 14 September 1995

On 14 September 1995 TRALSO made a request to RLCC to consider processing the two claims simultaneously

3 December 1995. TRALSO participatory research concludes that restitution should take place and that the communities understand the concept of conservation (press statement released).

5 March 1996. The Registrar of Deeds in Umtata was notified of the claims by the RLCC and that a claim had been instituted

Public notices posted at the Willowvale magistrate's court, the Elliotdale Town Hall and other public places in close proximity to the land claimed.

19 April 1996. Notice of the restitution claims published in *Government Gazette* No. 17106 as Notices No. 490 and No. 491 for Dwesa and Cwebe respectively.

19 April 1996. Notice of the restitution claims published in *Daily Dispatch*

7.1.3 Research and information gathering

A large number of documents relating to the claim were submitted; mainly reports from interested parties and NGOs (see *ibid*, p. 53)

5 March 1996. Memorandum from the Registrar of Deeds, Umtata confirms that no title deeds exist for the land and that it is commonly accepted that Dwesa-Cwebe Nature Reserves are State land.

8 March 1996. In a letter to *the Village Planner* Eastern Cape Nature Conservation (ECNC) accepts the Claimants' position that they do not envisage a change to land use at the reserve.

April 1996. National Department of Land Affairs (DLA) Research Report 103/96 compiled on the claims for the RLCC

24 April 1996. ECNC position statement recorded in a document entitled 'Land Claim against the Dwesa and Cwebe Nature Reserves.'

7.1.4 Negotiations

Negotiation meetings held with respective communities on 25-26 April 1996. All interested parties accepted the need for environmental protection and conservation of the reserves (See *ibid.*, p.25). Position of the communities also submitted in the document 'The Claim: The Land of Dwesa and Cwebe: A Right to what is ours.'

16 May 1996. Keith Cooper of the Wildlife Society forwarded a written submission to RLCC entitled: 'Claims for Restitution: Cwebe and Dwesa Nature Reserves.' This submission raised concerns about the conservation status of the Dwesa-Cwebe Nature Reserve.

23 May 1996. RLCC requests that DLA consider the Dwesa and Cwebe communities as tenure test cases (See *ibid.*, p.63).

29 May 1996. Eastern Cape Provincial Department of Economic Affairs, Environment and Tourism (DEAET) recognises the land rights of the claimant communities, and admits the wrongs committed in the past in the name of conservation. This was recorded in the minutes of a negotiating meeting. (See *ibid.*, p.60).

Eastern Cape Provincial Department of Agriculture and Land Affairs expressed support for the restitution process

7.1.5 Settlement Agreements and research, disputes and further negotiations

Deed of Settlement entered into between the representative of the Dwesa claimant community and the DLA on 27 June 1996.

Deed of Settlement entered into between the representative of the Cwebe claimant community and the DLA on 27 June 1996.

September 1996. DLA Research Report 171/96 compiled on the claims for the RLCC. Finds that removals took place for purposes of conservation and were not racially motivated.

5 July 1996. Memorandum forwarded to RLCC by Brian Sephton of the Legal Resources Centre in Grahamstown, outlining the legislative history of the Dwesa-Cwebe reserves

18-21 May 1997. Strategic Planning workshop held in Umtata, with community leaders drawing up a detailed management planning proposal for the reserve.

10 June 1997. DWAF Director-General forwards a letter to the Eastern Cape MEC for Economic Affairs, Environment and Tourism opposing the claim.

August 1997. DLA report compiled. Entitled: 'Report resolution of the Dwesa-Cwebe land claim.'

29 August 1997. Minister Hanekom meets the Conservation Committees of Dwesa-Cwebe and agrees to the restitution of land, subject to the meeting of various conditions.

1997-2000. Agreement for the joint-management of Dwesa-Cwebe by local communities & DEAET. However, this agreement is not put into action

7.1.6 New institutional arrangements conceptualised and drafted; funding approved

13-15 October 1997. Agreement on formation of CPAs to take over legal ownership of claimed land. Land to be owned by a Trust, with CPAs the drivers of the trust

RLCC points out that management of reserves should be distinguished from ownership, so that the land can be preserved as a Nature Reserve, while ownership is restored to the community.

19 February 1998. RLCC findings on the claim published and find in favour of the communities (Regional Land Claims Commissioner referral report, 1998).

Management Planning Framework endorsed by DEAET and community representatives.

June 1999. Final draft Administrative Management Plan, where co-management of the reserve agreed upon.

16-17 September 1999. Short-term lease agreed upon for Cwebe Cottage owners.

April-May 2000. CPA constitutions and Trust deeds registered. Land surveys also completed

11-12 May 2000. Lease agreement with DWAF made.

August 2000. Draft Business Plan for conservation management at Dwesa-Cwebe completed.

May 2001. Chief Land Claims Commissioner signs for funds allocation (see 10 December 2002 below)

17 June 2001. Dwesa-Cwebe settlement and community agreement signed. Including co-management of the reserve between the Trust and DWAF (or delegated management authority).

10 December 2002. Funds allocated (see 2004 below)

7.1.7 Development planning and the Development Plan

2002. A multi-stakeholder project steering committee develops a development plan for Dwesa-Cwebe

2003. Development planning process completed

2004. Approval of funds transfer by RLCC.

2006. Implementation of the Development Plan begins.

7.2 Mobilisation around the claim

As reported in 5.5 above, in the decade after 1983 a serious drought led to crop failures and reduction of grazing. Stock began to die of thirst or hunger. The coup that brought in Bantu Holomisa as military leader ushered in a seemingly more favourable political environment for negotiation, and local leaders

began to prepare their request that the reserve be opened for emergency grazing. However the new administration did not seem to have the will or capacity to deal with such representations. The administrative vacuum encouraged unilateral action, culminating in the invasions of the reserve in 1994.

Although the local leaders had the support of a major regional land NGO (Traliso) from 1992, they made little initial headway. This is not surprising, for this was the period of the political transition in South Africa. Law and order had all but collapsed in the Transkei; the provinces and their administrations were in the throes of reorganisation. With no progress in the negotiations, and the drought biting, the leaders considered their options. In keeping with the turbulent times, the communities planned a co-ordinated protest action. In October 1994, communities living adjacent to the Dwesa-Cwebe Nature Reserve launched a mass protest action against the local conservation authorities. Singing freedom songs, they forcibly invaded the protected area and illegally began harvesting many of its natural resources. Overwhelmed, and vastly under-resourced, local conservation officials were powerless to prevent the destruction. Images of large groups of women and children stripping the rocks of shellfish were broadcast on national television, sparking a public outcry. (Timmermans, 2004: ii)

Sensing a political crisis, the new government acted quickly. A section of the army was sent in to restore order and the regional MEC for Environmental Affairs arrived to defuse the situation. He ordered the reserve to be opened immediately to harvesting and grazing and organised locally elected Conservation Committees in every village to help control access, via a permit system, and to negotiate joint management of the reserve with the conservation authority (Dye and Lasiak 1994).

