COMMUNAL LAND RESEARCH PROJECT

RFP/JHB/2015/003

ANNEXURE 3:

ISSUES OF JURISDICTION ON STATE TRUST LAND IN THE EASTERN CAPE PROVINCE

November 2015

Main Authors:

This document arose from a workshop in early February 2015 of concerned specialists working in the Eastern Cape Province on the issue of land administration and funded indirectly by GTAC of the National Treasury, with recommendations specific to the Eastern Cape. It was prepared in response to a request for a document to brief a national Minister and contains material prepared by a number of participants.

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Overlapping and/or Conflicting Municipal and Traditional Council Roles

This briefing note attempts to highlight a number of jurisdictional issues and instances of administrative disjuncture which threaten effective and efficient local governance in contexts where there is a clash of authority and roles between municipal and Traditional Council authorities.[1] The briefing illustrates the broader problematic with reference to some of the specific problems confounding effective public administration in the Transkei and, to a lesser extent, the Ciskei regions of the Eastern Cape Province. Aspects of these problems manifest themselves in other parts of the Province and in other Provinces with Bantustan legacies.

The point of departure of the briefing note is that the problems, and sometimes conflicts, that manifest in, or result from, overlaps in roles and functions between Municipalities and Traditional Councils need to be seen as part of a bigger complex and cannot easily be isolated as a discrete problem. Although there are instances where the issue manifests as a 'direct clash', deeper probing reveals that the problems are intermeshed with a range of institutional and legacy problems. Thus the broader problematic feeds into wider and more complex issues and problems with historical legacies. For this reason, the briefing goes into some of these wider issues (though it is not exhaustive) to provide the context in which this problem has becomes a very sensitive – and in some respects intractable – issue in recent times.

Recommendations follow these notes, covering the topics under each heading below. The recommendations attempt to go some way to addressing the issues and challenges outlined.

The new "wall-to-wall" local government system

The *Municipal Structures Act No.117 of 1998* and the *Municipal Systems Act No.32 of 2000* introduced new local government structures and systems, and a new uniformity across the entire RSA, where no such uniformity had existed before.

This uniformity was implemented across the RSA intentionally in order to erase past discrepancies. There have, however, been unintended consequences resulting from such a dramatic move in time and space away from the older institutions that performed key administrative roles in particular contexts and which, as it turns out, have never been replaced. The new uniformity could not, by its very nature, take into account the historic context and continued relevance of some of these past administrative institutions, most glaringly evident in the system of co-ordinated, if not centralised, administration at magisterial district level in the former reserve areas. This system was honed in the former Transkei, but persisted for more than a century in most of South Africa's former homeland areas through their varying status as Reserve, Trust and later, Bantustan. For the rest of RSA, urban local administration had long been accepted and adhered to in the form of municipal institutions presiding over demarcated wards, with elected councillors.

Spatial jurisdiction and non-alignment

In most instances, for over a century, the first level of local administration in rural Bantustan areas began at village level (or a cluster of homesteads in areas which had not undergone

[1]The 2013 Eastern Cape Planning Commission *Diagnostic Study on Land Administration in the Eastern Cape Province* outlined in greater detail a number of these jurisdictional disjunctures on land administration – spatial, institutional, legislative and organisational.

betterment planning and forced removal into villages) under a sub-headman. The next level was that of an Administrative Area (AA), comprising a number of villages under the jurisdiction of a headman.

The boundaries of these Administrative Areas, of which there are 1 207 in the EC, were first proclaimed in the late 19th and early 20th centuries (**Addendum 1**). These Administrative Areas formed the basis of the spatial composition of Tribal Authority (TA) when they came into being, of which there were 241 in the EC.

While these boundaries were not uncontested, most have long become generally accepted. At the very least, the AA boundaries were not erased by the phases of development of TAs, and became for the most part a key spatial reference point for rural people's 'addresses', and remain so to this day (people usually refer to their home area, *ilali*, or rural village, by the name of their AA).

Despite the above *status quo*, the demarcation of Municipal Wards appears to have ignored the established boundaries of the Administrative Areas. For instance, a single Administrative Area may be divided and parts combined with parts of a number of other Administrative Areas into a Municipal Ward (**Addendum 2**). There are numerous examples of this, but, to illustrate the point, an evaluation of six coastal Local Municipalities in the EC, Mbizana, Ingquza Hill, Port St Johns, Nyandeni, King Sabata Dalindyebo (KSD) and Mbhashe, indicates that there is no alignment at all between ward boundaries and Administrative Area boundaries. Moreover there are 11 instances of AAs being split into two Local Municipalities (**Addendum 3**). Similarly some of the 241 traditional councils in the EC are split between different Local Municipalities (**Addendum 4**).

For residents in the Administrative Areas, participation in village meetings and subsequent channelling of communication via sub-headmen, headmen and chiefs to magistrates/commissioners at magisterial level, and with the growth of the Bantustan bureaucracy, to government departments, long proved to be efficient and effective in that the system was easily accessible to all rural people. So much so, that for many rural residents, this system (or code of operation) is something they continue to identify with and adhere to in day-to-day local administrative practises. However, the locus of power has spread out to more distant realms via the three spheres of government, which has compromised the past accessibility.

