follows: "Flags of the old Boer republics, among them the Vierkleur, flew. One banner read *Apartheid is heilig* – Apartheid is holy…Among those who attended the Afrikaner ceremony was convicted mass murderer and Wit Wolwe member, Barend Strydom."[60] The uncompromising nature of the ceremony at the Voortrekker laager did not reflect the views of all the Afrikaners at the ceremony. In an eyewitness account Dutch Reformed Church pastor LG Schoeman of Ladysmith described the events and his reactions to it as follows:

> "I took my family to Blood River on 16 December 1998 full of enthusiasm: Today we as Afrikaners are going to hold a service on 'our' side and the Zulu on 'their' side and then we are going to reconcile. I hear about joint commissions, a bridge joining the two monuments, and in ecumenical circles excitement over the occasion.
>
> Alas, on our way back we were all ashamed that we attended: Ashamed because such an emotionally charged opportunity to testify for Christian-Afrikaners was again hijacked by a handful of extremists stumbling into the future ideologically blinded.
>
> After the disappointing public worship, during which Afrikaner volk's theology was openly preached, the 'Daughters of Zion' displayed banners unhindered with the message: 'Apartheid is Holy' and pamphlets were distributed with the undertaking 'from now on in our country to apply Your command to live separately strictly and purposefully'. The rest of the programme did not show any sign of reconciliation.
>
> Together with a friend we set off on our own to the Zulu meeting at the new Ncome monument. Here the atmosphere was different. We were a few white faces in the crowd of Zulu festival-goers. Hands of reconciliation and goodwill were extended to my nation (volk).

[60] Sowetan 17.12.1998: Peace on battlefield, p. 1.

But Afrikaner representation was sparse and they were clearly more concerned about the Afrikaner's right to maintain their own than to talk about reconciliation.

During the Zulu evening news on the SABC Mangosuthu Buthelezi said that he was disappointed about the exclusivity in the Afrikaner laager, but that he believes that Rome was not built in one day.

Can we allow the hijacking of the Blood River festival by a minority of ideologically sick minds to continue, especially in the light of the Zulu monument on the opposite side which cries out for reconciliation? Was it not time for Blood River to acquire a reconciliatory Christian character?

For Heavens sake, do something. I try to raise my children to discover their identity as Christians and Afrikaners. Embarrassments like this do not make it easy."[61]

Many more examples can be quoted to demonstrate that the controversy and the lack of a consensus among Afrikaners on the Covenant and the Battle of Blood River/Ncome which have prevailed for the past fifty years are still present in the year 2000. One just has to read *Die Afrikaner* (official organ of the right-wing Herstigte Nasionale Party) of December 1998 to realise that the traditional interpretations of the Covenant and the Battle of Blood River with its references to the miraculous nature of the victory and the Afrikaner as God's chosen people still have their adherents.[62] In contrast are the views of people like Dr J Grobler, provincial leader of the Transvaal Voortrekkers (an Afrikaner youth movement similar to the English Boy Scouts) and history lecturer at Pretoria University, who applauded the establishment of a Zulu monument and a reinterpretation of the events, and of Prof P Naude, Dean of the Faculty of Philosophy at the University of Port Elizabeth, who rejects the binding nature of the Covenant on the Afrikaners of today.[63]

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[61] Rapport 27.12.1998: Laat Bloedrivier versoen, p. 15.
[62] Die Afrikaner 11-17.12.1998: Hoofartikel (Twee Godswonders in een maand herdenk), p. 2.
[63] Die Taalgenoot 12.1998: Geloftedag vandag, pp. 6-9.

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Dr Grobler probably came closest to the current pulse of thought among Afrikaners on the Covenant and the Battle of Blood River/Ncome when, in reference to the traditional interpretation of the events and the differences of opinion, he came to the conclusion that: "That interpretation is no longer generally supported. Indeed, there are many Afrikaners today who seem to attach no importance whatsoever to the annual commemoration of the Blood River events... One is indeed tempted to conclude that it would be easier for open-minded Afrikaners to agree with the Zulus than with ultra-conservative Afrikaners on the message of Blood River".[64] The traditional interpretation of the Covenant and the Battle of Blood River/Ncome have indeed lost their grip on the historical consciousness of the majority of white Afrikaners.

CONCLUSION

Is it possible to draw any conclusions or learn any lessons from the history of the Covenant and the Battle of Blood River/Ncome with regard to a desegregated South African history? An issue such as the role that historians can play in desegregating history in South Africa springs to mind. On the one hand, the history of the Covenant and the Battle of Blood River/Ncome seems to suggest that historians have a limited influence/capacity in desegregating history in South Africa. If one takes into account that the academic debate in Afrikaner circles on the demythologising of the events was already played out and largely settled in the early 1980s, the question arises why the public debate has not yet come to a rest despite the fact that historians have "done their job". To what can one ascribe the fact that not all Afrikaners were converted to the new interpretations on the Covenant and the Battle of Blood River/Ncome? Is it because acceptance of the new interpretations of the events and December 16 as the Day of Reconciliation has become the trade mark of those Afrikaners who accept (although in some cases reluctantly and with a feeling of deprivation) the New South Africa, whereas those adhering to the traditional interpretations and the Day of the Vow see it as a political statement through which they reject the New South Africa and the whole notion

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of reconciliation? Are Afrikaners still using the events to make sense of and give meaning to their everyday lives? Those accepting the new interpretations to justify their desire for reconciliation. Those sticking to the traditional interpretations to justify their desire for separateness. Is the extent of the influence of the labour of historians therefore determined by the political debates/climate of the day?

On the other hand, the history of the Covenant and Battle of Blood River/Ncome can also be interpreted as providing proof of the enormous influence historians can exercise in desegregating history in South Africa. One can argue that the reason why the public debate on the Covenant and the Battle of Blood River/Ncome has not yet been settled is attributable to the thorough work done by earlier Afrikaner historians (writing from a nationalistic perspective) in segregating South African history as well as to the diligence with which their interpretations were translated into school textbooks and were accepted by the powers that be as the Official Grand Narrative of the South African past. That it is because of their "thorough work" that it is now so difficult to change the perceptions and stereotypes created by their labour? If historians were able to exercise such influence in creating a segregated history, the same must also be possible for an integrated history.

I am of the opinion that historians have a crucial role to play but that it is not an unlimited role. The best they can do is to ensure that they don't write "in the service of"-history. That they don't write "positive to the self and negative to the others"-history. That they write historically accountable history. It is after all their narratives that form the basis for the creation of historical consciousness.

Another question that comes to mind is the role the powers that be have to play in desegregating history. The case of the Covenant and the Battle of Blood River/Ncome is a reminder of the damage that was done by ideologically driven Afrikaner political, religious and community leaders when they got hold of the narratives of Afrikaner nationalist historians. An integrated South African history provides no guarantee that this

[64] JEH Grobler: Afrikaner perspectives on Blood River: A never-ending debate? (Paper delivered at one-day seminar on the Battle of Blood River/Ncome at University of Zululand, November 1998, pp.1, 7).

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will not happen again. The only guarantee historians can provide is to write history as suggested in the preceding paragraph. The recent involvement of the South African government in facilitating a reinterpretation of the Battle of Blood River/Ncome suggests that co-operation between academic historians, the government and the public can make a positive contribution towards an integrated South African history. The result of the joint exercise was a narrative of the Battle of Blood River/Ncome with a greater degree of historical accountability that took cognisance of and included both Voortrekker and Zulu perspectives without the one replacing or dominating the other. It also produced a visual public legacy in the form of a monument that contribute to reflecting the past in a more balanced manner than before. Exercises like these, however, are only permissible as long as the government facilitates and not dictate. Whether governments have the capability for such restraint is another question.

An integrated history of the Battle of Blood River/Ncome seems to include both the negative and the positive elements of the historical experience. It must not be a history to enable people "to forget many things".[65] It must rather be a history to enable people to "make sure that they (you) know what they (you) are forgetting"[66]. Only with such an approach can an integrated South African history reflect the kaleidoscopic South African past and, in the words of Frank Ankersmit, can "we (you) become what we (you) are no longer".

[65] Ernest Renan as quoted in E Heese: The Voortrekker on Film: From Preller to Pornography (Critical Arts 10:1 (1996).
[66] With recognition to Jörn Rüsen and Frank Ankersmit.

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ROYAL BAFOKENG NATION

SUBMISSIONS BY THE ROYAL BAFOKENG NATION

IN RESPECT OF THE COMMUNAL LAND RIGHTS BILL, 2003

1. This memorandum is the response of the Royal Bafokeng Nation (" the Bafokeng") to Notice 2520 in Government Gazette No 25492 of 3 October 2003 in which the Communal Land Rights Bill, 2003 is published for comment by the general public. This submission will focus on the manner in which the Bill affects the Bafokeng and other similarly placed communities.

2. The Bafokeng is an indigenous community of some 300 000 members situated in the Bafokeng District near Rustenburg in the North-West Province.

3. In this memorandum, the Bafokeng addresses the following broad topics:

3.1 A brief history of Bafokeng occupation and ownership of land;

3.2 The legal status of indigenous communities referred to in the Bill as "communities";

3.3 The democratisation of the law and customs of communities; and

3.4 The issues of transfer of communal land and security of tenure in respect of communal land;

4. This legislation is long overdue, as 9 years have passed since the first democratic government was elected. Notwithstanding the delays the fact that a Bill has been published is welcomed by the Bafokeng.

5. In order to appreciate the Bafokeng' s position in respect of the Bill we provide more detail in respect of the Bafokeng, its structures and land holding.

HISTORY OF BAFOKENG RIGHTS TO LAND

6. The Bafokeng have a very ancient genealogy traceable to the 1100's. Part of the general southward movement of Batswana groups of people, the Bafokeng settled in an area which included the whole of the present municipal area of Rustenburg, Kroondal and Marikana, well before 1700.

7. The approach adopted to land in Bafokeng law and custom was one of communal tenure whereby ownership of the land vested in the community and not in any individual.

8. During the 1840' s the first white settlers arrived in the Rustenburg area and began to displace the Bafokeng from the land on which they had lived for many years.

9. With the arrival of the Boer settlers in the Transvaal, came a rudimentary system of land registration which became more sophisticated over time. Each citizen or burgher of the Transvaal Republic could claim a farm of 3000 morgan. Initially the grants of such farms were performed informally by the landdrost who issued certificates of registration for land. Such claims of land by burghers encroached on the land settled historically by the Bafokeng. By the mid 19th century all the land forming the greater Rustenburg region had been granted to Boer farmers, who accordingly became the registered owners of the land. At law the registered owner of land had absolute rights of ownership and possession. Accordingly, whilst the Bafokeng continued to occupy portions of their ancestral land, at that stage they enjoyed no rights of ownership. Thus for example the principal village which was within the present municipal area of Rustenburg was vacated and moved to the village of Kana situate on what is today the farm Reinkoyalskraal 278JQ.

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10. **In April 1844 the First Boer Constitution, being the Thirty-Three Articles drawn up at Potchefstroom, expressed the attitude that there would not be equality between blacks and whites as regards land rights. Article 29 thereof provided:**

> *"No natives shall be allowed to settle near village lands, to the detriment of the inhabitants, except with the consent of the full Raad".*

11. **The Volksraad of The South African Republic (the " Transvaal Republic") resolved in November 1853 that Commandant-Generals and Commandants could grant farm land to blacks provided:**

> *"... that such a farm be occupied by them and their descendants conditionally as long as they behave in accordance with the law and obediently. In case of disobedience such tenure may be declared lapsed, and, if so, it shall always remain only a loan farm, and the conditions or rent may be summed up in the words "good behaviour or obedience".*

12. **In June 1855 the Volksraad passed a resolution which provided that:**

> *"... no one who is not a recognised burgher shall have any right to possess immovable property in freehold... All coloured persons are excluded herefrom, and the burgher-right may never be granted or allowed to them (in accordance with the Grondwet)."*

13. **The Grondwet which was the constitution of the Transvaal Republic was adopted at Rustenburg in 1858 and provided that:**

> *"The people will not permit any equalisation of coloured persons with white inhabitants neither in Church nor in State".*

14. **The issue of whether blacks could purchase land arose when the Commandant of the Rustenburg district enquired of the Volksraad whether blacks in his district could purchase land from a burgher. The Executive Council proposed to the Volksraad that in such cases transfer should be made out in the name of the government, the use of the farm being available to the native and his heirs as long as they conducted themselves according to law. One member of the Volksraad proposed that "according to law no land should be sold to blacks", but this was rejected. The Volksraad referred the matter back to the Executive Council for a report as to the best way in which to provide the blacks with locations and what would be in accordance with the law. The Volksraad appointed a Commission to enquire into and report on the matter. The Commission duly reported whereafter a Volksraad resolution was passed in November 1871 which allowed for the purchase of land**

> *" ... by Kaffir tribes, subject to the condition that they shall not be allowed to in any way dispose of this ground otherwise than with the consent of the Government ..."*

15. **The government also retained a pre-emptive right to land where black purchasers wished to dispose of land.**

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16. This 1871 resolution of the Volksraad was however not acted upon and did not become law. A petition in 1872 which requested that land not be sold to blacks and that blacks not be entitled to obtain freehold ownership was answered by the Volksraad stating that it was unknown that transfer had ever been given to blacks.

17. In 1873 the question of land ownership by blacks was again raised before the Volksraad which referred the issue to the government for a report and proposal. Executive government submitted its report to the Volksraad in 1874 and placed before it a proposed law on the transfer of land to blacks. The proposed law provided for the transfer of:

> *"landed property to any coloured persons who shall produce a certificate from the Field-Cornet of the ward in which he abides or is resident, or from the Landdrost of the division which he resides, that such person is well known to him as an honest, quiet, industrious and peace-loving person, faithful to the Republic".*

18. The report and the draft law were both discussed by the Volksraad and rejected. The resolution which rejected the proposed law stated that it was in conflict with the Grondwet (Constitution). In law the status quo remained unaltered. The Volksraad resolution of 1855 continued to apply, whereby blacks were excluded from holding property in freehold.

19. In January 1875 Kgosi Mokgatle of the Bafokeng assisted by J.A. Butner enquired of the government whether a farm that the Bafokeng had purchased could be transferred into their name, and, if that was not possible, whether the farm could be transferred into the name of the government in trust for the Bafokeng. The response from the Executive referred Butner to a Volksraad resolution of the previous year which, pursuant to a request by one Macapan Aapie had refused to approve the transfer of land into the name of either an indigenous community or the government in trust for such community.

