

The Current Status of Land Rights in the Transkeian Territories of South Africa

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Key words: Communal land, tenure security, de facto land rights, land administration.

SUMMARY

There is very little formal documented record of land occupation or land rights in the communal areas of the Republic of South Africa. As a result, members of traditional communities who live in the communal areas create their own informal, yet recognisable, exclusivity and right of use through the erection of fences and hedges around their homesteads. Previous research undertaken by this author concluded that the majority of members of traditional communities in South Africa want documented proof that links them (as individuals) to the land that they were born to share.

Some attempts were made historically to give rights to land in areas that were part of what was then known as the Transkeian Territories. General plans of quitrent erven were surveyed by government surveyors and approved by the Surveyor-General and formal quitrent title deeds were registered in the Deeds Registry Offices. However, as the years progressed, government officials resettled many of the holders of quitrent titles into villages. Others moved off their land to find employment. "Permissions to occupy" were issued to new occupants by a resident magistrate and traditional authorities allocated sites to their subjects. Without any consideration of these documented land rights, the state forcibly removed people from outside the communal area and relocated them on the communal land. The state also constructed schools, hospitals, dams, nature reserves and roads, often without consideration of the documented records of the indigenous people. All of this resulted in a disaster for the formal documented land rights system that had been initiated in the Transkeian Territories. This paper therefore looks at the current status of all forms of land rights, both formal and informal, and seeks to attempt to make proposals on how to recover from this disaster.

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1. EARLY OCCUPATIONS OF LAND IN THE EASTERN CAPE

By the 18th century, there were already widely distributed populations of various ethnic groups in existence both east and west of the Great Kei River (Braun, 2008, pp. 35 – 36), mainly of Nguni origin, but also the Khoikhoi herders and the San hunters. None of these were entirely sedentary, but enjoyed the vastness of the land where wild game could be hunted, settling only long enough for their cattle to benefit from the most fertile grazing lands. *“Wealth flourished ... allowing [clans] to prosper, specialise, interact, and transfer people, goods and knowledge”* (Braun 2008, p. 35). The Nguni were a people whose *“culture revolved around cattle. They were the people’s most cherished possession ... Socially they were a well-organised people, possessing a magnificently worked out system of law ... of persons, and only in a minor degree a law of contract ... A deep pietas reinforced by law protected age and station”* (Brookes and Webb, 1965, p.2). While assimilation between groups was frequent, *“peace could generally be maintained through judicious distance”* (Braun 2008, p. 36). History suggests that this mostly peaceful existence started to change when, in the latter 18th century, the so-called *“trekboers”* of Dutch and mixed origin rapidly advanced eastwards from the Dutch settlement at the Cape and appropriated for themselves and their livestock the shared land (Binckes, 2013, p. 99). By the end of the 18th century, the Dutch had considered the Cape Colony to extend as far as the Great Fish River (see Figure 1). Many skirmishes resulting from claims to land and cattle theft ensued. The concept of exclusive use rights imposed by the *trekboers* in accordance with the Roman Dutch law instituted by the Dutch colonisers was a foreign concept to the Khoi and Nguni herders, whose wealth was in cattle, not immovable property!

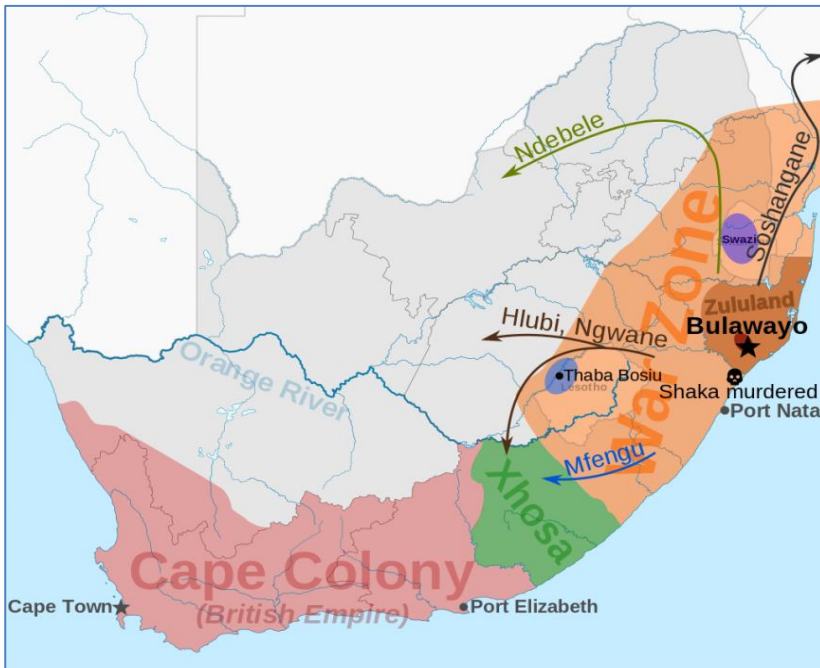


Figure 1: "Shaka's Empire map" by Discott.