There are a number of consequences. The old system, as mentioned, is not aligned with the municipal ward-based system either spatially or conceptually, and leads to difficulty in communication that in some worst-case scenarios leads to conflict between local traditional/customary systems and leadership and municipal systems and representatives. In spite of the emphasis on municipal governance in South Africa as the local unit of government, the inefficiencies of rural municipal government have, if anything, put the spotlight even more on former channels of communication via the traditional systems that appear to be more accessible, but these not necessarily aligned to state resources in any legally sound sense.

To compound the above already complex situation, in 2006 the office of the Surveyor General (SG) initiated a process to survey the boundaries of the Administrative Areas. Some of these were subsequently surveyed incorrectly. Then, to further add to confusion and exacerbate the disjuncture between local knowledge, customs and practices and official records, the Administrative Areas have been renamed as 'farms' in line with the technical requirements of the SG's office. For example, "Mbutye Administrative Area

No.10Willowvale", is now officially described as "Remainder Farm 44" (**Addendum 2**), but the rural residents only know the area as Mbutye and it is their key socio-spatial reference point.

To complete the picture of spatial disjuncture, the boundaries of District Municipalities also in many cases ignore the boundaries of the older more familiar Magisterial Districts (**Addendum 5**).

The important point to emphasise is that the older spatial units of magisterial district, internally divided into AAs', proved to be a highly convenient and accessible spatial unit for rural people, even though there were serious political lacunae in the system. This accessibility has been severely compromised by the new municipal boundaries and by the lack of clarity as to how best to access state resources via municipal or traditional council authorities, whose spatial jurisdictions also contradict each other.

Administrative discontinuity

Prior to 1996 the magistracy at the centre of each (magisterial) district played a key co-ordinating and administrative function, including dealing with communications and requests from the Administrative Areas. This arose out of the practice established in the colonial period of combining the office of the Magistrate with the office of the "Native Commissioner". Again, this practice was first honed in the Transkei and then gradually introduced in other 'homelands'. As 'native commissioners', magistrates were appointed also as executive officers of government in each district. Again the comment can be made that though politically compromised, there are lessons that could be learned in terms of accessibility and the linked features of functions such as land administration and dispute resolution.

Commencing in about 1996 and in parallel with the restructuring of local government and the extension of uniform institutions and systems of municipal government across the RSA, the Department of Justice determined that judicial officers should no longer perform wider administrative functions. Some of these functions were not transferred to appropriate line functions but simply ceased.

In regions such as the Transkei, this situation led directly to the withdrawal and collapse of essential public administrative functions including rural land administration which had long administered a system of issuing and maintaining 'certificates of occupation' known as Permission to Occupy rights (PTOs) and, along with it, **rural revenue collection,** which was tied to land administration.

To the extent that some land administration functions continued, this was due to the good faith and determination of mostly junior ranking public servants who, despite being declared supernumerary, continued to maintain records for as long as physical and local political conditions allowed (**Addendum6**).

Institutional jurisdiction and competition

The limited public functions of traditional leaders were in the past largely facilitative rather than administrative or executive. Prior to 1994, for example, many of their roles related to 'soil conservation' and agricultural issues set out in the respective Ciskei and Transkei *Administrative Authorities Acts* (No.37 of 1984 and No.4 of 1965 respectively) and *Agricultural Development Acts* (No.14 of 1989 and No.10 of 1966 respectively). While in former times there was some limited flexibility the detail of the functions of local rural

traditional structures, the later Acts made no provision for any land allocation function by such authorities, only to advise and assist. Local 'customary' understandings and practices of land allocation, which began at household/familial level and then intermeshed with widening social units and authorities, was superseded by uniform features of law which were extended by statute across the Ciskei, Transkei and RSA. However these Acts have all been repealed since 1994 (the former 2 amended in 1997, the latter 2 repealed in 1999).

In terms of S28(4) of the *Traditional Leadership and Governance Framework Act (TLGFA),* Tribal Authorities established in terms of the *Bantu Authorities Act No.68 of 1951* were deemed to be Traditional Councils. S20 of the *TLGFA* provides that national or provincial government, "through legislative or other measures" may provide a role for Traditional Councils and traditional leaders in respect of, inter alia, land administration. Given the institutional uncertainties that already exists, this statutory role is likely to further compound the overlaps that exist between the three spheres of government regarding land administration, and lend a bit of credence to some critics' suggestion that such roles carries the suggestion of creating a fourth sphere of government.

There are several implications.

Firstly, there are serious questions being raised regarding the delegation of land administration functions to TC's, given that historical research has revealed that this was not an historic customary role of traditional leadership in any clear or absolute sense, since issues to do with land were very different in former times, and most of the allocatory roles occurred at familial (clans) and neighbourhood level.

