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

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Recovery from Disaster

• What disaster?
  • Layers of conflicting/overlapping land rights
  • Registered title ignored
  • Forced settlement
  • Multiple land allocations

• Recovery
  • Proposed solution to the land issue
Areas in Question – Transkeian Territories

1843 - Natal Colony

1844 – Eastern Frontier

1869 – Lesotho

5 million ha
4% of South Africa
Colonial Land Administration System

• Territory (as in Transkeian Territories)
  – Land substantially occupied by “Native people”

• Native people (in the Transkeian Territories context)
  – A conglomeration of predominantly Nguni peoples
  – Mixed with other groups, including Khoi and San
  – Had settled or were resettled in the Transkeian Territories
  – Substantially make up what is now known as the “Xhosa Nation”,
  – Today, more commonly identified as “Indigenous people”
Complications – Colonial Land Administration

Magisterial Districts – under Magistrates
Complications – Colonial Land Administration

Administrative Areas – under Native Headmen
Intensity of Villages
Formal System of Land Rights

• Transkeian Territories
  • 27 Magisterial Districts
    • ± 20 Administrative Areas
    • On 8 of the Districts, ± 160 Administrative Areas
      • ± 300 Quitrents per Administrative Area (± 48,000 total)

• Quitrent
  – Individual tenure with title – each approx. 2.5 hectares
  – Granted to a subject loyal to the Crown, in recognition of service
  – Conditional on payment of annual tax to fund the British administration
Extract of original 1901 Quitrent plan

7484 TRANSKEI

REGISTRATION

(TOLEN) ALLOTMENT AREA
For alteration of description see Plan 192-00 (Plan 1)

SECTION PLAN N

- of -

LOCATION XI

called -

TOLEN

District of Butterworth.

Sept. 1901

by me

[Signature]

NOTING PLAN 50R (See Key to Locations 180R)
Native Register Grantees
- Deg 00'-
Areas for Building 5 AR
Subsequent Land Occupation

- Restriction of all native people into “Administrative Areas”
  - By 1919, the notion that only Quitrent title owners had access to land was abandoned
  - By 1923, the last of the Quitrents were surveyed
  - Became overcrowded, dependent on work in cities, mines

- Alternative forms of Land Right:
  - Permissions to Occupy – registered by magistrate
  - “Informal” Land Allocations by Headman/Community leaders
  - Government-run agricultural “Betterment Schemes” relocated people into villages
  - Resettlement of people forcibly removed from elsewhere
  - Politically motivated land invasions
Mix of Land Rights = Disaster!

- Rights of original title holder and successors – ignored
- State adopted ownership of community land (communal land, held “in trust”)
- Registered owner of a PTO
- Unregistered PTO allocated by Headman
- Land allocation under Betterment Scheme
- African community leadership (king, chief, headman, council)
- Every person residing on community land, no matter how they got there (birth / voluntarily / forcibly)
- Community registers of local leaders
- Political structures and allegiance
Following the letter of the law?

- South Africa law based on Roman-Dutch law
  - All land, unless granted, was Crown land (Now State land)
  - Places the rights of the property owner above the rights of the occupant
  - Upholds existing, registered land rights

- Holder of a Quitrent title must have
  - the right to occupy and use his or her land, or
  - be compensated for any encroachment or removal of that right

- Would leave the majority of the people occupying land in the Transkeian Territories landless…
Recovery from Disaster!

- Communities are more likely to preserve, protect and manage land if it is theirs.

- Claims by state to own land occupied by indigenous communities is the retention of colonial systems.

- Land occupied by communities should be re-designated as “Community Land”.

- The community must decide on all overlapping rights:
  - Land Rights Enquiry…
  - Land Rights Commissioner (State appointed?)
  - FAO voluntary guidelines call for:
    - “Effective and meaningful consultation with indigenous people”!
Thank you