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Mashubi: A Place Called Home

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By Teresa C. Yates

"The Manenzhe claim has the potential for creating major disruption in commercial farming and creating chaos in the Northern Province." This was he opinion of Jack Loggenberg, the Manager of Labor and Land Affairs for the Transvaal Agricultural Union. Loggenberg says that he doesn't "blame the guys for *laying* the claim, but I do have a problem with the authorities *handling* the claim."

The "guys" who lodged the Manenzhe (MAH-nen-jay) claim for restitution of land are the Manenzhe Territorial Council. The current claim was submitted to South Africa's Commission on Restitution of Land Rights in 1995. By all accounts the claim is massive. The Manenzhe Community is claiming 129 farms in and around the former homeland of Venda. According to some estimates the land claimed by the Manenzhe is approximately 25 percent of the Northern Province, and more than 2 million acres. An examination of the claim is a study of much that is wrong with the attempt to provide restitution to black South Africans who were dispossessed of rights to land under the old apartheid system.

THE RESTITUTION PROCESS

The current land restitution process cannot be viewed without acknowledging the historic relationship in South Africa between land dispossession and the legal process. Nelson Mandela's Government of National Unity (GNU) recognized the need to address the vestiges of past discrimination in access to land in South Africa and to provide a constitutional and legislative framework to facilitate providing equity in land distribution.

The Interim Constitution of South Africa provided a framework for recognizing and adjudicating land claims. Sections 121-123 required Parliament to pass a law establishing a land-claims process and empowering the courts to grant a range of remedies to claimants. The result of this Constitutional mandate was the Restitution of Land Rights Act.

The process for lodging a claim for restitution begins with an individual or community submitting a claim form to the Commission on Restitution. A Chief Land Claims Commissioner and four Regional Land Claims Commissioners manage the program throughout the country, each responsible for taking and investigating claims for land in their respective regions[1] In order for a community or individual to meet the requirements of the Act they must show that they were (1) dispossessed of a right in land (2) on or before 19 June 1913 and (3) that the dispossession was the result of a racially discriminatory law or other act of government. Land was taken from blacks by annexation, force and force-backed treaty before 1913, of course, but "legal" seizure is traced back only to the Native Lands

1. The commissioner for the Northern Province, Emma Mashinini, is also responsible for Gauteng (the area encompassing Johannesburg and Pretoria), Mpumalanga (the former Eastern Transvaal), and the Northwest Province. It is the largest of the four commission territories and presents some of the most complex restitution issues.

Act of 1913, passed by the first Union Parliament after the Boer War, which set aside roughly 13 percent of South Africa for "Natives" (blacks).

Once a claim is lodged with the Commission, the Commission determines whether the claim meets the requirements of the Act. If the Commission believes that the claim is neither frivolous nor vexatious, the claim is published in the government gazette.

Once a claim is published in the *Gazette*, the Commission must conduct an investigation into the merits of the claim. The Chief Land Claims Commissioner may direct parties to engage in mediation if the holders or owners of the land are opposed to the claim. If the parties reach an agreement, then the agreement is submitted to the Land Claims Court for endorsement.

If the Court refuses to endorse the agreement the claim is referred for a hearing. Likewise, if the parties are unable to settle through negotiation or mediation, the claim is also then referred for a hearing before the court.

