What do we do with quitrents?

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Abstract

Many quitrent titles were surveyed in the Transkeian Territories between 1894 and 1923. Formal title deeds were registered in the Deeds Registry Offices. People who held these quitrents were removed into betterment schemes; “permissions to occupy” (PTOs) were allocated over them, and the state ignored them by constructing schools, hospitals, dams, nature reserves and roads over them. A brief investigation has revealed that some quitrents lapsed due to forfeiture or cancellation; however, most of these quitrent titles of the Transkeian Territories are still “live”, even if the original owners are long deceased. All quitrents must, therefore, be assumed to be live rights until an investigation reveals whether they have lapsed.

All quitrents situated in the Transkeian Territories have corresponding diagrams or general plans archived in the Office of the Surveyor-General: Eastern Cape. They impact on Administrative Area (AA) diagrams, State Domestic Facility land rights, National Roads surveys and other potential developments such as windfarms. Quitrents are neither shown as excluded figures nor as subdivisions of the AA diagrams. With the exception of the Cacadu District (formerly Glen Grey), the quitrents in the Transkeian Territories were not brought under the application of Proclamation R188 of 1969 and therefore the Upgrading of Land Tenure Rights Act, No 112 of 1991 cannot be applied to them. There is currently no mechanism whereby quitrents in the remaining Transkeian Territories can automatically be upgraded. Quitrents cannot be ignored. The question that arises is: “what do we do with quitrents?” This research contributes to the resolution of problems that quitrents bring to any other land right currently being created or implemented in the Transkeian Territories.

Key words

communal land, tenure security, de facto land rights, land administration, private property rights.

Introduction

At the heart of the land administration system of the annexed Transkeian Territories was the Magistrate’s office. Each magistrate was responsible for a district. District boundaries were defined by proclamation and, within each district, 15 – 20 locations were defined under headmen. In eight of the 27 Transkeian districts, locations were further divided into allotment areas and commonage. Lots within the allotment areas were issued by perpetual Quitrent title, a form of ownership where a “loyal subject” was granted land on condition of payment of an annual tax in lieu of service, in order to fund the administration. The locations have more recently been referred to as “administrative areas” (AAs). As part of the programme to identify all state assets, AAs were surveyed in accordance with their proclaimed areas. Quitrents have neither been shown as excluded figures nor as subdivisions of AA diagrams, but they exist and are registered in the Office of the Registrar of Deeds: Mthatha. There is currently no mechanism whereby quitrents in the Transkeian Territories can be upgraded. Therefore, while quitrents cannot be deemed to be freehold; they cannot be ignored.

Land rights registration systems can and do work, even under areas where traditional authorities are respected and revered, and have been proven necessary and beneficial for sustainable development, good governance and the generation of wealth. A land right links a person to the land s/he calls home, which gives her/him an identity, an address and a stake in the nation.

Early occupations of land in the Eastern Cape

By the 18th century, there were already widely distributed populations of various ethnic groups of Nguni origin, but also the Khoikhoi and the San, in existence both East and West of the Kei River (Braun, 2008, pp. 35 – 36). 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 not only [Nguni clans but also Khoikhoi herders and San hunters] 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 was curtailed when, in the latter 18th
century, the so-called “trekboers” of European and mixed origin rapidly advanced eastwards from the Cape and appropriated for themselves and their livestock the same land. Many skirmishes resulting from claims to land and cattle theft ensued.

**Definition of limits of African occupation**

Into this mix came the British, who annexed the Cape Colony from the Dutch. Expansion of their colony early in the 19th century (see Fig. 1), primarily to limit conflict between their subjects and the Nguni peoples, led to the establishment of a definitive buffer along the eastern frontier. By 1835, the border between the Xhosa nation 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 Xhosa Nation of 1844 recognised the area occupied by the amaXhosa as a separate territory, east of the Kei (Public Domain Treaties, 1844 – 1845).

In the meantime further north, Nguni clans were subject, again and again, to Shaka’s warriors who swept over the hills and through the valleys, plundering and destroying anything that was left (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 Mfengu (which means wanderers). In 1845, Maitland also entered into a treaty with the Mfengu, who were allowed to settle between the Fish and the Keiskamma Rivers and given “special citizenship and employed as labourers and soldiers” (Braun, 2008, p. 73).