20. Up to the time of the British occupation in 1877 the grants of land for black occupation made by the government of the Transvaal Republic were according to these principles.

21. On 12 April 1877 Sir Theophilus Shepstone annexed the Transvaal on behalf of Britain. The annexation proclamation guaranteed " *equal justice to the persons and property of both white and coloured*" , but " *without the granting of equal civil rights*" , such as the right of voting, or their being entitled to " *other civil privileges incompatible with their uncivilized condition*" . The proclamation guaranteed that all private bona fide rights to property, guaranteed by the existing laws of the Transvaal Republic would be respected.

22. The British Administration altered the position in that it initiated the principle of vesting land title for blacks in a responsible representative of the government as official trustee. The Lagden Commission Report was later to record this change in policy towards the purchase of land by blacks which occurred during the British occupation as follows:

> *"With the British occupation of 1877 a modification of the principle of the South African Republic, which refused recognition of the right of Natives to purchase land, was introduced.*
>
> *It was considered inadvisable to make a violent change by which Natives should have the right to purchase land and to have it registered in their own names. The course adopted by the late Sir Theophilus Shepstone was to make the Secretary for Native Affairs ex officio trustee for the Native purchases; thus the latter*

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were secured in their rights, and the office being a permanent one, all risk of their being put to trouble and expense, in the event of the death of a trustee, was obviated."

23. The Lagden Commission Report also records that until the time of annexation of the Transvaal:

"The Government of the late South African Republic was, up to this point, unwilling to allow natives to acquire land by purchase. In these circumstances, the Natives resorted to the expedient of arranging with Missionaries to buy land for them, which was registered in the name of the Missionary. The purchase price was collected by each Native Chief from his tribe, principally in cattle, and the Missionary arranged the transaction."

24. As early as 1869 the Bafokeng had purchased and paid the purchase price of £9 for a portion of land which was registered in the name of a missionary. In 1871 the Bafokeng purchased and paid the purchase price of £150 for a further portion of land. Further similar purchases followed in 1874, 1876 and 1879 with all these farms being registered for the Bafokeng in the names of missionaries with the Hermansburg Mission Society.

25. Sir Theophilus Shepstone did not approve of land purchased by indigenous communities being held by missionaries. He accordingly instructed:

"That until further legislation on the subject, all lands purchased by or for natives are to be held in trust by the Secretary for Native Affairs for such natives".

26. Prior to July 1879 Kgosi Mokgatle of the Bafokeng obtained an interview with Sir Theophilus Shepstone in regard to land ownership by blacks. Shepstone indicated to Kgosi Mokgatle that according to the law blacks could not obtain ownership in land and that until such time as the law was amended no change in this respect could be achieved. Accordingly Shepstone enquired from Mokgatle as to what arrangements had been made in respect of the land which had already been purchased by the Bafokeng. Mokgatle informed Shepstone that the land was transferred into the name of a missionary, Reverend Penzhorn. The problem was that Penzhorn no longer wished to shoulder this responsibility as he anticipated that the Bafokeng would have problems in relation to the properties when Penzhorn died. Shepstone agreed with this and indicated that it would be better if the land could be transferred into the name of one or other government official in trust for the Bafokeng because the office of such official would continue to exist even if the holder of that office died. Shepstone nevertheless advised Kgosi Mokgatle that the Bafokeng leave matters as they stood for the present.

27. In December 1879 Reverend Penzhorn wrote to the Colonial Secretary, M. Osborne, requesting that the Bafokeng be given evidence of the fact that the government would transfer their land into the name of a trustee on their behalf. In that letter Penzhorn indicated that the Bafokeng intended to purchase a further farm and that the seller was prepared to sell it, provided it could be transferred into the name of Mokgatle or the government in trust. H. Shepstone in his minute to M. Osborne regarding this letter said:

"The suggestion that the land should be transferred to the Government in trust is a good one. There have been one or two similar applications and the land has been transferred to me in my capacity as Secretary for Native Affairs in trust for the native

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purchaser. I would suggest that a similar course be adopted in this case".

28. **The Administrator of the Transvaal, W.O. Lanyon in his minute regarding the same matter said:**

"this shows how ready the natives are to agree in the proposal to have a government trustee".

29. **In his Masters thesis on " The Question of Native Property Rights in Land in the Transvaal" W. A Stals states that the evidence shows that the British interim government for the first time at the beginning of 1880 officially decided that the Secretary for Native Affairs should be appointed *ex officio* as trustee for land purchased by native tribes. Thereafter the policy laid down in the case of the Bafokeng became general policy.**

30. **This period of British occupation of the Transvaal ended the following year at the battle of Majuba in February 1881. After that Boer victory the British accepted defeat and restored the independence of the Transvaal Republic. The Pretoria Convention signed in August 1881 contained the terms of cessation of war. Under that convention the British recognised the complete self-government of the Transvaal subject to certain reservations and limitations.**

31. **The day before the Pretoria Convention was signed, Sir Hercules Robinson, President of the Royal Commission and High Commissioner for South Africa, delivered an address to the Blacks of the Transvaal assembled at Pretoria. He explained the conventions upon which it had been agreed that the country would be given back to its former Boer rulers. In his address, which was later gazetted, Robinson said the following:**

"In the conditions, to which as I have said they (Messrs Kruger, Pretorius and Joubert) agree, your interests have not been overlooked. All existing laws will be maintained, and no future enactment which specially affects your interests will have any effect until the Queen has approved of it. I am anxious that you should clearly understand this today, and realise that although there will be a change in the form of Government, your rights, as well as your duties, will undergo no alterations.

You will be allowed to buy or otherwise acquire land, but transfer will be registered in trust for you in the names of three gentleman who will constitute a Native Location Commission. The Commission will mark out Native Locations, which the great Native Tribes may peacefully occupy. In marking out these locations, existing rights will be carefully guarded; and the Transvaal Government on the one hand and the native tribes on the other, will always have to respect the boundaries so defined ..."

32. **Article 13 of the Pretoria Convention formally recorded this position:**

" Natives will be allowed to acquire land, but the grant or transfer of such land will in every case be made to and registered in the

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name of the Native Location Commission hereinafter mentioned, in trust for such natives".

33. During March 1882 certain burghers in the Rustenburg district sent a written request to the Volksraad that no land should be transferred to blacks. The State Secretary to the Transvaal Republic replied by way of letter which document was subsequently approved by the Volksraad in August 1884. The letter of the State Secretary recorded:

" With reference to that portion in which you request that no ground may be sold to natives, or directly or indirectly transferred to their names, I have received instructions to refer you to Article 13 of the Convention whereby provision is made for retaining ground for Natives in the name of the Kaffir Location Commission, so that the Natives cannot hold ground in their own names.

It is not possible for the Government to comply with the request about the sale of the ground to natives, and no laws exist or ever have existed which prohibit such".

34. The Lagden Commission Report records that the Volksraad resolution of August 1884 was interpreted to approve of the principle that blacks could not hold ground in their own names, and that this principle was acted upon by the Registrar of Deeds under the government of the second British occupation.

35. In 1882 and 1883 the farms Zanddrift and Beerfontein which had been purchased by the Bafokeng were registered in the Deeds Register in Pretoria and transferred in " *full and free ownership*" to the Native Location Commission in trust for the Bafokeng. (The Commission included among its members Paul Kruger, Vice-President of The Transvaal Republic and George Hudson the British Resident).

36. The London Convention of 1884 replaced the Pretoria Convention and essentially abolished British supervision over the Transvaal Republic. This Convention provided that all transfers to the British Secretary for Native Affairs in trust for blacks remained in force, but that an officer of the South African Republic would take the place of such Secretary for Native Affairs. Consequently the Superintendent of Natives took over this role on behalf of the Transvaal Republic.

37. In 1896 the new constitution of the Transvaal Republic provided that:

" All persons who are within the territory of this Republic shall have an equal claim to protection of person and property"

but at the same time laid down that:

"The people will not permit any equalisation of coloured persons with white inhabitants".

38. In 1887 the farm Bierkraal purchased by the Bafokeng was transferred to the Superintendent of Natives in trust for the Bafokeng. In 1890 the farm Doornspruit was similarly transferred. The transfer of these farms to the Superintendent of Natives illustrates the prevailing policy of the government of the Transvaal Republic in regard to registration of land acquired by blacks.

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39. **Prior to 1898 Kgosi August Mokgatle of the Bafokeng requested the government to have all Bafokeng farms which were at the time registered in the names of missionaries transferred to the Superintendent of Natives in trust for them. However the relevant documents were mislaid in the office of the Native Commissioner of Rustenburg.**

40. **In October 1899 Britain declared war on the Transvaal Republic, formally annexed the territory and renamed it the Transvaal Colony. War continued until peace talks were concluded with the treaty of Vereeniging in May 1902. In consequence of the British victory the Superintendent of Natives was formally succeeded by a British official, the Commissioner of Native Affairs.**

41. **Lord Milner, the Administrator of the Transvaal, repealed and declared of no force and effect a large number of Transvaal Republic laws. Those included the Constitution of 1858 and 1896, various Volksraad resolutions and government notices published under the Transvaal Republic.**

42. **Under the second British occupation Sir G.Y. Lagden was appointed the Commissioner of Native Affairs. In 1903 a portion of the farm Kookfontein which had been purchased by the Bafokeng was transferred to *"Commissioner of Native Affairs in trust"* for the Bafokeng.**

43. **In July 1904, the Lagden Commission issued its "Report Relative to the Acquisition and Tenure of Land by Natives in the Transvaal" in which was stated in respect of the class of land held by the Bafokeng:**

> *" Land Owned by Natives:*
>
> *These properties were almost entirely acquired under the late Government. Being property purchased by communal subscription, it is not practicable to exercise the same control as over Government Locations. ....*
>
> *The title to such property is or is about to be vested in the Commissioner for Native Affairs in trust for the owners, who cannot, therefore, encumber or dispose of their interests without the consent of the Government" .*

44. **In 1904 the farm Vaalkop which had been purchased by the Bafokeng was similarly transferred to " *The Commissioner of Native Affairs, his successors in office, in trust"* for the Bafokeng.**

45. **In April 1905 judgement was handed down by the Supreme Court of the Colony of the Transvaal in case of Tsewu v Registrar of Deeds. On the basis that all the inhabitants of the country enjoy equal civil rights under the law the court held that an aboriginal native of South Africa was entitled to claim transfer in the deeds office of any land of which he was the owner. The court unanimously upheld the right of a black to obtain registration of transfer into his own name. The court held that there was no law which justified the position adopted by the Registrar in refusing to register land in the name of the black plaintiff. Chief Justice Innes stated:**

> *"No doubt the practice has prevailed for years in this country of not allowing transfer of land to be made direct to any native, but insisting upon transfer being taken in trust for him by an official appointed by the State. But the existence of that custom cannot in my judgement justify the attitude of the respondent. It is for the legislature to deal with the matter if it is thought right to make*

special provisions in regard to natives. When we find nothing in the statute book which would warrant us in drawing any distinction we are bound to draw none".

46. **In the Tsewu case the court referred to the Volksraad resolution of 1855 and accepted that had this not been repealed blacks would have been directly prohibited from holding landed property in the Transvaal.**

47. **In September 1906 the farm Klipgat purchased by the Bafokeng was transferred to the Commissioner of Native Affairs for the Transvaal in trust for the Bafokeng. Soon thereafter the Bafokeng purchased two further farms, Turffontein and a portion of Beerfontein from the Hermansburg Missionary Society for a purchase price of £680. On 11 July 1910 a resolution was passed by the Bafokeng that the transfer of these farms be passed from the missionaries to the Minister of Native Affairs in trust for the Bafokeng.**

48. **The Transvaal was granted Responsible Government in the Colony of the Transvaal in 1907. This change saw Johann Rissik appointed the Minister of Native Affairs in the Transvaal. He succeeded the Commissioner for Native Affairs.**

49. **In accordance with the recommendation regarding land owned by blacks contained in the Lagden Report, the Transvaal Government commenced the transfer of land nominally held by missionaries as representatives of indigenous communities into the name of the Minister of Native Affairs for the Transvaal. Accordingly in June 1907 six farms which had previously been purchased by the Bafokeng and nominally held by missionaries, were transferred free of transfer duty to Rissik in his capacity as Minister of Native Affairs for the Transvaal, in trust for the Bafokeng.**

50. **In November 1909 the farm Reinkoyaalskraal was purchased by the Bafokeng and similarly transferred to the Minister of Native Affairs in trust.**

51. **On 31 May 1910 the Union of South Africa came into being. The Minister of Native Affairs of the Union of South Africa succeeded to the office of the Minister of Native Affairs of the Transvaal Colony.**

52. **<u>The Native Land Act of 1913</u> came into operation on 19 June 1913 and divided land in South Africa into areas in which blacks could own land and areas where it was illegal for blacks to own land. To this end the Act established areas known as <u>" scheduled native areas"</u>. Any person other than a black person required the approval of the Governor-General to acquire land in a scheduled area. The Native Land Act of 1913 stipulated that blacks could not enter into any agreement or transaction for the purchase or acquisition of land from a person other than a black outside a scheduled area, except with the approval of the Governor-General. This legislation had devastating consequences for blacks with only some 7% (later to increased to 13%) of the land area of South Africa being available for acquisition by blacks.**

53. **The Bafokeng continued to purchase land after 1913 but the effect of the Native Land Act was to make it very difficult to acquire further tracts of ancestral land. Three further portions of the farm Kookfontein which fell within the scheduled area were however transferred to the Minister of Native Affairs in trust. The Bafokeng resolution which authorised this transfer further resolved that a two pound levy be imposed on each adult male member of the Bafokeng in order to raise the funds for the purchase price.**

54. **The farm Doornspruit Annex was purchased from the Government by the Bafokeng for the sum of £175 in August 1935. This farm was transferred by way of a Crown grant to the Minister of Native Affairs in trust for the Bafokeng. As this was a sale of government land, the transfer was made not only with the approval of the Minister of Native Affairs but also required the approval of Parliament. It is apparent from the resolution approved by Parliament on 21 May 1934, and from the relevant Executive Council minute, that the government and Parliament regarded the sale of Doornspruit Annex as a transaction whereby freehold ownership in this land would pass from the State to the Bafokeng.**

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55. In September 1935 the farm Toulon was exchanged for a portion of the State owned farm Tweedepoort and registered in the name of the Minister of Native Affairs in trust for the Bafokeng. Again both the Minister of Native Affairs and Parliament approved the transfer.