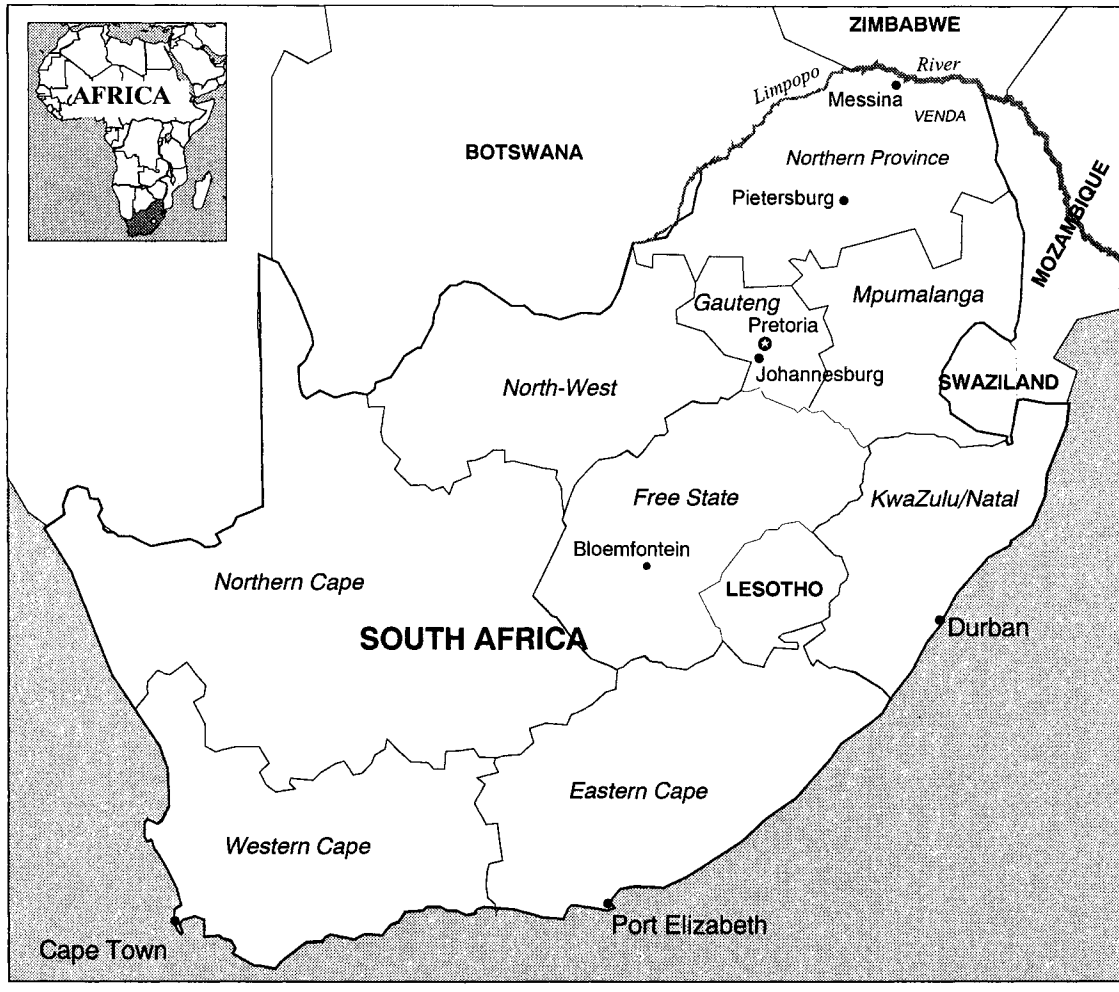
The Commission must, at the same time that it submits a claim to the Court, request the Minister of Land Affairs to certify whether (a) in the case of state land, restoring the right in the land is feasible, or (b) in the case of private land, it is feasible for the state to acquire the right; or (c) it is feasible to designate alternative state-owned land. The Minister's decision must be made within 30 days.

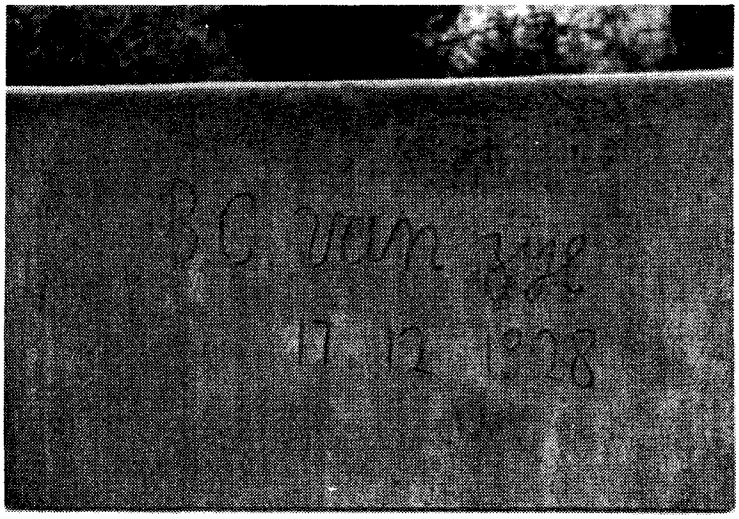
The Court must then decide on the merits of the claim.