Source: -

https://commons.wikimedia.org/wiki/File:Shaka%27s_Empire_map.svg#/media/File:Shaka%27s_Empire_map.svg

2. IMPERIAL EXPANSION

Into this mix came the British, who had finally wrested the Cape Colony from the Dutch in 1806. All land within the colony was deemed to be Crown Land, unless it had been surveyed, delineated on a diagram and registered in a deeds registry. Any colony was expected to be of financial benefit to the imperial authorities (Brookes and Webb, 1965, p. 42), and so generation of revenue was at the forefront of the colonial authorities' minds. This was achieved through the sale or rental of Crown Land. The British Colonial Government therefore continually extended the eastern frontier of the Colony (see Figure 2), under the pretext of limiting conflict between their subjects and the Nguni peoples, but primarily in order to ensure that all settlers (mostly Dutch, British or French) as well as the *trekboers* paid tax. By 1835, the border between the Nguni Clans and the British Colony was defined as the Kei River (Viedge, 2001, p.3). The treaty of amity between Lieutenant-General Sir Peregrine Maitland (representing the Queen) and Rili, Paramount Chief of the so-called "Xhosa Nation" of 1844 recognised the area occupied by the *amaXhosa* as a separate territory, east of the Great Kei River (Public Domain Treaties, 1844 – 1845). This therefore defined the southern boundary of the Transkeian Territories (see Figure 3).

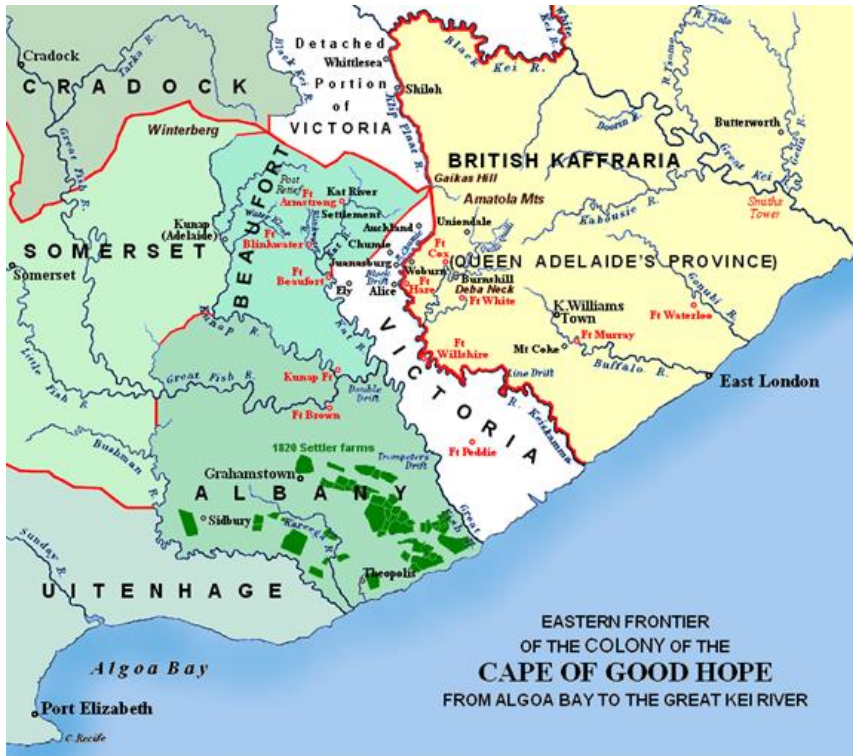


Figure 2: Eastern Frontier
 Source: https://en.wikipedia.org/wiki/British_Kaffraria