7.3 Stakeholders

One of the features of the Dwesa-Cwebe case has been the involvement of many 'stakeholders':

Table 7.1 Stakeholders at Dwesa-Cwebe in the run-up to the Claim

<i>Community sector</i>	Land claimants: Families and descendants of those who were forcibly removed from the forest reserve since 1913 and settled amongst the frontline villages.
	Resource claimants: Residents of the frontline communities who increasingly lost customary harvesting rights in the PA over the years.
	Conservation Committees (CCs), Communal Property Associations (CPAs) and the Dwesa-Cwebe Land Trust: Community Conservation Committees were set up in 1995 to negotiate joint management of the PA with the ECNC (see below) but they drove land reform and became the nucleus of the CPAs and the D-CLT, the present legal structures created through the land claim process to represent the land and resource claimants.
<i>State Sector</i>	National Department of Land Affairs (DLA): Administers state land on behalf of the government. The Commission for Restitution of Land Rights (RLCC) represents the government in restitution cases. In 2003 the Eastern Cape office established a Settlement Support and Development Planning Unit
	National Department of Environmental Affairs and Tourism (DEAT): The DEAT administers the Convention on Biological Diversity and implements national policy on biodiversity conservation, and thus has a stake in the Dwesa-Cwebe PA. Linked to it is the National Directorate of Marine and Coastal Management manages the Dwesa-Cwebe Marine Reserve which it founded
	Provincial Department of Economic Affairs, Environment and Tourism

	<p>(DEAET): The DEAET - chief directorate of Environmental Conservation managed the Dwesa-Cwebe PA, as a provincial reserve. ECNC also administered the PA as a forest reserve on behalf of the Department of Water Affairs and Forestry (see below). The DEAET has a mandate delegated from the DEAT and in terms of a Presidential Decree, Provincial Conservation Ordinances, the Forest Act and the Sea Fisheries Act to conserve biodiversity in provincial PAs.</p> <p>Eastern Cape Parks Board recently created to take over management of the provincial game and nature reserves, D-C since Feb 2006.</p>
	<p>National Department of Water Affairs and Forests (DWAF): DWAF is responsible for water and forest conservation and sustainable use, the amount and representation of indigenous forest that is formally protected. DWAF is the lead competent authority for the reserve.</p>
	<p>National Department of Trade and Industry (DTI) – The Wild Coast Spatial Development Initiative (WCSDI): An initiative of DTI - no longer exists.</p>
	<p>District and Local Government, Traditional Authorities: Amatola District Council (DCs) and Mbashe Local Municipality. While the DCs and LMs have had little to do with the negotiation stage of land reform, they have come to the fore during implementation.</p>
<i>Semi-state</i>	<p>RULIV (Rural Livelihoods Project) supported by GTZ, but working closely with the Provincial Office of the Premier. This project sought to facilitate institutional linkages in two pilot areas of the Eastern Cape to promote rural livelihoods. It appears to be less active currently.</p>
<i>The Non-Government Sector</i>	<p>The Village Planner (TVP): TVP is an Umtata-based rural development, research and support consultancy run by former Tralzo employee, Andre Terblanche. In the role of consultant first for Tralzo and later for DLA the VP worked closely with the residents to drive land reform at Dwesa-Cwebe in the early stages of negotiation. It played a key role in facilitating the establishment of the 7 CPAs and the Trust.</p>
	<p>Transkei Land Service Organisation (Tralzo): This Umtata-based NGO began championing the land claim at Dwesa-Cwebe since 1992. Tralzo's activist and research role was important in initiating and driving the Dwesa-Cwebe land claim until about 1998. It played a role in the negotiations until the settlement agreement in 2001. It took part in the formation of the Co-Management Committee Tralzo suspended operations for a while due to funding crises, but again in 2005 took up support work, externally funded by the International Land Coalition in a project entitled: The Wild Coast Empowerment and Monitoring Project. It aims to assist claimant communities and their representative structures along the Wild Coast to play an effective administrative and management role in the matters of land, resource and development of their areas.</p>
	<p>Wildlife and Environment Society of South Africa (WESSA): WESSA, a well-established environmental NGO, has a long history of involvement in environmental issues on the Wild Coast and has a commitment to environment and development education. Its greatest recent involvement has been in the prosecution of those involved in the establishment of illegal cottages on the coast. WESSA has supported conservation reform at Dwesa-Cwebe and was involved with the WCSDI.</p>
<i>Other Interested</i>	<p>The Wild Coast Cottage Owners Association (WCCOA): The white owners of the legal cottages at Dwesa-Cwebe have formed an association to defend their rights and negotiate new leases.</p>

<i>Parties</i>	<p>Wild Coast Holiday Hotels: This private company, based in Umtata, united three Wild Coast hoteliers from 1996 with a view to joint marketing and mutual interests, and owns the Haven Hotel, currently negotiating the continuation of its 30 year lease. Following the settlement, the Haven was placed on a three month lease. WCHH could not operate under such a condition and the Haven passed to the ECDC. Until recently the hotel was managed in tandem with the Windsor in Mthatha. As part of the settlement agreement, the hotel is run by a board made of three representatives of the ECDC, and three from the trust. In 2004 it was leased out for three-and-a-half years to allow time for its electrification and to find investors. A condition of the very favourable terms is that the leaseholder re-equip the rooms while the trust finances the minor renovations.</p>
<i>Academic and technical research institutions</i>	<p>University of the Transkei (Unitra), Department of Zoology: This Department has had a long involvement with Dwesa and maintains a research station in the reserve. After the protest action at Dwesa-Cwebe in 1994, this department was commissioned by the ECNC to assess the damage. In collaboration with Fort Hare, Rhodes University and the University of Cape Town, a five-year project, <i>The Management of Rocky Intertidal Subsistence Fisheries</i> was commenced in 1995.</p>
	<p>Rhodes University, Institute of Social and Economic Research (ISER) The 'Dwebe Project' of the ECNC was transferred to the ISER in mid-1996, renamed and expanded (see 7.4 below for details). Outputs include an interim report (Palmer <i>et al.</i> 1997) and a book (Palmer <i>et al.</i> 2002). Topics covered included the geography, history, infrastructure, socio-economic situation, natural resource use, scope for environmental education, tourism experience and potential, community conservation potential and a development vision. At the heart of the study was a household survey. This was revisited in 2003-4 to assess the current socio-economic situation. Preliminary results reflect very little change in five years.</p>
	<p>Rhodes University (with Fort Hare) - Telkom Centres of Excellence, Computer Science Department. An Information and Communications Project (Telecentres for e-commerce). Initial research commenced for field testing of an e-commerce/communication platform to support development.</p>
<p>University of Port Elizabeth - The STEP Thicket Biome project funded by GEF.</p>	

(see also Weinberg & Kepe 1999:29-30).

7.4 Support, Facilitation and Research

Following the protest action of 1994, Dwesa-Cwebe became involved in three interlinked policy processes. In addition to being a site of *land reform*, the area was simultaneously involved in *conservation reform*, and *development* – initially the Reconstruction and Development Programme (RDP) and later a Spatial Development Initiative, the Wild Coast SDI. Of the main players in all three processes, national government was in the early throes of transformation, provincial government was an entirely new concept in a new province, and local leaders had recently revealed their potential strength through their concerted protest action. Moreover, both the protest and the eventual claim on a protected area were without precedent in the province and rare in the country as a whole; the main players were in 'uncharted territory.' Under these circumstances, and given the publicity that the protest attracted, there was also plenty of interest from facilitators and researchers in the Dwesa-Cwebe case, and a willingness on both sides to include external stakeholders.

