

ZULU LAND TENURE AND DEVELOPMENT:
THE ADAPTATION OF CONTEMPORARY INSTITUTIONS

Catherine Cross
Clarissa Fourie
Cliff Bacon

Dennis Jenkins
David Scogings
John McLaughlin

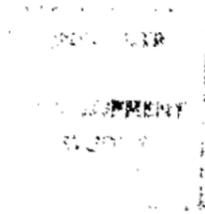
**Development Studies Unit
Department of Surveying and Mapping.**

DOCUMENT AND MEMORANDUM SERIES

Centre for Applied Social Sciences
Sentrum vir Toegepaste Maatskaplike Wetenskappe

UNIVERSITY OF NATAL
DURBAN

CASS.33/82



ZULU LAND TENURE AND DEVELOPMENT:
THE ADAPTATION OF CONTEMPORARY INSTITUTIONS

Catherine Cross
Clarissa Fourie
Cliff Bacon

Dennis Jenkins
David Scogings
John McLaughlin

April 1982.

<u>CONTENTS</u>	<u>PAGE</u>
INTRODUCTION: LAND TENURE AND DEVELOPMENT	1
1. Organization and Land Tenure in KwaZulu	3
1.1 Primordial organization and the land-holding cluster	3
1.1.1 The land-holding cluster in stable classical tenure	3
1.1.2 The cycle of cluster development	4
1.1.3 The emergence of open-modern tenure	4
1.2 Sovereignty and over-rights	5
1.2.1 Sovereignty and tenurial evolution	6
1.2.2 Diagram: Evolution of tenure	7
2. INDIVIDUAL RIGHTS AND CONSTRAINTS UNDER KWAZULU'S TENURE SYSTEM: A BRIEF SUMMARY	6
2.1 Right of Permanent allocation	6
2.1.1 Right of inheritance within the land-holding family	6
2.1.2 Right of allocation to other relatives or transfers	8
2.2 Rights of temporary transfer	8
2.3 Rights and restrictions regarding the use of land	9
2.4 Rights and duties involved in maintaining the rival land system	9
2.5 Issues in tenure which may impede development	10
3. PROPOSALS FOR REFORM OF TENURE	11
3.1 The environment for change	11
3.2 Emerging institutions favourable to development: Recommendations	13
3.2.1 Sale of land	13
3.2.2 Leasing arrangements	13
3.2.3 Encouraging productive land - Use	13
3.2.4 Urban fringe spontaneous settlement	14
3.2.5 Land as loan collateral	14

<u>CONTENTS</u>	<u>PAGE</u>
4. DEVELOPING A LAND RECORDS SYSTEM FOR KWAZULU: SURVEY AND REGISTRATION	15
4.1 Constraints on the selection of a land records system	15
4.2 The land Tenure System and the Land Records Unit	16
4.3 Viable survey and documentation procedures	17
5. SUMMARY AND CONCLUSIONS	18
5.1 Tenure Institutions	18
5.2 Land survey and land registry	19
FINAL REMARKS	21
FOOTNOTES	23
BIBLIOGRAPHY	27

INTRODUCTION : LAND TENURE AND DEVELOPMENT

KwaZulu's land tenure system is a critical issue in rural development, and crucial to development in agriculture. The 'communal tenure system' is condemned from all sides as the most serious obstacle holding back agricultural development in the rural districts, and efforts are being urgently pressed to make sweeping changes.

The view of the problem may be seriously over-simplified. The character of the indigenous land system is often misconceived, and the effects of arbitrary change are inadequately forecast or totally ignored.

The actual relevance of the land tenure system extends beyond agriculture alone, since the system of land rights structures the entire organisation of rural society. It is the land system which controls the admission of new households into the rural communities.

Unwise intervention may ultimately bring about the crippling or collapse of KwaZulu's rural organisation, which is now barely holding its own against the stress of economic and demographic change.

The point which must be debated is whether KwaZulu's indigenous land system in fact requires extensive administered change. Serious consideration has already been given to the question of KwaZulu land tenure.⁽¹⁾ New information is now becoming available which should be taken into account. To date, the possible role of existing indigenous tenure in supporting and promoting rural development has not yet been examined.

We will show that there are aspects of indigenous tenure which may be preferable to any foreign system of 'freehold', in that they may well provide equivalent advantages with far less accompanying disruption. The formalisation of indigenous tenure should therefore be debated as an important agenda in development policy.

To establish our argument, we will attempt to substantiate the following propositions :

1. Indigenous or traditional tenure is not 'communal';
2. Indigenous tenure as it stands does not appear to be a persistent and serious obstacle to development;
3. KwaZulu's tenure system is not static; it is rapidly adapting itself to the modern economy and it is developing an indigenous answer to 'freehold' rights;
4. It is unwise at this point to impose any planned artificial tenure system on the rural districts; and
5. A survey and registration system can be developed to meet the requirements of an evolving tenure system and contribute directly to regional development.

At the same time, the limitations of tenure change must be recognised. An effective tenure system can facilitate development, but cannot serve as a substitute for the factor of economic opportunity and wider political rights. Extension services, roads, markets and other elements of development infrastructure must be put in place. All the problems of development should not be dumped at the door of the tenure system.

In this situation, extreme caution is called for. The issue of land tenure is one of extreme sensitivity.

Effective solutions will require some pause for thought and planning, and full consultation on the part of all parties involved; policy cannot be thrown haphazardly at the problem. Above all, the evolving tenure systems of KwaZulu require a deeper and more quantitative understanding, since imposition should at all costs be avoided.

On these points a new debate should be opened, to bring the alternatives that are now emerging into clearer focus, and to establish what additional information will be needed to support any planned initiatives. There is an urgent need for more information on the indigenous tenure system. In particular :

- a. how the classical Zulu tenure system changes spontaneously over time; and
- b. how tenure is actually related to rural development.

To go forward on these points, we will submit preliminary recommendations on three levels :

1. on the form of the tenure system;
2. on the form of the survey and registration system; and
3. in relation to the supporting research initiatives.⁽²⁾

The purpose of this report is to raise issues and encourage debate. It does not offer a master plan; but the ultimate goal to be kept in view is the evolution and eventual codification of a new tenure system derived from both indigenous and Western elements, comprehending the present and future demands of land development.⁽³⁾

1. ORGANIZATION AND LAND TENURE IN KWAZULU*

The land tenure system in KwaZulu is usually described as 'communal'** Using this term conveys an impression of a formless pool of shared land, in contrast with what are thought to be modern or 'freehold' principles. This is essentially misleading.⁽⁴⁾ The essential point about KwaZulu land tenure is that it is not, and has never been, shared or 'communal'.⁽⁵⁾

We submit that it is necessary to develop a more appropriate set of terms to describe the evolving land tenure system in KwaZulu today. ⁽⁶⁾ Such terminology should take account of the vitality of the emerging changes which are radiating outward from the peri-urban zone. The following transformational model is presented here as a first attempt.

The actual control of land depends on the interaction of four organizational levels in local micro-politics :

- a. the individual household head;
- b. the extended-family cluster or 'descent group' under its senior kinsman;
- c. the local land-holding cluster under the senior kinsman of the founding descent group;
- d. the chief together with his supporting officials.

The land transfer process is arranged from the lower and middle levels, then legitimated higher up by the formal approval of the chief and indunas.

1.1 Primordial Organization: The land-holding cluster

1.1.1 The land-holding cluster in stable-classical tenure

The classical Zulu land-holding system is brought into being through the occupation of empty territory by a group of families belonging to one clan, who claim the empty land by right of first settlement. This first-settling descent group then accepts onto their land newly-arrived families of other clan-surnames. These new descent groups receive land of their own with agreed boundaries, placed at the margins of the primary land-holding. The rights of these new people are contingent on the continued consent of the first-settling group, whose approval is necessary before any further allocations of land can be made. (9,10,11)

* C. Cross, unpublished Ph.D. thesis, University of Michigan. Ann Arbor, Michigan.