Secondly, the ambiguity surrounding what constitutes 'land administration' is contentious. There are examples where TCs regard powers over land administration to be synonymous with 'ownership' of the land, and there are numerous examples of traditional leadership using this concept to 'sell' or cede land without the consent of the rights holders who are the true owners of the land. There are also examples where municipalities misunderstand their roles with regard to communal land and similarly claim to 'own' the land it needs, but this view is less prevalent now than in the past. However, what this points to is the need to clarify that it is the rights holders of the land who in effect, own the land, since the Interim Protection of Informal Land Rights Act, No 31 of 1996, confers rights akin to ownership on the long term occupiers. These blurred lines makes the subject of 'ownership' of customary or communal land highly charged in current times.

Thirdly, the acceptance of apartheid spatial boundaries for the TAs to be recognised as TCs is cited an example of solidifying, both spatially and politically, the versions of TAs that were ordained under colonial and apartheid rule.

There was some suggestion in terms of S21of the *Communal Land Rights Act No.11 of 2004* (*CLaRA*), which has since been declared unconstitutional, to allow for an element of choice as to the composition of the mandatory "land administration committees" that were to be established in terms of the Act. This, point, however, became increasingly subject to negotiation, with traditional leaders arguing for more mandatory control. The Act did allow for TCs to be the land administration committees in their entirety.

In the meantime, in the absence of an explicit legislative framework and authority, various local individuals, associations and institutions, but mainly traditional leaders and traditional councils have assumed rural administrative functions, especially in relation to land.

CLaRA was declared unconstitutional on procedural grounds relating to the enactment of the legislation. However substantive arguments were presented to court to the effect that *CLaRA* and other legislation was unconstitutional in that it created a 4th sphere of government. Revised draft regulations for *SPLUMA* published for comment in the Government Gazette on 12 December 2014 may still be open to challenge on specific provisions such as Section 19 which provides for an elevated status for traditional councils but not for other structures of civil society. S25 of the draft *Traditional Affairs Bill*, published in 2013 and intending to repeal and replace the *TLGFA*, may be open to a similar challenge. This is reflective of ongoing debates and contestations on the role of traditional leadership.

Boundary and "urban edge" conflicts

Nowhere is the collapse of rural governance and land administration more immediate than in the problems confronting Local Municipalities in the former Transkei in particular, who battle to exercise jurisdictional authority over or manage municipal commonage as well as Trust land surrounding their towns, which is often urgently required for purposes of urban expansion and/or infrastructural development (**Addendum 7**). As a direct consequence, this has already resulted in violent protests in towns such as Sterkspruit and Butterworth.[2]

Loss of control of the commonages occurs even though these are municipal commonages registered in the name of the relevant municipality. The issues revolve around the somewhat "fevered" environment many of these small towns find themselves in, with traditional leaders/neighbouring communities often laying claim to the commonages, either formally to the RLCC or informally – i.e. by word of mouth or suggestion. That creates the situation where these traditional leaders/communities often deem the commonage land to be theirs by right and allocate portions of it to people, or defend what they perceive to be "intrusions" on their land, e.g. orchestrated land invasions intended to stymie infrastructure developments such as public funded housing, water services facilities and solid waste facilities. In turn, the municipalities lack the political and administrative skills and experience to deal with these situations and effectively lose control of the commonage. Many of these struggles are historic contests dating to back to the early establishment of towns as to the ownership or control of town commonages.

Unresolved land restitution claims in and around rapidly urbanising towns like Mthatha further complicate the already murky and fluid situation with regard to jurisdiction over land areas and the contestation over land itself. It would seem that where land claims are made (or even rumoured to have been made) there arises a conflation between the claim and actual authority over claimed land - that is that claimed land is often assumed by claimants to be *de facto* "their land".

This unstable situation is compounded by the reality that most, if not all, Local Municipalities where such complex dynamics around land (and municipal commonage, specifically) play themselves out lack robust and proficient political and administrative capacity to manage such challenges. Thus, in effect, many of these instances lead to a paralysis on the part of LMs with regard to taking charge over or managing land that is registered as theirs.

[2]Ironically protests concerning the provision of basic services such as water are often directed towards local municipalities, whilst the actual functions have been removed from Local Municipalities and elevated to District Municipalities.

These situations point to the urgency of confronting challenges within the local governance sphere in a manner that is specific to the particular legislative and institutional history of the EC, and, most immediately, with regard to land administration.

It is very likely that these issues apply as well in other provinces with Bantustan legacies.

Municipal jurisdiction, control over land, and land use management

Within the broad context of disjuncture between the new conception of local government and ongoing customary approaches to local affairs and land administration, it is noted that a specific challenge is posed to Local Municipalities in the form of what many term "mushrooming inadequate housing". Such housing is most often found in the form of "flats" or rooms built, variously, on formal erven in small towns, on vacant municipal land that has been "captured", on peri-urban land outside of defined municipal commonages, and on Trust or Reserve land. Again, in almost all cases, Local Municipalities (for whatever reason) have found themselves to be incapable of regulating and/or regularising these situations, even where these occur on formal, registered erven within uncontested urban land areas.

In virtually all cases, the land that is so developed is controlled either by a landowner or a rentier landlord who has responded (in an "entrepreneurial" fashion) to a strong demand for accommodation in a local area. This market for accommodation is robust and dynamic and, quite obviously, is beyond the reach of state housing provision systems. In short, it is a housing need that has been met by the private sector.

