

# ICWA LETTERS

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## The Rule of Law

PIETERSBERG, South Africa

February 1997

By Teresa C. Yates

"There were never any problems with evictions before this government came in and started to threaten farmers with tenure legislation. Farmers treated their workers like family members before the government started imposing new laws!" exclaimed Jack Loggenberg of the Transvaal Agricultural Union in response to my question about his view of the government's Extension of Tenure Security Bill.

Even in its most repressive years, South Africa struggled to present itself as a country governed by the rule of law. The apartheid regime used an array of laws to restrict where blacks could live and work, who they could marry and where their children would go to school.

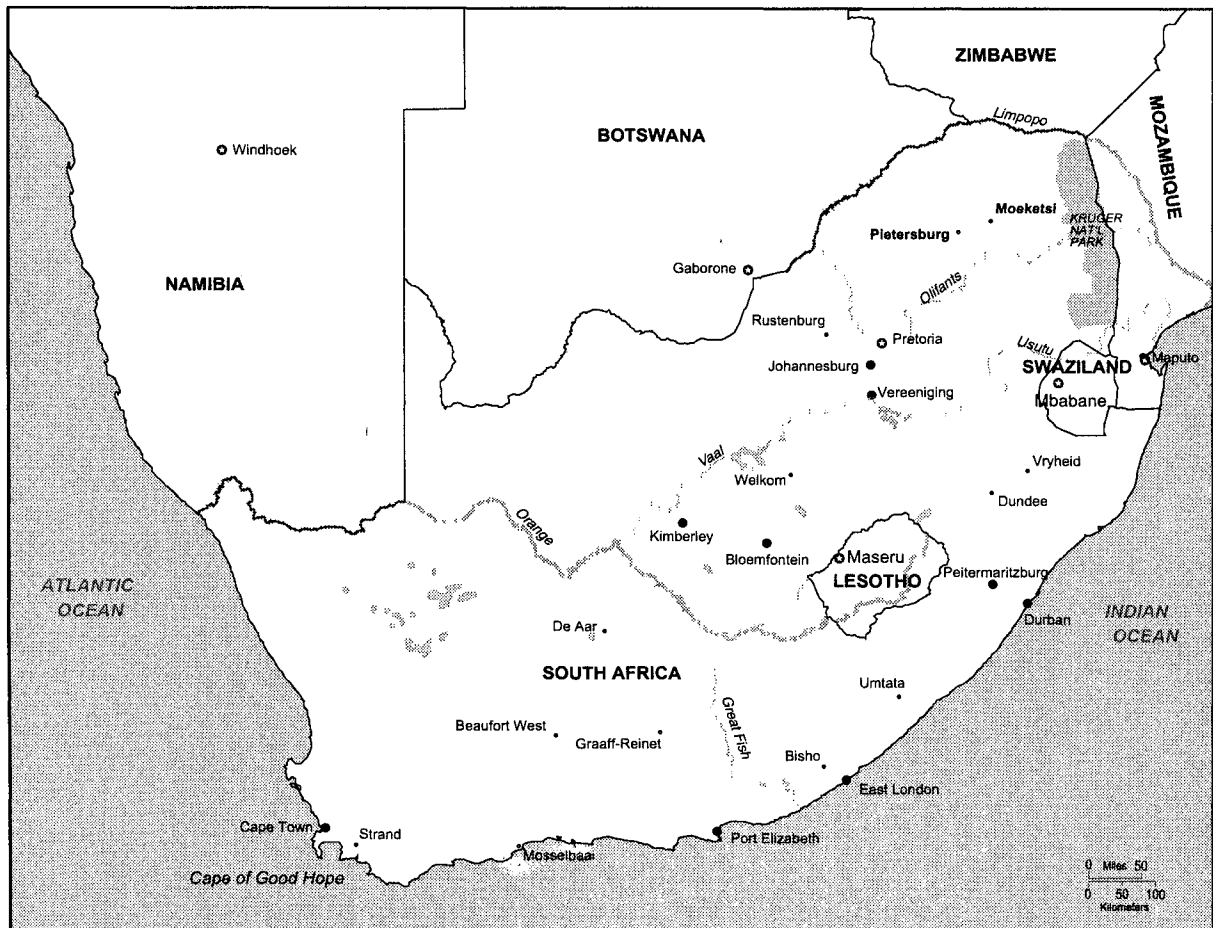
The current government is trying to construct a framework of laws that will in some way rectify the injustices of the past. It is a formidable task.