THE MANENZHE CLAIM

The Manenzhe claim in many ways represents much of what is most difficult about restitution claims in the Northern Province. The community began its efforts to regain land that it lost in 1982 when the government of the former homeland of Venda purchased farms from the former South African Government. The community appealed to the Venda government for the return of certain land they believed they once had a right to, but their appeals were denied. The Venda government instead leased the farms to Venda government officials.

For centuries the Manenzhe Community has lived in the area they are claiming, stretching from where they are now located more than 100 miles north of Pietersburg, up to the Limpopo River along the border with Zimbabwe in the north, and 65 miles west to Messina. The government sanctioned surveys of the Manenzhe land in 1916





Dipping tank constructed for Manenzhe cattle in 1928.

and white farmers began to settle on the land around 1921. In 1927 conflicts with white farmers arose as their numbers increased on the Manenzhe land. The disputes were initially over labor obligations and cattle grazing rights. At this time the community's livestock were moved to one farm in the region where the government built a dipping tank to control the spread of disease by the Manenzhe cattle. This dipping tank still stands today, marked and dated by B.C. van Zyl, the government official who oversaw its construction.

Following years of forced reductions in livestock, forced labor tenancy and other attacks on their way of life — including the destruction of a sacred burial site — the Manenzhe Community moved or were evicted from much of the lands they are now claiming. The Manenzhe ruins are still present on this land. The Manenzhe chief and his people ultimately settled in the area they currently occupy in the early 1960s.

A report by the Land Research Group in 1995 found that the land currently occupied by the Manenzhe Community is flat and dry, with an annual rainfall of 240mm per year. The report further noted that rainfall is erratic with the heat of the Limpopo Valley ensuring a substantial precipitation deficit, even in the rainy season. The report further found that the land was reasonably fertile, but had insufficient water for crop growing without irrigation. Only 274 hectares (677 acres) of land was available to the community for crops, and 100 hectares (247 acres) available for residential purposes. The estimated population of the Community is 10,000.

The Community divides its lost land into three categories: private white farms; government-owned "buffer-zone" used by the military and police; and leased lands, the farms bought by the former Venda government from white farmers and which are currently being leased to black farmers, none of whom are from the Manenzhe community.

If you drive north on Route N1, the main highway that runs from Cape Town to the Zimbabwe border, about 100 kilometers (65 miles) south of the border, you will begin to drive past land claimed by the Manenzhe. It is a vast area that seems to stretch to infinity in all directions. As I drove farther and farther north with Amos Manenzhe, a member of the Manenzhe Territorial Council, I asked if a community of 10,000 people really believed that they should have so much land for their exclusive use and occupation?

What followed was a recitation of the Manenzhe history that made my eyes glaze over. The history, as Amos told it, is complex with a succession of kings and then chiefs being dispossessed over the past three centuries due to colonial wars and then due to policies and laws of the old Republic of South Africa. When I replayed my taped recording of the day I heard the tongue-twisting names of Manenzhe kings and sub-rulers whose graves Amos promised to show to me. The graves and the ruins, Amos said, are clear evidence of the Manenzhe presence on the land they are claiming. But before we could begin our journey we first had to pick up the chief and some older people from the community who would be accompanying us on our tour.

We met the chief and the others on a dirt road. Two old ladies rode in the car with me and Amos and pointed out the places along the route where they at various times in their lives had lived and moved. One woman pointed to an area on land that is now a private game farm and said that that was where she had been born and lived until she was a young girl. "When were you born?" I asked. Everyone in the car laughed. No one had any reason to keep records of births back then, so most of the old people in the community cannot tell you their exact age.

We followed the truck carrying the chief and a few community elders. We stopped at one farm that is part of the land the community is claiming and is owned by the government. Everyone stepped out of the automobiles. We wound our way through some bush and came upon an opening. One old man told us that this was the place where he had lived as a young boy. He pointed to stones that were all that was left of the house in which his family lived. "You can see where the houses were" he said. "The stones form circles like our traditional houses." He couldn't give an exact date that his family moved from this farm but estimates that it was some time in the 1920s. Members of the community did not know why they were moving, either. They simply followed their chief.