56. The Native Trust and Land Act of 1936 provided that where a black was the owner of the mineral rights, no person could prospect for minerals without the written permission of the Minister of Native Affairs. This legislation discriminated directly against blacks and the Bafokeng.

57. It is quite apparent from the records surrounding the lease of mineral rights over various of the Bafokeng farms, that the government officials in the Native Commissioner's office, the Secretary for Native Affairs, the Minister of Native Affairs and the Bafokeng all regarded the Bafokeng as the owner of the land and as such entitled to deal with mineral rights on such properties as the owner thereof. For example, on 14 September 1953 the Secretary for Mines in a letter to the Secretary for Native Affairs regarding a proposed prospecting contract between the Bafokeng and a mining company in respect of 6 portions of Bafokeng land stated:

> *"It would appear that the ownership of both the surface and mineral rights in respect of the land in question vests in the said Bafokeng Tribe and the land therefore ranks as private land for the purposes of the mineral laws".*

58. There is no recorded instance where the government of the Republic of South Africa sought to deal with Bafokeng land contrary to the wishes of the Bafokeng. On the contrary the trustee inevitably adopted the attitude that he should act as required by the Bafokeng in land related transactions.

59. In dealing with their land the Bafokeng have always exercised rights consistent with ownership. The government functionaries holding the land in trust for the Bafokeng have never purported to exercise rights inconsistent with the Bafokeng's rights of ownership. The single notable exception to this was President Lucas Mangope of Bophuthatswana who purported in 1990 to conclude mining contracts on behalf of the Bafokeng against the will of the Bafokeng. The circumstances of this attempt to interfere with the Bafokeng' s right to deal with their own mineral rights is recorded below in part 2 hereof.

60. The Bafokeng are an indigenous community governed by their own system of indigenous law. In Bafokeng indigenous law a decision to dispose of communal land can only be taken at a general meeting *(pitso)* of the Bafokeng. This principle of indigenous law has been recognised by the South African courts. The precise role of the government functionaries who held the Bafokeng land as "trustees" was never spelt out. In practice through the course of more than a century of Bafokeng land being held in trust in this way, the government functionaries who were trustees never sought to interfere in the Bafokeng' s right to deal themselves with their own land or mineral rights. In short the trustees did what the Bafokeng instructed them to do with the land.

ESTABLISHMENT AS A JURISTIC PERSON

61. THE CONSTITUTION

61.1 Section 211 and 212 of the Republic of South Africa Constitution Act, Act 108 of 1996 provide:

> *" 211 Recognition*
>
> *(1) The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution.*

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(2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs.

(3) The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.

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(1) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.

(2) To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law-

(a) national or provincial legislation may provide for the establishment of houses of traditional leaders; and

(b) *national legislation may establish a council of traditional leaders"*

62. THE COMMON LAW

62.1 The Bafokeng and other indigenous communities enjoy full legal personality as unincorporated associations and can sue and be sued.

62.2 In law there are two classes of persons - natural persons and artificial or juristic persons. There are various classes of juristic persons including unincorporated associations. Unincorporated associations may have full legal capacity to contract and may enjoy *locus standi* to sue and be sued, provided such associations have certain characteristics. Such an association is known as a "*universitas personarum*", commonly referred to simply as a *universitas*. A *universitas* is a legal fiction constituted by an aggregation of individuals forming a persona or entity which has a capacity to acquire rights and incur obligations in much the same way as a natural person. There are of course inherent limitations in the kind of rights and obligations which a *universitas*, being an artificial person, may acquire.

62.3 Generally an association which has no constitution is not a *universitas*. This general rule is not an absolute one. Where there is no written constitution the common law recognises that a body which does possess the characteristics of a *universitas* may nevertheless enjoy legal personality. In the absence of a written constitution the courts have regard to the nature of the body, its objects, activities and powers in order to determine whether the association possesses the requisite characteristics of the *universitas*.

62.4 In order to possess legal personality, a voluntary association must have:

62.4.1 perpetual succession (i.e. a continued existence despite changes in its members and governing body from time to time); and

62.4.2 the capacity to acquire certain rights apart from the rights of the members which form the association.

This requirement is often expressed as the right or power to hold property in the association's own name and apart from its members.

62.5 The Bafokeng clearly enjoys perpetual succession as it continues to exist despite the fact that the Bafokeng may acquire new members and existing members may die or leave the community. There is no doubt that the Bafokeng has power to own property apart from its members. The common law requisites for a *universitas* are therefore satisfied. It follows that at common law the Bafokeng has legal personality to contract and *locus standi* to sue and be sued.

62.6 There is moreover a body of case law which recognises the *locus standi* of indigenous communities. The Appellate Division has considered the question of *locus standi* of indigenous communities in the cases of Matope v Day 1923 AD 367 and in Rathibe v Reid & Another 1927 AD 74. In the latter judgment De Villiers JA delivering the unanimous judgment of the Appellate Division held that:

> *"The Tribe is the universitas recognised by the law and by virtue of being recognised as a universitas is capable of owning property."* (pg 86)

62.7 Later in the same judgment and in the course of rejecting an allegation that a portion or section of an indigenous community constitutes a separate legal entity the learned judge stated:

> **"*The Tribe as represented by the Chief is the universitas. The Chief is not merely the connecting link between the various sections of the Tribe. But the Tribe as a persona preserves its unity through the common Chief, and there is consequently no room for separate legal identities."* (pg 88)**

63. CUSTOMARY LAW STRUCTURES

63.1 The Bafokeng traditional and customary system of government is made up of the Kgosi (chief), the bakgosing or tribal council (also called the council of noblemen), the dikgosana or council of headmen and the pitso or tribal assembly. Professor M W Prinsloo, erstwhile professor of Indigenous Law at the Rand Afrikaans University, writes that for legislation and other important matters which affect the whole indigenous community, Bafokeng procedure at customary law required that the Kgosi consult and inform the indigenous community at a tribal assembly or pitso. Matters of such importance to the indigenous community as a whole as would require a pitso would include not only legislation but would for example include the disposition of tribal land or mineral rights. In executive matters which are of lesser importance to the Bafokeng, such as the building of roads, schools and matters regarding mines, the Council of Headmen meets with and advises the Kgosi. In the case of the Bafokeng there are 72 headmen recognised as such in terms of Bafokeng custom. Further the custom of the Bafokeng is that each headman is entitled to be accompanied by one or two wardmen chosen by that headman to assist him and to accompany him to meetings of the Council of Headmen. The full complement of councillors at a meeting of the dikgosana and wardmen therefore potentially totals some 216 persons. Historically the practice was that smaller council (referred to for convenience as the "Tribal Council") administered the day to day affairs of the Bafokeng. This Tribal Council consisted of a much smaller number of persons (approximately 16 persons) nominated by the constituencies of the headmen and appointed by the Kgosi. This Tribal Council operated as a policy and decision making body in relation to day to day operations of the Bafokeng. Important decisions or those involving large amounts of money were required to be taken by the dikgosana, wardmen and councillors of the Tribal Council sitting together.

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63.2 The system of traditional authority observed under indigenous law recognised by the Bafokeng immediately prior to the commencement of the 1993 constitution was preserved by that constitution. Similarly, the powers and recognition of traditional leaders according to customary law were recognised by the final Constitution.

63.3 The Bophutatswana Traditional Authorities Act 23 of 1978 (" the Traditional Authorities Act") creates a Tribal Authority for each indigenous tribe. The Tribal Authority, where there is an existing " tribal government functioning in accordance with the law and customs observed by that tribe, shall be that tribal government" . The chief is an ex officio member and chairman of the Tribal Authority. The Tribal Authority consists of:

63.3.1 those members of the tribe who are recognised as councillors in accordance with the law and customs of the tribe and who, with the chief constitute tribal government; and

63.3.2 such additional members of the tribe as may be appointed to the Tribal Authority by the chief with the approval of such officiating councillors.

63.4 Section 4 of the Traditional Authorities Act describes the statutory duties of a Tribal Authority which are generally to administer the affairs of the tribe and to assist, support and guide its chief in the exercise or performance of the powers conferred upon him by the Act or under any law.

63.5 The Tribal Authority is under a duty to establish a proper administration and appoint personnel to manage that administration. Legal proceedings against a Tribal Authority may be instituted by or against the chairman of that authority (i.e. the chief) in his official capacity.

63.6 In law the Tribal Authority is that system of tribal government functioning in accordance with the law and custom of the Bafokeng. It is incorrect to regard as two separate and distinct bodies the Tribal Authority and the dikgosana or headmen in council together with the wardmen and councillors (being the councillors of what we have termed the Tribal Council). In any event it is entirely impractical to administer two parallel councils the membership of which is co-extensive as is the case with the Bafokeng. Since the inception of the Tribal Authority Act in 1978 only a single council has in fact operated. This is the body which has de facto represented the Bafokeng.

63.7 In considering the modern administration of the Bafokeng there is one further administrative body which must be taken into account, namely the Executive Authority/Council. Following democratic elections by the Bafokeng in 1996 a " Constitution of the Executive Authority / Council of the Royal Bafokeng Nation" was signed (" the Bafokeng Council constitution"). This was assented to by the Kgosi of the Bafokeng as well as the chief negotiators of a number of interested stake holders in the Bafokeng. This constitution recognises and upholds the indigenous law of the Bafokeng, the authority of the Kgosi and the seniority of the council of the dikgosana (which is the Council of Headmen) as the legislative authority of the Bafokeng nation. This Bafokeng Council constitution does not purport to be the Constitution of the Bafokeng Royal Nation itself (i.e. the Tribe), but is a constitution only of the body styled the Executive Authority/Council of the Bafokeng. This Executive Authority/Council was established to replace the traditional Tribal Council as the body which administered the day to day affairs of the Bafokeng and to ensure that it is a democratic body rather than one where the members are simply appointed by the chief as was the case historically with the Tribal Council. It is important t note that this Council must include women.

63.8 Like the Tribal Council before it, the Executive Authority/Council has both policy and decision making powers in relation to the day to day operations of the Bafokeng. Under the Bafokeng Council constitution the management and administration of the affairs of the Bafokeng are entrusted to the Executive Authority/Council.

Similarly the finances and property of the community and all matters provided for in the Traditional Authorities Act are entrusted to the Executive Authority/Council.

63.9 The Bafokeng believe that in the light of Sections 211 and 212 of the Constitution and the above exposition of the common law, the provisions of Section 3 of the Bill are unnecessary. The law is that communities such as the Bafokeng already possess legal and juristic personality.

64. DEMOCRATISING THE LAW AND CUSTOMS OF COMMUNITIES

64.1 The Bill provides that communities will be recognised as juristic personalities upon registration of the community rules in terms of section 27 of the Bill. The Bafokeng do not believe that it is necessary to provide for the recognition and conferring of the status of legal personality by way of reference to community rules. Similarly it is submitted that the transfer of land should not be linked with and interwoven with the conferring of legal personality.

64.2 Insofar as the Bafokeng are concerned, its law and custom is largely oral although several academics have in various publications recorded aspects pertaining to Bafokeng law and customs;

Prior to conducting elections for a democratically elected council in December 1996, the Bafokeng adopted a constitution governing the role and functions of such council.

64.3 The reducing of the oral tradition and custom to writing is a process which will take a considerable period of time. The reduction to writing of law and customs will to a certain extent cast in stone such law and customs and will, it is submitted, reduce the dynamism of such law and custom. This notwithstanding the Bafokeng are of the view that in a developing and ever increasingly complex society the need to reduce their law and custom to writing is welcomed.

64.4 Indigenous law or customary law must be seen as integral part of our law and its validity must be determined by reference to the Constitution of South Africa. In terms of section 211(3) of the Constitution, the courts are obliged to apply customary law when it is applicable subject to the Constitution and any legislation that deals with customary law. In the Richtersveld Community judgment, it was held that the Constitution acknowledges the originality and the distinctiveness of indigenous law as an independent source of norms within the legal system and while the constitution gives indigenous law force, it makes it clear that such law is subject to the constitution and has to be interpreted in the light of its values. It was further held that indigenous law is not a fixed body of formally classified and easily ascertainable rules as the laws change when the patterns of life of the people who live by its norms change. The Court referred to *Ex Parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa 1996* where it was held that:

> ***" The (Constitutional Assembly) cannot be constitutionally faulted for leaving the complicated, varied and ever developing specifics of hoe...customary law should develop and be interpreted, to future social evolution, legislative deliberation and judicial interpretation."***

The court held that in applying indigenous law, it is important to bear in mind that indigenous law is not written but it is a system of law that is known to the community, practised and passed from generation to generation and it will continue to evolve within the context of its values and norms consistently with the Constitution.

64.5 What is problematic for the Bafokeng is that the transfer of land from the nominal trustee to the Bafokeng (thus entitling the Bafokeng to deal with its land in an unfettered fashion as would any other private land owner but obviously in accordance

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with their law and customs), is dependent on the registration of these community rules. In the Bafokeng's view the land ought to be transferred to them without reference to the community rules on the simple basis that the Bafokeng is in fact owner of the land and the system of trusteeship pertaining to registration of the land is a colonial and apartheid relic based on racial discrimination. The detail is set out earlier in this submission.

64.6 The issue of democratising the law and customs of communities is not an issue to be avoided. It is correct that certain criteria should be stipulated to encourage transformation and further democratisation of communities. This however is a process which cannot be achieved overnight and it is submitted that to continue to delay the transfer of land to communities which like the Bafokeng are entitled to such transfer, perpetuates previous discrimination against those communities.

64.7 The legislation should deal separately with what are two separate issues:

64.7.1 Transfer of registered ownership of community land should be effected immediately;

64.7.2 Targets should be set for the achievement of community rules which comply with the Bill and the Constitution. Such targets should be such as to realistically allow for consultation with indigenous communities so as to allow time for a process of reducing laws and custom to writing.

The reduction of law and customs to community rules covering the topics set out in section 27 to section 32 to writing should be pursued and communities should be afforded a reasonable time to do so. A period of 2 years should suffice.