\* \* \* \* \*



About 60 kilometers east of Pietersburg lies a rich valley that is green and lush in the summer, surrounded by beautiful hills. The land is owned by commercial farming companies that are producing, among other things, tomatoes, mangoes and avocados. The companies include ZZ2, the largest producer of tomatoes in South Africa.

The Maake (MAH-kee) family arrived in this fertile valley south of Moeketsi



sometime in the mid-nineteenth century. The family was led to the valley by Maphea Mampshe Maake. When Maphea died his son, Popela, became the recognized leader of the community and over time the community came to identify itself as the Popela Community.

Popela had eleven wives, one mistress and an estimated forty-two children. The community lived, plowed and grazed their livestock on land that is now divided into six farms.

Whites followed the Maake family to the valley in the late 19th century. Phineas Maake says that "when the whites arrived we were living in peace, but under their control. We had cattle, sheep and pigs and we were plowing our own land. We worked on the white farms some of the time."

The Maakes, like many families in the Northern Province, gradually lost rights in their land over many years. When the first whites arrived here, around 1911, they shared plowing and grazing land in return for free labor. Each member of the Popela community, men and women, worked six months of the year and spent six months at home. Some of the men were as young as ten

years old when they started working for the white farmers. They accepted these conditions because if they refused to work they were forced to leave the land.

At some point, and no one can remember the year, the people of Popela were told that they would be required to work two days each week for whites, and that they would be paid. Johannes Maake said that "when I started to work for money, I was paid sixty cents per month [six-tenths of a Rand, then worth about U.S.\$2]. We were still plowing for ourselves and we still had livestock grazing at that time."

The Popela community lived under this system of labor tenancy until 1969. At that time the community was told that they could no longer plow land for themselves. The white owners told some of the people that new government rules said that they could no longer plow at all. The new rules were codified in the Black Laws Amendment Act. The Act was passed in 1964 to abolish labor tenancy. The law was enforced on a district-by-district basis. It took five years for the law to take effect in the Letaba District, where the Popela community lived.

Many people on the farms were told by the whites to

<sup>1</sup> Most of the old people I interviewed did not know in what year they were born. Their birth dates are taken from their identification books, which often have incorrect birthdates.

leave the land, or left "voluntarily" because they did not want to live under a system of virtual slavery. The people who left went to Sekgopa's Place, the location that was established for blacks under chief Sekgopa, 10 kilometers from Popela. Sekgopa is dry, rocky and barren. It is not a place where people living in a fertile valley would go to unless they were presented with circumstances that made their lives unbearable.

Abraham Maake is 78 years old. He was born at Popela, on a farm called Boomplaats. He left Popela in 1966 and moved to Sekgopa. "I left because I was tired of working for the whites. We were told not to plow for ourselves. I thought that I could not survive in such a way."

Johannes Ramoadi is 85 years old. His family moved to Popela when he was just a baby. He left Popela when he was a young man, though he does not know what year it was. He says, "the white man came in the middle of the night and told us to pack and go. It was in April. He destroyed our houses and cattle *kraal* [pen]. When we left that place we left maize [corn] growing in the fields. We moved to Sekgopa."

Most of the Popela community left their land in the late 1960s after labor tenancy was abolished and they were told to stop plowing. Only a few families, all headed by descendants of Popela, remain.

The six families still living in Popela live on Boomplaats farm. When I first met with them they had just been told that they had 30 days to vacate the land. The reason for the eviction, they were told, was that they were not following the new rules of the farming company. The rules required, among other things, no overnight guests without the permission of the company, no fishing or swimming in the pond beyond the dam, no hunting of any kind and no children who were not working or in school.