We walked through more bush and the old men pointed to stones they said were grave markers. Farther down a steep hill stood a large baobab tree that was where the community held meetings. On the other side of the hill was where the Manenzhe chief lived.

From this farm we continued farther north to two farms owned by one Howard Knott. We were to see the famous "pot hole" that provided water for the Manenzhe people when they lived on this land. Venda folklore has it that a snake lives at the bottom of the pot hole preventing it from ever drying out.

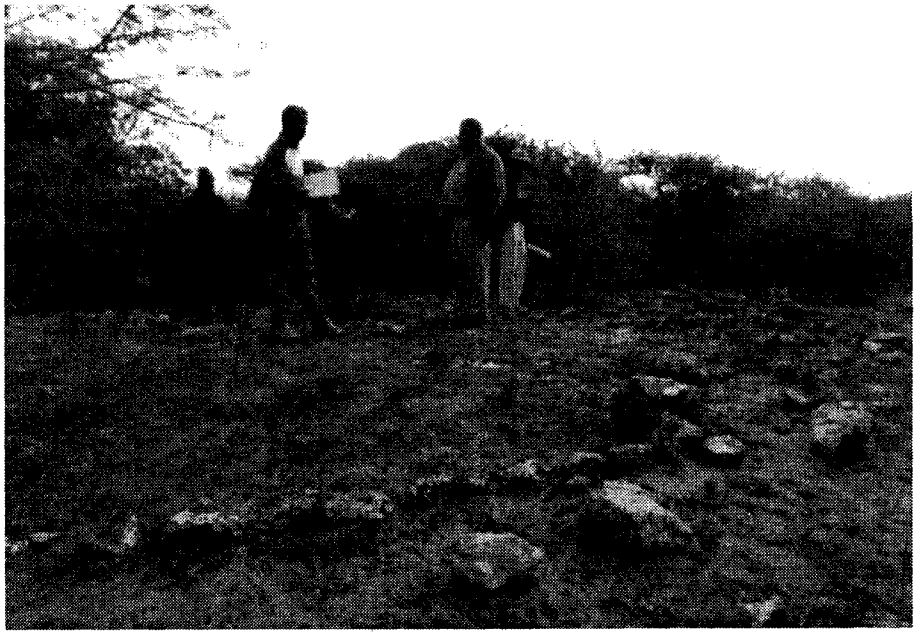
The two farms owned by Howard Knott are private game reserves. You cannot view all of the so-called big five (elephant, cape buffalo, rhino, leopard and lion), but you can see kudu, impala and giraffe. When we arrived at the farm office Amos asked one of the workers if we could see Mr. Knott.

Knott came out of the office and greeted Amos in the Venda language. Knott was younger than I expected (around 45) and slender. The discussion continued in Venda and at the end Amos said that Knott had no problem with us going to see the ruins. When I commented to Amos about the ease with which Knott gave us access to the farm and about his fluent Venda, Amos responded that Knott's family owns several farms in the area, and that Knott had grown up on a nearby farm with many Venda-speaking farmworkers. Knott has only once refused people from Manenzhe access to the ruins, and that was the time that they arrived with a filmmaker a camera at the ready.

We drove as far as we could along a dirt road. When the road ended we had to walk to the foot of a mountain and then we had to climb to the top. As we approached the peak we could see the walls of the compound where the Manenzhe king once lived with his family. The wall stands approximately five feet high and stretches along the top of the mountain for about 100 yards.

The entrance to the compound was a narrow walkway with stones stacked on each side that allowed only for a single-file approach. From the top of the mountain you could see as far north as the Zimbabwe border, land now claimed by the Manenzhe. Manenzhe legend has it that the grandfather of the current chief threw his brother from this mountain in a struggle for power. But this legacy is not talked about much, and it is generally accepted that the current chief Manenzhe is the rightful leader of the Manenzhe people.