7.4.1 NGO support and local dissent

Following the passage of the Restitution of Land Rights Act, the Dwesa-Cwebe community leaders and Tralso were investigating ways of motivating a claim for the nature reserve. Tralso's former employee, Andre Terblanche, now an independent consultant trading as The Village Planner (VP), was charged with the project of simultaneously researching and driving the land claim (Terblanche and Kraai 1996).

Tralso assisted the claimants during a period of hard negotiations with ECNC through the second half of 1995 and the first half of 1996. By June 1996 – well ahead of the 1998 deadline for restitution cases - the claim was lodged and a Deed of Settlement drafted, but it was not taken further by the Land Claims Commission (LCC) and the Department of Land Affairs (DLA) because of uncertainty over which government department (DWAF, ECNC, or DLA) actually owned the land and because of the lack of an appropriate tenure form for a conservation area.

Frustrated, the local leaders withdrew from the joint management process and adopted a progressively more combative and uncompromising approach leading to an impasse which required the intervention of the Minister of Land Affairs to break (see below)

7.4.2 The DLA and RLCC

At the end of August 1997, more than a year after the drafting of the agreement, the process had effectively stalled and it took a personal visit from the then Minister of Land Affairs Derek Hanekom to restart the process. He assured the claimants that he supported their claims to restitution and that the state would transfer property rights either through the Restitution Act or the State Land Disposal Act, subject to the agreement of cabinet colleagues, the creation of necessary legal entities and clear guarantees for future conservation. (DLA 2001a,b).

It took a further four years of negotiation before the Deed of Settlement was signed on 17 June 2001. According to the former Project Manager at RLCC, the case took such a long time due to extraordinary institutional complexities around new local government and land tenure arrangements, the large number of claimants and villages (2382 claimants and seven villages), in some cases artificial grouping together of claimants and difficult relationships between the TAs, the CPAs and the Trust which all contributed to conflict and technical difficulties. There was also conflict around the core principles of future land use and management of the reserve.

DLA and RLCC were at that time not geared toward fulfilling development responsibilities and were more geared towards resolving claims or dealing with technical matters around land transfer, etc. However, in 2003, the Eastern Cape office of the RLCC established a "Settlement Support and Development Planning Unit" and this put "post settlement support" more firmly on the agenda.

7.4.3 Involvement of Universities

Natural scientists at the University of the Transkei (Unitra) were the first to be involved in the post-1994 process, with estimations of the damage to the forests and marine resources in the immediate aftermath of the protest commissioned by ECNC. The Department of Zoology had a long-running research programme on shellfish, and its own research station at Dwesa. Natural scientists with marine research interests both here and at Rhodes and the University of Cape Town, through membership of the South African Network for Coastal and Oceanic Research (SANCOR) would continue to take a strong interest in conservation of marine resources at Dwesa-Cwebe. Community leaders generally regarded the scientists as working hand-in-glove with ECNC and against their interests.

Conservation reform began with the establishment of Conservation Committees (CCs) at village level in the course of negotiations following the protest action of 1994. The CCs obtained controlled access to a

range of forest resources through a permit system, and they were incorporated into a process towards joint management with ECNC. In 1995-96 concerned environmentalists within the ECNC, Christo Fabricius and Herman Timmermans launched the externally-funded 'Dwebe Project' which would promote joint management of the reserve through training workshops and other interventions and provide baseline data that was almost entirely lacking on Dwesa-Cwebe. Late in 1996 the project was transferred to the ISER at Rhodes University and re-launched as a broader project under a new name with funding from the Human Sciences Research Council (HSRC).

In the second phase, the project benefited immeasurably from collaboration with Derick Fay, an American postgraduate student, who arrived at the ISER in October 1997 looking for a field site. He selected Hobeni, a village made populous through betterment on the Cwebe side and conducted meticulous archival and field research over the next two years

8. The claimant communities

8.1 Introduction

As previously stated, the forests that came to be demarcated and the land that was later incorporated into the nature reserve at Dwesa-Cwebe sheltered only a minority of the residents of the area. Research for the land claim commissioned by the Regional Land Claim Commission (RLCC) in 1996 revealed that those removed from the protected area after 1913 and their descendants were only some 46 families comprising just over 1 000 persons, out of a total of about 15000 residents. The RLCC initially tried to maintain the distinction between the claimant families and the rest for the purposes of advancing the claim, but in the interests of continuing the unity which had served the various settlements so well in their protest action and in driving the land claim, the singling out of the claimant families was not the model that was pursued.

There were thus a total of 2382 beneficiary households occupying eight villages which, for land administration purposes, are now grouped into seven CPAs. All seven CPAs are represented on an umbrella structure, the Dwesa-Cwebe Land Trust, in favour of which the reserve land was legally settled in 2001. The findings are based on household surveys undertaken by the ISER in 1998 and again in 2003-4. Rather than sample across all eight villages, the survey concentrated on two of them, Cwebe in the north and Ntubeni in the south. These capture the opposite extremes of the Dwesa-Cwebe experience.

8.2 Socio-Economic Profile of the Communities

In 2003-4 the same 40 households that were surveyed in 1998 were surveyed again five years later. The topics included: employment levels, incomes, sale of goods, access to grants, poverty levels, ownership of assets, maize yields and natural resource use. The variations between the two locations are apparent as well the changes that have occurred between 1998 and 2003. The findings for 1998 have been variously published (Palmer et al. 2002: chs. 7, 8; Fay 2003; Timmermans 2004); only the findings on natural resource use have been published from the 203-4 survey (Shackleton et al. 2004). Below is a summary of some of the key changes that occurred between 1998 and 2003.

8.2.1 Employment

It was found that the number of people employed in Cwebe and Ntubeni had not changed significantly between 1998 and 2003. However, households now have fewer people working away from home and more people working locally. This is most likely a consequence of job losses, notably in the mining

sector, in which a high proportion of men from the Cwebe side, at least, have worked. In 2003 a sizeable number of households were benefiting from casual employment from public works programmes at Cwebe, while in Ntubeni more than half of households were involved in public works programmes.

8.2.2 Pensions and grants

There was a small drop in the number of people of pensionable age in both Dwesa and Cwebe. All households appeared to be receiving the pensions they are entitled to by 2003, but no more households were receiving government grants in 2003 than 1998.

8.2.3 Income

After taking inflation into account, we found that income levels in Cwebe increased between 1998 and 2003. Average household income increased from R762 to R877 per month in 2003. At Dwesa the opposite was the case, with household incomes having dropped from R874 to R771.