However, as noted, these "housing schemes" are most commonly illegal in nature and are operated without the consent and oversight of Local Municipalities. As a consequence of this, they represent a segment of the economy (property market) that is currently out of reach of the formal sector, as represented by the state or formalised (that is, legally compliant) property developers and administrators.

The value represented by these "housing schemes", however, is estimated to be significant in terms of the revenues they generate for their rentier owners or landlords.[3] Needless to say, it may be assumed that the income derived from the majority of these "schemes" goes undeclared and untaxed. Moreover, in the absence of Local Municipalities being able to regulate and regularise these "schemes", any formal properties so developed are unlikely to be classified and rated in accordance with the actual use.

Horizontal and vertical jurisdictions and spheres of government

Vesting versus governance issues

Schedule 4 of the Constitution lists "functional areas of concurrent national and provincial legislative competence". Schedule 5lists "functional areas of exclusive provincial legislative competence". Neither Schedule refers to a functional area "land" at all. They only refer to land by inference insofar as land is affected by functional areas such as "regional planning and development", "soil conservation", "urban and rural development", "municipal planning"

[3] In the rural town of Willowvale (Mbhashe LM) for example, Census 2011 indicates that some 47% of the population resided in "Flats" and the CSIR GAP Analysis 2009 suggests that the *Financial Intermediation, Insurance, **Real Estate**, and Business Services* sector contributed some 68.2% of the total Gross Value Added (GVA) of the town's economy.

(Schedule 4) and "provincial planning" (Schedule 5). Therefore land matters not integral to the functional areas listed above are exclusively issues of national legislative competence, such as the three programmes of land reform – land redistribution, land tenure reform and land restitution.

To complicate land matters further, administrative or executive functions (as opposed to legislative functions) are assigned by the competent legislatures to various spheres of government and to the institutions set out in Chapter 9 of the Constitution. Because land is fundamental to a wide range of administrative functions, administrative functions involving and affecting land are located across all spheres and institutions of government. The complexity is illustrated by an ongoing problem when assigning or delegating legislation in that many past and present laws contain provisions which should be the functional responsibilities of different spheres.[4] To the extent that the national Department of Land Affairs and now the Department of Rural Development and Land Reform (DRDLR) has failed to address issues of rural land administration in former Bantustan areas, this has multiple impact on the abilities of both provincial and local government to fulfil their wider mandates of public administration.

While the *Spatial Planning and Land Use Management Act No.16 of 2013* (*SPLUMA*) has been drafted by the national Department of Rural Development and Land Reform, the implementation of the act is the responsibility of municipalities and oversight of this sphere is by the national Department CoGTA and provincial counterparts. Preparations for the implementation of *SPLUMA* have further highlighted a number of the issues raised in the preceding sections.

Political Perceptions

Added to the institutional disjuncture is the issue of local perceptions of democracy. People in the ground have views about conflict between two different forms of governance, one with an elective element and one which is based on non-elective principles. In reality this pure political problem feeds into and from complex issues that affect people's day-to-day lives and regarding performance of functions and delivery of basic services and administration.

Conclusion

In general one may consider that the situation has swung from one kind of extreme imbalance to another. With regard to the imbalance in former times, the evolution of an 'administrative regime' in the former homelands, much of which was honed in the former Transkei, was politically unjust in that the system reduced 'land rights' and property issues, including inheritance of land, to an administrative regime removed from political participation and the parliamentary process. The system, however, gave rise to some administrative efficiencies. The post-apartheid governance regime, on the other hand, has stressed the democratic features of voting and swung from a focus on administration to a focus on 'management'. The management regime is more politically just in theory, but has ironically removed key administrative functions that in the past worked reasonably well. Thus, there was no balance in the past, but there continues to be no balance, since the emphasis has now swung to 'managing' bigger development processes, but not 'administering' them adequately. The swing to a management regime has eroded many of the crucial and

[4] "In many instances the unravelling of the functions of the different spheres of government involved in the administration of a single law is only possible after a legal opinion has been obtained." (PSC 2003: 37)

practical features of administration and accessible local governance that existed in the past, however erroneously constituted.

Recommendations

1. With reference to prevailing (traditional) administrative and participatory practices (that evolved from past rural governance systems), it is recommended that the department explore options for ensuring support to, and incorporation of such (including recognition of the administrative boundaries within which they are set) with the present-day local government system and demarcation. Recognition and incorporation is critical for addressing the perception of exclusion that exists within many communities' administrative structures and can often result in resistance to participation in municipal processes.

2. Assess the extent of collapse of rural administration and co-ordination, social and economic effects, present and future loss of revenue, long term costs of failure to take action, and options for resourcing and re-establishing public administration, including land administration at local municipal levels. (Much of this work has already been done in numerous reports including some listed above). The key question is why to date no effective action has been taken on any suggested steps towards solutions.

3. Identification and assessment of the range of institutions and structures which may perform public (local government!) **administrative** functions, including functions such as those in *SPLUMA*, and including traditional councils, civic structures, communal property associations etc., and revisiting legislation accordingly.