We moved on to see the pot hole. One of the old women warned me that I would not be able to take any photographs of this sacred Venda spot. We followed the chief up the side of another mountain. Before climbing to the top the chief stopped to approach the graves of his father and grandfather. It is Venda custom to enter burial grounds without shoes. But it was a bitter cold day. Heavy rain and hail were falling and wind was cutting

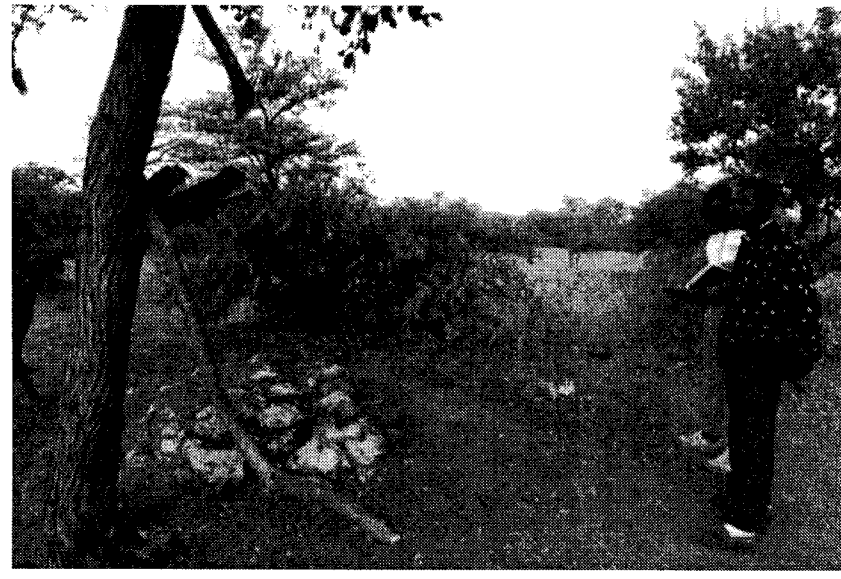


Amos Manenzhe, right foreground, looks at stones that were once homes of people from the Manenzhe Community.

through to my bones. I dreaded the thought of having to take my shoes off.

The chief took his shoes off, walked to the stones that marked the graves and knelt down. As I stood shivering in the cold Amos explained that the chief was paying homage to his father and grandfather and asking their permission to allow Amos and me to proceed with our shoes on. After a few minutes the chief came back to us and told us that we could continue.

When we reached the top of this mountain we could see the legendary pot hole. The hole was indeed filled with water. It was not, however, water that anyone would be likely to drink. It was covered with a green film that moved about the surface as if it had a life apart from the water. I asked how deep the hole was, but Amos and the chief both said that they had never tried to put a stick in to measure. The chief believed the legend of the snake and advised that we not try to measure. We ultimately did not try because we could not find any long sticks.



Stones marking Manenzhe graves

This location, according to Amos, was the site of the first Manenzhe settlement. He said, "we call this place Mashubi. It is the place from which we came and the place where we must one day return. Westerners might call it home."

We returned to the chief's home and talked about what the claim meant to the community. The chief stated very simply that the land was Manenzhe land and that his people wanted it returned so that they could plow. Did he believe that a community of 10,000 should have what is estimated to be over one million hectares (2.4 million acres) of land? He adamantly stated, "yes!"

One of the major problems with this claim, and others in the Northern Province, is that the rights that the community is claiming pre-date June 19, 1913. While the ruins we visited were impressive, and no one seems to dispute that they are Manenzhe ruins, they were all constructed in the 19th century or before. Although the Restitution of Land Rights Act requires that claims for rights in land must fall after the 1913 date, the Minister of Land and Agriculture may, at his discretion, review claims predating 1913 and prioritize such claims for redistribution if the claimants are disadvantaged and will benefit in a sustainable manner from the support. The Minister has not yet ruled on any claim pre-dating 1913, but the Manenzhe are hopeful that this part of their claim will get his consideration.

The farms that the community says that they lost rights to after 1913 are also problematic. The exact nature of the rights held in this land has to be determined, as well as the cause of the community's removal. In order for the Manenzhe community to satisfy the Restitution Act they will have to show that they had a legally recognized right in the land, such as labor tenancy (an exchange of their labor for rights on the land), or title deeds.

The community never held any title deeds to the land and it is difficult to determine the nature of any other rights they are claiming. As for the cause of their removal, most people just remember that they were told by the chief that they were moving. They do not know whether it was because of a discriminatory law passed by the government.