Table 8.1 Number of Households Deriving Income from Different Income Sources

	2001 Dwesa		1998 Dwesa		2001 Cwebe		1998 Cwebe	
	No.	%	No.	%	No.	%	No.	%
State Welfare Grants	21	54	21	54	29	74	22	65
Remittances	15	38	17	44	5	13	14	41
Occasional Work	17	44	11	28	5	13	4	12
Livestock sales	4	10	6	15	6	15	6	17
Crop Sales	0	0	7	18	0	0	1	3
Crafts	10	26	6	15	9	23	2	6
Local Employment			7	18			1	3
Self-employment	3	8	1	3	7	18	2	6

8.2.4 Poverty

The surveys show that poverty remains an intractable problem in the area, with two thirds of households surveyed remaining below the poverty line (those with an income of less than R375 per month for each adult). Three household's incomes in Cwebe did grow enough for them to move above the poverty line, but only a total of 5 of the 37 households surveyed earned incomes above the poverty line. In Ntubeni there was actually an increase of 5 in the number of households with incomes below the poverty line, leaving only 4 households above the poverty line.

8.2.5 Cultivation

The average size of gardens has increased since 1998, while the size of fields used has continued to decline. We found that each household surveyed grew about 800kg of loose maize in Cwebe but only 400kg in Ntubeni, per season.

8.2.6 Natural resources

Ntubeni and Cwebe households continue to make widespread use of natural resources; these continue to be valuable sources of food and materials. Fuelwood remains the most coveted natural resource at Cwebe, because of the high cost of alternative fuels. The same might be said of protein; there was widespread concern that shellfish and fish were no longer available because of the closure of the reserve to harvesters. Trading in natural resources such as thatching grass and weaving reeds is a useful form of income. Supplies of most resources were regarded as inadequate for all who wished to collect. All resources surveyed, except building sand and clay, had decreased in the last 5-10 years. The main problems highlighted were the ban on harvesting at the Nature Reserve (except for reeds) and the burning of grasslands.

9. The claim settlement

The Dwesa-Cwebe land claim was lodged on 10 July 1996 and settled on 17 June 2001. In the interim, it was thoroughly investigated and negotiated leading to an agreement.

9.1. The agreement

A report to the Land Claims Court from the regional Land Claims Commissioner (RLCC 1998) details the investigation of the claim which led to an agreement and the eventual Court Order.

The initial agreement signed on 27 June 1996 involved:

- The communities at Cwebe and Dwesa represented by the Conservation Committees that were set up in the aftermath of the protests action of 1994.
- The Department of Land Affairs as owners of the Dwesa-Cwebe nature reserve.

The following parties also had interests in the reserve, but they were not signatories to the agreement because the Regional Land Claims Commission (RLCC) felt their inclusion would delay the claim process; instead these parties would submit their views directly to the Land Claims Court.

- East Cape Nature Conservation (ECNC) within the provincial government's Department of Economic Affairs, Environment and Tourism (DEAET) as administrator of the reserve
- The national Department of Water Affairs and Forestry (DWAFF) and the Department of Sea Fisheries (now Marine and Coastal Management) as the parties responsible for the demarcated forests and the sea beyond the inter-tidal zone, respectively.

The settlement agreement covers the assets described in detail in section 6 – the Dwesa-Cwebe reserve including the cottages at Ntlongonyana, and the Haven Hotel – but the agreement also addresses the preparation of the adjacent communities for future development. The agreement may be summarised as follows:

- All parties agreed that racially discriminatory removals from the claimed land did in fact occur, and over a long period after 1913, and that the claimants therefore qualified for some form of restitution in terms of the Act

- All parties agreed that ownership of the claimed land should be restored to the Dwesa and Cwebe communities through Communal Property Associations (CPAs), for which the Communal Property Associations Act (28 of 1996) makes provision, and which the DLA would set up for the communities.
- All parties agreed that the conservation land use in the reserve portion of the land should continue.
- Through a separate process, agreement was reached with the ECNC that a joint management Committee (later renamed the Co-management Committee or CMC) with equal representation from the ECNC and the claimant communities would manage the reserve in accordance with an agreed Reserve Management Plan and share in any economic benefits from the reserve.

9.2 Position of the Regional Land Claims Commission (RLCC)

With regard to ownership and management, the RLCC basically endorsed the Order of the Land Claims Court, summarised in the Agreement above. (RLCC 1998: 71-75). It was an out of court settlement signed by the Minister, facilitated by the LC Judge based on the existing agreement. The RLCC supported the restoration of the land and the creation of CPAs. It assumed a mediatory role between the community and the ECNC, which was seeking to have conditions attached to the eventual Court Order that would prohibit grazing of livestock, damaging trees, building homesteads or collecting of marine resources in the reserve. The position of the RLCC was that these areas of dispute should not be made conditions of the eventual court order but should rather be left to the CMC to deal with.

This position was consistent with the more general position of the RLCC which was that legal ownership of the land should be separated from management of the reserve. On this basis, it would be possible to restore ownership to the community while maintaining the reserve, albeit now on privately-owned land.

With regard to claimants, the initial position of the RLCC was that the claimant community was to be defined as those who had been identified during the investigation as having been removed or descended from those who were removed from the reserve (the 46 families comprising just over 1 000 persons). The distinction between the claimant families and the rest is maintained in the RLCC's recommendation to the Land Claims Court. Thus, the CPA constitutions would need to provide for:

- The right of access to the land of all dispossessed persons and their direct descendants, and any others and their descendants whom the committees of the CPAs find to have been similarly dispossessed, 'on a basis which is fair and non-discriminatory towards any person';
- The accountability of the committee of the CPAs to its members.

Additionally, the RLCC recommended that the CPAs should decide what to do with the strip of land between the forests and the sea, including resettle it, but if this land was to continue to be conserved, then the claimant families should be given priority access to housing and other services where they currently reside. However, as stated in 8.1 above, the singling out of the claimant families was never implemented and the wider group became the claimants to ownership and benefits.

9.3 The Settlement

The settlement agreement duly restored the reserve to the communities by ordering the immediate transfer to the Trust in ownership of the land of the Reserve and the Haven Hotel

The Community agreed to the Reserve remaining a National Protected Area in perpetuity

- to co-manage the reserve for 21 years
- to a management planning framework
- to form a Trust to represent the community

The Dwesa-Cwebe Land Trust, which was composed of two representatives each from what were now to be *seven* CPAs, two on the Cwebe side and five on the Dwesa side.

- To lease the cottages held by PTO to the holders.

The financial settlement came to a total in excess of R14 million, made up of the following components:

- a “consideration” of R2 100 000 (for the lease of the land by DEAET for 21 years at R100000 pa.)
- “compensation” in terms of the Restitution of Land Rights Act of R1 600 000 (50% of the land value for waiving use rights)
- Restitution Discretionary Grants of R3 000 per household. Multiplied by 2 382 households, the grants totalled R7 146 000
- Settlement Planning Grants of R1 440 per household. Multiplied by 2 382 households, these totalled R3 430 080.

Each component of the financial settlement was earmarked for a different use (Table 9.1).