4. In order to assess the extent and fiscal consequences of so-called "inadequate housing" in rural towns, it is proposed that a pilot project be undertaken in a town such as Willowvale or Dutywa (Mbhashe LM) in order to carry out the following:

    a) Identify and record all instances of extra-legal accommodation provision in the form of dwelling houses re-developed as communes or rooms, backyard flats or dedicated high density residential buildings that are not recorded as such on the Municipal Zoning Scheme and Valuation Roll;
    b) Enumerate the number of residents and establish the rental paid in each instance and to whom it is paid;
    c) On the basis of this data, assess the "value capture" being achieved by the rentier landowner and/or landlord
    d) Identify possible interventions to deal with negative consequences of the situation (without necessarily wanting to jeopardise the broader trend of the private sector responding to a real need for short- and medium-stay accommodation).

5. Review the range of existing land-related legislation and public administrative functions and in which sphere of government the latter could and should be located, whether by assignment, delegation, agency, service level agreement or other lawful means.

    In particular, it is recommended that the Department of Rural Development and Land Reform be encouraged to strengthen the existing Interim Protection of Informal Land Rights Act, No 31 of 1996 to emphasise the content of the property rights being conferred on the rights holders, and with sound institutional backing to record, register and protect these rights. This would immediately remove the ambiguity as to

where the 'ownership' of the land resides, and would discourage the down-raiding of land by many powerful actors (in government institutions, traditional governance and private capacities) who take advantage of the vulnerability of people's land rights and acquire them by stealth in order to re-sell or allocate for a various gains. This situation flourishes as a direct consequence of the lacunae in effective rural land administration.

Existing reports

These are not new issues. Aspects of these issues and related issues have been the subject of numerous previous investigations and reports including:

- Public Service Commission, 2003, Report on the Evaluation of Land Administration in the Eastern Cape
- Eastern Cape Planning Commission, 2013, Diagnostic Study on Land Administration in the Eastern Cape Province, draft document
- GTAC, 2014, Integrated Wild Coast Development Programme Strategic Synthesis
- The impact of these issues and disjunctures on a number of peri-urban cases in both the Transkei and Ciskei is described briefly in Addendum**7** below.

Addendum 1: Example of a proclamation

G.N. No. 1373 of 1917.] [October 11, 1917.

G.N. 1373—1917.

Mqanduli District: Location boundaries.

His Excellency the Governor-General has been pleased to approve, in terms of section *forty-one* of Proclamation No. 140 of 1885 (Cape), of the sub-division of Location No. 41 called Tyolo, in the District of Mqanduli, as defined in Government Notice No. 315 of 1906 (Cape), into two locations, in accordance with the descriptions given in the attached schedule.

SCHEDULE.

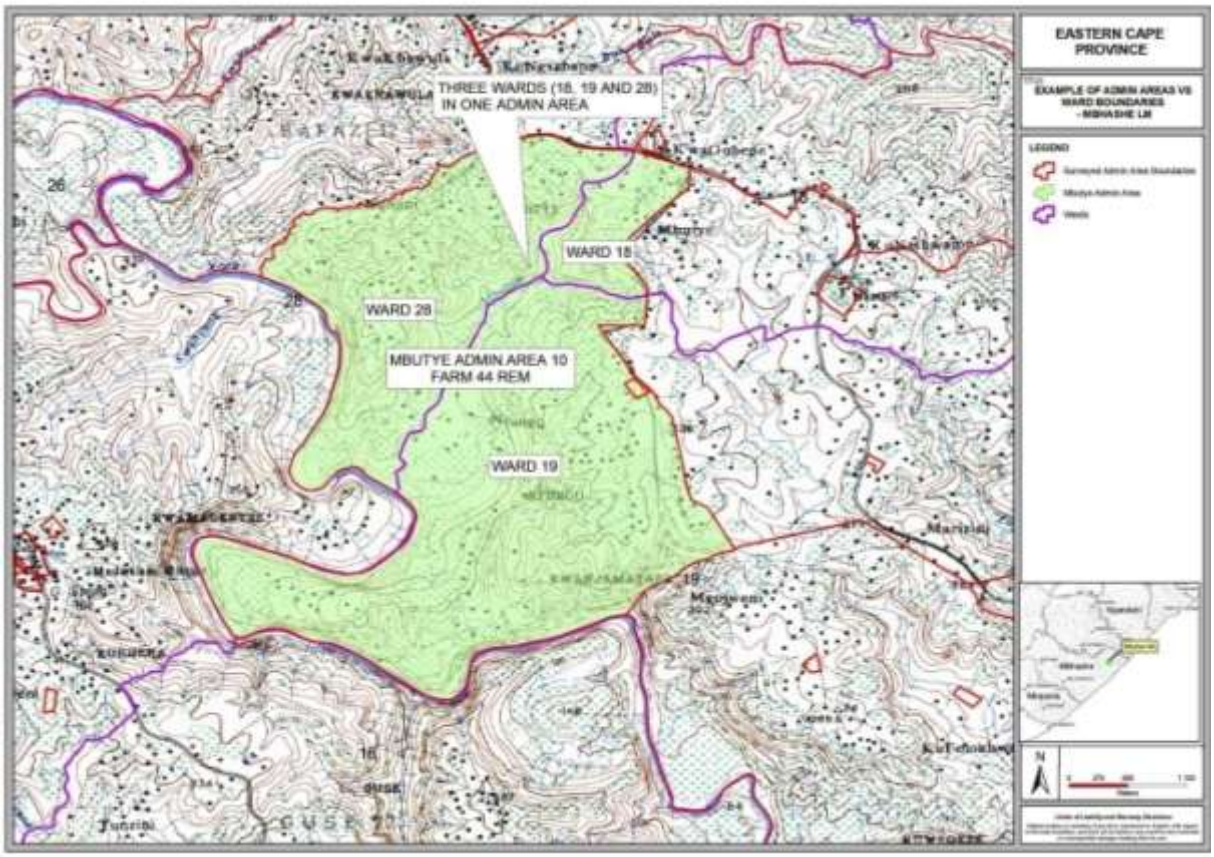
Location No. 41A, *called Tyolo* (*a*).