** Dictionaries refer the definition of "communal" back to the root word "common; in common": "shared by or affecting all those concerned alike...";⁽⁷⁾ belonging equally to more than one, public, general ... a tract of open land used in common by the inhabitants of a town, parish etc; "in joint use or shared ... belonging to, open to ... the public".⁽⁸⁾ It will become clear below that outside of public grazing rights this is not an accurate description of KwaZulu's land-holding system.

This localized cluster, with the primary land-holders and their associated client families staying together (12), is the basic unit of classical local organization.* It is defined by land, by kinship, and by sequence of arrival. Underlying it is the assumption that the first settlers will be the most numerous group in the cluster, and are socially and politically senior in rank.

The head of the first-settling group assumes the status of leader of the local cluster as a whole, with authority over land. He then maintains an adequate apportionment of land to all cluster members over time by negotiating the boundary adjustments between the descent groups as families expand and the need arises, and as new families continue to arrive asking for land.

1.1.2 The cycle of cluster development

As the original cluster unit finally comes to contain too many family lines with separate land-holdings to be manageable, the client families which arrived earliest begin to claim 'owner-of-the-land' standing. This implies that they have held their land for generations, and attained the sovereign right to make their own autonomous decisions in land allocation. They accordingly start to grant land in their own right, and a new independent cluster-grouping comes into being. It is formally similar to the older parent cluster, but fitted closer together onto their smaller secondary land-grant.

This splitting process is triggered when cluster units come to contain too many people for their decision-making and conflict resolution mechanisms to work effectively. At this point, cluster units are able to reduce themselves to an organizationally manageable size by the process of splitting.

This repeating process, where new clusters continually split off from the land-holdings of older clusters which have become over-populated, constitutes the development cycle of the classical land tenure system. This mechanism allows an effective organisational response to the increase of population in the rural districts. Likewise, it provides for the fair re-allocation of available land, while at the same time recognising individual land rights and protecting these rights in perpetuity.

1.1.3 The emergence of open modern tenure

It is this flexibility in the land system that preserves the integrity of rural organization against the stresses of economic and demographic change. This local cluster organization is stable so long as the rate of entry by new families does not overwhelm the cluster's mechanisms for maintaining a workable internal land allocation.

* Called "primordial organization" because it pre-dates the formation of the Zulu nation. Structurally this comprises a cluster of related families, rank-ordered in terms of the sequence in which they arrived to join the cluster. One *isigodi* or tribal ward is usually composed of several such local clusters under the authority of an induna or other official.

In cases where a rising rate of immigration causes this to happen, the classical tenure system is tipped over into an accelerating state of feedback change, in which the traditional system is unable to cope with the increased rate of entry by new families, and new versions of local organization evolve to accommodate this rapid immigration.

In peri-urban areas within convenient reach of industrial employment centres, high immigration and competition for land develops, which shifts the balance of primary settlers and immigrants. The local cluster breaks up, and the area begins to transform through a sequence of intermediate forms towards the more individualistic and modern-oriented forms of tenure.

Rights have developed at this level which approximate an indigenous response to the requirements of change just as 'freehold' arose in Western systems, though some important differences remain.

1.2 Sovereignty and Over-rights.

The classical Zulu concept of land is that it is never anyone's unique property. There is always a complex layering of over-rights declining in strength and legitimacy from lineal relatives outwards to the boundary of the tribal community.^(13,14) In respect of this pyramid of over-rights, sovereignty can be defined as the effective power to make and implement decisions that cannot normally be blocked by another organizational level.

The concept of "over-rights" refers both to public rights to "environmental resources" (15) and to individual authority to carry out land transfers. It does not carry any community right to share use of land. Once a land-holding is formally granted, it cannot normally be taken from the owner, or even temporarily used by anyone else, unless the owner is prepared to authorize such use.^(16,17)

If a man has more land than he strictly needs, others may ask for some of it; but because the land is his, the land-holder has the right to refuse even if it is the chief who asks, though here he would usually agree out of courtesy. This is a system of individual control over land and land use rights which cannot accurately be described as 'communal'. The current use of this phrase seems to have arisen from the mistaken assumption that land is directly held by the chief in common for the entire tribe, and that the chief assigns all land use rights.* This is not the case, nor has it ever been in the past.⁽¹⁸⁾

The over-rights of other persons affect the land-holder mainly when he wishes to grant or sell some of his land to someone else. Any such transfer may be blocked by whichever interested parties hold over-rights at that stage. Community over-rights therefore do not allow public ownership or control of land other than public pastures. Instead, they limit land allocation, and partially control new

* The chief symbolizes the unity of the tribal community in regard to land, but only makes direct land grants in a minority of all cases; in a sample of 289 land transfers in one peri-urban district, the chief or his representative had made direct grants of land in 13, or less than 5 per cent.

transfers. When the phase sequence reaches the point where a landholder can transfer land without consulting or notifying anyone, individual sovereignty has been achieved.

1.2.1 Sovereignty and tenurial evolution

Which level of organization is actually exercising sovereignty in rural land allocation depends on how far along the sequence of evolutionary change the given locality may be. The path to understanding the emergence of the modern tenure forms lies through an understanding of changes in the level of sovereignty.

In classical Zulu land organization, sovereignty lies with the cluster as a decision-making group. This form of organization is identified here as *stable-classical* tenure; while the new forms of tenure system which develop as sovereignty devolves toward individual control of land can be called collectively *open-modern* tenure systems. The chart which follows overleaf summarizes this general sequence of phase changes.*

2. INDIVIDUAL RIGHTS AND CONSTRAINTS UNDER KWAZULU'S TENURE SYSTEM: A BRIEF SUMMARY **

2.1 Right of Permanent Allocation

2.1.1 Right of inheritance within the land-holding family

Men obtain land by right from their fathers, by allocation or by inheritance. A man can only get land if he is married, otherwise he does not qualify; and only with land does a man become a full member of the tribe. The KwaZulu Legislative Assembly has now passed legislation enabling a man's daughters to inherit his land if he has no sons. Land may also be permanently transferred from one branch of a descent group to another branch which is land-poor.

The chief and induna are only notified when land is given to offspring: they conduct the formal public placement, but take no actual role in deciding the allocation of the extended family's land.

* It should be noted here that the sequence of tenurial evolution described in this section need not be uni-directional. The new emerging tenure forms are all transformations of stable-classical tenure, but they constitute evolutionary responses to specific local economic conditions. The general trend of change appears to be, in KwaZulu as elsewhere in Africa, toward the inevitable emergence of a more individual sovereignty in land, with a progressive lessening of community and group over-rights in disposal of land.

** The rights discussed in this section are those popularly recognised in KwaZulu today. These will not necessarily be those set out in the South African Government Gazette Proclamation No. R.188, 1969, Bantu Areas Land Regulations or any of the other relevant Government Acts.