Westfalia, the German farming company that owns Boomplaats and Goedegelegen, the adjacent farm,

bought the land in 1993 from August Altonroxel, a South African of German descent. Mr. Altonroxel is now employed by Westfalia and some of the women who live on Boomplaats, including one of Phineas' wives,<sup>2</sup> work in the Altonroxel home as housemaids.<sup>3</sup>

Along with the new "Village Rules" Westfalia brought in security guards from S.S. Security, a private security company, to enforce them. Some young Maake boys who were found fishing in the pond were taken to a "kangaroo court" and

## VILLAGE RULES : GOEGEGELEGEN

The following rules apply to Company villages:

1. Animals will only be allowed in villages if no damage to Company property is done. This will include control over grazing, young orchards as well as area of movement. The privilege to own animals such as dogs, goats and chickens will be cancelled should strict control measures not be adhered to.
2. The behaviour of all people in villages as well as single quarters must at all times be acceptable to orderly community standards.
3. Only employees and their immediate families are allowed to stay in the villages. This includes pre-school as well as school going children but excludes children who are unemployed and are not going to school or university/technicon. Only single employees will be allowed to stay in single quarters.
4. Visitors must get permission from the Village Council to stay over in the village; for a maximum period of seven (7) days.
5. The Village Council is responsible for maintaining discipline in the village, Action will be taken in accordance with the Disciplinary Code and Procedure of the Company.
6. It will be expected from employees to keep their accommodation and garden neat and clean.
7. No hunting of any form will be allowed.
8. Wood may only be collected for personal use. Written permission from management is required to transport firewood on the farm.
9. Employees only will be allowed into the orchards after hours with the approval of Security, should they wish to collect "marog".
10. Employees only will be allowed to cut thatch-grass with the prior approval of management.
11. Permission to fish will only be given to employees who are in possession of an approved permit issued by management.
12. No swimming in any of the dams will be allowed.

06/09/1996

<sup>2</sup> The men and women of Popela are married under customary law. Most of the men have more than one wife. Phineas Maake has two wives and nine children. Both of his wives and eight of his children live at Popela.

<sup>3</sup> When I asked Mr. Altonroxel if I could speak to him about the Maakes, he refused, saying that he couldn't talk to me without permission from Westfalia. Westfalia, he said, later, refused to give permission.

lashed with *sjamboks* (whips). Others complain that the security guards regularly harass them.

The Maakes read these rules and were outraged. They were not going to live under such restricted conditions on their land. They were also angry about the security guards who were hired to enforce the rules. When I asked Alan Snyman, the human-relations officer for Westfalia, why the security company was hired, he said that the "Maakes come to meetings and threaten to kill Westfalia employees. They have also injured one security guard."

As I sit and talk to the Maake men who are still living on Boomplaats and are now 60, 70, and 80 years old, I can't imagine the anger that they must have felt when they were told that they must leave land that they have lived on and farmed all of their lives and I wonder if I would be provoked into threatening to kill in order to protect what I saw was my land.

Phineas Maake, who is 60, was born on Boomplaats, and has lived there all his life, says that "when Westfalia bought the farm, we heard rumors that we would have to get rid of our livestock because they were damaging the plots."

Phineas started working on Goedgelegen when he was ten. He worked for successive owners of the farm and for Westfalia when the company bought the farm in 1993. In

January Phineas was fired because the company said that his children had received overnight visitors without first getting permission, had fished in the dam and had cleared fields for plowing.

After 27 years working as a driver on Goedgelegen and Boomplaats, Phineas was paid R270 (U.S.\$80) and told not to return to work.

When Phineas lost his employment with Westfalia, the only people legally on the land (according to the rules of the company) were people drawing state pensions, six men who are viewed as heads of the remaining households, and their wives and children who were in school. The company wanted the rest of the people off the land by January first.

The community asked the Nkuzi Development Association, a new nongovernmental organization assisting people in the Northern Province with land-reform projects, for help. Nkuzi got a lawyer in Pietersburg to call the farming company and request that they reconsider the planned eviction. He also explained that the community would be submitting a claim for restitution of the land and that it would be best if the two sides could find a basis for cooperation through the process.

There was also the possibility that the eviction would contravene the "Interim Protection of Informal Land

Family Tree compiled from interview with Phineas, Isaac and Mamatlato Maake. April 1997.

Only first names are given, all were born Maake. Sometimes more than one name is given this is when people are commonly known by both names.