In the meantime (i.e., roughly between the years 1816 and 1828), Shaka, with the aid of his warriors, conquered the Nguni clans that had occupied the areas of what is now KwaZulu-Natal (Brookes and Webb, 1965, p.15). Although a few escaped with their lives, it was at the expense of their property and livestock. Turned into refugees, most fled south into what is now the Eastern Cape. Bereft of wealth and tribal structure and displaced from the land they had occupied, they became known as the “*amaMfengu*” (which means wanderers). Bulpin (1966, p. 127) adds that, after the *Boers* defeated the *Zulus* (which is what Shaka’s subjects became known as): “...*a horde of tribespeople who had fled the country in fear of their lives twenty years before, in Shaka’s time, now started to troop happily back from sundry points of refuge in foreign lands. Overnight, whole parties of people would appear on farms, mostly allotted to trekkers but as yet unoccupied, squat contentedly down on their old kraal sites, and erect huts ... After lengthy deliberation they decided, on the 2nd August 1841, that all the returned tribespeople should be forcibly collected, removed and settled in one vast location between the Mzimvubu and the Mthamvuna Rivers.*” This action would have greatly increased the number of *amaMfengu*, and would have forcibly resettled these refugees onto land that was already occupied by other Nguni herders and tillers. The uMtamvuna River ultimately was to become the northern boundary of the Transkeian Territories (see figure 3).

Ross (2013, p. 144) suggests that the *amaMfengu* were not necessarily only refugees from Natal, but included “*those who had thrown off their allegiance to the Xhosa chiefly families and decided to enter the Cape Colony and to accept the laws and the government of the whites.*” Destitute and

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receptive to Christianity, the refugees readily accepted employment on the Dutch and British Settler farms, or as infantry in the “Coloured Regiment” used by the British for the defence of the colony’s eastern frontier. In 1845, Maitland entered into a treaty with the *amaMfengu*, who were allowed to settle between the Fish and the Keiskamma Rivers (see figure 2) and given “*special citizenship and employed as labourers and soldiers*” (Braun. 2008, p. 73).

This acceptance of the *amaMfengu* people south of the Kei River was, however short-lived. Just four years later, the British colonial government issued a proclamation (in Government Gazette dated 18th February, 1848) whereby Africans could no longer claim a “Location” where they resided, but “*must be removed, so that a distant line be established between the different races...*” While the Transkeian Territories were largely populated and occupied, the tribes remained partially nomadic, and this gave rise to claims of land being uninhabited and therefore available to others for resettlement. Many “unwanted Africans” were coerced to relocate across the Great Kei (McKenzie, 1984, p. 10), which caused conflict with those already there, although Hammond-Tooke’s 1975 research quoted in McKenzie (1984, p. 6) notes that the *amaMfengu* were moved into southern Transkei and settled as “buffers” between warring tribes. While there were clashes between “Settlers” and “Natives”, even those who took no part in such rebellions were removed from their land and resettled across the Great Kei (Braun, 2008, p. 48).



Figure 3: The greatest extent of the Transkeian Territories of South Africa

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Source:

https://feathersandflouro.files.wordpress.com/2013/05/topographic_map_of_the_transkei.jpg

When the British Colonial Government of the Cape of Good Hope proclaimed that the District of Port Natal had been recognised and adopted as a part of the British Colony (Government Gazette, 1843), this left an area between the two parts of the Cape Colony, which became known as the Transkeian Territories. By 1870, much of the Cape Colony up to the Great Kei had been divided into farms, surveyed and allocated to (“European”) settlers (Braun, 2008, p. 97). Additional land was desired and, therefore, the British imperial authorities annexed the Transkeian Territories piecemeal, with the intention of increasing revenue by establishing more farms. Act No. 38 of 1877 (Transkei Proclamations, 1907, p. 1 – 4) annexes the area between the Great Kei and the Mbashe Rivers, which had been recognised by Maitland in 1844 as the “*amaXhosa* Territory”, but was now known as “Fingoland”, the land of the *amaMfengu*! The colonial authorities had also expelled the *abaThembu* who lived to the west of the White Kei River in order to create the Queenstown District. Any Thembu who indicated “loyalty” to the Crown was permitted to remain in the “Tambookie Location” (Braun, 2008, p. 75), which became known as the Glen Grey District within the Transkeian Territories. The annexation of the whole of Transkei area was only completed in 1894, which ultimately determined the greatest extent of the Transkeian Territories, an area of approximately 5 million hectares (Riba and Dlamini, undated, p. 8) that was bounded substantially by the Great Kei River in the south, the uMtamvuna River in the north, the Indian Ocean to the east and the Drakensberg Mountains in the west (see figure 3).