1.2.2 EVOLUTION OF TENURE

TYPE OF ORGANIZATION	STABLE-CLASSICAL ORGANIZATION	TRANSITIONAL CLASSICAL	OPEN - MODERN ORGANIZATION		
	PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5
SEQUENCE OF TENURE PHASES	STABLE CLASSICAL TENURE	INDEPENDENT DESCENT GROUP TENURE	SEMI-INDEPENDENT HOUSEHOLD TENURE	SOVEREIGN HOUSEHOLD TENURE	INDEPENDENT INDIVIDUAL TENURE
LEVEL OF SOVEREIGNTY	Cluster head as head of the senior descent group consults with other heads of households	Descent group heads consult with other descent group members; neighbours have right of refusal	Household heads responsible for land transactions; subject to neighbours' and previous holder's sanction	Household heads responsible for land transactions; subject to previous holder's sanction only	Individual level: household members can hold and trade in separate land rights
ENTRANTS	Households related by marriage to resident descent groups - rate of entry by outsiders low and intermittent	Mostly relatives, and a growing number of outsiders; entry rate is moderate and continuous	Many unaffiliated households with-out local relatives; more outsiders; entry rate increasing	Outsiders predominate; individual households highly mobile; accelerating turnover rate for land rights	Free interchange controlled by employment patterns and other economic factors
TRIGGERING CONDITIONS FOR PHASE CHANGE	Initial settlement and initial re-allocation to related descent groups	Increase in demand for land caused by immigration, due to better transport access to urban employment area	Relaxation of organizational structure allows faster and easier land transfer	Rate of sale of land increases, accepted even by tribal authorities	Close of rural phase sequence; open urban-oriented sequence
CHARACTERISTICS:					
ORGANISATION BASED ON	Cluster of related descent groups in rank ordering	Descent groups in a looser neighbourhood context	Single homestead units in a neighbourhood	Independent homestead unit	Spontaneous/urban settlement generally under a chief
ALLOCATION PATTERN	Orderly	Less orderly	Rapidly departing from pattern	Unstructured, becoming commercially determined	Individual sales without official sanction
VALUE ORIENTATION	Conservative and traditional	Christian and educated families appearing	School attendance general	Growing aspirations to education and employment	Modern and urban
EMPLOYMENT LEVEL	Intermittent employment among men	Steady employment becoming established, women occasionally work	Men participate in labour market, women commonly work	Increasing participation by men, women and adolescents	General for men and unmarried women
MIGRANCY PATTERN	Long cycle	Cycle of home visits shortening	Monthly/weekly visits home	Weekly commuting	Approximates urban patterns
LOCAL NON-SUBSISTENCE COMMERCIAL ACTIVITY	Low level and unevenly distributed	Entry of small local enterprises and informal sector activity	Spreading commercial and informal sector enterprises	Multi-sectoral extensive economic activity, oriented to modern perspective	Intensive participation in formal and informal economic activity
SIZE OF SOVEREIGN LAND UNIT	2-10k ² for the local cluster as a unit*	0,5-1,0k ² for the descent-group land-holding*	500-1,000m ² for a household land-holding*	100-500m ² per household (variable access to cultivated land)	50-250m ² per household (residential site with/without garden)
NUMBER OF HOMESTEADS	10-35	5-10	1-2	1	1

* residential sites plus fields plus use of grazing areas

2.1.2 Right of allocation to other relatives or strangers

A land-holder has the right to bring in additional people chosen by him, by formally allocating them a piece of his own land. It is very common for heads of household to grant land either to their sisters' husbands or to their daughters' husbands, and not uncommon for land rights to be transferred to other relatives or to unrelated friends. The chief may also be asked by strangers for land; if the chief has no land through expropriation or by default of an heir, the chief may ask a land-holder with a large holding to settle the new family. In the modern context, the system is becoming more flexible. Transfers of land by sale have become common but are still not official; sale transactions are therefore arranged privately between the parties involved. Whether the approval of the neighbours or the previous owner is required depends on the tenure phase of the locality.

Particularly in close peri-urban areas, where land settlement activity is very heavy, only a low level of temporary group action* is required to authorize land re-allocation. These evolved tenure systems encourage the establishment of individual land-holdings. (19)

2.2 Rights of Temporary Transfer

Land is held in trust for future generations; therefore unused land 'belongs' to families, who are maintaining their right over it to allow the expansion of the family at a later date.

The KwaZulu Legislative Assembly has directed that land not used for two years for residential or cultivation purposes, may then be expropriated and re-allocated by the chief. The use or non-use status of fallow land under casual use as grazing is a point of conflict in many districts, and therefore a point where change in land usage control can enter the system. The trend is for recognized categories of use to become tighter as land becomes more scarce.

Land may also be lent to others in the community. Temporary transfer is made for a year at a time, and the agreement renewed on a fairly casual basis. Under stable classical tenure, the recipient should give the owner 'something'. Under emerging usage, the owner is paid, according to a pre-arranged agreement, a cash sum of about R10 a year.

Land may also be either temporarily lent or permanently transferred within the family. Any person not in a position to cultivate may temporarily transfer full or partial control to a relative. While the relative is cultivating this land, he has full rights to the produce.

It is also becoming common in peri-urban districts for accommodation to be rented.

* "a temporary alliance of distinct parties for a limited purpose".
J. Boissevain. 1974.

2.3 Rights and Restrictions regarding the Use of Land

The uses of land holdings are :

- a. Residential: individual rights are allocated within the family, and also within the descent group. There is no restriction on what structures may be built. Semi-permanent and permanent buildings of substantial construction, which may require a capital outlay anywhere between R50 and R5 000, are becoming increasingly common, especially in peri-urban areas.* Under rural land law as it is popularly understood, and apparently under the Natal Code as well, actual dwelling structures are privately owned and may be publically sold.⁽²⁰⁾ The common practice in peri-urban areas is to sell the buildings together with an agreed and designated plot of land on which they stand, as a residential unit; but it is also possible, in theory and in practice, to sell the house alone.
- b. Arable: agricultural land which is under actual use, with crops standing, is entirely private. Under traditional tenure once the crop is harvested, the use-right to the stalks remaining is available to the public for winter stock-grazing, subject to the right of the land-holder to precedence and to consultation. Contour ploughing is enforced.
- c. Grazing: there are grazing rights in two main types of pasture land: formally designated public pastures, and privately held land made available for public use. Larger uncultivated areas belonging to individual land owners often become slowly accepted as public grazing. In addition to these main types, smaller grassy tracts which are part of an allocated land-holding are often used for private summer grazing by the land-holding family. Free access to such small privately-held grazing areas can be arranged only by individual agreement. It is only in regard to the formally designated public pastures that rural land rights ever assume a form of open general access that can accurately be called 'communal'. Over time even the formally delimited public pastures are encroached upon by fields belonging to individuals.

Under modern conditions of drastic population increase, in many parts of KwaZulu there are serious boundary conflicts which lead to faction fighting.

2.4 Rights and Duties involved in maintaining the Rural Land System

Seeing to the compliance with the rules and laws of tribal tenure is the duty of the chief and the indunas. Tribal assemblies over time decide on tribal laws which remain unwritten, and are changed under new conditions. Once a decision is made, the chief and his officials

* Such semi-permanent and permanent housing has all but superseded traditional grass-and-pole architecture in most parts of KwaZulu, in a development which reflects the increasing stability of land rights. See Frescura, 1981, 53-4. 67-9.

see that the law is upheld, and fine people in tribal courts if it is not. As each tribe's law is arrived at through consensus, it is also enforced by neighbours' disapproval.

However, these levels of control and authority can also be invoked to facilitate and sanction change.

The rights and duties of the chief in this regard include:

1. Formally approving of land re-allocations, and authorizing the official placing of new land-holders.
2. Expropriation of land left unused; the present limit is two consecutive years non-use.
3. Arbitrating disputes and trying cases.*
4. Confiscation of any land or livestock which becomes subject to intractable disputes.
5. Providing for tribal assemblies and relaying the concerns of the people to the KwaZulu Government.
6. Regulating the use of environmental resources by the people.**

As a final sanction on anti-social behaviour, the chief can transfer a family from one region to another within the tribal area, or withdraw tribal citizenship and banish the family from the tribal area completely if they have been involved in habitual theft, or in initiating faction fighting.