The Main Man	Popela											
Wives	Mapipa	Ngwakwana <sup>1</sup>	Mangata (Mamotola)	Mamoyagabo (Mamotola)	Masilelo	Mamatome (Mamotlatjo)	Mamutlatjo <sup>2</sup>	Mamubijilo	Mamaropeng	Motshimana	Musebudi	Masilelo <sup>3</sup>
Children		Soso -d	William Masikela -s <sup>4</sup>	Moyagabo -d	*Johannes -s	Mutapi -s	*Isaac Mabule -s	Mokopi -d	Frans Chabu -s	Motshako -d	Molatelo -d	Silelo -d
		Lekuta -s <sup>5</sup>	Molatelo -d	Motau -d	Daniel -s	Petule -s	Jan -s		Piet -s	Selaelo -d	Matheiel a -s	*Petrus Mabu -s
			Mapula -d	Ngate -d	Mamatola -d	Matole -s	*Phineas Ramuthuba -s		Mamulatelo -d	Mabjataka -d		*Leubela Josias -s
			Joseph -s		*David -s	Motamai -s	Maite -d		Mutau -d	Mmatsatsi -d		Masapula -d
			Abraham -s				Mabyalwa -d		Albert Ngoako -s			Ntchaka -d
			Modjadji -d				Simon -s					

\*Marks the current heads of families still at Boomplaats.

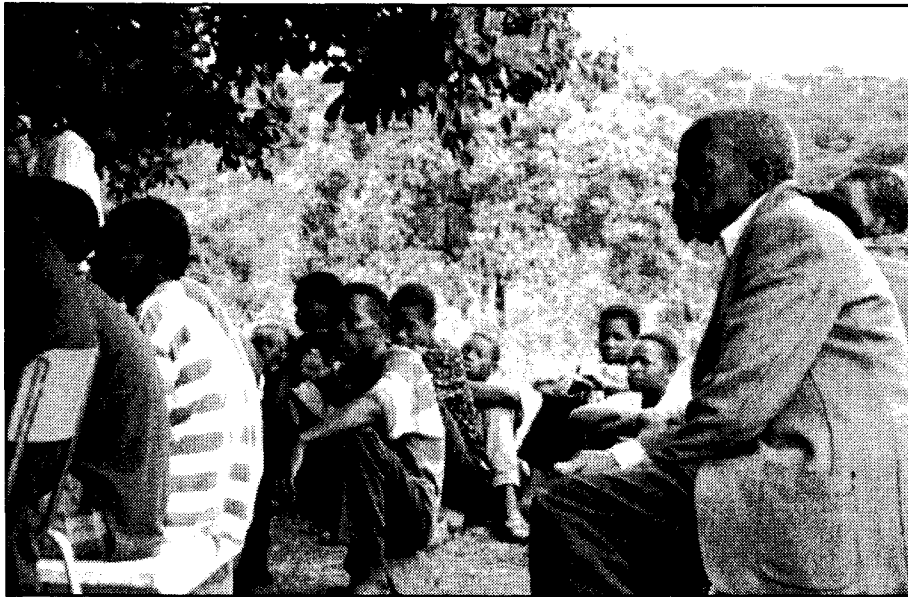
<sup>1</sup>MaNgwakwana was the sister to Mapipa and bore children for Mapipa as Mapipa could not have children, these children are seen as the children of Mapipa.

<sup>2</sup>She is still alive at Boomplaats and is one of the informants.

<sup>3</sup>Masilelo was not a wife. She was a concubine. However her children seem to have the same status as other children of Popela.

<sup>4</sup>William became the induna for all those who remained at Popela, this included some families who were not Maakes.

<sup>5</sup>Lekuta was an induna and left with his people to Sekeman in the 1940s



*Popela people listen carefully as restitution is explained.*



Rights Act." This Act was a temporary measure passed by the government to protect farmworkers and residents from eviction until more comprehensive legislation could be drafted. It was clear from the Interim Act that Phineas and the others living on the farm who were 60 years old or older were protected from eviction. The Interim Act will expire at the end of this year.

In the meantime community members are living on land that they have lived on all of their lives with the knowledge that the law does not recognize their right to be there.