According one lawyer who helped to draft the Restitu-

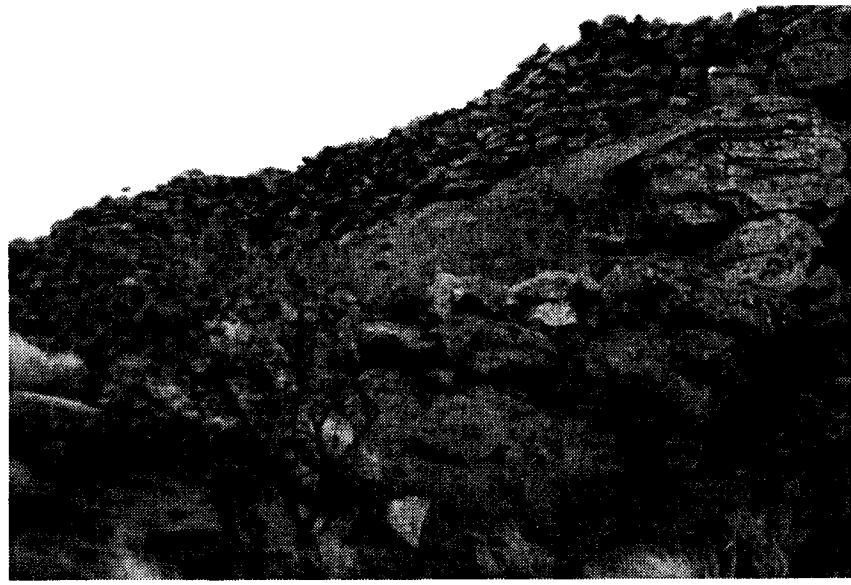
Baobab tree where community meetings were once held

tion of Land Rights Act, the "Act was not designed to accommodate claims like the Manenzhe claim. We had in mind the urban removals that came after the 1956 Group Areas Act was passed." The problem with the dispossessions in the Northern Province, he continued, was that "communities cannot point to a set date when the government came in and bulldozed their homes. Their dispossession was far more subtle, with communities moving from one farm to another without ever having any clear right in the land."

Nearly two years have passed since the Manenzhe community first submitted its claim to the Commission. Amos complains that the Commission has done nothing to help prepare the community to present the claim before the Land Claims Court. Ms. Mashinini's Commission had nearly 4,000 claims lodged as of the end of 1996. With limited resources and staff, she says that the Commission is not able to provide the research assistance that is needed for this claim.

One of the researchers working with Ms. Mashinini says that "the Manenzhe claim should not have been published in the Gazette until more information was gathered from the community. Now the Commission is in a bad place because the community's expectations were raised by the Commissioner."

Gregg Nott, the lawyer representing the community, disagrees. "I think that the community has a valid claim, and it should have been published. What is needed now is intensive research so that we can begin to unbundle the



The wall of an ancient Manenzhe compound

Graves of former Manenzhe chiefs. On a bitter cold day the chief walked among these graves in his bare feet.

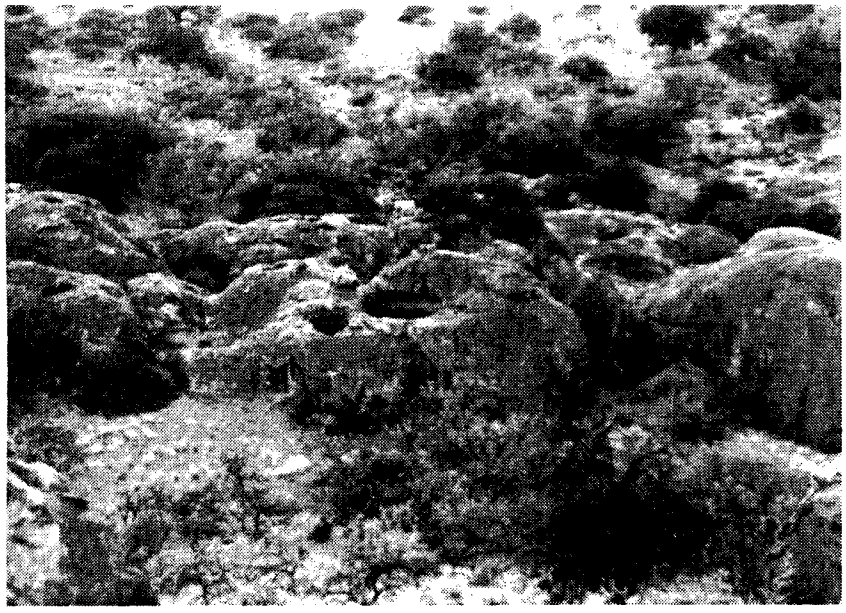
rights the Manenzhe had in that land."