From a point on the Ludaga River where it crosses the boundary line between Pongomile's and Pangele's Locations, down the river to where it joins the Xora River; thence up this river to where it crosses the boundary line between Pongomile's and Hlatikulu's Locations; thence along this boundary line in a south-easterly direction to where it joins the Pongomile-Ngwenya boundary; thence along this to the Pongomile-Pangele boundary; then along this to the first point mentioned.

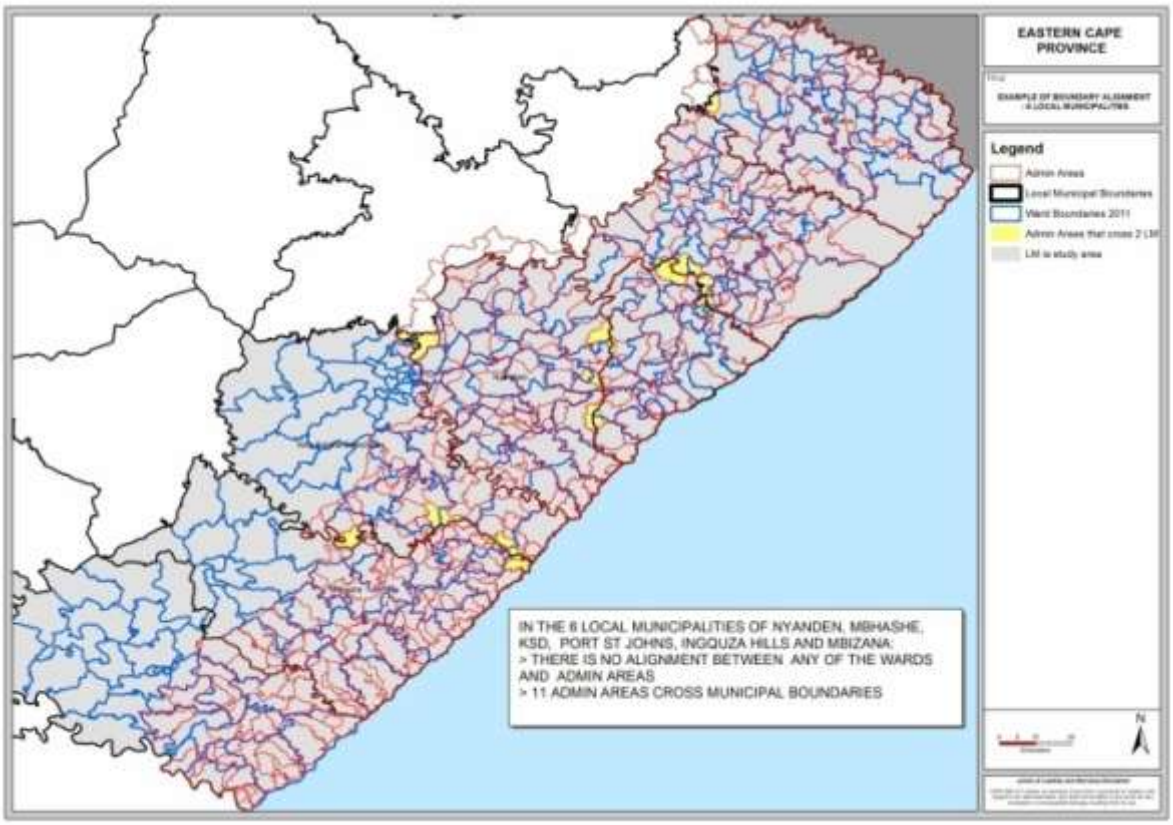
Location No. 41B, *called Tyolo* (*b*).

From a point on the Ludaga River where it crosses the Pangele-Pongomile boundary; thence south-east along this boundary to where it joins the Xora River; down the Xora River to its junction with the Ncembezana Stream and up this stream to the beacon at its head and near Mzwama's Kraal; then straight over into the Futye Stream and up this stream to the Bovamboland boundary; thence south-west along this boundary into the Xora River; down this river to its junction with the Ludaga Stream, and down this stream to the first point mentioned.