3. FIRST LAND RIGHTS – HUT-TAX

At the heart of the land administration system of the annexed Transkeian Territories were the Magistrates. Each Magistrate was responsible for a District. District boundaries were defined by proclamation and, within each of the 27 Districts, 15 – 20 Locations were defined. Every Location was overseen by a headman. Locations were further divided into allotment areas and commonage. Paragraph 43 of Proclamation 110 of 1879 (Transkei Proclamations 1907, p. 4 – 22) recognised the land allocations that had been made by the headmen of the *amaXhosa* (a term of disputed origin that referred to the amalgamation of all the people of African origin that had been concentrated in the Transkeian Territories, including Nguni clans and the *amaMfengu*). The head of every household was required to pay an annual “hut-tax” for each homestead. This was the first form of land right in the Transkeian Territories, but there were no documents, save the list of heads of households submitted by the headman to the Magistrate, who in turn issued receipts on payment of the hut-tax. However, the Colonial Authorities were driven to distraction in trying to levy taxes on a very non-settler minded African population. The nature of the *amaXhosa* was not as committed to permanent settlement as was the custom demanded by British rule. Deprived of sufficient land or cattle to continue the Nguni traditions of semi-migratory herding, the *amaXhosa* were forced to seek alternative livelihoods, which came in the form of labour required outside the Transkeian Territories. New farms allocated to immigrants and “white” subjects in other parts of the Colony, the discovery of diamonds in Kimberley in 1866, the massive expansion of the South African rail

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network and transport routes and the discovery of gold on the Witwatersrand in 1884 all required labour, sourced from the Transkeian Territories.

4. TOWNS

With the appointment of a Magistrate in each district came the need to establish a seat for that Magistrate. The Magistrate required a court and a residence. There were also other court officials and policemen. The police also required a police station and a gaol. And so an informal town would form around the Magistrate's court. The numbers of residents could have been bolstered by the presence of a military garrison and a post office. Traders, churches and schools soon followed. Umtata (now Mthatha) was the first town proclaimed in the Transkeian Territories by Proclamation 192 of 1882 (Transkei Proclamations 1907, p. 45 – 46). The Proclamation defines the extent of the town by defining the outer boundary of the commonage. The streets and erven of the town were surveyed (see figure 4) and granted to the occupants. The survey of the commonage, being the full extent of the proclamation, only happened in 1920.



Figure 4: Town of Umtata laid out in 1883; redrawn in 1923
Source: Surveyor-General's records: S. G. No. 3017 of 1883

5. QUITRENTS

Through the promulgation of the Glen Grey Act (Act No. 25 of 1894), first attempts were made to tie African people to the land in the Glen Grey District through the issuance of Quitrent title. The title holder would have to comply with the authority of the colonial administration and contribute to its coffers through the payment of prescribed taxes, or forfeit and face eviction. Quitrent title was substantially conditional, some of the conditions being:

- Registered holders were precluded from mortgaging their land;
- Land holders could only transfer their lots with the approval of the Governor;
- Upon death of the land holder, the Magistrate determined who would inherit the lot, provided that the widow of the deceased would have the use and occupation during her lifetime or until re-marriage;
- Quitrent tax was to be paid to the Magistrate annually;
- The Governor had the right to make roads, railways, dams, aqueducts, drains and water furrows if required for public purposes and to resume the whole or any portion of the land granted, on payment of compensation; and
- Holders were prohibited from subdividing their erven.

Superficially, the original purpose of Quitrent title in the Transkeian Territories was, firstly to recognise residents who were perceived to be loyal to the crown – often granted in recognition of service to Her Majesty – notwithstanding that their earlier resettlement had evicted those perceived less loyal! Conversely, Quitrents were a form of enforced settlement to facilitate taxation, rather than a desire on the part of the Colonial Government to see the holders owning an immovable asset. Thirdly, the African culture of the time perceived tilling of land to be women’s work and, therefore, it was a place where the womenfolk could till a man’s field while he provided labour on distant farms and mines, and to which he could return when his indenture was complete.

The big mistake made on the first Quitrent allotments surveyed around the Mission Station of Mount Arthur was that the erven were all surveyed as contiguous rectangular pieces of ground. They ignored completely existing occupation, cultivation or topography. There was inadequate consultation with the inhabitants, which created much dissatisfaction (Braun, 2008, pp. 193 – 221). Beneficiaries were summarily moved from their existing cultivated lands onto the grid-patterned lots, without any consideration of size or yield of the allocation. The exercise failed.