Table 9.1: Financial Parameters: Dwesa–Cwebe Land Restitution Funds

Item	Applicable Section in Agreement	Description of Funding	Purpose for which Funds can be Used	Conditions	Amount
1	9	Consideration	Capital can be used for development	10 year period or approved Development Plan (MEC or Minister)	R 2 100 000
2	10.1	Compensation	For the development of the community and the area	Approval of Land Trust	R 1 600 000
3	10.2	Restitution Discretionary Grants	Agricultural educational and development projects for the benefit of the community	Approval of Land Trust	R 7 146 000
4	10.2	Settlement Planning Grants	Settlement Planning, infrastructure planning, land survey, legal assistance etc.	Approval of Land Trust	R 3 430 080
Total					R14 276 080

Source: DP: 17

The RLCC would continue to monitor the post-settlement for two years, but the funds would be housed with the Amatole District Council, which was to be the implementing agent for the settlement. The RLCC has since appointed a general Project Manager within the ADM and the ADM has appointed a dedicated Project Manager in the form of a private consultancy to drive the implementation of the Development Plan and to act as the “glue” between the Municipality and the communities. Funds that were allocated to the Trust require major motivation, in terms of business plans. Strangely, considerations such as administration and running costs for the trust were not included.

9.4. Assessment

9.4.1 The positive aspects of the settlement can be summarised as:

1. A very thorough, painstaking negotiation process involving all the stakeholders culminated in agreed terms of settlement.
2. The former Project Manager maintains that “each and every clause was arrived at through negotiation and consultation... [which was] useful in addressingsome conflicts”.
3. The wide range of signatories to the agreement commits all parties legally to its sustainability: Trust, 7 CPAs, 3 Ministers, 1 MEC, Transdev [precursor to ECDC after amalgamation], Cottage owners.
4. The settlement agreement reiterates the theme of sustainability of natural resource use because environmental concerns and were always fundamental to all interested parties throughout the Dwesa-Cwebe claim process.
5. The agreement provided for the immediate transfer of the land and the Haven Hotel, with a 21 year lease for the Reserve. The thinking was clearly long-term (the failure to honour this aspect of the agreement thus far is discussed below).
6. A management planning framework and a management transformation plan were part of the agreement, also pointing to sustainability.
7. Access to the Reserve, participation in management of the Reserve and hotel, and financial benefit from both, were spelt out in answer to the concerns that led to the claim.

9.4.2 Weaknesses in the Settlement Agreement:

1. There appears to have been an underlying assumption that the government parties would meet their obligations, but that the Trust or communities might not.
2. There appears also an underlying assumption that the Trust would not be able to manage its own affairs, either financial or in conservation management.
3. The agreement consequently spells out provisions for non-performance by the Trust but barely refers to similar possibilities for government.

9.4.3 Ongoing Concerns

The overall conclusion is therefore that while the Settlement Agreement was intended to effectively sustain the claim settlement, it carried within it potentially serious flaws of omission. Ironically the sustainability is now threatened by poor performance by government parties rather than by the Trust:

- **Transfer of land:** after 5 years, the “immediate transfer” of neither the Reserve nor the Haven Hotel has taken place. Nor has the land been transferred to the CPAs.
- **Funds:** financial management systems of the ADM are inflexible and inscrutable.
- **Control of funds:** control of a small portion of the funds has reluctantly been transferred to the Trust for operational costs such as secretarial assistance and an office.
- **Planning but little implementation:** whilst development planning has been undertaken on behalf of the community, little actual development has been implemented, though the appointment of

Project Managers has recently set implementation in motion. The settlement agreement does not address developmental approaches to implementation.

9.5 Extent to which the Settlement Agreement clearly addresses the provision of Post-Settlement support and identifies agents

The agreement addresses post-settlement support by implication, but not explicitly, viz. by providing for planning, funds for development projects and drawing attention to capacity-building. According to the former RLCC Project Manager, the Settlement Agreement for D-C is one of the best in the Commission and "lays a sound basis for meaningful developmental process to take place."

It does not, however, provide the "nuts and bolts" of how this will be executed in practice. It does NOT:

- bridge the gap between planning and implementation;
- anticipate institutional constraints of inter-governmental co-operation and continued resistance to the spirit of the agreement on the part of some authorities;
- anticipate the problems and delays in implementing land tenure reform in 'communal' contexts; nor the problems in implementing an integrated land administration system;
- for some of the reasons above, provide for a single, spearheading institution to single-mindedly drive an integrated development programme for Dwesa-Cwebe for the purposes of supporting the settlement – rather it is a "project-by-project" approach that mirrors existing weaknesses in national and provincial rural development strategies..
- Most crucially, therefore, the settlement agreement does not have any mechanisms to hold the authorities to account:
 - It lacks the legal "teeth" to hold all parties to the agreement to account in the event of non-delivery
 - It does not stipulate a time frame for delivery; and there is therefore no legal mechanism to take recalcitrant parties to arbitration in the event of slow delivery or delays in implementation
- Anticipate the implementation approaches followed by Municipalities, which tend to prioritise technocratic and bureaucratic processes which favour municipal systems and consume non-productive funds (e.g. expensive consultancies, expensive surveys, layout planning, General Plans, etc) but which may not yield tangible results. There is a great deal of research on whether investment should precede formalisation, or whether formalisation should precede investment. Municipalities favour the latter.

10. The post-settlement period: The struggle continues

10.1 Introduction

The post-settlement process has been hampered by major administrative changes and power shifts in the general environment. It has taken a long time to put implementation systems in place, and claimants grew increasingly frustrated with the lack of evidence of development 'on the ground'. However, the situation appears to have picked up quite seriously in the last six months, stimulated in part by the appointments of (a) a Project Manager in the Amatole District Municipality and (b) a dedicated Project Manager (a private consultant) for Dwesa-Cwebe in February 2006. This has reversed the inertia and indications are that the development projects identified in the Development Plan are beginning to be implemented under the guidance of a reactivated Steering Committee.

From the perspective of the leadership at Dwesa-Cwebe, the struggle for empowerment on the part of the claimants, represented by the Dwesa-Cwebe Land Trust continues. While there are signs of delivery now, the indications are that there are problems with the approach to delivery.

10.2 Conditions of the settlement in a Shifting Institutional Context

In spite of the recent progress, lingering problems with post-settlement are:

(1) The highly conditional nature of the Dwesa-Cwebe land restitution case where land uses other than conservation are prohibited.

(2) The reluctance to transfer management responsibilities to the claimants:

- The Eastern Cape Parks Board continues to manage the reserve, the Dwesa Bungalows and camp site.
- The East Cape Development Corporation (ECDC) manages the Haven hotel. There is a Board between themselves and the Trust, but the ECDC dominates, and appears to regard the hotel as its own asset. The Board has recently renewed the lease for a further three years to the present managers. The ECDC's approach has been to find a large investor, but after five years of management (tied up in a further three year lease) it has yet to find an investor. Now the community's Settlement Funds are being used to renovate the Hotel (discussed below).
- The Amatole District Municipality (ADM) manages the settlement funds and is the designated "Implementing Agent" for the settlement, responsible for investing the funds in local development, including commissioning a development plan
- The Regional Land Claims Commission continues to have 'aftercare' responsibilities and is a member of the Project Steering Committee.

(3) Delays in transferring the restituted reserve land and the land under the CPAs to the new legal entities. The land has still not been transferred.