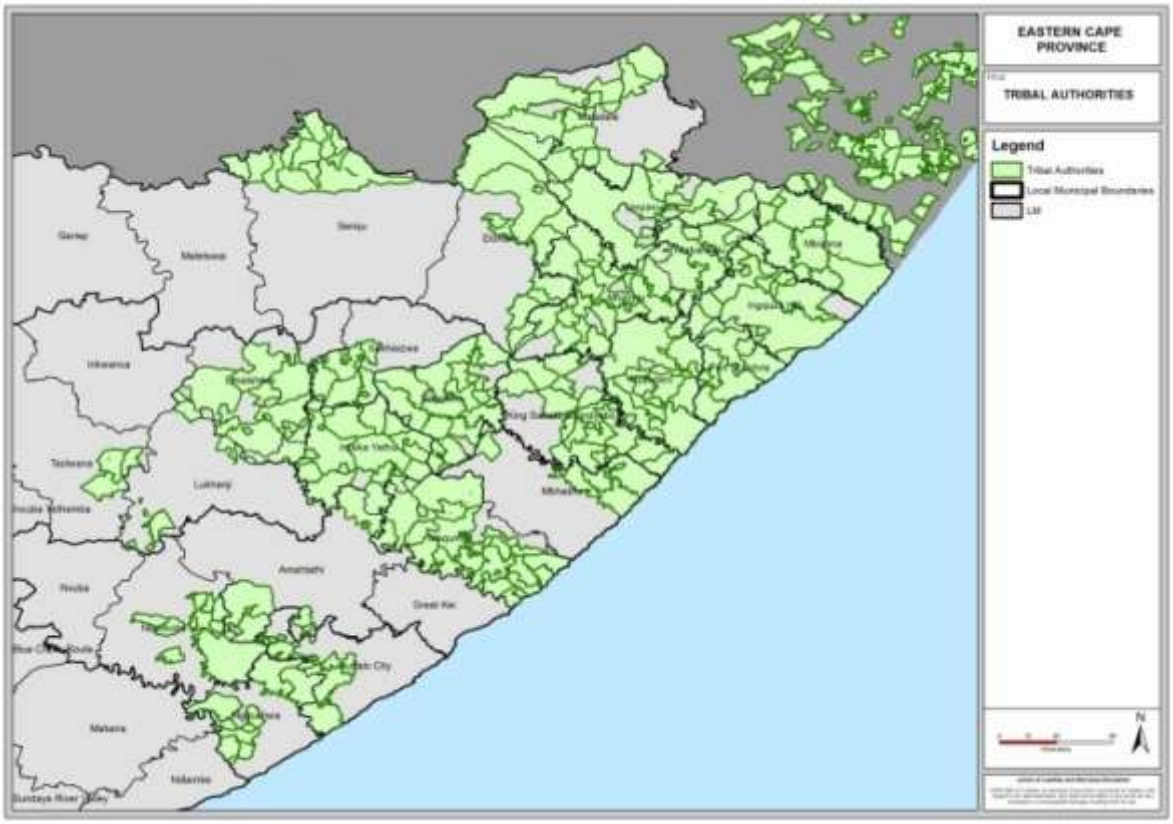
Addendum 2: Example of admin areas vs. ward boundaries



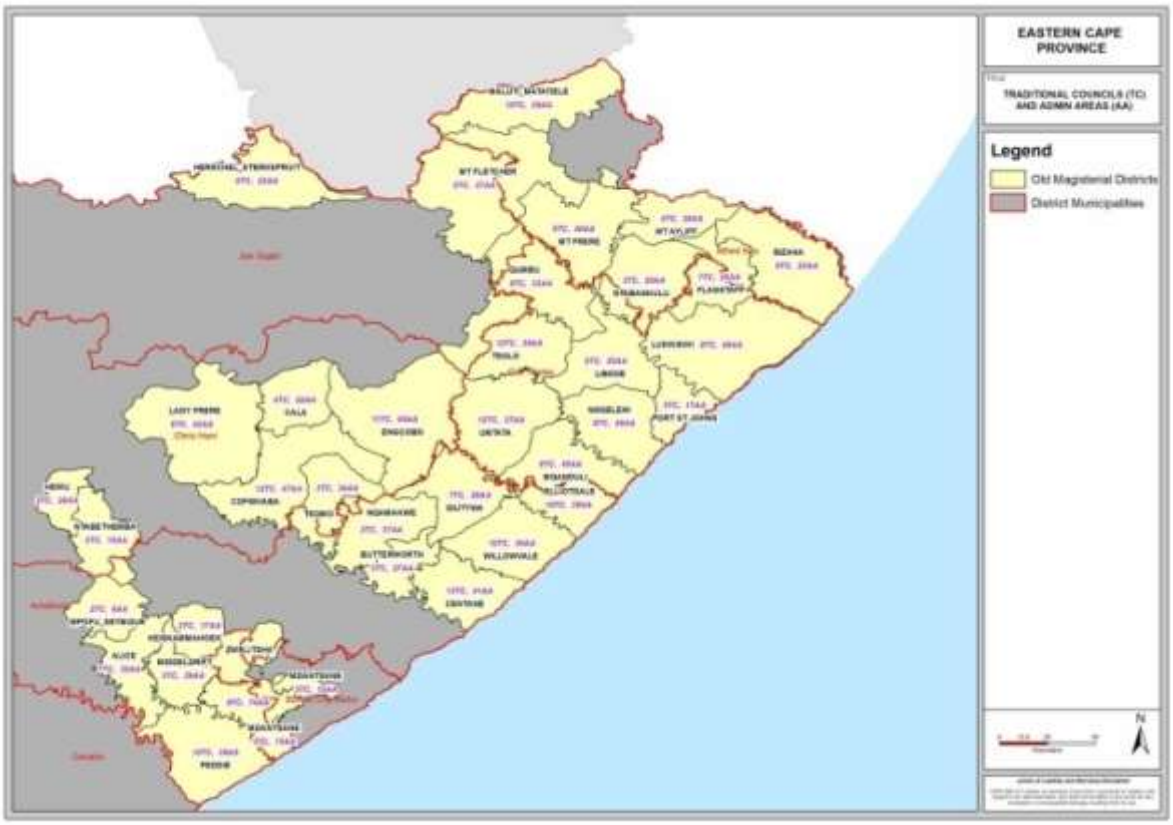
Addendum 3: Example of boundary alignments with local municipalities