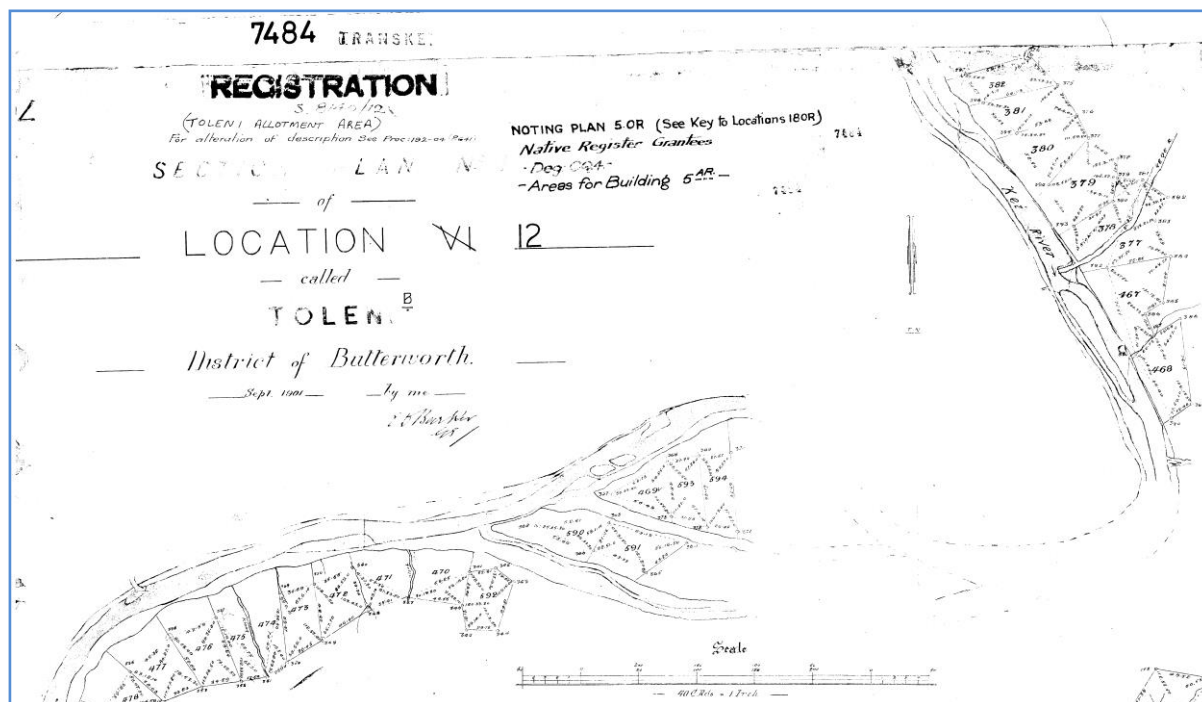


Figure 5: An extract from a Quitrent Plan – this of Toleni, on the Kei River, surveyed in 1901
 Source: Surveyor-General's records: S. G. No. 9150 of 1901

Learning from this failure at Glen Grey, the Colonial Government issued Proclamation 227 of 1898 (Transkei Proclamations, 1907, pp. 299 – 310), which divides the Butterworth District into Locations, and allotments within those Locations. This second phase of allocations proceeded with much less objection from the inhabitants, primarily because the administration now respected the cultivated and improved areas by surveying and allocating Quitrent title over existing cultivated lands. Subsequently, Proclamation 75 of 1903 (Transkei Proclamations, 1907, p. 383) permitted the Governor “to grant, or reserve, or set apart [land rights] for Mission, Mission schools or carrying on the business of licensed traders” for use by “European” individuals or organisations. It was later stipulated that, while the Governor granted permission to occupy land for these specified uses, title could only be granted by Parliament. By means of several other proclamations, the principles of Proclamations 227 of 1898 and 75 of 1903 were expanded to cover the 7 Districts of Butterworth (now Gcuwa), Nqamakwe, Tsomo, Idutywa, Xalanga (now Cala), Engcobo and Umtata. With the change of land policies taking place after the advent of the South African Union government, no new administrative areas were proclaimed for granting of formal land rights. The last quitrents were surveyed in the former Transkeian Territories in 1923.