(4) Overlapping and uncoordinated development roles and responsibilities (e.g. at local level alone, between local government and their ward arrangements, TAs, CPAs and the Trust). Though the Steering Committee continues to function, there is insufficient attention to power-sharing arrangements between local government and CBO's. Municipalities tend to dominate the decision-making process, the administration and release of funds, implementation priorities and implementation time-frames.

Municipal systems of financial management are subject to national frameworks such as the Public Finance Management Act (PFMA) that, while increasing accountability upwards to the Treasury, can translate into inflexibility with regard to downward accountability. Municipal systems of delivery are premised on planning-intensive approaches that favour formalisation of settlements as a precursor to infrastructure investment and service delivery by the Municipality. This is an expensive option that favours municipal systems rather than "on the ground" development, capacity building and local empowerment. The system does not allow for flexible, incremental and inexpensive systems for detailed village-level land administration and planning functions (e.g. boundary demarcation, land rights registration, infrastructure development, etc)

By registering the Dwesa-Cwebe CPAs in the central Deeds Registry, the properties are viewed, for the purposes of service delivery, as "private property" and this has important implications for the manner in which municipal systems can accommodate investment of public infrastructure. Municipalities therefore insist on "town planning" approaches to settlement planning with very expensive internal surveying so

that servitudes can be registered for the purposes of road construction and the building of community facilities such as Community Halls, sports complexes and facilities, etc. All this requires expensive project management under consultancies to manage this "high order" level of implementation, further chewing up community funds. Formal surveying also changes the nature of customary land rights. It is not merely a technical intervention; it is an intervention in social systems

10.3 Local Institutions, institutional changes and institutional gaps

10.3.1 The Project Steering Committee (PSC) and the Technical Committee

The current institutional arrangements are driven via the re-activated Steering Committee that was set up to implement the Settlement Agreement and which commissioned the Development Plan. The PSC membership comprises representatives from the Trust, the Dwesa-Cwebe Project Manager (a private consultant, Mr Ncunyana), the ADM (the Project Manager, Mr T. Peme), the Mbashe Local Municipality (a portfolio holder), RLCC (the Project Manager), EC Parks Board, DEAET (sometimes), ECDC (sometimes, it has more or less withdrawn from attending meetings).

The PSC meets monthly and is always preceded by a Technical Committee Meeting. The Technical Committee consists of the Trust Chairman and the ADM, Mbashe and RLCC Project Managers. The PSC and TC meetings are held alternately at Dutywa and Dwesa (though indications are that the meetings at the former are not well attended by the community representatives as roads and transport present major obstacles to attendance). The Mbashe Local Municipality created a dedicated portfolio for Dwesa-Cwebe support due to problems with erratic attendance in the past which generated a formal complaint from the PSC. The RLCC has seen the departure of its former Project Manger of many years, Fikiswa Mabuntana at the end of last year and Mlu Tuswa in June 2006. It is not known who the new Project Manager in RLCC is.

According to the ADM and D-C Project Managers, the Trustees have made useful inputs into the PSC process, e.g. turned down an extravagant offer of a loan from the Development Bank of SA for investment in the tourist facilities. The Trustees rightly maintained that paying back the loan would be a major risk and a financial encumbrance they were unlikely to be able to meet in the future.

10.3.2 The Dwesa-Cwebe Land Trust

The Trust is made up of two-member representation from each of the 7 CPAs, totaling 14 members. The Trust does not have an administrative centre, a major bone of contention. Funds for its operational expenditure were transferred to the Trust, who appointed an administrator/secretary but she has vacated this post, possibly due to tensions with the reserve management. The Trust still does not have an office. The small structure at the gate of the Reserve was identified but Mr Mbethe, the reserve manager, has "fenced it into the reserve". There were ideas to use the Haven Hotel but no permanent solution has been found. The ADM Project Managers report that Trust members on the PSC provide positive input and "make sensible suggestions" regarding financial decisions and project support.

10.3.3 The District Municipality

The settlement funds have been transferred to the ADM as implementing agent. Expenditure must be approved by the PSC. The ADM has its own Project Manager, Mr Thobile Peme. He is Manager: Development Administration and Project Implementation, and is responsible for one of many restitution and other land reform and development projects within ADM. The ADM has appointed (in February 2006) a dedicated Dwesa-Cwebe Project Manager, Mr I. Ncunyana, a member of a private consultancy, Nondi Dazana. This firm is responsible for overseeing all aspects of implementation of the Development Plan. He attends the Technical and Steering Committee meetings and reports back to ADM.

The two Project Managers report that the financial systems of ADM are bureaucratic and cumbersome, leading to delays in implementation. There appears to be no separate account, file or record-keeping for the Dwesa-Cwebe project. Mr Ncunyana has no financial authority. Mr Peme also expressed some frustration with the system: even once an appointment is made for service provision (e.g. an engineer), “you must put it into the system and then wait.....”.

The Trust members on the PSC are frustrated with the financial systems for other reasons also. The Dwesa-Cwebe claimants wanted implementation projects to favour local labour-based practices through local sub-contracting in order to bolster local employment. This approach is hampered by the upward-accountability of the PFMA which insists on professional tendering procedures, etc.

In addition to the frustrations with ADM’s financial management, it was previously commented above that ADM’s approach to implementation is via the formalisation of settlements through layout planning and the drafting of General Plans (for formal registration of land). It is doubtful that the full implications of the formalisation approach have yet been fully grasped by the authorities and the Trust. It presupposes a radical intervention into how land rights are allocated and managed in the future. It is generally a precursor to individual titling and is usually motivated by authorities to (1) protect the assets of the municipality (so that public land can be demarcated from private land) and hence to promote service delivery and (2) to stimulate local and external investment. There is however, a worldwide debate on whether these claims are justified. Funding for the formalisation of the settlements is to be taken from the community’s settlement grants and not, as in many other projects, from the Consolidated Municipal Infrastructure Programme (CMIP).

An important consideration for post-settlement support intervention might be a review of the “cumbersome” financial and implementation system of the ADM. The perceived negative costs of locating the funds in the Mbashe Local Municipality (due to capacity problems) might be offset by the advantages of increased accessibility if the financial management were to be transferred to the Local Municipality, under guidance of capacity building. RLCC has in all known cases of large funds transfer for restitution been completely unwilling to transfer funds to Local Municipalities due to bad experiences with financial management at this level in the past.

10.3.4 The Mbashe Local Municipality

Whilst the Amatole District Municipality was the apparently logical choice for the development oversight role in 2000, the functions of spatial planning and development have meanwhile shifted to the Mbashe Local Municipality. The Dwesa-Cwebe Development Plan has reportedly been absorbed into the Mbashe IDP and SDF, which is a very positive development. However, Tralso reports that the community members and their representatives are not comfortable with the municipal planning systems and complain of an absence of real downward accountability. There is a feeling that the IDPs are sometimes conducted in a cursory and ad hoc manner. It would appear that a major area for post settlement support intervention might be capacity building within the Local Municipality, so that planning processes may be improved, and so that implementation and financial management might be transferred to the local municipality (which in terms of new legal frameworks is supposed to be the implementing authority for development) and which is more accessible to the claimants.