64.8 The approach of recognition of a community as a juristic person subsequent to the entire process relating to community rules being completed is with respect a throw-back to the colonial past, where, particularly under the British regime, recognition of amakhosi and bakgoshi was dependant on the whim of the colonial administration. Whilst it is extremely unlikely that the present State will adopt such an approach, the mere use of a mechanism so badly tainted is undesirable. In any event these communities are already possessed of legal personality.

CONVERSION OF REGISTERED NEW ORDER RIGHTS INTO FREEHOLD OWNERSHIP

65. TRANSFER AND REGISTRATION OF COMMUNAL LAND TO COMMUNITIES

65.1 There are three main aspects which require attention:

65.1.1 The transfer of land to communities;

65.1.2 Registration of land in the name of the community; and

65.1.3 The rendering of adequate security of tenure.

65.2 These aspects are interwoven in the Bill and with respect this creates a number of problems. In the Bafokeng's view these are related aspects that should be dealt with separately.

65.3 The Bill does not do this. Rather it creates conflicts between an individual and the community. Thus in section 5 (1) the Bill grants an individual the right to apply for the transfer of communal land. Whilst it is so that this right is subject to the provisions of sections 6 of the Bill, the right of an individual should be a right dealt with separately in the legislation. To deal with the transfer to individuals in the same section which deals with the transfer of communal land to the community entitled to that land causes confusion and will undoubtedly create conflict within communities. This was precisely the point at issue in the Rathibe v Reid case referred to above when the Appellate

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Division declined to recognise the separate legal identify of a portion of the indigenous community.

65.4 The land purchased by the Bafokeng Community belonged to the community and not individuals. Section 9 of the Bill read with section 13 provides for a holder of a registered new order right to apply to the community owning the land to which such rights relates for conversion of such right into freehold ownership and the Minister may , with the written agreement of the holder of an old order right and on conditions as may be agreed to, cancel the old order right. New order right is defined by the Bill as a tenure right in communal or other land which has been confirmed, conferred or validated by the Minister in terms of section 26. Old order right means tenure or other right in or to communal land which is formal or informal, registered or unregistered, derives from or is recognised by law including customary law, practice or usage and exist immediately prior to a determination by the Minister in terms of section 26. The Bafokeng is opposed to individuals holding land in their own right because as it has been shown above the Bafokeng land is for the Bafokeng community.

65.5 The provisions of section 21(2)(c) will, with respect to the Bafokeng, cause an immense administrative burden. The Bafokeng support the extension and securing of land tenure. However, the provisions of section 21(2)(c) mean that the land rights enquirer in terms of the process envisaged by this Bill will be delayed. The Bafokeng is opposed to further extensive delays in the transfer of land which as has been pointed out was its ancestral land and which because of the colonial and racist past they were obliged to repurchase. The Bafokeng is committed to granting its members security of tenure and would be prepared to accept endorsements on the title deeds reflecting such a commitment.

65.6 Section 5 should either explicitly or in due course by way of regulation provide a period during which the necessary land tenure rights and communal land register be achieved.

65.7 It is correct that the Bill in chapter 6 provides a dispute settlement mechanism but in our view this chapter will lead to great difficulty in its application. The dispute resolution provision confers jurisdiction upon the Customary Court, Magistrate's Court or Land Claims Court. It is inadvisable that there be a choice of forums as it will lead to a divergence of authority and raises questions of creating precedent and there being an automatic right of review generally from the Customary Court and the Magistrate's Court. In the Bafokeng's view it is preferable that the disputes be resolved by the Land Claims Court or at very least that the decisions of the Land Claims Court explicitly be made binding on the Magistrate's Court.

CONCLUSION

66. The Bafokeng support the broad principles of the Bill namely:

66.1 The transfer of land to communities;

66.2 The entrenchment of security of tenure in respect of Communal Land ;

66.3 The democratisation of structures and administration of indigenous communities.

67. The Bill as presently drafted achieves some of these objects but fails in respect of others.

68. The Bafokeng are opposed to their entitlement to transfer being subject to registration of community rules. They are firmly of the view that they have been discriminated against for centuries and that they should be entitled to deal with their land at their own discretion in accordance with their customary law subject to the Constitution.

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69. The Bafokeng are opposed to proposals which allow individuals to acquire title of communal land. There are sufficient safeguards to protect individuals in terms of the Bafokeng' s own law and customs.

LEGAL & CORPORATE AFFAIRS DEPARTMENT

"PAM 5"

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Historia 59, 2, November 2014, pp 69-78

S.J.P. Kruger and landownership in the Transvaal

*J.S. Bergh**

State President S.J.P. (Paul) Kruger may be regarded as one of the leading landowners in the Transvaal during the nineteenth century. His historical background in landownership is an interesting one. His father, Casper Kruger, did not own any land in the Cape Colony before he and his family, including the young Paul, migrated to the Transvaal in the late 1830s. Casper was largely dependent on the lands of family and friends in the colony for the necessary grazing for his flock of sheep.[1] This was possibly one of the incentives for the young Kruger's intensive and systematic efforts to acquire land in the Transvaal after he settled there. Chief Justice J.G. Kotzé, who knew Kruger quite well as state president and had weekly appointments with him,[2] made an interesting observation on the importance that Kruger attached to landownership:

> In the matter of banking, however much he may have trusted the deposit of state funds in the bank, the President kept no personal banking account, preferring to cash the Treasury draft received of his monthly salary and having the money in his possession, investing it in land.[3]

The earliest land registers for the Transvaal contain at least two entries for the young Kruger – one for "Paul" Kruger and the other one for "Stephanus Johan Paulus" Kruger for, respectively, 1840 (Rietvlei [sic] "on the Magalies berg") and 1842 ("on the Hexrivier").[4] The latter entry refers to the farm Waterdoof No. 4 which, according to Kruger's memoirs, he obtained in that period – evidently on the strength of the practice of allocating two farms to new farmers in the initial years of white settlement in the Transvaal (ZAR).[5] This farm was initially allocated to J. Cronjé but he does not appear to have utilised it; either way, he did not pay the inspection fees.[6] Rietvlei (sic) 824 is located to the southwest of Rustenburg. The government awarded this farm to Kruger.[7] During his short stay in the Eastern Transvaal in 1845 the farm Swartkop on the Steelpoort River was also allocated to Kruger.[8] However, since he returned to the western Magaliesberg area a few months later, this was not really of any significance.

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* Johan Bergh is currently working on a source publication of the documents of State President S.J.P. Kruger.

1. D.W. Krüger, *Paul Kruger. Deel I. 1825–83* (Dagbreek-Boekhandel, Johannesburg, 1961), pp 1, 6–8.
2. J.G. Kotzé, *Memoirs and Reminiscences*, vol. 2 (Maskew Miller, Cape Town, [1946]), p 126.
3. Kotzé, *Memoirs and Reminiscences*, vol. 2, p 31.
4. National Archives of South Africa, Pretoria, Transvaal Archives (hereafter TA), Farm Registers (hereafter RAK, for all the various districts) RAK 2333, Farm Registers for the District of Rustenburg, Folio 23, No. 222, Rietvlei, 6 February 1849 and Folio 156, No. 691, no name, 7 February 1842.
5. S.J.P. Kruger, *Gedenkschriften* (De Locomotief, Semarang, 1902), p 7; J.S. Bergh, *Geskiedenisatlas van Suid-Afrika. Die Vier Noordelike Provinsies* (J.L. van Schaik, Pretoria, 1998), pp 126–128.
6. TA, Office of the Surveyor General, Inspection Rapports Rustenburg District, p 51: Waterdoof, 19 May 1843. See also TA, RAK 2433, Farm Registers for the District of Rustenburg, Folio 2, No. 179, De Waterdoof "Aan Magaliesberg", 18 December 1839.
7. TA, RAK 3015-3023, Farm Registers for the District of Rustenburg: Rietvlei 824 (new number 814).
8. *South African Archival Records, Transvaal No. 1* (Government Printer, Pretoria, 1948), p 181.

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In the period up to 1877 Kruger acquired possession of at least 27 farms or portions of farms in the Rustenburg district in addition to the farm allocated to him on the Steelpoort River (see above). Nine of these farms were awarded to him for services rendered to the state.[9] The farms were Rietvalei 824 (*sic*) (see above); Doompoort 251; Saulspoort 269; Welgevonden 351; Rhenosterkraal 563; Middelkuil 564; Modderkuil 565; Koedoesspruit 572; and Roodekraalspruit 592.[10]

However, these farms, together with the other farms that he bought in the 1850s and 1860s, created a financial problem for Kruger. In the early years of the South African Republic, officials such as Kruger were largely remunerated with land instead of salaries because of the poor state of the economy.[11] Kruger nevertheless had to pay transfer duties etc. for the land he acquired in this manner, as well as the full purchase price for land that he bought from other persons.

In January 1858 Kruger brought this dilemma to the attention of State President M.W. Pretorius. He also referred to money that the state still owed him for his services – a sum of £60 in total.[12] To solve his problem Kruger even gained permission in 1858 to go on hunting expeditions again, concurrently with his duties as commandant and commandant-general. On these trips Kruger usually took poor families with him and gave them some of the game he shot. Furthermore, a memorandum calling upon the Transvaal people to support him was drawn up and circulated among the public. However, by February 1859 his financial constraints had still not been resolved satisfactorily. At that stage he asked the state president to pay him some of the money that the state still owed him so that he would be able to pay his creditors.[13] Even at the beginning of 1866 this matter had not been entirely resolved.[14]

Apart from the nine farms that Kruger obtained from the government in the District of Rustenburg for his services, he also bought a number of other farms or portions of farms in this district in the period preceding the 1880s, *inter alia* Losperfontein 119; Baschfontein 193; Klein Doomspruit 255; Bavianskrans 288; Beestvaal 296; Turffontein 297; Boekenhoutfontein 336; Kookfontein 337; Zwartkop 355; Zoutpansdrift 359; Rietspruit 419; Beerfontein 432; Kgolontein 535; Waterval 544; Elerkraal 545; and Palmietfontein 551. At a later stage, Kruger bought the farms Driefontein 696 (later No. 83, in the Warmbaths district) and Albion 376 in the Rustenburg district. He possibly also acquired other farms as well.[15]

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9. TA, RAK 3015-3023, Farm Registers for the District of Rustenburg.
10. TA, RAK 3015-3023, Farm Registers for the District of Rustenburg.
11. S. Trapido, 'Reflections on Land, Office and Wealth in the South African Republic, 1850–1900', in S. Marks and A. Atmore (eds), *Economy and Society in Pre-Industrial South Africa* (Longman, London, 1980), p 352.
12. TA, State Secretary (hereafter SS) 19, R180/58, p 73; S.J.P. Kruger – State President M.W. Pretorius and the Executive Council, 21 January 1858.
13. TA, RAK 3015-3023, Farm Registers for the District of Rustenburg. Staff members in the National Archives were unfortunately unable to give me access to all of these RAK volumes, which I consulted a few years ago. The same happened to some or all of the appropriate volumes for the districts of Pretoria, Middelburg, Carolina, etc. See also *Land en Volk*, 10 August 1893; and Kruger, *Gedenkschriften*, p 10.
14. TA, SS74, R70/66, pp 165–169; S.J.P. Kruger – State President, 25 January 1866.
15. TA, RAK 3015-3023, Farm Registers for the District of Rustenburg; *Land en Volk*, 10 August 1893. Regarding the farm Kgolontein, see also S.J.P. Kruger and P.G.W. du Plessis: Declaration, 20 December 1865 at Waterkloof, TA, A.371, Engelbrecht Collection, vol. 9, file 30, pp 5–8. According to this document, Kruger bought the farm together with Du Plessis.