Proclamation 200 of 1910 (Transkei Proclamations, 1913, pp. 71 – 75) introduced “building lots” on commonage, not exceeding a half morgen in size. “Building lots” could initially only be allocated to holders of a “garden lot”, but there were more people in the Transkeian Territories than there were arable lots being allocated and, therefore, it was soon expanded to grant building lots to specified persons engaged in a legitimate trade or industry. It also stipulated that any inhabitant could receive permission from the Magistrate to remain in occupation of any building or homestead he already occupied. Proclamation 45 of 1916 (Transkei Proclamations, 1917, p. 122) enforced occupants who had been allocated a site by the Headman to take title to it (at the prescribed fees) once the lot had been surveyed and the beacons taken over by the Magistrate. Failure to take title meant the allocation was deemed to have lapsed, removal of the defaulter and re-allocation! Proclamation 209 of 1911 (Transkei Proclamations, 1913, p. 138) forced title holders to cultivate their land. Where cultivation had ceased for more than three successive years, the owner was required to provide the Magistrate with convincing reasons why he had been prevented from doing so, failing which the Magistrate could refuse the application to continue the holder’s possession.

Over the ensuing years, there were some minor amendments made to Proclamations 227 of 1898 and 75 of 1903, but they have never been cancelled or superseded. Specifically, while the Glen Grey Act is repealed by Proclamation R188 of 1969 (and therefore Quitrents falling within the District of Cacadu (formerly Glen Grey) now fall under the prescripts of Proclamation R188 of 1969), Quitrents created under Proclamations 227 of 1898, 75 of 1903 and others remain and do not fall under Proclamation R188 of 1969. Act 18 of 1936 recognises holders of Quitrent title as “registered owners”. Since many title holders transferred Quitrent titles informally, the Deeds Registers rapidly became outdated. Incentives were introduced in the 1930s to update transfers through free registration of current owners, but this failed to solve the problem. Nevertheless, Quitrent titles issued in the Districts of Gcuwa (formerly Butterworth), Nqamakwe, Tsomo, Idutywa, Cala (formerly Xalanga), Engcobo and Umtata (now Mthatha) are still legal today!

6. INFORMAL LAND RIGHTS – “PERMISSIONS TO OCCUPY”

Due to change in policy, surveys of quitrent erven had ceased entirely by 1923, and although recent efforts have been made to survey every “Location” on an “Administrative Area” diagram, the rest of the Districts making up the Transkeian Territories remain unregistered communal land to this day. Since extended families wished to remain together, the system of inheritance by a single family member was not sustainable. In order to accommodate the growth of families (including returning migrant workers), and the massive influx of families evicted off “white-owned” land, new sites had to be allocated within the Locations. The notion that only title holders would own or have access to the land had to be abandoned. Therefore, Proclamation 143 of 1919 (Government Gazette, 7th November 1919, pp. 213 – 217) introduced the land register kept by the Magistrate, in which the Magistrate would record all “permissions to occupy” (PTOs) granted by him for “*any native person to remain in occupation of such homestead and arable land as are in his lawful but unregistered possession.*” PTOs were not surveyed in the same manner as Quitrents, but the Magistrate often had sketch plans attached to his registers indicating some form of relative position.

7. INFORMAL LAND RIGHTS – HEADMAN ALLOCATIONS

In practice, the system of land allocation often did not adhere to the letter of the law. The system was open to abuse and corruption. There are many records of Headmen allocating land without magisterial approval or record. Proclamation 302 of 1928 specifically attempted to “legalise” the occupation of any homestead site or arable land that was unregistered at a prescribed date. Up until then, taxes were only being imposed on the lots and sites that were in the Magistrate’s registers, so extending control over the unregistered sites increased the numbers of households that could be taxed. This new control did nothing to prevent Headmen from continuing their practice of land allocation, even though Section 26(3) of the Native Trust and Land Act (Act No. 18 of 1936) refers to all such people as squatters whose “unlawful” presence must be reported to the Magistrate!

8. INFORMAL LAND RIGHTS – “BETTERMENT SCHEMES”

From the 1930s onward, the introduction of new land use control measures in the areas entrenched under the Natives Land Act of 1913 allowed the state to re-plan localities and move families from customary settlements into betterment villages. *“A large part of betterment planning after 1955 involved the reorganisation of rural locations ... into separate residential, arable and grazing areas for purposes of what planners saw as better land-use. This involved the movement of large numbers of families into centralised, village-like residential areas”* (de Wet, 1987, p. 85), (see figure 6). Quitrents and PTOs were simply ignored by the government officials and holders were relocated into the new villages.