2.5 Issues in Tenure which may Impede Development

Within commonly accepted development principles, certain attributes of the tenure system might appear as potential obstacles to development. However, not enough is known at present to be sure of the relation between development and possible problems in the tenure system. In each case more data is needed about the detailed relationship between tenure rights and land use to enable us to say with certainty what the effects are,*** and whether they can be called detrimental or will require definite remedies.

* Magistrates also have a role in land disputes.

** "Environmental resources" includes waterpoints, public pastures, wood collecting rights, clay, reeds, and others.

*** Fallowing land, for example, may help in maintaining soil structure and fertility, or may encourage erosion, depending on the local situation. Traditional KwaZulu cultivation is premised on an alternating fallow cycle; it may or may not be sound practice to structure tenure so as to encourage annual use of soil in areas where modern agricultural practices are not followed. See W. Allen, *The African Husbandman*, 1965, p. 5-6, 36-7.

The KwaZulu Government has accepted the usefulness of capital-generating strategies in its development plans. The chiefs generally are not opposed to development, and development enterprises are allowed on tribal land if they are seen to be of use in the community. But at the same time, the tribal authority structure, through its regulatory functions, has influence over the pattern of growth in land settlement throughout the peri-urban area. In some rural districts this may affect the agricultural cycle as well, including the timing of ploughing and planting. Such authority could possibly be used obstructively in some cases, and may represent a tenure problem.

Another potential problem lies with the principle that every family is rightfully entitled to land. This is a factor which encourages a decrease in the size of land-holdings which may affect economic cultivation. The need for research into these problems is very evident.

The issue of grazing rights on both public and individually-held land is an acknowledged area of difficulty. There is a known correlation with environmental degradation, and the question of uneconomic use of the land is relevant as well. But the constraints affecting public grazing rights are not well known, and these are also prime areas for research. In some districts where competition for valuable arable or residential land exists, stock-farming has tended to decline in favour of the more intensive and profitable land uses. Where economic opportunity to use the land does exist, the tenure system is capable of responding to incentive, and denying the argument that land which is free will not be economically used.

A still more serious problem may be the present difficulty faced by individuals in raising development loan capital. Money can be raised from KwaZulu Development Corporation if it can be shown that land is being improved, and a man has money in a bank, or other institution; but there is no existing provision in the legal system or the tenure system which could allow a land-holder to use his rights in land as collateral for obtaining a development loan. The use of houses as loan collateral, on the grounds that they are privately owned and may be legally transferred by contract, may possibly prove viable, but the position is not clear and enabling legislation may well be required. The role of land rights in capitalizing local development is one of the main issues which must structure research into KwaZulu tenure in the near future.

3. PROPOSALS FOR REFORM OF TENURE

3.1 The Environment for Change

- 3.1.1 Any reform of rural tenure in the interests of promoting development will largely stand or fall by the economic opportunities provided at the same time. The tenure system has already demonstrated a striking capacity to adapt to economic change in areas where economic incentive is strong; but without economic space into which the rural economy can expand, no amount of tenure reform will be able to produce real results. We submit that change of tenure cannot of itself generate economic opportunity.

- 3.1.2 It is important not to offer programmes which are not thoroughly researched or properly funded,⁽²¹⁾ or where proper control cannot be maintained and which are therefore likely to fail. It is unfair and dangerous to ask people to commit themselves to options which might collapse, or which might not deliver the benefits promised; and this applies particularly to ambitious land-use planning or "resettlement".
- 3.1.3 Finally, it is important wherever possible to adhere closely to emerging usage. If efforts at reform move away from actual grass-roots practices, the only result will be to cause the rural people to look for ways of avoiding compliance.

Development perspectives today rest on avoiding imposition.⁽²²⁾ Numerous cases come to mind where land systems have been imposed requiring the registration of all transactions. The common outcome is eventual failure, as such restrictions are ignored, and common usages continue unabated.

It is in this respect particularly that the possible disadvantages of existing "freehold" tenure areas are relevant.* In districts which are now under freehold, title to land appears from available evidence to be so strongly vested in individuals that the community interest may not be represented effectively. Absentee landlordism appears to be a serious problem in Clermont and similar areas, while in rural districts such as at Adams or Shongweni the landholders commonly rent out plots to paying clients, but only rarely are willing to actually transfer title to the occupier. Occupiers therefore tend to remain perpetual clients, while title to freehold land characteristically passes only to the actual heirs of the landholder.⁽²³⁾ This is a system which can be more rigid in application than any form of classical or open-modern tenure, and which tends to exclude mobile families from access to land rights.

In contrast, under open-modern tenure forms, land tends to be readily sold by families who cannot productively use their entire holding to newcomers who receive full rights, subject to the remaining community sanctions which work to prevent the accumulation of large holdings by non-residents. It therefore appears to be substantially easier for a family to obtain full rights to a landholding under open-modern indigenous tenure than in areas presently under "freehold". These are matters which urgently require to be researched before large-scale change is undertaken, particularly when it is borne in mind that the full meaning and implications of "freehold" tenure are not always clearly perceived by rural dwellers at present, whose ideas on land are often influenced by existing indigenous tenure. Not enough is known at present to be sure that rural freehold tenure would encourage development in every case.

* Evidence on these points has been presented to the Buthelezi Commission by Mr. A.B. Colenbrander, a KwaZulu administrator of long experience, relating to the areas of Adams Mission and the Motefe tribal district at Nqutu, where freehold and/or agricultural land planning schemes were introduced, during and after the 1920's. (Buthelezi Commission Archives verbal evidence file, A.3. Colenbrander, 4 June 1981.)

3.2 Emerging Institutions favourable to Development: Recommendations

The list below is not offered as either definitive or exhaustive; rather it gives an indication of some possible changes which may be looked into:

- 3.2.1 *Sale of Land.* The selling of land on the basis of informal transactions has now become a common practice over wide areas of KwaZulu. Institutional provision for sales could encourage development. If it is promulgated that sale of land is legal, those transactions now done secretly can be witnessed in public, and where desired can be surveyed and registered. The formal requirement for new allocations to be sanctioned by the chief or induna and other interested parties should be maintained and can become a basis for registry.
- 3.2.2 *Leasing Arrangements.* A system of exchange and informal leasing of unused land presently exists, in some instances with monetary payments. This system could be institutionally recognized; the right to use the soil could be open to trade, with the option of official recording and even surveying of plots. Land held by people who are not in a position to cultivate it would more easily be made available for productive use, and families with the means to exploit the land could obtain economic holdings without the need to impose anything unfamiliar on the tenure system. The distinction between sale and leasing transactions should be plainly established, since there is now in certain areas a widespread belief that long-term rental becomes equivalent to sale, which may now be exerting pressure toward the sale of land which in many cases the owner might otherwise prefer to lease.⁽²⁴⁾
- 3.2.3 *Encouraging Productive Land Use.*
- a. Cultivation: the present system whereby fields not used for two years are re-allocated should be adhered to. Where environmental degradation can be ruled out, a system of relatively small fines might be added to ensure that fields don't lie fallow for more than a year, and to encourage leasing. In possible cases of unavoidable hardship, local officials should retain their customary discretion.
 - b. Stock-farming: Livestock grazing is probably the single most intractable problem facing development planning in those areas of KwaZulu where stock-farming is a preferred strategy. There is a connection between land tenure and grazing, though level of stocking does not fall within our frame of reference. The community right to grazing of fields in winter might be made subject to the right of the individual land-holder to fence his holding. Beyond this, much more research work would be needed before submitting detailed recommendations.