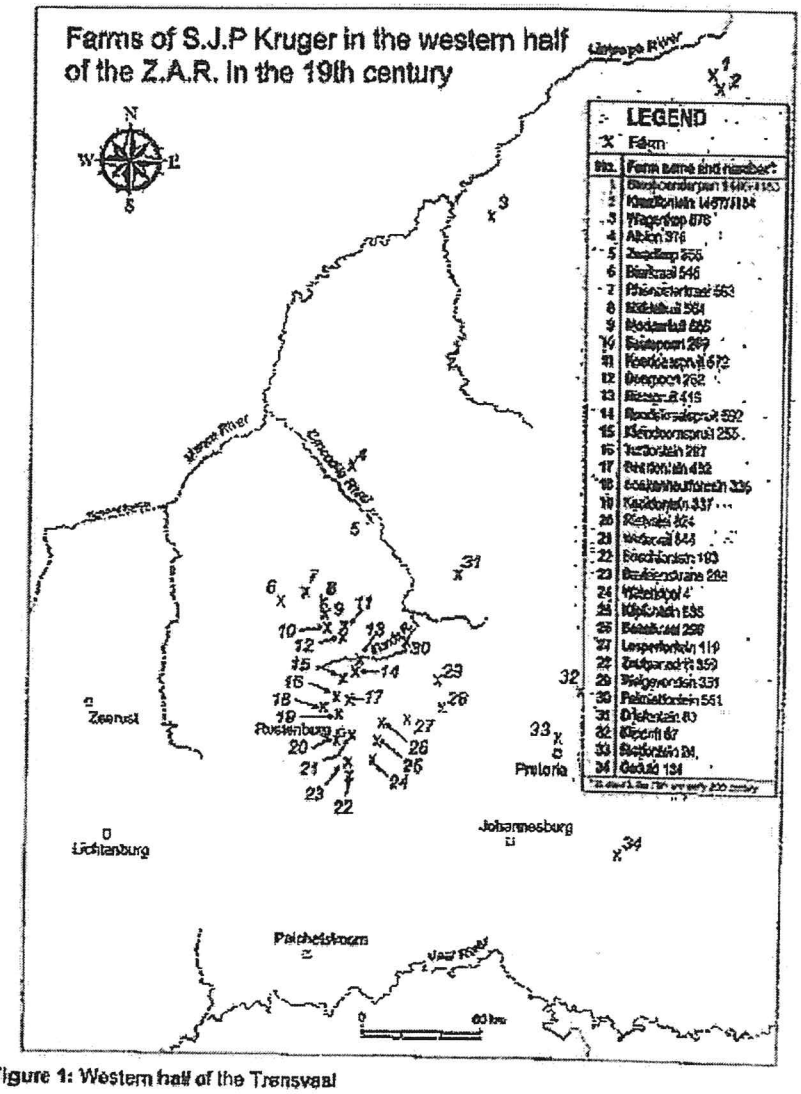

Figure 1: Western half of the Transvaal

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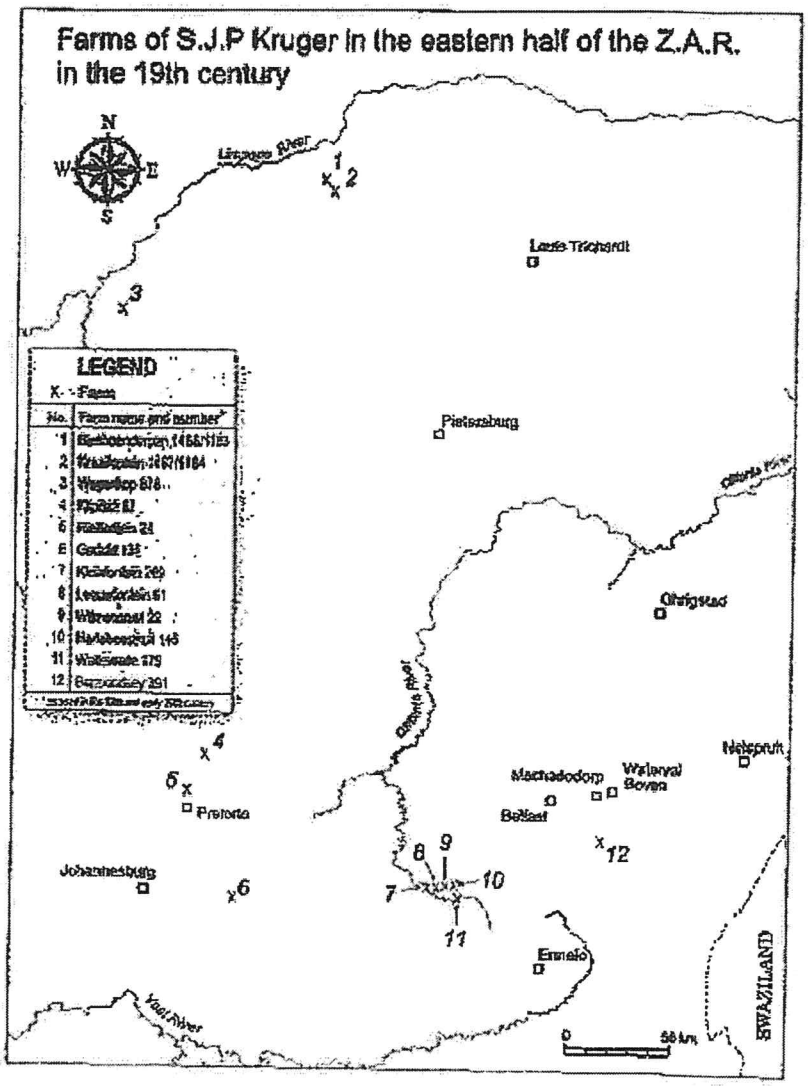

Figure 2: Eastern half of the Transvaal

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In the Pretoria district, Kruger obtained the farms Klipdrift 87 and Rietfontein 24 (portion), adjacent to Pretoria. Kruger's wife, Gezina, sold some of the milk and other products produced on this farm to their neighbours. Kruger also acquired five adjacent farms or portions of these farms along the upper reaches of the Olifants River in the Middelburg district in the 1860s and early 1890s, namely, Wilmansrust 22; Leeuwfontein 91; Weltevreden 179; Kleinfontein 289; and Harlebeestkuil 145.[16] In the Carolina district he bought the farm Bermondsey 230;[17] and in the northern Transvaal he acquired Wagenkop 878 in the Waterberg district and Blaauwboonderpan 1466 and Kraalfontein 1467, both of which were also in the Waterberg district. The latter two farms were subsequently included in the Soutpansberg district, respectively as Nos 1183 and 1184.[18] In an apparent attempt to embarrass Kruger, in 1893 the newspaper *Land en Volk*, which was critical of him, published a list of some of the farms and erven he owned in towns that it had knowledge of.[19]

The above farms do not represent a complete list of the farms owned by Kruger. For example, in a document dated 19 November 1858 and issued by the landdrost of Rustenburg, W. Robinson, at least three more farms belonging to Kruger are referred to, but the names of the farms are difficult to decipher.[20] In another (damaged) document reference is made in July 1871 to a farm owned by Kruger in the Wakkerstroom district.[21] Then too, Kruger stated in the Volksraad in August 1894 that he possessed a farm that had been cut out of the Transvaal when the borders were adjusted in 1884.[22] There is also reference in a letter written in 1896 by his son-in-law, P.N.J. Smit, to another two farms belonging to Kruger, but without the necessary detail regarding numbers and location.[23]

Kruger sold a large number of the farms that he obtained for small amounts to his sons and sons-in-law. In 1860, for example, he sold Losperfontein 119 to Tjaart A.P. Kruger; and in 1869 he sold Boschfontein 193 to Douw Gerbrand Kruger. In June 1873 he sold the farm Rhenosterkraal 563 to his son Casper and his son-in-law, Lourens du Plessis, for £15; and for similar sums he sold Middelkuil 564 to his son, Stephanus S.P. Kruger and his son-in-law Theunis Eloff; Modderkuil 563 to Jan A. Kruger and Pieter Kruger; Roodekraalspruit 592 to Jan A. Kruger, in 1874 he sold a portion of Kookfontein 377 to Jan A. Kruger, and Bierkraal 545 to Casper Kruger. There is also evidence that he and Jan Kruger bought Rietspruit 419 together in 1871. He probably also assisted the new minister of the Gereformeerde Kerk in Rustenburg, Dirk Postma, to buy Kleinboomspruit 255 from him in 1860.[24]

16. TA, RAK 2928, Farm Register for the District of Middelburg; *Land en Volk*, 19 August 1893; TA, A371, Engelbrecht Collection, vol. 10, file 32, p 187 and file 35, p 122 and file 34, p 216, Poynton Bros. – S.J.P. Kruger, 12 September 1898; D. Reitz, *Commando, A Boer Journal of the Boer War* (Faber, London, 1932), p 16.
17. TA, A 371, Engelbrecht Collection, vol. 11, file 36, p 137.
18. *Land en Volk*, 19 August 1893; Jeppe's Map of the Transvaal or S.A. Republic and Surrounding Territories, Pretoria, 1899.
19. *Land en Volk*, 19 August 1893; *De Volksstem*, 16 August 1893, pp 2–3 (Praatjes van den Dag).
20. TA, SS 22, R2438/56, p 131, Statement by W. Robinson, 19 November 1858.
21. TA, SS 134, R725/71, No. 72, p 265; S.J.P. Kruger – ?, 13 July 1871.
22. Minutes of the First Volksraad, 29 August 1894, art. 1541.
23. TA, A371, Engelbrecht Collection, vol. 10, file 34, p 197; P.N.J. Smit – S.J.P. Kruger, 6 September 1895.
24. TA, RAK 3016-3023, Farm Registers for the District of Rustenburg.

Apart from farms, Kruger also owned a significant number of erven in at least four Transvaal towns. Thorough research on this is likely to reveal that he owned even more. In the town of Rustenburg at least three erven belonged to Kruger by 1858,[25] while in Pretoria he owned at least eight by 1883,[26] and in Middelburg and Belfast at least 18 by 1903.[27]

In his analysis of farms possessed by S.J.P. Kruger, the historian D.W. Krüger only appeared to be aware of 17 of the 27 farms (at least) that Kruger owned in the Rustenburg district. He apparently had no knowledge of the 10 farms (at least) owned by Kruger in other districts. He was also seemingly unaware that Kruger originally bought the farms Beerfontein 432 and Turffontein 297 when these two farms still formed a single farm and that it was only later that he divided Beerfontein and Turffontein into two farms. The missionary Christof Penzhorn bought these two farms (portions) from Kruger on behalf of Mokgatle, the chief of the Bafokeng. Although D.W. Krüger regarded the selling prices of Beerfontein/Turffontein and Saulspoort as very high, they were in fact comparable with the selling prices of other similar farms in the Rustenburg district in this period.[28]

Kruger was well aware of accusations that in some instances at least the farms that he purchased had previously belonged to African communities. He pointed out, however, that he had purchased these specific farms second hand; that there were other considerations involved in these purchases; and that he was inclined to sell the land back to the African communities in question.[29] In the 1880s Kruger tried to sell some of these farms – Beerfontein and Turffontein (in the vicinity of his own farm, Boekenhoutfontein) and Saulspoort (at Pilanesberg) – back to African communities under the trusteeship system. However, such proposed sales were problematic because of the views prevailing in the Volksraad at the time. Kruger eventually sold these farms to missionaries acting on behalf of the specific African communities for substantial amounts – £900 for Beerfontein (portion)/Turffontein, as well as £900 for Saulspoort.[30] The Bafokeng bought the remaining portion of Beerfontein from Kruger in the 1880s.[31] Subsequently, in 1891, Kruger shed more light in the Volksraad on his point of view on white farmers' infringing on land owned by Africans:

> Now it was earlier laid down that nobody could register a farm located at a native village; people, however, did not heed this and various burghers and speculators registered farms on which natives lived, or near to where they lived. This was, however, against the law. They received transfer for those farms and then it would have meant that the Government had no land left and that the natives would have to be driven away. Therefore the Volksraad resolved to give such burghers this land on a proportional basis and a Commission was appointed to see from the returns made

25. TA, SS 22, R 2438/58, p 131: Statement by W. Robinson, 19 November 1858.
26. *Land en Volk*, 10 August 1883.
27. TA, A71, L.J. Jacobz Collection, vol. 6, pp 53–55: Declarations by S.J.P. Kruger, 20 June 1903.
28. Kruger, *Paul Kruger I*, pp 76–81; J.S. Bergh, 'S.J.P. Kruger in the Dock, 1872', *South African Historical Journal*, 63, 1, March 2011, pp 1–9; TA, First Volksraad (hereafter EVR) 217, No. 1624, pp 240–241, Testimony of S.J.P. Kruger before a Volksraad Commission, 24 October 1872.
29. Bergh, "S.J.P. Kruger in the Dock 1872", pp 15–17.
30. J.S. Bergh, "S.J.P. Kruger and the Transvaal Hardliners on Race Policies and Practices in the Early 1870s", *South African Historical Journal*, 58, 2007, pp 154–155; TA, RAK 3015-3023, Farm Registers for the District of Rustenburg.
31. J.S. Bergh "We must never forget where we come from": The Bafokeng and their Land in the 19th-century Transvaal', *History in Africa*, 32, 2005, p 113.

on the land whether burghers had received more than the value of such farms. As far as the granting of locations was concerned, the Government had always been careful ...[32]

Kruger's most lucrative land transaction was made when he and his son-in-law, F.C. Eloff, bought the farm Geduld No. 134 Heidelberg (later No. 174 Witwatersrand, No. 24 Boksburg and No. 4 Springs) to the east of Johannesburg and adjacent to the later East Rand town of Springs from A. Brodrick in 1886 for £700. In 1891, Eloff sold his portion of Geduld to Kruger for £3 000.[33] The very successful gold-mining industry, which commenced in 1886 on the Witwatersrand, a mere 47 kilometres west of his farm, was probably Kruger's incentive for buying Geduld No. 134. Against this background, F.C. Eloff made large profits in his own right on various other land transactions. In the Heidelberg district in particular, he was very successful in this regard and acquired substantial wealth.[34]

There was an irrigation dam on Geduld and Kruger rented out part of the farm to individuals who used the water for agricultural purposes. He also let small portions of the farm to individuals who erected businesses, including a hotel and butcheries, as well as to a few people who were prospecting for coal, gold and other minerals. Kruger derived a handsome monthly income from this source.

At some stage Kruger also became aware of rich coal deposits on Geduld. By March 1891, Kruger and Eloff had concluded an agreement with the Nederlandsch Zuid Afrikaansche Spoorweg Maatschappij (NZASM) for the coal rights on the farm, up to a maximum of 200 tons, in terms of which they were paid £10 000. The mining rights which Kruger and Eloff owned to search for gold and other precious metals, minerals and stones was not affected by this agreement. They also agreed that the dam on the farm should not be polluted and that the NZASM should not extend its activities to a piece of land adjoining the dam – to the extent of 3000 by 2000 yards – and that the leases which Kruger and Eloff had granted previously should be duly recognised.[35]

This contract was amended slightly in November 1894 after new negotiations between Kruger and NZASM (headed by G.A.A. Middelberg). In terms of one of the new stipulations, the 200 tons of coal that NZASM was entitled to was reduced to 50 tons.[36]

Kruger was probably aware from an early stage of the possibility that there might also be gold deposits on Geduld. In his contract with the NZASM, concluded in 1891, he specifically excluded the right to prospect for gold, silver and other precious minerals. It was therefore no surprise that early in 1895 he concluded a purchase option agreement in this regard with the Geduld Syndicate for a period of

32. Translated from the original Dutch. Minutes of the First Volksraad, 11–12 June 1891, arts 373 and 5.
33. TA, RAK 3035, Farm Register for the District of Springs: Geduld 134. See also Kruger, *Paul Kruger I*, p 78 footnote 9.
34. TA, RAK 2654, Farm Register for the District of Heidelberg. See, for example, his land transactions in connection with Puttovlein 24, Het Stuk 48 and Potfontein 53.
35. Sanlam Archive, Cape Town, Geduld Mine 7/1/3/1/1: Contract of S.J.P. Kruger and F.C. Eloff with the Nederlandsch Zuid Afrikaansche Spoorweg Maatskappij, 13 March 1891. See also the correspondence from various individuals who were utilising stands etc. on Geduld to Kruger's private secretary – TA, A371, Engelbrecht Collection, vols 9 and 10; as well as TA, A71, L.J. Jacobz Collection, vols 3 and 4.
36. Sanlam Archive, Cape Town, Geduld Mine 7/1/3/1/1: Supplementary Agreement between S.J.P. Kruger and G.A.A. Middelberg for the NZASM, 7 November 1894.

three consecutive years. This syndicate must have been aware that there was a strong possibility of large deposits of gold on Geduld because even at this early stage they were prepared to offer Kruger £5 000 for the first year to investigate this and £1 000 for each of the second and third years – and (significantly) for the right to buy the farm eventually. At this stage they were prepared, in consultation with Kruger, to determine the eventual purchase price of Geduld in the following way:

> If the series of reefs known as the Main Reef series ... run through the property either as outcrops or as deep levels, the purchase price shall be £100 000 sterling ...
>
> If the Main Reef series or some of them do not run through the said farms but there are other payable reefs ... the purchase price of the said farm shall be £70 000 ...