Figure 6: Settlement Patterns of a Betterment Village on Communal Land.
Photo: Mark Williams-Wynn

9. RESETTLEMENT AFTER FORCED REMOVAL

In the subsequent years, the apartheid government continued to resettle African people into the Transkeian Territories and, with the promulgation of the Promotion of Bantu Self-Government Act in 1959, the government empowered itself to *“push Africans back into the reserves and homelands”*, where they were confined (Magubane, 2004, p. 39; also Mamdani, 2002, p.43). Some

moved voluntarily. Others, however, through forced removal were dumped on land of existing communities (Ralikontsane, 2001, p. 28), where they became “ethnic strangers” (Mamdani, 2002, p.46). Government moved between 80 000 and 100 000 people from their ancestral land into the Locations and, “by 1961 the Locations ... were overcrowded, and not one of them could feed its own population except for food purchased by wages from outside” (Brookes and Webb, 1965, p. 60). People were forced into migrant labour when they would have preferred to be farming (Kayser and Adhikari, 2004, p. 330). The state no longer considered the Quitrent ownership of landholders (Matoti and Ntsebenza, 2004, p. 192). The state officials resettled new immigrants (either by forced removal or voluntary relocation), wherever they deemed appropriate, even at the expense of other African occupants and landowners.

10. LAND ALLOCATIONS BY CIVIC ORGANISATIONS AND POLITICAL HIERARCHY

The system of land allocation in communal areas was further complicated by organised “land invasions” especially in the early 1990s. Anecdotal records claim civic organisations in communal areas usurped the function of land allocation from Headmen and Magistrates and demarcated and allocated land to rural residents without PTOs. Since 1994, land allocations have taken place outside of any official system due to the break-down of the land administration system (PSC, 2003, p. xii). Therefore, it is estimated that a large number of rural sites in the Transkeian Territories do not have title, PTOs or any other form of record.

11. LAND FOR STATE DOMESTIC FACILITIES

On top of this mixture and confusion of land rights, the state has, since 1913, perceived that all community land of the Transkeian Territories was state land. Therefore, the multiple state organisations could do as they pleased. Schools, hospitals, clinics, post offices, police stations, military camps, nature reserves, dams, airports, railways, national and provincial roads, powerlines and pipelines, etc., were constructed wherever the state saw best, without any consideration of the documented rights of the quitrent and PTO holders. This has had serious implications on the state registering certificates of registered state title for portions of communal land on which state assets were constructed, but now found to be encroaching onto older existing land rights, in particular onto quitrent erven.

12. PROPOSALS

Communities are far more likely to preserve, protect and manage their land if it is theirs! People will only invest in the land (through financial contribution and effort) if they know there is a beneficial future for them, where they have greater chance of improved livelihoods and even the possibility of prosperity. Heitger (2004, p. 384) refers to ownership as being the “*real foundation of the economy*”. More and more there is recognition that community land tenure should be defined in terms of recognising and strengthening existing “social tenure”, where there is “*strong local oversight of processes of claiming, recognising and transferring rights, and of dispute resolution*”

(Eglin *et al*, 2016, p. 38). It is the key to the future. Previous research (Williams-Wynn, 2007, pp. 21, 27 – 28) has demonstrated that land in the hands of the state remains “dead land” and therefore land tenure, instituted and formalised in the hands of the occupants, is a necessary component of poverty reduction through sustainable development. Following a “Fit-for-purpose” approach (Enemark *et al*, 2014, pp. 21 – 24), communities must be able to decide for themselves what they want, based on local conditions, supported by the state and its enabling legislation.

Where the state retains land occupied by communities as “unalienated state land” or “communal land”, the occupants are denied the recognition of rights – an injustice inherited from colonial policy. “Communal land” should be redefined as community land (*vide* FAO, 2012, pp. 14 – 16). Community land is not state land, held in trust for the indigenous people. It is land that a community owns in common and then can allocate individual rights to members of the community (Wily, 2015, p. 1) or, under certain circumstances, to outsiders. Recognising families and communities as legal owners of their traditional land is becoming common-place across Africa (Wily, 2015, p. 2). Registering it as community land will separate land ownership (i.e., belonging to the community and individuals within the community) from land use management controls (which is a state or municipal function).