- c. 'Betterment' areas: If the tribe decides to demarcate an area for betterment, survey should be made available to record all relevant boundaries, and from the outset it could be recognized that the chief may invoke his prerogatives to discipline any participating land-holder who does not fulfil his commitment.

3.2.4 *Urban Fringe Spontaneous Settlement.* The present* approach to housing provision has failed in both human and economic terms; funding has run out for township development. Viable development here will require research into the acceptable minimum size of a residential site, so that land use control can be instituted to govern the growth of informal settlement. The need for both peri-urban growth and productive agricultural land must be recognized, and a workable relation between the institutions of tribal authority and the expansion of informal settlement must be researched.

3.2.5 *Land as Loan Collateral.* On the basis of what is presently known, there appears to be no direct correlation between 'freehold' tenure and credit availability in KwaZulu.** The focus of the inquiry should be the form of the relationship between land tenure and credit facilities. What needs to be identified is what the credit institutions actually require: whether it may include investment security, estimate of the risk involved, a market for foreclosed properties, or other considerations. It is important to determine whether the financial institutions have legitimate concerns in these areas. If so, then changes in the tenure system may be considered; but if not, then change in the financial agencies might be preferred. Credit unions or similar institutions might be a possibility. Whatever is done here will undoubtedly require enabling legislation.

3.3 Humanising Reform

Before carrying through any policy recommendations, thought should be given to anticipating their impact and to making provision for possible hardship they may cause - both out of human consideration, and to avoid building up resentment among the people the system is intended to serve. Particularly in regard to facilitating the convertibility and transfer of land, it is important to escape creating a welfare problem of landless poor.

* Local experiments in self-help housing have been introduced recently at Mfolweni and Inanda which indicate a possible new flexibility on the part of the authorities.

** The Buthelezi Commission's representative from the financial institutions, Mr. D.C. Grice, stated at the 3rd Plenary Session (8th to 18th July 1981) that the issue of loan collateral in KwaZulu was tied to the perceived political status of "independent states" with relation to KwaZulu as in Transkei; and were not wholly governed by the issue of freehold land ownership. The statements were offered as comments to Bishop Alpheus Zulu when he remarked that he had been unable to obtain loan collateral against his unencumbered freehold property in Clermont.

Under the indigenous tenure system, it is assumed that every member of the tribal community is entitled to a residential site, and access to the complete package of environmental resources, including arable land. If the more convertible tenures serve to cause the poor to sell, pledge or otherwise lose their entire land right, change in tenure may create more problems than it solves. Possible concessions which could be researched include :

1. Establishing a minimum subsistence allotment for poorer members of the tribal community, and stipulating that land-holdings below this size may not be traded or sold without either showing alternate residence rights, or meeting conditions which would exclude hardship.
2. Allowing a defaulting debtor's descent group or neighbours a first option to redeem his land rights pledge before carrying through any form of foreclosure.
3. Consideration might be given to relaxing fallow land fines in the case of poor families. Implementation of reforms or restrictions related to development must be carried out subject to the principle of *ubuntu-batho* with consideration allowed for the poor.

It is important to recognise that one of the main factors structuring rural land transactions is the fear by weak house-holds that their interests can be over-ridden by stronger neighbours. The poor and weak are numerous in the rural districts, and have no future to look towards in the urban areas. Acceptability of tenure changes to the rural people can be improved by deliberate planning based on adequate research on these points.

4. DEVELOPING A LAND RECORDS SYSTEM FOR KWAZULU: SURVEY AND REGISTRATION

4.1 Constraints on the Selection of a Land Records System

The decision has apparently been taken to move towards the development of a modern land records system for KwaZulu. The planning of a system which would provide information pertaining to the requirements of land law is apparently now in progress.

A modern land records system has two basic functional elements: a surveying component, to provide the unambiguous delimitation of each land parcel; and a registration or information-recording component, to record relevant data about each land parcel and the interests pertaining to it.

The full information capacities of any form of land records system for KwaZulu will not come into being for a number of years. Nevertheless it is now, before survey and registry are undertaken, that the decisions must be taken to lay an adequate foundation to allow the full exploitation of the system in years to come.

The data which should be recorded in a development context will probably not be limited to strictly legal interests in the land but will also include information in other categories such as land use data, information on private buildings, community facilities, informal road development, etc. Thought should be given to the feasibility of establishing a multi-purpose land-records system in preference to the more limited legal-oriented type. The multi-purpose system is a more flexible and powerful instrument, capable of providing information pertaining not only to the requirements of land law, but also important data in the fields of land management, planning, statistics and economics. (25, 26, 27)

To assess the future land-related information requirements for KwaZulu's development planning, in relation to the probable level of available funding, both feasibility studies and basic research should be organized now. What needs to be determined is which land-records system would be cost-effective in the overall long-term-development context. Whatever the form of the land information system ultimately chosen, the inputs necessary to get it organized must begin now, and will represent a critical investment in KwaZulu's future.

4.2 The Land Tenure System and the Land Records Unit

Any land records system must be based at the institutional level. To develop an appropriate land-rights survey and registry system, the existing tenure institutions and the political and social system to which they are adapted must be taken into account. The determinants for establishing a framework for survey and registry are not set by the survey process itself, but by KwaZulu's needs in the context of integrated regional development. What will be required from the research enterprise is to clarify these needs and assign priorities.

Against this background the most immediate problem is the structuring of the land-records parcel, the unit against which information is recorded.

We have shown that the ground-level processes by which land allocation is traditionally organized in rural KwaZulu are comparatively fluid. Area boundaries only reach a comparatively stable long-term situation at the level of the *isigodi*, or tribal ward headed by an induna.⁽²⁸⁾ To attempt to delimit boundaries associated with tenure interests below this level, on a continuous basis as required of any land records system, will probably prove not only to be unfeasible from the standpoint of time and expense, but also difficult to justify in the context of the prevailing tenure system.

The *isigodi* itself could therefore conceivably be the most meaningful land-parcel against which to register interests in land, at least in districts under conservative tenure arrangements and in the initial stages of land records system development. Before taking such a decision, however, further investigation would be needed.

Using this approach, a possible procedure would be to record through

The data which should be recorded in a development context will probably not be limited to strictly legal interests in the land but will also include information in other categories such as land use data, information on private buildings, community facilities, informal road development, etc. Thought should be given to the feasibility of establishing a multi-purpose land-records system in preference to the more limited legal-oriented type. The multi-purpose system is a more flexible and powerful instrument, capable of providing information pertaining not only to the requirements of land law, but also important data in the fields of land management, planning, statistics and economics.(25, 26, 27)

To assess the future land-related information requirements for KwaZulu's development planning, in relation to the probable level of available funding, both feasibility studies and basic research should be organized now. What needs to be determined is which land-records system would be cost-effective in the overall long-term-development context. Whatever the form of the land information system ultimately chosen, the inputs necessary to get it organized must begin now, and will represent a critical investment in KwaZulu's future.

4.2 The Land Tenure System and the Land Records Unit

Any land records system must be based at the institutional level. To develop an appropriate land-rights survey and registry system, the existing tenure institutions and the political and social system to which they are adapted must be taken into account. The determinants for establishing a framework for survey and registry are not set by the survey process itself, but by KwaZulu's needs in the context of integrated regional development. What will be required from the research enterprise is to clarify these needs and assign priorities.

Against this background the most immediate problem is the structuring of the land-records parcel, the unit against which information is recorded.