10.3.5 Relationships between Municipalities and local structures

An identified institutional weakness in the local institutional setup is the weak linkage between the Land Trust and the Mbashe Local Municipality. The CMC is a co-management structure, but intended only for the Reserve and includes only the Trust and DEAET/DWAF. A similar or expanded structure might be considered between the Trust and Mbashe LM (plus other role-players in post-settlement support such as Dept of Agriculture) to deal with the spatial planning and physical development aspects consequent

upon the settlement. The Project Steering Committee of the 'Tshani' Development Plan effectively played that role for a time in 2002/2003.

Local community representatives on the CPAs and Trust continue to report a sense of feeling generally "disrespected" by the government sector. They allege that their voice is sometimes not heard and that they do not always feel they are equal partners in the development decision-making processes.

Although the Trust, in line with the terms of the settlement, has to be consulted with regard to expenditure of funds (this is done in the PSC meetings), it would appear that in reality it has been treated more like an advisory body. The trustees had been accustomed to a relatively high level of consultation with government in the run up to the Settlement but this tapered off post-settlement. The recent upsurge in project implementation has increased the ability of the Trust to take up more responsibility, but it is possible that further thought should be put into more formalised power-sharing arrangements.

The trustees had to motivate strongly for operational finances, and to their credit did not campaign 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 administrative assistant. This is the only funding directly controllable by the Trust, that is, the money that was transferred for operational expenditure, and administrator and an office, but these have run into difficulties as stated above. The inaccessibility of the funding has dampened the earlier hopes that, 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. One of the factors that previously undermined their trust was the insistence that the members go on a financial management training course before funds could be disbursed. This initially led to a boycott that delayed the development planning by six months. Eventually the trustees submitted to training, along with leaders from other communities along the Wild Coast.

It would seem that rivalries between the Trust and the Local Municipality and the Trust and Traditional Authorities were a feature of the development planning period. However, a particularly heated rivalry exists between the TAs and the Municipalities. The latter, with their ward councillors and ward system, cuts across the traditional boundaries and roles of the traditional leaders.

10.3.6 The Co-Management Committee

The management of the Reserve remains, ironically, unchanged. There was, in the interim a change of authority from the Environmental Conservation directorate of DEAET to the EC Parks Board. The drawn out process of this changeover bred uncertainty and delay, until it finally took place in February this year 2006.

The Co-management Committee (CMC) has fluctuated over the post-settlement period from non-existence to regular meetings to decline and now revival. The CMC has in crucial ways been undermined by the institutional overlap of the national DEAT Marine and Coastal Management directorate, which had no role nominated in the Settlement Agreement, and whose national policies and regulations take no account of local realities. Community members are drastically affected directly by fines and court cases, and indirectly by the effects on the Haven Hotel which in theory was to be a major source of financial benefit. The Haven's reputation and continuing main role is as a fishing hotel, with at least two major competitions a year. These attract additional guests to the normal in season individuals and groups. If they can't get special permits to fish in the reserve (either along the beach or the Mbashe River), they have to go along the coast to fishing spots beyond the reserve. Because of the

ban on vehicles on the beach, this means a major detour. As one commentator observed, “No fishing, no fishermen, no profits”!

The use of forest products such as building timber and forest access has also been subject to institutional uncertainty between DEAET management and DWAF (the “lead competent authority” with respect to the Settlement Agreement), and is still unresolved in spite of a new Forest Act and the community forest agreement. It appears that the ambiguous position of the policy on community ownership of a State forest still awaits clarification. Part of the problem is that the D-C forests have never been properly audited: no one knows what is sustainable and what is not.

10.3.7 Communal Property Associations

Constitutions for seven CPAs for the land excluding the reserve were drafted in accordance with the CPA Act, 1996 (Act no 28 of 1996) and were duly registered.

The decision to form CPAs was taken after workshops, facilitated by Tralso, were held with community members on various options for landholding. DLA national office reportedly sent a team of lawyers to workshop options with the communities. The CPA constitutions were drawn up in consultation with community members, and are all uniform. Membership is defined as comprising “individual households” (defined as an individual, family or group of people s. 11.1.1) represented by the “Head of Household” or by his or her proxy (sections 11.2 and 12.3). The Constitutions are mainly procedural. They do however stipulate general land administration functions regarding the administering, allocating, exchanging, encumbering and disposing of real rights in land as well as use rights of members (s. 10.2). In other words, both real rights and personal rights are dealt with, but these are not very clearly separated and identified as such. Land rights are stipulated as a residential plot for each member, and access to communal land and communal facilities. Arable land is not mentioned (only “allocation of sites for any other purpose than residential use). Leasing and sale of land rights is allowed subject to the consent of the majority of members. “Such rights being transferred only to a person or group of persons who engages in a development that is beneficial to the people of the [relevant] CPA.” (s. 19.2.2).

The land has never been transferred to the CPAs. The services of the lawyer responsible for conveyancing, Chris Bodlani, were terminated after problems with conveyancing and he challenged the issue in court. The outcome is not known. It does not appear that new lawyers were appointed. In an interview with the former Project Manager in the RLCC, Mlu Tuswa, who managed the project for the first six months of this year before leaving the RLCC in June 2006, he stated that the RLCC was in favour of waiting for the implementation of CLaRA, and that it would be pointless to transfer the land into the CPAs if CLaRA was to be used to supersede the current land tenure arrangements.

In this climate it would appear that the CPAs main unofficial jurisdiction currently is as local community representation on local development initiatives. Two representatives of each CPA form the nucleus of the Trust. As such, these bodies have become a form of CBO. They have not assumed land administration functions, because they do not yet own the land, hence land administration continues to be executed along the more familiar local practices of the Traditional Authorities.

Added to that, it is important to note that the CPAs were drafted, not only as landowning entities, but local development facilitation structures as well. Sections 4.2.3, 4.2.4 and 4.2.6 stipulate a range of development facilitation objectives of the CPAs, including poverty alleviation. This is a contentious interpretation of CPAs and one the communities might wish to review. Evaluation of other CPAs has concluded that CPAs are not necessarily the best vehicle for driving development. It might be advantageous to consider local management structures for specific land and natural resource uses,

such as water, grazing and other resource uses, while leaving the CPAs to more careful definition of membership, land tenure and property rights and land administration functions. This would help address the management lacunae currently being felt at the local level, and allow broad-based development to be championed by an umbrella structure.

10.3.8 Traditional Authorities

The former Traditional Authorities are still in place and continuing with their land administration functions notwithstanding the new CPAs. Earlier resistance to the formation of the CPAs has been diluted by (1) the failure to transfer land to the CPAs, and therefore the failure by CPAs to assume land holding and land administration functions and (2) the anticipation of the implementation of CLaRA. The DLA Land Tenure Directorate presented a detailed explanation of the latter to the Traditional Leaders at a meeting in Bhishe under the auspices of the provincial Department of Housing, Local Government and Traditional Affairs, and its implications for the reintroduction of formal development and land administration powers to traditional leaders are therefore well known to this constituency.

It can be anticipated that the tensions between the CPAs and TAs will resurface if or when the introduction of CLaRA is presented as an option to supersede CPAs at Dwesa-Cwebe. This may reignite all the former internal conflicts that have taken a decade to iron out. Whatever the final decision, a significant grouping within the Dwesa-Cwebe seven villages is likely to be disaffected by the outcome. It can therefore not be taken as given that the establishment and registration of CPAs has eliminated the potential for future dispute around the contentious area of securing land rights and reforming land administration at Dwesa-Cwebe.