Addendum 4: Tribal Authorities



Addendum 5: Traditional councils and Administration Areas



Addendum 6: Example of land records

Diagnostic Study
on
Land Administration in the Eastern Cape Province

This is the storeroom at Mount Frere of the Eastern Cape Provincial Department of Agriculture, now called Rural Development and Agrarian Reform.

The storeroom not only houses the original records of land allocation for the 41 Administrative Areas in the magisterial district, the Land Registers, but also a variety of highly inflammable chemicals, agricultural and other.

The Land Registers are kept here because there are no filing cabinets or offices for Land Administration.

Compare this to the requirements of storage for Deeds Registries and offices of the Surveyor-General: fire-proof storage, automatic sprinklers in the event of a fire, temperature and humidity control, restricted and controlled access ...

Think also of the office resources available in a Deeds Registry: highly trained staff, computers, microfiche, photocopiers, e-filing, effective and efficient systems ...

The Land Registers are not duplicated anywhere else. They have already been lost in a number of fires in various magisterial districts.

Addendum 7: Municipal expansion, commonages and adjacent trust land

In Sterkspruit and Butterworth one of the key issues is the commonage, which is largely depleted or used up. The challenge in both towns is about managing urbanization, the urbanization of poverty and the unmanaged land uses in the fringes as a result of the rural-urban landscape and interface. Both towns are choking, needing more land for expansion of the urban development. The original commonage boundary, became the TLC boundary during the transition of local government. Since 2000 the wall-to-wall boundaries apply but the TLC boundary is the urban edge. The urban edge is surrounded by unregistered state land or what is typically called communal areas, under the jurisdiction of traditional leadership. In both towns the traditional leaders are irregularly demarcating land, largely because of the high demand for residential land. The land is often made available at a price. In the case of Butterworth a slum/squatter camp is mushrooming just outside the urban edge. The development on the communal area is increasing demand for services as settlement become dense. The municipalities are not clear about what their powers are in terms of planning and land use management on communal land. In both cases, while the demand for services is on the rise from the rural population on the urban fringe, the municipalities neither have the political will to face up to the power of traditional leaders and they also are limited by lack of resources for formalization of tenure.

Willowvale: This town has a large commonage, much of which still remains undeveloped. The big challenge is how the Mbhashe Municipality is to manage this resource. A serious impediment to Local Municipalities' ability to manage their commonages is the tribal land claims that have been lodged by surrounding rural communities, which are often spearheaded by traditional leaders. In the case of Willowvale no land claims in respect of commonage land have as yet been formally lodged with the Commission, though they remain a reality in people's minds. To assert their rights (which are real or imagined) traditional leaders often support land invasions by allocating land over the commonage, thus creating an intractable quasi-tenure situation. One of the results of these invasions is that they impede development. Housing developments planned by the municipalities are frustrated by the invasions (this is a problem in Nqamakwe as well). The result of these invasions has stopped the construction of a Waste Water Treatment Works in Willowvale.

Other instances of infrastructure development being impeded by claims to land or jurisdictional issues include Centane and Sterkspruit, where proposed WWT Works were sited on Trust land.

The phenomenon of municipalities running out of land for critical facilities such a WTW and WWTW is a general problem across many former homeland towns. In many situations traditional leaders simply refuse to make the land available. In the case of Sterkspruit, an IPILRA community resolution could not achieve the release of a portion of communal land, and the only option that the municipality was left with was to expropriate. This undesirable route poses challenges because the land is nominally held by the state.

The common thread in all these cases is that the municipalities lack the capacity and tools to manage development outside the urban edge. The residents of these areas find non-payment for rates being attractive on communal land, but as soon as people get access to land they find themselves demanding services. For municipalities to roll out services, some level of formalization is often required. Formalisation is generally resisted by traditional leaders because it is seen to tamper with their powers in favour of municipalities.

In Peddie (the only example here in the Ciskei) the situation is slightly different in that the municipality has been quite proactive the development of RDP housing. The result is that there is absolutely no slum development on the fringe of town.