We have shown that the ground-level processes by which land allocation is traditionally organized in rural KwaZulu are comparatively fluid. Area boundaries only reach a comparatively stable long-term situation at the level of the *isigodi*, or tribal ward headed by an induna.⁽²⁸⁾ To attempt to delimit boundaries associated with tenure interests below this level, on a continuous basis as required of any land records system, will probably prove not only to be unfeasible from the standpoint of time and expense, but also difficult to justify in the context of the prevailing tenure system.

The *isigodi* itself could therefore conceivably be the most meaningful land-parcel against which to register interests in land, at least in districts under conservative tenure arrangements and in the initial stages of land records system development. Before taking such a decision, however, further investigation would be needed.

Using this approach, a possible procedure would be to record through

the incuna in charge a list of the descent groups holding land rights within the *isigodi*, and possibly also a listing of individual land-holders at this level without spatially delineating their holdings. In addition, other types of planning data could be recorded for the *isigodi* at the same time.⁽²⁹⁾ Specific tenure interests or ownership rights could be spatially recorded within *isigodi* boundaries on a voluntary basis. Individuals or descent groups who decide they want their land rights formalized and placed on register would obtain the consent of other interested parties locally, and then submit a request for the land-holding to be surveyed. Such tenure interests could then be re-registered against the secondary level of recording unit so created.*

4.3 Viable Survey and Documentation Procedures

The actual procedure of survey and documentation could be substantially simplified by the use of aerial survey, and further economies could possibly be achieved by integrating new land records mapping programmes with present orthophoto mapping activities.**

The immediate objective of the survey will be to establish easily recognizable boundary markers on the ground, and then to translate these boundaries from the ground onto some paper form (map, plan, or photograph) which can be easily read or interpreted, and can offer security of title and serve as the instrument of efficient, fair, and just settlement of disputes.⁽³⁰⁾

Large scale aerial photographs would provide an economic and efficient instrument where large continuous areas are to be surveyed. A print of the photograph with the particular *isigodi* clearly shown could be used as the document for registration of an owner's holding within that *isigodi*. A second copy could be presented to the owner as certification of his rights. For the owner's benefit, endorsements, conditions, and certificates could conveniently be recorded on the reverse sides of the prints. For security, a second copy of the negative could be produced and housed separately for retrieval in case of dispute.

It is suggested that it is possible to involve the prospective owners and their families by making it a condition of registration of title that the owners themselves mark the boundaries, by means of visible markers acceptable to their neighbours and to the surveyor before the scheduled date of aerial photography.

* Whether such formal registry of ownership would be sufficient for financial institutions to accept in relation to questions of collateral would probably require enabling legislation. This is a topic which lies beyond the scope of this submission. There will in any case be a need for legislation covering land records systems initiatives in KwaZulu.

** Orthophoto mapping refers to any aerial photograph that also serves as a map.

A suitably qualified surveyor would obviously have to visit the sites, to deal with the cases where boundaries are not clearly visible and also to verify that what has been interpreted as the boundary is in fact that recognized by those concerned. A fair amount of field annotation is envisaged. The work load and the expense would be considerable. Existing boundaries and survey legislation should be reviewed in this connection.

Where an indigenous tenure system has existed over many years, especially in the more traditional phases of tenure, the establishment of an acceptable and viable delimitation may prove very difficult and time-consuming, though hopefully not impossible to implement. To impose a rigid system of boundaries and ownership on a people used to a system with over-rights, without their agreement, would be disastrous. We have tentatively suggested that a multi-purpose system of land records should be looked into for KwaZulu. If adopted, such a system would constitute a more comprehensive and more advanced type than any system presently available in the rest of South Africa.

5. SUMMARY AND CONCLUSIONS: DEVELOPING LAND RIGHTS

This report has attempted to identify some critical issues connected with land tenure and land registry. It now remains to ensure that unforeseen problems do not flare up on the blind side of planning, and jeopardize the entire enterprise of formalizing and registering land rights in rural KwaZulu.

5.1 Tenure Institutions

Though KwaZulu's land tenure system has not yet been extensively studied, enough is now known to make it clear that the concepts of 'freehold' and 'communal' are not accurate in the sense in which they are currently applied. The use of these terms involves a danger, since they imply a specific agenda. Substituting 'freehold' rights for the existing tenure system will not, as commonly assumed, necessarily improve the socio-economic adaptation of KwaZulu overnight. It has yet to be demonstrated that 'freehold' would be more effective in terms of development than the individual rights that have been evolving in KwaZulu, or that 'freehold' would be acceptable as collateral security.

We have therefore proposed a terminology for KwaZulu's tenure based on the balance between sovereignty, or final control over land use and allocation, and over-rights, which are the legitimate claims of interests within the community. We have also suggested that this balance changes as tenure evolves, allowing for increasing individual control over land. This evolutionary trend is expressed in the contrast between *tribe-abstract* and *open-modern* systems of tenure in KwaZulu.

The findings which we have presented in the first two sections of this report should serve to demonstrate that KwaZulu tenure is not static. It is a highly dynamic and adaptable system capable of providing for

fully exchangeable land rights held on an individual basis, while still preserving the authority of tribal government to see that the interests of the community at large are not thrown away in a rush of commercial development.

An important property of indigenous KwaZulu land tenure is its flexible capacity to prevent the build-up of imbalances in access rights to land which would otherwise be an inevitable consequence of population increase. To achieve this, the ground-level processes by which land allocation is organized remain relatively fluid over time. Boundaries exist, but are subject to re-adjustment at need. This system is self-regulating and in its present form it causes no administrative burden.

If a rigid survey were imposed, this re-adjustment capacity would be cut off or stunted. Inequities in access to land would develop rapidly, in advance of the capacity of the regional economy to absorb the rising numbers of rural people who would be without land and largely excluded from the subsistence economy. It follows that undertaking a KwaZulu land survey without taking into account the important regulatory capacities of the indigenous tenure system would almost certainly generate serious unintended consequences.

In addition, the pattern of existing tenure rights, as they shift from stable-classical to open-modern, does not substantiate the contention that traditional tenure blocks development. Any existing rights which hold back the thrust to modernisation tend to be pushed aside by the forces of economic change. Land rights, always transferable, become freely exchanged under modern forms of tenure and take on economic value. Institutional practices prevail which allow for the sale, loan, exchange, and lease of land itself, and for separate use-rights to the land.

In summary, indigenous systems are already in existence which seem to cater for the needs of development in a modern economy, while still providing the traditional functions of equitable land re-allocation and social control. It must be questioned whether any new system introduced from outside could do as well in providing both these goals, with minimum disruption of settlement, organization and rights, as do the new indigenous systems.

5.2 Land Survey and Land Registry

Survey and registration should take a form which can be presented as an exercise to give people more than they already have in terms of rights and security, not as a set of centrally-inspired measures taking away existing rights. We tentatively suggest the survey of fixed micro-political units as the first level of registration for a land-records system. If this proposal is adopted, a properly surveyed base-level map of tenure interests will be established and other land-related data relevant to planning may be recorded. In addition, a step could be taken toward establishing the credibility of the survey operation.

Every effort should be made to approach the enterprise of land survey and registration with aims which are realistic, cost-effective⁽³¹⁾ and capable of being achieved in terms of a realistic budget.

Instituting survey at the field level, which would involve parcels of a feasible size for initial registration, with the smaller individual holdings to be surveyed on request when demand warrants, would be easier to fund than an attempt to survey every individual land-holding in KwaZulu in pursuit of immediate 'freehold' tenure.

We have argued above that land tenure is not a dead or static entity. Rather, tenure is a living system and the process of evolving land rights is itself an aspect of development. The interrelationship between tenure and development should be continually monitored so that a clear line for development can be kept in view.