10.3.9 Conclusion

The struggle for recognition, prestige, power and influence on the part of the 'trustees' appears to be emerging from the humiliating phase of the first five post-settlement years. Meanwhile the residents continue to face seasonal drought, impoverishment and denial of their resource-base. Their entitlement to own the reserve is on such a conditional basis that nothing appears to have changed 'on the ground.' The ECNC and now the EC Parks Board, with its 21 year 'hands-off' lease to manage the reserve continues to deny the residents access to the reserves resources. The trade-off implied in the doctrine of sustainable development, that communities would be compensated for supporting conservation by sharing in the income from ecotourism development, remains entirely theoretical. Indeed, the overriding restrictions imposed by Marine and Coastal Management not only restricts community access to marine resources as never before, but also threatens through its restrictions the viability of the Haven Hotel, the jewel in the crown of the settlement.

10.4 Spatial Planning

Under the Wild Coast Spatial Development Plan (WCSDI), Dwesa was identified as an "Anchor Project" with promises of multi-million rand foreign investment which never materialized. Under the EU programme a large-scale tourism training took place but for non-existent tourists. The Development Plan, in contrast, has placed spatial planning on a more realistic footing. The Mbashe Local Municipality, the Trust and the CPAs were closely involved in drawing up this plan which attempts to meet the community's identified priorities.

The Development Plan has since been incorporated into the Mbashe LM Spatial Development Framework which is at present being reviewed by the newly elected council, thereby formalizing the Settlement Agreement development proposals into the local government land use responsibilities. No major changes are expected.

Over the same period, at provincial level, the Wild Coast Project completed its planning phase in 2005. This included a major Strategic Environmental Assessment of the Wild Coast and a Spatial Development Framework, which drew in the local municipalities. The relevant sections for Dwesa-Cwebe are also being incorporated into the Mbashe SDF. The SDF now identifies Mbashe (Haven) and Ntlonyane as 2nd Order development nodes⁴ with clearly identified Land Use Management Guidelines; and of the Reserve area as a Nature Tourism Zone. It identifies the infrastructure priorities of Eskom power, bulk water supply (both now supplied) and access roads upgrading (still desperately needed if tourism is to take off.). However, as stated above, the Municipalities appear unwilling to construct roads and provide services on “private property” without detailed “layout” planning due to the land tenure implications of municipal investment on private property.

10.5 Projects

10.5.1 Development Plan projects

The implementation of projects has finally proceeded. The implementation is closely following the project identification and suggested budget allocation as outlined in the Development Plan. The ADM has approximately R9m at its disposal. At one stage the ADM was forced to relinquish the funds (R10m) back to the RLCC pending the completion of the Development Plan (and possibly in view of the resentments on the part of the Trustees to their financial oversight role at the time) losing valuable interest. Only R7m was returned, but ADM had held onto R2m for operational costs. The outstanding R3m continues to be a bone of contention.

The PSC has identified projects with associated budgets for the full R14m identified in the Settlement Agreement. There is no leeway. The following projects are planned or are being implemented:

- Eskom: electrification of the Haven Hotels and Dwesa Bungalows is proceeding. Previously, Eskom only went as far as the pumping stations (one on each side) for the water reticulation system supplying the eight settlements. Rather than wait until Eskom to extend power to the reserves and communities, the trust has decided to use some of the settlement money (about R800 000) to bring power at least to the Haven in accordance with a suggestion in the DP.
- Bulk water has been supplied to the seven villages.
- Community Halls in all seven villages is a top priority identified by community membership and Trustees. However, there is a mere R1,4m budgeted for this.
- The major physical disincentive is still the road conditions which are a District Municipality responsibility. The roads will reportedly only be constructed after the formalisation of the village settlements.
- A tender is about to go out for an assessment of the Haven Hotel: reportedly for the services of an architect to estimate the costs of the proposed renovation of the Haven Hotel
- Layout planning (including the production of a General Plan) is about to be initiated – this will, in the eyes of the municipality, lay the foundation for all further infrastructure development in the form of road construction, and community facilities such as community hall, sports facilities, and other identified site development. The budget for this is the aggregate settlement grant, viz. R3,4m
- Agricultural projects: poultry, piggeries, irrigation, fishing, environmental education, medicinal plant nursery.

⁴ First, second and third order nodes refer to areas identified for respective concentration of investment in the relevant IDPs.

10.5.2 Other projects

- Working for Water (DWAF) – see comments below
- A private ICT (Information and Communications Technology) project initiated by Telkom's Centres for Excellence housed at the Universities of Rhodes and Fort Hare (under the Rhodes Computer Science Department) has seen the start of the introduction of computers in one of the schools. The project has very long term goals: it is not merely a "computer project" but a rural pilot project to develop an e-commerce/communication platform.
- River Rangers, a canoe-based ecotourism and fly-fishing venture

10.5.3 Other problems with projects and 'failed ecotourism'

Ongoing problems around project implementation without adequate consultation of the Trust continue to be reported. A particular disappointment was that the trustees had been initially given to understand that they would administer the important income-generating project, Working for Water, in the local forests. This never materialised – it was administered by an independent 'contractor'.

A long-standing project of the European Community that also involved Dwesa-Cwebe has failed thus far to establish community eco-tourism along the Wild Coast. This was to have consisted of horse-trails, canoe-trails, fly-fishing and community lodges (Ashley and Ntshona 2002; Palmer and Timmermans 2002). So now eco-tourism development at Dwesa-Cwebe depends even more heavily than before on the development of the Haven hotel site, the rest camp at Dwesa and the holiday-cottage sites, all in the reserve. Another round of bidding for concessions is about to begin, but it is largely handled at the district municipality and regional government levels.

What is needed is a powerful domestic or foreign partner with experience in genuine eco-tourism involving local partners, rather than bogus eco-tourism or, worse, some 'consortium' put together by dubious regional investors (McLaren, 1998). The reasoning is that if there are strong 'anchor' facilities in the reserve attracting tourists, then there is scope for the development of community-led satellite facilities, activities and attractions in the general area of the reserve, i.e., in the seven villages and beyond (Palmer *et al.* 2002: ch.12). But the Wild Coast appeals more to domestic tourists who have been visiting the area for years if not generations, and to backpackers, than to the more lucrative up-market tourist trade (Palmer *et al.* 2002: ch. 10). Domestic tourism continues to be the mainstay on the Wild Coast. But domestic tourists tend to go to the study area for the fishing. Earlier in 2006, however, the national body, Coastal and Marine Conservation, applied a regulation prohibiting *any kind of* fishing or harvesting by anyone, whether tourist or resident, in any conservation areas of the South African coastline. This regulation, if enforced, will diminish the attractiveness of the Haven hotel with its traditional clientele of fishermen to bidders – unless they have in mind a large backpackers' hostel or an up-market facility aimed at international tourists who are not interested in fishing. The regulation will also impact on the livelihoods of the illegal harvesters from the communities.

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