"Unbundling" these rights is likely to take year. In the meantime the Manenzhe community patiently awaits the outcome of their claim. Amos Manenzhe is fearful that as the process drags on the people will lose their patience and start invading idle land.

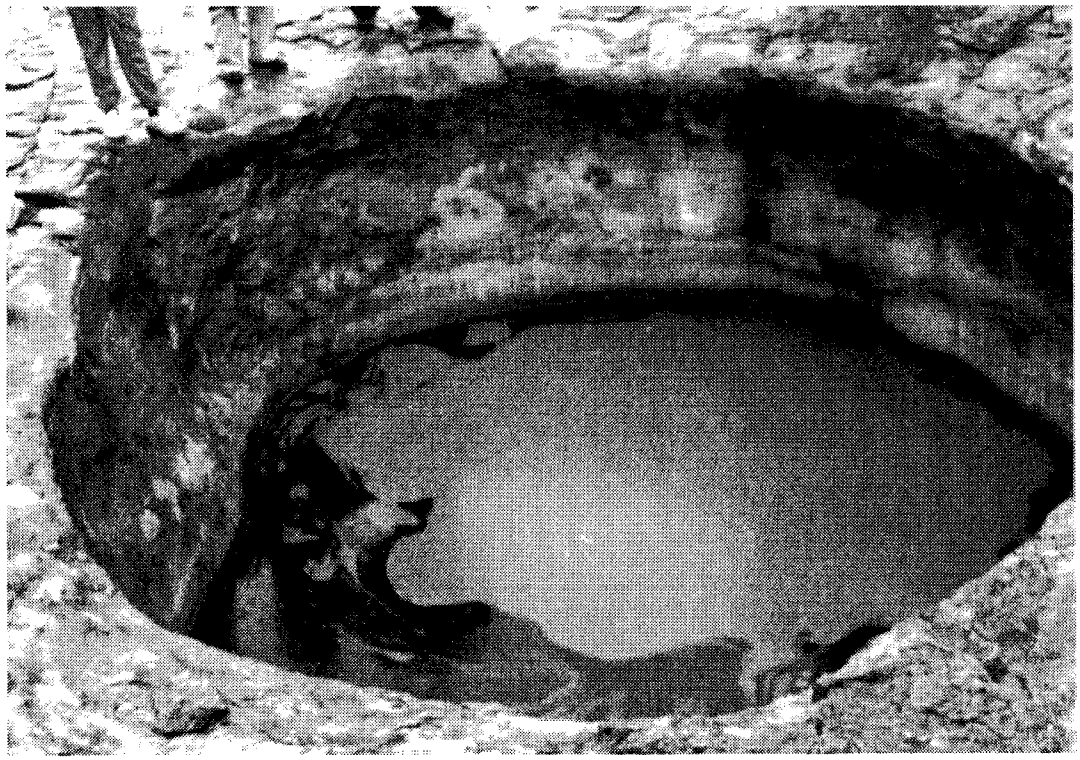
The Northern Province got a new Commissioner as of March 1,1997. It is hoped that the restitution process will start to move after this date. But if the experience of other Provinces is any kind of guide, there is little reason to hope for any considerable change in the pace of the process. As of November 1996, only five claims had gone before the Land Claims Court. Of those five only one was approved. At this pace it has been suggested that it will take another 5,000 years to complete the claims thus far submitted.

No doubt the patience of the community will run out before the restitution process is completed. But Jack Loggenberg warns that no one should "underestimate the abilities of [white] farmers to protect their land." No, Loggenberg says he is not threatening violence, but wanted to be clear that "white farmers will protect their land against invasions."

Land invasions and violence are a real threat, however, if restitution and other land reform measures are not implemented. ❑



View of the legendary Manenzhe pot hole from the top of the mountain



A closer look at the pot hole. Venda legend is that a snake at the bottom of this hole prevents it from drying out.