This was also subject to the contract concluded by Kruger and Eloff with NZASM on 13 March 1891 "with reference to the coal rights ...", as well as the supplementary contract between Kruger and the NZASM of 17 November 1894 and the other less important contracts entered into by Kruger with third parties pertaining to the arable land and stands. It was again expressly stated that the Geduld Syndicate should not damage the irrigation dam on the farm during their exploration.[37]

The final deed of sale for Geduld was concluded on 20 December 1898 after the initial three-year period of investigation had been extended by another year. Despite the fact that it had not yet been conclusively determined at that stage whether the Main Reef series ran through Geduld, the Geduld Syndicate agreed to a purchase price of £100 000, reduced by an amount of £4 800 for a small portion of Geduld that Kruger sold separately (see below). In terms of the final agreement, a sum of £10 000 was payable in cash immediately after the signing of the agreement; a further £85 200 within two years from the date of signing, on which interest was to be paid calculated at six percent per annum and payable half-yearly; and the remaining £30 000 within three years.[38]

In the event, the Geduld Syndicate paid the remaining amount of £85 200 plus £4 000 interest to Kruger by 17 May 1899.[39] Kruger had previously sold a small portion (200 morgen) of Geduld to the Springs Real Estate Company for £12 500 in 1897.[40]

After the conclusion of the transaction with the Geduld Syndicate, Kruger gave £1 000 to each of his children as a gift.[41] Out of the amount that he received from the Geduld Syndicate, Kruger also paid £40 000 over to the government of the South African Republic in May 1899 as a loan. This amount was, however, not repaid to the Kruger family after the Anglo-Boer War.[42] Dr W.J. Leyds, who was in

37. Quotation translated from the original Dutch. Santam Archive, Cape Town, Geduld Mine 7/1/3/1: Copy of the original Dutch Agreement between S.J.P. Kruger and the Geduld Syndicate, 25 February 1895.
38. Santam Archive, Cape Town, Geduld Mine 7/1/3/1/1: Copy of the agreement between the Geduld Syndicate and S.J.P. Kruger in Dutch, 20 December 1898.
39. TA, A 371 Engelbrecht Collection, vol. 11, File 37, p 42: Nel, Lorenz and Pienaar to S.J.P. Kruger, 17 May 1899.
40. TA, RAK 3036 Farm Registers for the District of Springs: Geduld 134, Transaction B 68385/1897.
41. TA, A71, L.J. Jacobsz Collection, vol. 4, pp 375–84.
42. TA, A140, Dr F.V. Engelenburg Collection, pp 84–97 and 101–4, F.V. Engelenburg – C. Ramsbottom, 15 June 1928; J.R. Leak to F.V. Engelenburg, 11 June 1928; P. Grobler to F.V. Engelenburg, 9 July 1928 and 10 September 1928.

close contact with Kruger while the former president was in Europe, was under the strong impression that Kruger did not think it likely that this loan would ever be repaid.[43]

S.J.P. Kruger was one of the most prominent landowners in the ZAR. This was especially true of the period prior to the first British annexation of the Transvaal (1877–1881). Along with other well-known residents of the districts of Rustenburg and Pretoria, such as Hermann Jeppe, the Rustenburg member of the Volksraad, and O.W.A. Forssman, he can be regarded as one of the leading landowners of those districts.[44] Because of the discovery of gold on the Witwatersrand, the ZAR experienced a huge influx of wealthy people in the 1880s and 1890s. Some of these new settlers bought land in the Transvaal, especially on the Witwatersrand and in adjacent areas. Against this background, Kruger became a less prominent landowner but he continued buying farms, as well as erven in some Transvaal towns. Especially after the discovery of gold on his farm Geduld, Kruger became a wealthy man. This enabled him to live comfortably in Europe in his latter years – even after his ZAR salary was stopped in April 1904.[45]

Abstract

State President S.J.P. Kruger may be regarded as one of the leading landowners in the Transvaal during the nineteenth century. As one of the early settlers he was entitled to some land free of charge. He also acquired a few farms as compensation for his services as commandant and commandant-general in the early years of the new Transvaal Republic (ZAR). In addition to this, Kruger became a very prominent buyer of farms, as well as erven in some towns – initially in the western half of the Transvaal, but later also in the eastern and northern Transvaal. Kruger sold a large number of his farms for small sums to his sons and sons-in-law, but also sold some at market prices to others. His most lucrative transaction occurred when he and his son-in-law, F.C. Eloff, bought the farm Geduld to the east of Johannesburg in 1886. After the discovery of coal and gold on this farm Kruger was able to sell it for a very large sum and he became a relatively wealthy man.

Key words: S.J.P. Kruger; landownership in the ZAR; F.C. Eloff; Geduld No. 134.

Opsomming

Staatspresident S.J.P. Kruger kan as een van die prominente grondeienaars in die Transvaal gedurende die negentiende eeu beskou word. Hy was as een van die vroeë setlaars geregtig op 'n beperkte hoeveelheid grond sonder vergoeding. Hy het ook 'n paar plase as kompensasie vir sy dienste as kommandant en kommandant-generaal in die vroeë jare van die nuwe Transvaalse Republiek (ZAR) ontvang. Kruger het daarbenewens 'n baie prominente koper van plase, sowel as erwe in sommige dorpe, geword – aanvanklik in die westelike helfte van die Transvaal, maar later ook in die oostelike en noordelike Transvaal. Kruger het 'n groot aantal van sy plase vir klein bedrae aan sy seuns en skoonseuns verkoop,

43. TA, A140, Dr F.V. Engelenburg Collection, p 107, W.J. Leyds – F.V. Engelenburg, 3 October 1926.
44. J.S. Bergh, "To make them serve": The 1871 Transvaal Commission on African Labour as a Source for Agrarian History", *History in Africa*, 28, 2002, pp 45–47.
45. TA, A71, L.J. Jacobsz Collection, Vol. 11, pp 68–69, H.C. Bredell, on behalf of S.J.P. Kruger, Menton, France – Dr W.J. Leyds, Utrecht, 15 April 1904.

maar later van sy ander plase teen markprysе aan andere. Sy mees winsgewende transaksie was toe hy en sy skoonseun, F.C. Eloff, die plaas Geduld, oos van Johannesburg, in 1886 gekoop het. Na die ontdekking van steenkool en goud op hierdie plaas was Kruger in staat om die grond vir 'n baie groot bedrag te verkoop. As gevolg hiervan het hy 'n relatiewe ryk persoon geword.

Sleutelwoorde: S.J.P. Kruger; grondeiendomskap in die ZAR; F.C. Eloff, Geduld No. 134.

LAWS, VOLKSRAAD RESOLUTIONS,

PROCLAMATIONS,

AND

GOVERNMENT NOTICES

RELATING TO

NATIVES AND COOLIES

. . IN THE TRANSVAAL. .

Translated by

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RELATING TO

NATIVES AND COOLIES

..IN THE TRANSVAAL..

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Government House, Cape Town, 24th December, 1900.

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Laws, Volksraad Resolutions, Proclamations and . . Government Notices . .

RELATING TO

NATIVES AND COOLIES

IN THE TRANSVAAL.

EXTRACT FROM THE THIRTY-THREE ARTICLES

APRIL 9, 1844.

Art. 28. No person or persons shall be allowed to go near the dwellings of natives for the purpose of kidnapping children; any such offence shall be punished with a fine of 500-rix dollars or imprisonment for six months, and the children thus seized shall be restored to their parents. **Kidnapping native children.**

Art. 29. No natives shall be allowed to settle near village lands, to the detriment of the inhabitants, except with the consent of the full Raad. **Squatting of natives near towns.**

Art. 33. With regard to master and servants, every master shall have the right to keep his servants under proper discipline, but no ill-treatment shall be permitted, and in case of ill-treatment, the ill-treated servant shall be taken away, and the master punished, according to the nature of the case. **Master and servants.**

VOLKSRAAD RESOLUTION, 20TH MAY, 1850.

Art. 37. The Raad notifies that it strictly forbids any one, without exception, claiming presents either for himself or for others, from any kafir tribe living among or near us. **Presents to kafirs prohibited.**

And those persons who, in spite of this prohibition, nevertheless demand presents from kafirs, shall, if this is discovered or informed upon, be punished by confiscation of everything demanded from such kafir or kafirs, and by a fine of 150 rds., and all expenses; and, on repetition of an offence against this law, the fine shall be doubled for every such repetition. And the informant of such an offence against this law shall be paid a third part of the amount of the fines as a reward. **Penalty.**

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VOLKSRAAD RESOLUTION, 20TH MAY, 1850.

Voluntary presents from kafirs may be accepted.

Art. 38. But if it happen that any kafir or kafirs shall have given any person a present voluntarily, or from gratitude, or in return for any benefit conferred on him, or for any other cause, such person shall immediately make this known to the Landdrost of the district, and shall prove that it is a voluntary gift, and if he do so it shall remain his lawful property.

VOLKSRAAD RESOLUTION, 24TH JANUARY, 1850.

TRADING WITH KAFIRS.

Superseded.

See Volksraad Resolutions Arts. 62, 63, 64 and 65 of 19th September, and Art. 125 of 21st November, 1853.

APPRENTICE LAW.

LYDENBURG, 9TH MAY, 1851.

Resolution adopted by the Volksraad with regard to the orphan children or so-called Apprentices brought in by the kafir nations round about us.

The provisions of this law are partially amended by Art. 19, 40-45, 54, 56-58 of Fieldcornet's Instructions of 1858.

This was replaced by Law No. 2, 1885, and by the provisions of Law No. 13, 1880, regulating the rights and duties of masters, servants and apprentices.

See also Proclamation 24th March, 1858, and Government Notice 77, 23rd July, 1866.

VOLKSRAAD RESOLUTION, 19TH SEPTEMBER, 1853.

Art. 62. Smuggling ammunition among the natives prohibited. Penalty: Death.

Superseded. See Proclamation 24th March, 1858;

Art. 2. of Law of 1858 relating to trade with the subject native tribes;

Law 6, 1873;

Law 4, 1884.

VOLKSRAAD RESOLUTION, 19TH SEPTEMBER, 1853.

Art. 63. Obligations of burghers with reference to imprisonment of persons who smuggle ammunition among the natives.

Superseded as above. See Volksraad Art. 62.

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VOLKSRAAD RESOLUTION, 19TH SEPTEMBER, 1853.

Art. 64. Penalty for smuggling ammunition among the kafirs.

Superseded as above. See Volksraad Art. 62.

VOLKSRAAD RESOLUTION, 19TH SEPTEMBER, 1853.

Art. 65. Provisions with reference to smuggling ammunition among the kafirs.

Superseded as above. See Volksraad Art. 62.

VOLKSRAAD RESOLUTION, 19TH SEPTEMBER, 1853.

FIREARMS TAKEN AS BOOTY TO BE SOLD.

Superseded by Art. 125 of the Constitution (Grondwet) and Law relating to Military Service, No. 2 of 1883.

VOLKSRAAD RESOLUTION, 19TH SEPTEMBER, 1853.

Commandant-General permitted to trade with Kafirs. Kafir Tax.

Art. 68. Permission is hereby given to the Commandant-Generals to deal with the small kafir tribes in such manner as they deem fit in order to get the firearms from among them, and to impose an annual tax upon them for the Public Treasury; (*1) but, if possible, without using force at first.

VOLKSRAAD RESOLUTION, 28TH NOVEMBER, 1853.

Kafir Locations considered as loan farms

Art. 124. With regard to lands granted to Kafirs for occupation, the Commandant-Generals and Commandants are ordered, where it is necessary, to grant the same. The Raad has resolved that such a farm may be occupied by them and their descendants, conditionally, as long as they behave in accordance with the law, and obediently. In case of disobedience such tenure may be declared lapsed, and, if so, it shall always remain only a loan farm, and the conditions or rent may be summed up in the words: "Good behaviour or obedience." (†1)

PROCLAMATION, 24TH MARCH, 1858.

Proclamation against removal of native children.

By His Honour M. W. Pretorius, President of the South African Republic, with the advice and consent of the Executive Council.

Whereas it has been brought to the knowledge of the President of the South African Republic, both in writing and otherwise, that some reckless and licen-

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*1. Kafir Tax defined by Arts. 15 and 16 of Law No. 9, 1870. Altered by later Laws No. 3, 1872; No. 4, 1873; No. 3, 1876; No. 6, 1880; No. 11, 1881; No. 4, 1885.

†1. See V.R. 21st Oct., 1874, Art 149, and Law No. 4, 1885, Art. 13.

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'PAM 7"

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Traditional leaders of the Bakgatla-ba-ga-Kgafela and their succession story[1]

by

*J S MOHLAMME**

Sedibelo-a-moilô se a fša se a tlhaologa, sa re se fša metse ya falala,
ya tshaba maputlela, ya nna makgaagamyana: morula o kgothi-kgolo, Bakgatla,
bana ba sefatana sa Moruleng,
barwa-mpša-e-jele-mpšana-ya-yona, dilhata tsa Molefe a Masilo,
tse di jeleng mokgoro di o lala.

Translation:
The curse that is fire, if it burns it melts and when it burns villages scatter and flee in splinters and fragments:
the morula tree with a thick stem
the Bakgatla are children of the concavity of Moruleng,sons of the-dog-has-devoured-its-own-pup forces of Molefe of Masilo that ate the hut in which they slept.[2]

Introduction and background

The name Bakgatla is shared by several groups of Bantu-speaking people inhabiting the central and western districts of the Transvaal[3] and the south-eastern parts of Botswana. Among the more important of these groups are:

I have departed from the anthropological practice of dropping prefixes before the names of peoples. My reason for retaining them is that this is how the people refer to themselves and would like to be referred to likewise by those writing about them. Thus we say the Bakgatla and not the Kgatla. The latter form, however, has been reserved for adjectival use, eg. Kgatla genealogy, Kgatla regiments, etc.

Prof. J.S. Mohlamme is head of the Department of History at Vista University.

I am deeply indebted to the late Professor S.S. Maloto, a distinguished academic and meticulously careful linguist, for the translation of this praise poem. Vide S.S. Maloto, 'The growth and Tendencies of Tswana Poetry', (D.Litt et Phil., Unisa, 1970), pp. 72-73.