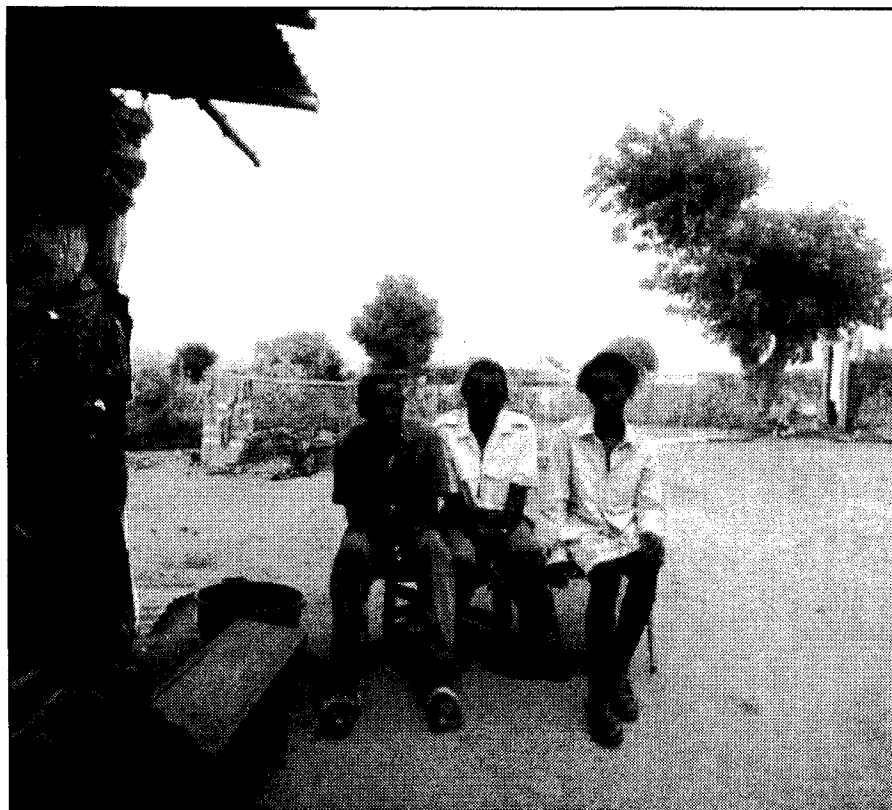
#### **THE SEARCH FOR A LEGAL SOLUTION**

The Popela community filed a claim for restitution of the land they lost in the 1960s when the laws govern-

ing labor tenancy were abolished.

The Restitution of Land Rights Act gives individuals and communities the right to claim land that was lost after 19 June 1913 as the result of racially-based law. The Act specifically identifies tenant-laborers as a class of people who may be able to claim back a lost right in land.

The first problem that the Popelas face is that land in the Moeketsi Valley was occupied by white farmers prior to 1913. The people of Popela were forced into labor tenancy prior to 1913. Still, the rights of labor tenants derive from the labor that they provide to the owner of the land. A tenant laborer does not have an absolute right to occupy land, but it is the only legally recognized right that the Popelas held after 1913. If community members, therefore, are going to succeed with a restitution claim,



*Montomola Alpheus Maake, his daughter and Matome Albert Matsepane were among 15 families forced to leave Poggio farm last year. They are now living in shacks in Sekgopa.*

documents relating to government activities in the area during the time the Popela community lost their labor-tenant rights. The material in the boxes is not organized in any way, so one would have to sit and sift through each box to look for any helpful information. It is a task that even the most diligent researcher is unlikely to be interested in taking.

The families living on Boomplaats are getting anxious as the plowing season approaches. They want to clear land and plant crops. They want to know whether they should clear whole fields or just small plots next to their houses. Westfalia has told the community that they are not to plow fields beyond their immediate residential areas. If the community disregards this instruction and clears the same fields they cleared last year, they will once again be threatened with imminent eviction.

While the community waits for its restitution claim to wend its way through the Commission and the Court, another chance for

they will have to claim the rights they lost as tenant labor.

Since no tenant-labor case has gone before the Land Claims Court, no one can be certain how the court will interpret the rights claimed by communities such as Popela. Although the Restitution Act clearly identifies labor tenants as one class of people who have a right to claim restitution, one lawyer with the Legal Resources Center here believes that any successful labor-tenant claim will end with a monetary settlement rather than restoration of any land. This, he believes, is because the court is not going to hold that a labor tenant's right is superior to the right of an owner with a registered title deed. He doesn't believe claims for restitution will ever result in the return of the actual land lost by labor tenants.

Even if it were clear that labor-tenant rights were rights that could be restored by the Land Claims Court, the community would still have to prove through evidence that dispossession was the result of a racially discriminatory law.

Although the Land Claims Court is allowed to consider oral evidence, the claims most likely to succeed will be those supported by archival evidence. Land documents for the Letaba District are scattered throughout the District in places as remote as magistrates' courts and back rooms of post offices. There is a 30-meter row of boxes at the central archives office in Pretoria that *may* contain

legal relief lies in new tenure legislation that is expected to be passed by Parliament at the end of this year. The hope, however, seems slim.