In the area of survey and registration in relation to development, any land records system will have to be structured to take account of both policy issues and practical problems. The role of land-related information in the development of KwaZulu will need to be determined and the techniques of survey and registration adapted to the requirements of the evolving tenure system.

To do this, we suggest that the involvement of surveyors at an exploratory level be considered for areas of the following types, where pioneer multi-purpose land records system development might be carried out at the level of the individual land-holding:

1. New settlement, resettlement, or 'betterment' areas;
2. Coastal districts where sugar-cane is a viable crop, and agricultural land is becoming economically viable;
3. Peri-urban districts with rapidly evolving open-modern tenure forms, where the population is most strongly integrated into the Natal regional economic structure and residential land is becoming valuable.

In connection with this type of project, or at other points within KwaZulu, research might also be done to clarify the dynamic relationship between tenure and development. In particular, such issues as the possible role of the tenure system in a policy toward managing the growth of informal settlement in the inner peri-urban districts, and the influence of tenure phase on the cultivation of specific economic or subsistence crops appear to be areas of immediate concern. Rural agricultural districts and the near-urban residential districts are likely to have their own specific characteristics in terms of tenure and development, which should be determined in order to help define the land records system and gain insight into land management problems.

Research at this level into the evolving situation on the ground is the only realistic way to establish the actual information value of any land records system, and to monitor the impact of land registry on

KwaZulu's society and economy, while keeping in step with the requirements of a developing region.

In addition, a basic research program into local variations in the evolution of tenure should be considered, and efforts made to determine attitudes toward survey and registry in different areas. We do not now know the distribution of the different tenure phases, or of individual-oriented institutions such as sale and leasing.

Lastly, the relationship between land tenure and the possible use of land in serving as collateral security in raising development loans should be thoroughly explored. To date, not even the possession of unencumbered freehold tenure has been automatically acceptable in guaranteeing loans. An investigation of this nature might well need to bring information on developments within the existing tenure system to the attention of the financial community and survey profession, so as to determine the extent to which financial requirements can be satisfied, and to provide data for framing any possible legislation which may be decided upon.

Final Remarks

Finally, the effective development of KwaZulu's resources can be served by making the best use of the institutions which provide sources for change. There are four levels:

1. from above, through legislation passed in the South African or KwaZulu legislatures;
2. through the regional tribal authorities, which may be involved in land registration;
3. through the regular tribal assembly meetings which provide for open debate and public resolution of grievances or new procedures;
4. at the grass-roots level, where the accumulated decisions taken by individuals in land-related matters gradually result in a shifting of customary usage.

Such decision-making institutions as the right of the tribal authorities to expropriate unused or disputed land, can help to underpin development within the system. By operating at these levels, imposition would be avoided and conflict and disruption of lives minimized. The simplest and most viable approach must be to work within the evolving system.

Catherine Cross

Centre for Applied Social Sciences,
University of Natal.

Clarissa Fourie

Inkatha Institute

Professor Dennis Jenkins

Department of Surveying and Mapping,
University of Natal.

Professor David Scogings

Department of Surveying and Mapping,
University of Natal.

C.J. Bacon

Department of Surveying and Mapping,
University of Natal.

Professor John McLaughlin

Department of Surveying Engineering,
University of New Brunswick.

April 1982.

FOOTNOTES

1. FINAL REPORT OF THE SELECT COMMITTEE ON LAND TENURE IN KWAZULU; UJundi, 1976.
2. It is important to note that this report deals with the development of indigenous tenure in districts where no artificial tenure system has been imposed; areas which have been resettled or which have been subject to agricultural land-use planning are therefore excluded from its brief.
3. The study of KwaZulu's land system is now expanding rapidly. All relevant data are not yet in; the views we have advanced in this report are based on the state of the field at this point in time, and hold until further information may require adjustments.
4. V.G. Sheddick commented in 1954 in his study of Lesotho land tenure, "If the notion of communal and individual tenure, as characteristic respectively of primitive and Euro-American societies in their totality, still persists with the layman, it may now be said to have passed out of current anthropological usage ...". Sheddick based his remarks on tenure studies extending as far back as the 1930's, by such prominent authorities as Malinowski, Gluckman, Schapera and Wilson. Sheddick, V., 1954, LAND TENURE IN BASUTOLAND, Colonial Research Studies 13, London, p. 1.
5. The Barry Commission (CAPE NATIVE LAW AND CUSTOMS COMMISSION OF 1881) inquired specifically and extensively into indigenous land rights in Natal and Cape Colony. References to inherited individual land rights and to the exclusive control of cultivated land and residential sites appear throughout the testimony of expert witnesses both black and white; in particular, see the evidence of King Cetshwayo and Sir Theophilus Shepstone on Natal, and Col. Maclean and Charles Brownlee on Xhosa land law. (1883; vol. 1, 49-60, 484-7, vol. 11, 19-21, 65)
6. The material presented here relates to rural and peri-urban Kwazulu only, and none of the recommendations are intended to apply to the urban context.
7. CONCISE OXFORD DICTIONARY, Revised 5th Edition, Clarendon Press, 1974.
8. CHAMBER'S TWENTIETH CENTURY DICTIONARY, ed. W. Geddie, Revised edition with supplement, W.R. Chalmers, 1971.
9. Holleman, J.F., "Die Zulu isigodi", BANTU STUDIES, September 1941.
10. Vilakazi remarks, "... all land allocations were made originally and are made today along lineage lines. All divisions of land ... are known and identified by lineages to which they belong. They are for the exclusive use of these lineages or other non-lineage members with the express permission of the lineage to which the lands had been originally allocated." (underlining ours). A. Vilakazi, ZULU TRANSFORMATIONS, University of Natal Press, 1962.

11. Reverend B.L. Key, evidence before Cape Native Laws Commission, 1912, p. 188.
12. Preston-Whyte and Sibisi comment, "... The effective local group appears ... to consist of a large agnatic core surrounded by a cognatic band and ... a fringe of non-kin ...", Preston-Whyte, E., and Harriet Sibisi, "Ethnographic oddity or ecological sense? Nyuswa-Zulu descent groups and land allocation", 1974, African Studies Institute Kinship Seminar, University of Witwatersrand, p. 28.
13. Gluckman, M., LOZI LAND TENURE, Rhodes-Livingstone Papers No. 10, 1943.
14. Preston-Whyte, E., and H. Ngubane, *ibid.*, p. 16-17.
15. "environmental resources" is used here to denote a class of materials which form part of the primordial subsistence package in that they are needed to carry on the self-sufficient life of the homestead, but which occur in an irregular distribution throughout a settled district. Such resources include waterpoints, reedbeds, clay deposits, bush tracts from which firewood can be gathered, and others. Few if any landholdings will provide the family with the full complement of all these resources, but access to them must be provided as part of the basic implied contract which is seen to govern the tribal land right, by which tribal membership entitles a family head access to the entire range of his subsistence requirements. Such "environmental resources" as occur on individual landholdings are therefore subject to the right of local community access under classical indigenous land law. This represents a distinct form of commonage or communal right in respect of this class of resources only, and not in respect of the landholdings where such resources may be located. People wishing to obtain access to environmental resources are obliged to notify the landholder before proceeding to collect what they need, and have no other rights on his land.

The trend of change is for most classes of environmental resource to lose their economic significance as the district becomes integrated into the modern economy, and for individual landholders to become more assertive of their ownership rights as the area moves toward open-modern tenure. The environmental resources which retain their importance include waterpoints and grazing tracts, and to a somewhat lesser extent the larger and more remote bush tracts which can still provide firewood. (C. Cross, unpublished ms. Ph.D. thesis, University of Michigan)
16. Vilakazi, A., *op. cit.*, p. 19: "The general rule is that once allocated and occupied, not even the chief may interfere with the free use and enjoyment of the benefits of such land..." People in the Valley of a Thousand Hills think and speak of themselves in both English and Zulu as "owning" the land.