3. For the purpose of this study we will refer to the names of the provinces as they stood before the 1994 general election.

Historia, 44(2), November 1999, pp. 328-44.

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(1) the Bakgatla-baMosetlha,[4] in the Hammanskraal and Pretoria districts of the Transvaal;
(2) the Bakgatla-ba-ga-Kgafela, in Botswana, Pilanesberg and Nylstroom;
(3) the Bakgatla-ba-ga-Mmanaana, in the Bangwaketse and Bakwena regions of the present Botswana;
(4) the Bakgatla-baMmakau, at de Wildt near Pretoria and in Hammanskraal;
(5) Bakgatla-ba Mosha, in the Hammanskraal and Nylstroom districts of the Transvaal; and
(6) Bakgatla-ba Seabe, in the Hammanskraal and Pretoria districts.

According to Kgatla genealogy, Bodibe, Malekaleke's direct descendant in the fourth generation, had two sons, Mogale (YMokgatle) and Tabane.[5]

Early in the seventeenth century the group divided. A large section under Tabane moved to the north, and subsequently became divided into the modern Bakgatla-baMmakau of de Wildt near Pretoria, and Bakgatla-baMotsha, Schilpadfontein (Marapyane), in the district of Pretoria. Mogale, Tabane's elder brother, remained at Diroleng[6] (Rustenburg district). Later this group moved eastwards to a place called Mmu-Motswen (commonly known as Makapan's Location) near Hammanskraal. It was here that the Bakgatla-ba-ga-Kgafela also broke away. One story relates that Mogale had a son, Matshego. Matshego, who died in about 1650, had no male heir but only a daughter named Mosetlhe, in his great house. In the second house he had a son called Kgafela. The clan split on the issue of who was to succeed Matshego. Kgafela and his followers, who decried the idea of being ruled by a woman, broke away and they called themselves the Bakgatla-ba-ga-Kgafela. Those who remained with Mosetlhe became known as the Bakgatla-

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4. This is the most senior of all the Bakgatla tribes. In fact, if the Tswana had a paramountcy like, for example, the Amo-Zulu, this would be considered the paramount tribe among the Bakgatla.

5. The early history of the Bakgatla already has its classic in the shape of I. SCHAPERA'S *Short History of the Bakgatla* and *Diolofalo*, and it is not likely that any further research would reveal significantly much more. It was felt, nonetheless, that for the sake of providing a background to this study it should be briefly recapitulated. For further reading, see I. SCHAPERA, "A history of the Bakgatla-baga- Kgafela of Bechuanaland Protectorate", in *Communications from the School of African Studies*, Cape Town, New Series 3, July 1942 and *Praise poems of Tswana Chiefs*, (Oxford University Press, London, 1954); W.L. Mutes, *Uit Bakwena Gerug*, (Voortrekkerpers, Johannesburg, 1966); T. Tlou and A. Campbell, *History of Botswana*, (Botswana Publishing Company, Gaborone, 1984); R.F. Morton, "Lobengula and the Bakgatla Campaign in the South African War, 1899-1902", *Journal of African History*, 26(3), 1985, pp.169-191 and also P.L. Breutz, The Tribes of Rustenburg and Pilansberg Districts in Ethnological Publications, 28, (Government Printer, Pretoria, 1953) which have been consulted in writing this article.

6. It has not been possible for me to establish the exact location of Diroleng from those interviewed.

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baMosetlha (hereafter ba Mosetlha)[7] This was probably towards the end of the seventeenth century.

It is said that after separating from the baMosetlha, the Bakgatla-ba-ga-Kgafela (hereafter Bakgatla) sojourned at several places such as Ntsane (near Makapanstad), Molokwane at the confluence of the Pienaars (Moretele) and Crocodile (Odi) rivers and Tsekane (near Leeuwpoort in the district of Waterberg). Kgafela died at Tsekane and was succeeded by his son Tebele.

Under Masellane (Tebele's son and successor) they moved west and established themselves between the Crocodile River and the Pilaansbergen in the country of the Batlhako. They eventually settled at Mabule, a hill on Kruidfontein (Lesetlheng) north-west of Saulspoort,[8] in the Pilaansbergen, with small outstations at Dithubaruba, Maremapoong, Sefikile, and Tlhaka-le-Moetse, alias 'Manakaditelle' (Middelkraal). Masellane's sons, Madise and Mare, died before they could rule over the Bakgatla. Kgwefane, son of Mare, ruled from about 1760-1770. After that the Bakgatla were ruled in succession by Molefe (died ±1790), Mmakgotso (c.1790-1795), Pheto (c. 1795-1810), Senwelo (c. 1810-1815), Letsebe (c. 1815-1820) and Pilane (died ±1850) who was succeeded by his eldest son Kgamanyane, who ruled the Bakgatla from c. 1851-1874.[9] (See Appendix A for the Bakgatla line of Chiefs).

Kgamanyane (1851-1874)

In the 1850s much of the Transvaal had already come under the control of the

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7. According to TRANSVAAL COLONY, *A short history of the native tribes of the Transvaal* (Government Printer, Pretoria, 1905), p. 27 the Bakgatla-baga-Kgafela broke away from the baMosetlha "upon the death of Mokgatle, ... for reasons unknown". Schapera found another version in *Lesupo-Tsela*, six (6), April 1932, p. 4, which states that the Bakgatla were originally part of the Bakwena, and lived for a long time at Mabyanamatshwaana (Swartkoppies), near Brits. Then they began moving south, leaving behind the section now known as baMfatlha (Bahlaloi). Afterwards the bagaMmanaana broke away. The others continued to move on, until they reached the Nawana mountains (?)[a], where they settled. Here there was a dispute about the chieftainship. Mosetlha should have succeeded, but his (half?) brother Matshego refused to acknowledge him and seceded with part of the tribe. The latter then became known, after Matshego's son, as Bakgatla-baga-Kgafela. Subsequently the baMmakau and the baMotsha also broke away. J. SCHAPERA, *A Short History of the Bakgatla*, p. 2, fn 3. ([a]Most probably Nwamaraui, cf. M. LEGASSICK in L.M. THOMPSON (ed.), *African Societies in Southern Africa* (Heinemann, London, 1969), p. 100.)
8. Saulspoort is a corruption of Tshomo's Poort. This is the capital of the Bakgatla people, also called Moruleng or Mmamodimo or Mphe-Batho.
9. Kgamanyane ruled the Bakgatla from about 1851-1874. A variant version has 1848 as the beginning of his reign; this is less satisfactory considering that the *Masome* regiment (Kgamanyane's own age-regiment) was created only in 1849. See I. SCHAPERA, *Handbook of Tswana Law and Custom* (Frank Cass, London, 1970), p. 317. It must be remembered that according to Tswana law and custom, before initiation a male was not considered to be a man, no matter his age, and could not attend the *kgotla* (court session), advise the chief or marry.

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emigrant Boers. This was during the reign of Chief Kgamanyane, son of Pilane, after whom Pilandsberg/Pilaansbergen (Pilanesberg) was named.

By the time Kgamanyane became chief, the Boers had already taken effective control of much of the Transvaal. With the departure of Mzilikazi's Amandebele from the Transvaal in 1837-38 the Boers claimed that all the Africans in the territory north of the Vaal River (Noka-e-tshetlha/Lekoa) were their subjects, and subsequently liable to labour taxation. They maintained that the "Bible made Ham a servant of servants, and servants these children of Ham must always remain",[10] and of course, according to the Boers, the Africans were the children of Ham destined to occupy a position of inferiority for all eternity. The Bakgatla, like many other Africans, were forced to provide free labour on the Boer farms. The Boers also employed the Bakgatla as auxiliaries in their wars against other African chiefdoms: In Kgamanyane's praises (*maboko*) lengthy reference is made to the help the Bakgatla gave the Boers when they fought against the Baga-Mokopane (1854) and the Basotho of Moshweshwe (1865-66).[11] It is said that Kgamanyane was related by affinity to King Moshweshwe of Basutoland (today Lesotho). The legend is that just before the outbreak of this war, Kgamanyane sent a messenger to Moshweshwe with this message:

Kè lemowana le ntlha pedi
le tlhabelang kobo le moroki tsheked
ke re ke le kwano ke koo
ntlha nngwe kè tswele borokgwe,
ntlha nngwe lekebi.

Translation:

I am the awl with two points
which pricks the *kaross* and the mender aslant
while I am this end, I am that end
one leg wearing a trouser and the other
a loin skin.[12]

The gist of the message is that Kgamanyane was torn between two loyalties, i.e.

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10. W.M. MACMILLAN, *Bantu, Boer, and Briton*, (Oxford University Press, London, 1963), p. 339.

See I. SCHAPERA, *A Short History*, p. 10; *Traditional Histories of the native tribes of the Bechuanaland Protectorate* (Lovedale Press, South Africa, 1954), p. 175; and *Praise Poems*, p. 65. In the Boer-Moshweshwe War of 1865-66 Kgamanyane drafted the *Manswi* (his own regiment), the *Mangana* and the *Matlakwi* regiments in support of the Boers, albeit against his wish as can be seen from the message he sent to the Basotho monarch.

12. E.S. MOLOTO, "The Growth and Tendencies of Tswana Poetry", pp. 90-92.

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"PAM 8"

CHURCH AND STATE RELATIONS: THE STORY OF BOPHUTHATSWANA AND ITS INDEPENDENCE FROM 1977 TO 1994

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by

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on from the original owner after death to other generations within the family, through inheritance (Jepp 1980: 25).

3.2.1 Various land acts

The ideology of the Nationalist Party was only officially in force from 1948, and the areas which were allocated to the Bantustans were the reserves which white people were least interested in owning over the years (Rogers 1976: 10). These were widely scattered parcels of land, many of which were smaller than single farms, forming one-eighth of the total land of the Republic. The existing allocation objectives at that time could not go further than the 1936 Trust and Land Act, which was based on the 1913 Land Act which was the result of the colonial conquest and theft of the African people's land. The Act (1913) itself was a means to facilitate the two-thirds majority which the government of the time had wanted in order to remove the Africans from the voters' roll, especially in the Cape (Rogers 1976: 19). The total reserve area which was planned was about 6.21 million hectares an (equivalent to 13,8% of the land area in South Africa) (Rand Daily Mail: 24. 3. 1976).

From that time on the 1936 Act was used as the yardstick for land allocation in the Bantustans in spite of the attempts in some cases by certain of the chiefs to try to make sense of the policy. One of the chiefs who attempted this was Chief Lucas Mangope, when he rejected the 1936 Land Act in an attempt to make it the basis for settling the issue itself (Rogers 1976: 10). In his argument Mangope tried to show that this Act was introduced to solve the 'Native Problem'. His argument was simply that the Act was not relevant to the homeland issue and the future of its sovereignty. The chief ministers of the homelands were concerned with the expansion of the existing homelands and the massive removal of the large number of Africans to the Bantustans and they protested at this imposition upon the homelands without the pretence of consultation. In response to the demands of the chief ministers of the Bantustans, the South African government through Mr MC Botha, who was minister of Bantu Affairs for all the Bantu people of South Africa, said:

> '...if they think they can get more land than was allocated to the Bantu in

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the 1936 Act, by coupling it to independence, then they need not come and discuss it; they would be wasting their time and ours' (Rogers 1976: 10).

The 1910 founding of the Union of South Africa led to the Batswana tribes becoming South Africans, while the Land Act of 1913, which 'deprived' them of all their territory. According to Reikert (1975: 134), the areas in which the Batswana people were situated did not form a consolidated unit but were made up of loose units over a large area of the North Western and Western Transvaal, North Western Cape and a section of the Orange Free State. Out of this about fifty territorial units were occupied by Setswana speaking people (Bophuthatswana at Independence, undated: 16). The Land Act of 1913 stopped the alienation and the decline of Batswana homelands in South Africa. However, Bauer (1992: 20) seems to think that the Land Act of 1913 should have been regarded as an initial step towards Batswana Nationhood. In terms of the recommendation of the Beaumont Commission the Batswana area covered 1,8 million hectares and comprised a total of 139 units. In spite of these proposals being rejected, they served as a foundation to reduce the number of Batswana areas to 36 larger territorial units through the Black Trust and Land Act of 1936. (Bophuthatswana at Independence, undated: 16).

The consolidation of the Batswana areas by 1967 had arrived at the stage where the homeland was made up of 18 large areas of land (Bauer 1992: 20). The consolidation proposal which was accepted by the South African government in 1975 meant that Bophuthatswana was to be consolidated to six geographical units. At 'independence' Bophuthatswana bought some more land, which at that time meant that there were now seven large units which were extending to four million hectares. Post 'independence' saw Bophuthatswana still receiving more land from South Africa (Bauer 1992: 20). The purchasing of this land was done mainly by the South African Black Trust and it was later transferred and legalised in the South African Parliament, as the transactions were, it was said, taking place between the two 'independent' countries (Bophuthatswana at Independence, undated: 16). The fragmentation of Bophuthatswana was always an issue as it was scattered through some parts of South Africa. For the Bophuthatswana

government it was important to consolidate it into one large unit, not only for political, administrative and economic reasons but because this was going to reverse the 'process of scattering' and displacement which was to ultimately mould the Batswana into one 'independent nation' (Bophuthatswana at Independence, undated: 16).

In attempting a justification for the existence of Bophuthatswana as a sovereign state, Lucas Mangope tried to appeal to pre-colonial history during the Convention for A Democratic South Africa (CODESA). His justification was simply that this history dated back to the nineteenth century, where the Batswana were the occupiers of the area stretching from the South West of the Zambezi River to the North of the Orange River (Bophuthatswana: Pioneer 1992: Vol. 14, No.1). In addition to the argument which Mr Mangope used, based on his historical view, he pointed out that the opportunity had been presented by the South African Government to regain Batswana 'sovereignty'. A further argument which was adduced by people who supported the government of Bophuthatswana was that their 'independence' did not come about as a result of human making but was due to their prayers. One of the strongest arguments was that Bophuthatswana was a Christian state built on sound religious principles; hence the national anthem was not only regarded as a song but as a prayer of thanks as well.