**Imperial expansion**

This acceptance of the Mfengu people west of the Kei River was, however short-lived. Just four years later, the British colonial government issued a proclamation (*Government Gazette*, 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 Transkei was 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 Kei (McKenzie, 1984, p. 10), which caused conflict with those already there, although Hammond-Tooke’s 1975 research notes that the Mfengu people were moved into southern Transkei and settled as “buffers” between warring tribes (McKenzie, 1984, p. 6). 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 Kei (Braun, 2008, p. 48).
Any colony was expected to be of financial benefit to the imperial authorities. Generation of revenue was at the forefront of the colonial authorities’ minds, and this was achieved through the sale or rental of crown land. Much of the Cape Colony up to the Kei had, by 1870, 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. Act No. 38 of 1877 (Transkei Proclamations, 1907, p. 1 – 4) annexes the area between the 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 Mfengu. 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. The whole Transkei area was brought under Colonial rule piecemeal and only completed in 1894, which ultimately determined the greatest extent of the Transkeian Territories (see Fig. 2).

The need for quitrents

Paragraph 43 of Proclamation 110 of 1879 (Transkei Proclamations, 1907, p. 4 – 22) requires the headman to provide the chief magistrate with a list of all members of the tribe that are proposed to receive an allotment of land for occupation. 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 African person was not as committed to permanent settlement as was the custom demanded by British rule. Further, labour was required by settlers acquiring farms; the discovery of diamonds in Kimberley in 1866; the massive expansion of the South African rail network; and the discovery of gold on the Witwatersrand in 1884. Through the promulgation of the Glen Grey Act (No. 25 of 1894), first attempts were made to tie African people to the land.

Individual quitrent title was to be issued in the Glen Grey district. 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 resident 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 resident magistrate annually.

“…the Governor shall at all times have the right to make roads, railways, dams, aqueducts, drains and water furrows, and to conduct telegraphs over the land hereby granted for the benefit of the public and to resume the whole or any portion of the said lands if required for public purposes, on payment of compensation…”.

Holders were prohibited from subdividing their lots.

The big mistake made on the first quitrent allotments surveyed around the Mission Station of Mount Arthur was that the lots 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.

Based on the Glen Grey Act, 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 had learnt from the Glen Grey disputes and respected the cultivated and improved areas by surveying and allocating quitrent title substantially over existing occupation. 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 seven districts of Butterworth (now Gcuwa), Nqamakwe, Tsomo, Idutywa, Xalanga (now Cala), Engcobo and Umtata.

What was the original purpose of quitrent title in the Transkeian Territories? Firstly, quitrents were issued in areas where the residents 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, 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.

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 an arable lot, but there were more people in the Transkeian Territories than there were arable lots being allocated and, therefore, it was soon expanded 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 meant the allocation was deemed to have lapsed, removal of the defaulters and allocation to another. 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, otherwise the magistrate could refuse the application to continue the holder’s possession thereof.

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.

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 Caca’du, formerly Glen Grey, now fall under the prescripts of Proclamation R188 of 1969). Quitrents created under Proclamations 227 of 1898 and 75 of 1903 remain and do not fall under Proclamation R188 of 1969. Act 18 of 1936 recognises holders of quitrent title as “registered owners”. Therefore, quitrent titles issued in the districts of Gcuwa (formerly Butterworth), Nqamakwe, Tsomo, Idutywa, Cala (formerly Xalanga), Engcobo and Umtata are still legal today.
Second level of land right: registered permissions to occupy

Due to change in policy, surveys of quitrent lots had ceased entirely by 1923, and the rest of the districts making up the Transkeian Territories remain un-surveyed 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 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 plans attached to his registers indicating some form of relative position.

Third level of land right: land allocations by headmen

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 legalised 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.

Fourth level of land right: betterment schemes

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 Fig. 3). Quitrents and PTOs were ignored and holders were re-allocated into the new villages.

![Fig. 3: Settlement patterns of a betterment village on communal land. Photo: Mark Williams-Wynn.](image)

Fifth level of land right: 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 and Mamdani, 2002, p. 43). Some moved voluntarily; others, however, through forced removal were dumped on land of existing communities (Ralinkotsane, 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 African landowners.

Sixth level of land right: 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 breakdown 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 PTOs.

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 is also legitimate; so are registered PTOs. Betterment schemes forced people to live in villages and they, too, have a form of right. An African traditional community may control an area and members of the community may also have individual rights. 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 is a 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. By comparison, under the English common law system, there is much more emphasis in law on protecting the rights of the occupants, rather than just the title holder. We, however, live in a country where the law upholds existing land tenure. Therefore, while subsequent occupation must be considered, the 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. The Department of Rural Development and Land Reform will need to appoint a commissioner to determine who the successors in title of the deceased estates should be – in order to determine who the current owners of each quitrent title are.

References

[1] Act No. 25 of 1984, Glen Grey Act
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[3] Act No. 38 of 1927, Native Administration Act


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