The one key issue that seems to be a stumbling block in designating communal land as community land is the belief in many spheres that “the chiefs won’t allow the people to own land!” However, if the leadership structures would understand that wealth is built by individuals and that prosperous people make prosperous communities, which means prosperous leadership, the community leadership will be more willing to help their community become self-sufficient. This will need “*effective and meaningful consultation with indigenous peoples*” (FAO, 2012, p. 16).

Further, historical cultural differences in the identification of who had land rights should be recognised and overcome! Under Roman Dutch laws implemented during colonial and apartheid eras, the only recognised land rights were those documented by the “white” administration, and (quitrent rights excepted) community land was held in trust for the indigenous people by the “white” administration. The community and its leadership recognise far broader land rights. Therefore, a land rights enquiry (STDM or similar) needs to be conducted, community by community, to determine the existing land rights of every individual and authority that exists within or over that community. This will enable all existing land rights (whether overlapping or exclusive) to be recorded and recognised. Existing fences, hedges, stones, etc. that indicate an exclusive use and visible on large scale rectified imagery or aerial photographs can be the basis from which all rights will emerge.

13. CONCLUSION

Land rights can be equated to a bundle of sticks (Palmer *et al*, 2009, p.7), where each stick defines a way in which the land may be used and by whom, the profit that may be derived from it, or the manner in which it can be transferred. Thus, the state may claim to hold the overall rights to the land, but a registered Quitrent title is also legitimate, so are registered PTOs. Betterment schemes

forced people to live in villages and they, too, have a form of right to the land they occupy. An African traditional community may control an area and traditional leaders may have allocated individual rights to members of the community. Unregistered occupants may also have a legitimate (albeit enforced) right to the land. The civic leaders of a settlement may keep a community register showing who are resident in the area.

Under Roman-Dutch law, the emphasis is laid on protecting the rights of the property owner rather than the occupants of the property. The South African legal system upholds existing land tenure. Therefore, while subsequent occupation must be considered, Quitrent title must be upheld. The holder of a Quitrent title must have the right to occupy and use his or her land, or be compensated for any encroachment into that right. However, this is not the only right that should be recognised. Policies of previous and current governments have limited the recording of any other rights that individuals and the communities that occupy community land have. By comparison, under the English and indigenous African common law systems, there is much more emphasis in law on protecting the rights of the occupants, rather than just the title holder. Communities must be part of the decision-making process that determines which rights are recognised, and how these should be documented.

Land rights registration systems can and do work, even under areas where Traditional Authorities are respected and revered. They have been proven necessary and beneficial for sustainable development, good governance and the generation of revenue. Land is of value to the communities of the Transkeian Territories and all members of those communities. Therefore, a land tenure system should be established to recognise and protect their rights to the land they call home!

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BIOGRAPHICAL NOTES

Chris Williams-Wynn grew up in the Eastern Cape, South Africa, and went to school at St Andrew's College in Grahamstown. He completed a BSc (Honours) degree in Land Surveying from what is now the University of KwaZulu-Natal in 1981 and his Masters in Public and Development Management at the University of the Witwatersrand in 2007.

He is a Registered Professional Land Surveyor, a Registered Sectional Titles Practitioner and a Registered Township Planner. Having worked for 17 years in the private sector, he moved into the government sector due to his deteriorating physical ability. Mr. Williams-Wynn was appointed the Surveyor-General: KwaZulu-Natal on 1st May 1998, and transferred at his own request to establish the Office of the Surveyor-General: Eastern Cape on 1st July 2010.

Mr. Williams-Wynn advises Government institutions on land issues, with particular interest in legislation affecting property development approvals and land administration. He serves on the Townships Board, the Land Use Regulations Board and the Spatial Planning and Land Use Management Steering Committee. He has recently had papers published in the PositionIT magazine, the Deeds Journal and on the FIG website. One of his main passions is to see people in the Traditional Communities also benefit from the Land Rights system of the country.

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Outside of his survey career, Mr. Williams-Wynn is interested in environmental conservation, with special interests in birds, trees and estuaries. This interest has benefited his knowledge concerning coastal public property and the legal position of boundaries adjoining the high water mark of the sea and rivers. He is a Society Steward of the Methodist Church and an active Rotarian. He is married to Glenda, a Natural Sciences Graduate, who works in the Conservation Ecology Research field and they live in Kidd's Beach.

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