17. Mbatha remarks of a land dispute in the valley, "... there was a great deal of feeling among the Hlongwa lineage ... that Headman Mangqoba was allocating lands which belonged to the Hlongwas, even though these were not used or occupied ..." M.B. Mbatha, unpublished M.A. thesis, University of Natal, Durban, 1960, p. 70.
18. The testimony of Chief Kama indicates that the chief organized the settlement of unoccupied land by pointing out the direction in which each cluster head was to go in order to take up land and settle. Cape Native Laws Commission, *Ibid.*, Vol. 1.
19. Clarissa Fourie, unpublished research findings for M.A., University of Natal; see also J. Boissevain, FRIENDS OF FRIENDS: NETWORKS, MANIPULATORS, AND COALITIONS. Blackwell, Oxford, 1974.
20. S.M. Seymour, BANTU LAW IN SOUTH AFRICA, 3rd ed., 1970, Juta & Co. "Under the Natal Code, Bantu dwellings ... are deemed to be moveables ... Being moveable property, a hut is owned by the person who erects it, if a major ..." p. 69. Persons with the status of a major may enter into contracts of lease, pledge, or sale.
21. It is equally important not to offer programs which in their implementation impose hardship on the people, for example by making the process of reporting deaths and successions onerous or expensive. This will insure the failure to report such events, and the ultimate failure of the system.
22. Lissner, J. THE POLITICS OF ALTRUISM: A STUDY OF THE POLITICAL BEHAVIOUR OF VOLUNTARY DEVELOPMENT AGENCIES. Lutheran World Federation, 1977, p. 20.
23. Institute for Social Research, University of Natal, (now Centre for Applied Social Sciences); unpublished field data collected for the Three Rivers Survey, 1963, and analyzed by Hilston Watts.
24. Unpublished research findings, COMMUNITY, LAND AND DEVELOPMENT: A STUDY OF VALUES AND ORGANIZATION IN RELATION TO LAND TENURE, funded by Department of Cooperation and Development through Centre for Applied Social Sciences, University of Natal; forthcoming. It must also be recognized that research findings suggest that leasehold or rental legislation must be examined thoroughly and handled very carefully. Depending on how it is formalized, leasehold as an institution may potentially have profound effects on actual landholding patterns. A rental transaction can readily leave the weaker party open to exploitation.
25. J. McLaughlin, "The nature, function and design concepts of multi-purpose cadastres", unpublished Ph.D. thesis, University of Wisconsin, 1975.
26. Panel on Multi-Purpose Cadastre of the Committee on Geodesy, THE NEED FOR A MULTI-PURPOSE CADASTRE, U.S. National Research Council; National Academy Press, Washington, D.C., 1980.

27. C.J. Bacon, "The Multi-purpose Cadastre and its significance for the task of integrated rural development", 1981, forthcoming.
28. The *izigodi* is an administrative territorial unit within the tribe. A tribal district normally contains a number of *izigodi*, which may vary greatly in size and population. A large *izigodi* is usually headed by an induna, a senior official appointed by the Chief, and may in turn contain several smaller units, also called "*izigodi*", headed by less senior officials (minor indunas; *amaphoyisa*, tribal policeman; *amakhansila* or *amaphakatini*, councillors; or simply *abavumzane*, cluster heads; local terminology varies here). Within the *izigodi* can be found local residential clusters as described above, p. 2-5. Either the smaller or the larger *izigodi* have fairly stable boundaries and might prove a suitable unit for survey and registration. See Vilakazi, *ibid.*, p. 79, Preston-Whyte and Sibisi, *ibid.*, p. 12 ff.
29. Data which might be included here would vary according to the use envisioned for the information. Such points as land use and number of fields, livestock etc., might be recorded against individual holdings. Social and demographic data might also be recorded, or cross-referenced from census data.
30. Jenkins, D., "A preliminary report on tenure, rights, registration of land in KwaZulu", unpublished report submitted to KwaZulu Development Corporation, March, 1981.
31. E.H. Ayers, "Progress report: land records information system, Forsyth County, North Carolina", Workshop on Cadastre-based Land Information Systems, L.R.I.S., Frederickton, New Brunswick, Canada.

BIBLIOGRAPHY

ALLAN, W. 1965:

The African Husbandry, Oliver and Boyd, p. 5-6, 36-7.

AYERS, E.H. 1978:

Progress report: land records information system, Forsyth County, North Carolina, Workshop in Cadastre-based land Information Systems, L.R.I.S., Frederickton, New Brunswick, Canada.

BACON, C.J. 1982:

The Multi-purpose Cadastre and its significance for the task of integrated rural development (forthcoming publication).

BOISSEVAIN, S. 1974:

Friends of Friends: Networks, Manipulators and Coalitions, Oxford, Basil Blackwell.

CAPE COLONY, GOVERNMENT PRINTER 1883: Reissued Irish University Press 1970:

Cape Native Law and Customs Commission. 1881, (Barry Commission), Vol. I, II; Shannon, Ireland.

CHAMBERS, W.R. 1971:

Chamber's Twentieth Century Dictionary, Revised edition with supplement.

CROSS, C. 1982:

Community, Land and Development: A Study of Values and Organization in Relation to Land Tenure. (forthcoming).

CROSS, C.

Unpublished ms., Ph.D. Thesis, University of Michigan, Ann Arbor.

FOURIE, C.

Unpublished field notes, M.A. Thesis, University of Natal, Durban.

GLUCKMAN, M. 1943:

Lozi Land Tenure, Rhodes-Livingstone Paper No. 10, Rhodes-Livingstone Institute.

HOLLEMAN, J.F. 1941:

Isi Zulu Isigodi, Bantu Studies, Sept. 1941.

JENKINS, D. 1981:

A preliminary report on tenure, rights, registration of land in KwaZulu, unpublished report submitted to KwaZulu Development Corporation.

KEY, B.L. 1883:

Evidence before the Cape Native Law and Customs Commission of 1882, (Barry Commission), *ibid.* p.188.

KWAZULU GOVERNMENT 1976:

Final Report of the Select Committee on Land Tenure in KwaZulu, Ulundi.

LISSNER, J. 1977:

The Politics of Altruism: A Study of the Political Behaviour of Voluntary Development Agencies, Lutheran World Federation, p.20.

MBATHA, M.B. 1960:

Migrant Labour and its Effects on Tribal and Family Life among the Nyuswa of Botha's Hill, unpublished M.A. Thesis, University of Natal (Durban), p.70.

McLAUGHLIN, J. 1975:

The Nature, Function and Design Concepts of Multi-purpose Cadastres, unpublished Ph.D. Thesis, University of Wisconsin.

OXFORD EDITORS 1974:

Concise Oxford Dictionary, Revised 5th Edition, Clarendon Press.

PRESTON-WHYTE, E., and SIBISI, H. 1974:

Ethnographic oddity or ecological sense? Nyuswa-Zulu descent groups and land allocation, African Studies Institute Kinship Seminar, University of Witwatersrand.

SCOGINGS, D.A. 1966

An Investigation into the Precision of Photogrammetric Cadastral Surveys, South African Survey Journal Vol.10 No. 63.

SCOGINGS, D.A., and MARRIOTT, G.E. 1970

Cato Manor Cadastral Survey Test, South African Survey Journal Vol. 12 No. 75.

This work is licensed under a
Creative Commons
Attribution – NonCommercial - NoDerivs 3.0 Licence.

To view a copy of the licence please see:
<http://creativecommons.org/licenses/by-nc-nd/3.0/>