On February 4th this year the government published the "Extension of Tenure Security" Bill. It was hoped that this Bill would provide long-term tenure rights for people like the Maakes. As originally proposed, the Bill protected former farm employees who had reached the age of 55 or who were no longer able to work because of disability. Eviction could not take place unless suitable alternative accommodation had first been found.

The current draft of the Bill lifts the protection age to 60 and gives the owner six months to seek alternative accommodation. If none has been found, the owner can proceed with eviction if he or she can show that every effort has been made to find an alternative. That should make it easy enough for owners to evict, but if that fails residents can also be evicted if they: 1) intentionally harm any other person occupying the land; 2) intentionally or negligently cause material damage to the property; 3) unreasonably interfere with the use of the land by the owner; 4) threaten or intimidate other legal occupants or; 5) enable or assist unauthorized persons in establishing new dwellings on the land in question.

For the moment, Westfalia has stopped threatening the community with eviction. Until the Boomplaats people



are given legal relief, however, they live in the shadow of a nearby object-lesson. Last year a community of seven families living on Poggio farm, adjacent to Boomplaats, were presented with rules similar to the ones that Westfalia tried to impose in Popela. They were told to leave. They resisted.

Then, just months before the Interim Protection of Informal Land Rights Act came into effect. Poggio officials arrived with bulldozers and destroyed the homes of the people. The community still did not leave. "We remained at the ruins for three months," one old farmer told me, "but it was very cold and it started to rain. Officials from Poggio came and offered us R2,000 for our property. We took the money and left the farm. We had no other choice." Most of the people who were forced to leave Poggio are now living in Sekgopa. They have submitted a claim with the Commission for the Restitution of Land Rights.

The restitution process is likely to take years to resolve, and even if tenure legislation is passed, in its current form it promises only feeble security. In the meantime Popela community members continue their daily routine, trying to make their current situation as liveable as possible.

Their immediate problems include uncertainty about where and whether they are allowed to chop wood for their fires — and what to do about their water supply.

Westfalia has been informed by the City of Pietersburg that the water the Popela community is using is not fit for human consumption and is contaminated with typhoid. (see box, page 8) The first time I passed the communal water tap, there seemed to be open sewage next to it. Phineas explained that the tap water was used for cooking, drinking and bathing and comes from an open dam. Before it gets to the Maakes, Westfalia uses the water to irrigate its fields.

Phineas Maake hopes that "the new government will allow us to stay because the white men think that we are not men, they think that we are animals. We are not animals, we want what they want. We want a nice house and a car like they have." The last time I visited, Jan Maake asked if I could bring some guns on my next visit. I smiled and told him that I hoped that they would not have to arm themselves, and that I was sure that the legal process was going to bring them satisfaction.

We'll see.

□



*Mamatlatjo Maake was the 11th wife of Popela. She is 97 years old. She came to Popela after she was married in 1918 and has lived there ever since. She says that she wants to remain at Popela so that she can be buried next to her husband.*

## PIETERSBURG CITY COUNCIL LABORATORY ANALYSIS WATER REPORT

### The Popela Water

The water does not conform to SABS Specification 241-1984 as water for domestic use. The following determinants are not within specified standards:

- 1) Turbidity: recommended limit = 1 NTU, maximum allowable limit = 5 NTU, sample = 35 NTU.
- 2) Total viable organisms: recommended limit = 100, sample = 440 organisms/ml.
- 3) Total coliform organisms: recommended limit = 0, sample = 380 organisms/10ml
- 4) E Coli: recommended limit = 0, maximum allowable limit = 0, sample 34 organisms/100 ml.

The Department of Environment Affairs Standards (TR 108) are as follows:

- 1) Suspended solids: 25 mg/l, sample 34 mg/l
- 2) Ammonia: recommended limit = 0 mg/l, medium limit = 0.5 mg/l, maximum allowable limit = 2mg/l, sample 1.9 mg/l.

The water should be treated by passing it through a sand filter to remove the suspended matter and the turbidity and must then be chlorinated. The water should not be used until it can be chlorinated.



*The water for the Popelas is pumped from this open dam to irrigate fields. By the time it reaches the Popela tap (below) it is contaminated with a variety of bacteria and organisms that make it unfit for human consumption.*