The issue of land is very sensitive for many of the African people (including the Batswana) as it bears the scars of dispossession and the loss of identity. Among Batswana the issue of land can be traced back from the pre-colonial period when ownership was exercised through territorial and genealogical membership of a group. This membership was determined through kingship or the tribe and it was of communal land which could be used for cattle grazing, tilling and occupation (Jepp 1980: 7). This is a dominant feature in Africa South of the Sahara, where the different groups and levels (in terms of hierarchical order) which work as inclusive interest groups (political, social and economic) are able to provide the structures within which the rights to land of traditional systems of Africa, South of the Sahara, should be understood.

Land allocation was also a problem among the Batswana because the traditional

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method was not fully followed when Bophuthatswana was allocated land. The method followed was the one which was used by the South African government, following the 1913 land act and its 1936 amendment act. This allocation was further justified by the use of the Christian principle that the 'land was given by God without any conflict or bloodshed' but through negotiations with South Africa. This became an extension of the supposed inheritance of the South African government, that this was the promised land of milk and honey: the same Old Testament story of Exodus emerging in the boiling pot of the divided context of South Africa. One may ask, what then is the traditional method of land allocation amongst the Batswana?

In most cases the land is under the control of the king (tribal head) who traditionally is the highest authority, with control over the communal area of his tribe (Jepp 1980: 18). The king (Kgosi[1]) has direct control over the land and sometimes may work through delegation (dikgosana[2]). However, the right of the king to control the land does not cease to exist. Because of the different clans that exist among the Batswana there are different ways in which the tribal heads control and allocate the land in their different wards. This contradicts the land allocation by the South African government to Bop and at the same time reduced the traditional leadership of the Batswana, as well as taking away their rights to control and allocate the land to both the their subjects and to strangers (Jepp: 1980: 18). Due to colonialism, the traditional method of land control and allocation was taken away from the African Kings and was used against them, since they then had to turn to the colonial powers and the apartheid government for land allocation and control. Despite this the South African government went ahead to allocated the land to the Batswana and appointed a leader for them, who in this case was not a 'king' but a 'president'.

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[1] This refers to a king of the Batswana. He may belong to a certain clan but oversees a large area of that clan.

[2] Under the king is a prince, who is delegated by the king to overlook some of the smaller areas which may be a little further from the king's kraal. Princes are given the powers to control and allocate the land the same way as the king except that they do not exercise absolute powers over the use of land and decision making.

In the context of this situation many people tend to believe that racism started only in 1948 when in the actual sense there was already racism in the colonial era and it seemed to have been a way of life even then. The church collaborated with the state during that period, as missionaries endorsed the racial disparity in the alienation of land, which had clear implications for the practice of traditional religions (Saayman 1993: 37). This added to the Natives Land Act of 1913, which disadvantaged the Black South Africans, and in Saayman's words (1991: 37) 'these expressions of colonialism were not simply bureaucratic political arrangements, but were conceived by their recipients as having very specific religious overtones. This is clearly articulated in the well-known saying ascribed to black South Africans: When the missionaries came, we had the land and they had the Bible. They said: 'Let us pray', and when we opened our eyes after the prayer, they had the land and we had the Bible'. At the same time the abolition of some of the apartheid laws (e.g. the Population Registration Act and the Group Areas Act) did not in any way help to end apartheid, as the social structure characterising apartheid was still in existence in South Africa.

The legal and political background of what was called homelands within the South African context was adopted after the Union came into existence in 1910 (Jepp 1980: 58). This was directed mainly to the land and land use relevant to the Land Act, 13 (Act No.27 of 1913) and the Development Trust and Land Act, 1936 (Act No. 18 of 1936) which specified all the national or black 'states' and provided borders for the administration of land inside these states (Jepp 1980: 58). The 1913 Act was providing additional land for the occupation of national states and reserved areas for the black people (Jepp 1980: 58). After the passing of the Act of 1913 the acquisition, exercising and alienation of rights to land in the national (black) states became subject to the stipulations of these acts, which encompassed mainly the following:

(i) Blacks may only obtain rights to land in so-called 'reserved black areas' and 'released areas' (Act 27/1913: section 1; Act 18/36: section 2 r.w. section 11).

(ii) In 'reserved black areas' and in 'released areas' blacks may obtain land from anybody but alienation of their rights to whites, coloureds and Asians is subject

to approval (Act 27/1913: section 1(2); 18/1936: section r.w. section 11 (4). (Jepp 1980: 61).

However, in the context of transferring land from South Africa to Bophuthatswana distinctions were made based on the Constitution Act for the Black National States, 1971 (Act No. 21 of 1971) section 36. This proclamation made provision for the transfer of land as well as movable property. A distinction was further made regarding the following:

(i) Transfer of all rights to land of which the property rights or control vest in or were obtained from the South African government or the SADT (South African Development Trust) to the government of Bophuthatswana (Proc. No. R347 of 1977: par. (1)); and

(ii) transfer of all rights to land which are registered in the name of the Minister of Cooperation and Development or any other person in trust for a black person, a tribe or community, to the Chief Minister (now the President) of Bophuthatswana and are registered in trust in the latter's name for this black person, tribe or community (Proc. No. R 347 of 1977: par. (2)).
(Jepp 1980: 61).

At the same time there was a legal position which was presented in this manner:

(i) The legal distinction between 'reserved black areas' and 'released areas' has no further practical value in Bophuthatswana. The most important basis of distinction with regard to ownership rights to and control of land is:

(a) the land transferred to the government of Bophuthatswana. 'On the understanding that the land in the area is still administered for the settlement, support, benefit, and material and moral welfare of citizens' (Act 21/1971: section 36) and
(b) the land transferred to the President in trust for the black people, tribes or communities concerned. This distinction is clearly superimposed over that of reserved black areas and 'released areas'.

Declaration of the Uitlander Council.

The Uitlander Council, having carefully considered the Present Political Situation, resolved, at their Meeting on Saturday Evening, 1st July, to publish the following Declaration, and to communicate a copy thereof to Her Majesty's Agent at Pretoria for transmission to His Excellency the High Commissioner and the Right Honourable the Secretary of State for the Colonies:—

The proposals submitted at the Bloemfontein Conference by His Excellency the High Commissioner were briefly:

1. That Uitlanders possessing a certain property or wages qualification, on proving that they had resided five years in the country and on taking an oath of allegiance, be given full burgher rights.

2. That there should be such a distribution of seats as would give to the new-comers a substantial representation in the First Volksraad, but not such as would enable them to swamp the old burghers.

All must admit that this scheme is most conservative, because

(a) It does not restore to the Uitlanders all the rights of which they have been unjustly deprived since the retrocession.

(b) Nearly the whole revenue of the country is derived from the taxation of the Uitlanders.

(c) The Uitlanders form at least two-thirds of the total white population. (This was practically admitted by President Kruger at the Conference).

(d) In most new countries one or two years residence ensures full voting power. There is no reason why there should be more stringent conditions in operation in this State than in Natal or Cape Colony, or than those which existed until quite recently in the Orange Free State, and which were only changed from one to three years on account of the unhealthy political conditions in the South African Republic.

Notwithstanding, however, the conservative character of the scheme, the Uitlander Council consider that the proposals of His Excellency the High Commissioner are calculated in no small degree to bring about a practical and permanent settlement.

But, in the opinion of the Uitlander Council, it is essential at the outset to definitely fix the conditions under which:—

1. All duly qualified persons can get the franchise without any unnecessary expense, trouble or delay, and without being subjected to any kind of intimidation.
2. Those who have got the franchise shall be able to use it effectively.

Redistribution of seats shall take place periodically by automatic arrangement, and representation shall bear some definite relation to the number of electors.

Having regard to the recent history of the Government of this country and the facility with which even fundamental laws are and may be changed the Uitlander Council are convinced that no settlement will be of any value unless its permanency is guaranteed by an understanding between the Imperial Government and the Government of the South African Republic.

Further, knowing by past experience that every effort will be made by means of the existing Government machinery to obstruct and pervert even the smallest measure of reform, and bearing in mind the immense discretionary power accorded by the laws to all Government officials, the Uitlander Council are strongly of opinion that the understanding between the two Governments should provide for such immediate changes in the present laws of the country as would make it possible to carry out Sir A. Milner's scheme, not only in the letter, but also in the spirit.

The outcome of the understanding between the two Governments should be the inclusion amongst the permanent and fundamental laws of the South African Republic of a Reform Act embracing, in addition to the clauses providing for naturalisation and redistribution on the lines already indicated, the following, amongst other provisions:—

1. No burgher or alien shall be granted privileges or immunities which upon the same terms shall not be granted to all burghers.

2. No person shall, on account of creed or religious belief, be under any disability whatever.

3. The majority of the inhabitants being English speaking, English shall be recognised equally with Dutch as an official language of the State.

4. The independence of the High Court shall be established and duly safeguarded.

5. Legislation by simple resolution (*besluit*) of the Volksraad shall be abolished.

6. The free right of public meeting and of forming electoral committees shall be recognised and established.

7. The freedom of speech and of the Press shall be assured.

8. All persons shall be secured in their houses, persons, papers and effects against violation or illegal seizure.

9. The existence of forts and the adoption of other measures intended for the intimidation of the white inhabitants of the country, being a menace to the exercise of the undoubted rights of a free people, shall be declared unconstitutional.

10. Existing monopolies shall be cancelled or expropriated on equitable conditions.

11. Raad members must be fully enfranchised burghers and over 21 years of age. Any candidate for the Presidency must be a fully enfranchised burgher over 30 years of age and have been resident in the country for 10 years.

12. All elections shall be by ballot and shall be adequately safeguarded by stringent provisions against bribery and intimidation.

13. All towns with a population of 1,000 persons and upwards shall have the right to manage their own local affairs under a general Municipal Act. The registration of voters and the conduct of all elections shall be regulated by local bodies.

14. A full and comprehensive system of State Education shall be established under the control of Local Boards.

15. The Civil Service shall be completely reorganised, and all corrupt officials shall be dismissed from office, and be ineligible for office in the future.

16. Payments from the public treasury shall only be made in accordance with the Budget proposals approved by the Raad, with full and open publication of the accounts periodically.

17. No person shall become a burgher, and no fresh constituency shall be created except in accordance with the lines herein laid down, and officials shall have no discretionary power in this or any other matter affecting the civil rights of the inhabitants of the country.

JOHANNESBURG, *1st July*, 1899.

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ARMY HEADQUARTERS, SOUTH AFRICA.

General Lord Kitchener of Khartoum
Commanding in Chief

AND

His Excellency Lord Milner
High Commissioner
on behalf of the BRITISH GOVERNMENT

AND

Messrs S.W.Burger, F.W.Reitz, Louis Botha, J.H.de la Rey,
L.J.Meyer and J.C.Krogh
acting as the GOVERNMENT of the SOUTH AFRICAN REPUBLIC

AND

Messrs M.J.C.Breitner, C.R.de Wet, J.B.M.Hertzog
and C.H.Olivier
acting as the GOVERNMENT of the ORANGE FREE STATE
on behalf of their respective BURGHERS

Desirous to terminate the present hostilities, agree on the following Articles.

1. The BURGHER Forces in the Field will forthwith lay down their Arms, handing over all Guns, Rifles, and Munitions of War, in their possession or under their control, and desist from any further resistance to the Authority of HIS MAJESTY KING EDWARD VII whom they recognise as their lawful SOVEREIGN.

The manner and details of this Surrender will be arranged between Lord Kitchener and Commandant General Botha, Assistant Commandant General De la Rey, and Chief Commandant De Wet.

2. Burghers in the field outside the limits of the TRANSVAAL and ORANGE RIVER COLONY, and all Prisoners of War at present outside South Africa, who are burghers, will, on duly declaring their acceptance of the position of subjects of HIS MAJESTY KING EDWARD VII, be gradually brought back to their homes as soon as transport can be provided and their means of subsistence

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ensured.

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3. The BURGHERS so surrendering or so returning will not be deprived of their personal liberty, or their property.

4. No Proceedings CIVIL or CRIMINAL will be taken against any of the BURGHERS so surrendering or so returning for any Acts in connection with the prosecution of the War. The benefit of this Clause will not extend to certain Acts contrary to the usage of War which have been notified by the Commander in Chief to the Boer Generals, and which shall be tried by Court Martial immediately after the close of hostilities.

5. The DUTCH language will be taught in Public Schools in the TRANSVAAL and the ORANGE RIVER COLONY where the Parents of the Children desire it, and will be allowed in COURTS of LAW when necessary for the better and more effectual Administration of Justice.

6. The Possession of Rifles will be allowed in the TRANSVAAL and ORANGE RIVER COLONY to persons requiring them for their Protection, on taking out a license according to Law.

7. MILITARY ADMINISTRATION in the TRANSVAAL and ORANGE RIVER COLONY will at the earliest possible date be succeeded by CIVIL GOVERNMENT and, as soon as circumstances permit, Representative Institutions, leading up to self-Government, will be introduced.

8. The question of granting the Franchise to Natives will not be decided until after the introduction of Self-Government.

9. No Special Tax will be imposed on Landed Property in

the TRANSVAAL and ORANGE RIVER COLONY to defray the Expenses of the War.

10. As soon as conditions permit, a Commission, on which the local inhabitants will be represented, will be appointed in each District of the TRANSVAAL and ORANGE RIVER COLONY, under the Presidency of a Magistrate or other Official, for the purpose of assisting the restoration of the people to their homes and supplying those who, owing to war losses, are unable to provide for themselves, with food, shelter, and the necessary amount of seed, stock, implements etc, indispensable to the resumption of their normal occupations.

His Majesty's Government will place at the disposal of these Commissions a sum of three million pounds sterling for the above purposes, and will allow all notes, issued under Law No.1 of 1900 of the Government of the SOUTH AFRICAN REPUBLIC, and all receipts, given by the officers in the field of the late Republics or under their orders, to be presented to a JUDICIAL COMMISSION, which will be appointed by the Government, and if such notes and receipts are found by this Commission to have been duly issued in return for valuable consideration they will be received by the first named Commissions as evidence of War losses suffered by the persons to whom they were originally given. In addition to the above named free grant of three million pounds, His Majesty's Government will be prepared to make advances as loans for the same purpose, free of interest for two years, and afterwards repayable over a period of years with

3 per cent interest. No foreigner or rebel will be entitled to the benefit of this Clause.

Signed at Pretoria this thirty first day of May in the Year of Our Lord One Thousand Nine Hundred and Two.

Kitchener of Khartoum

Milner

UNITED NATIONS
CENTRE AGAINST APARTHEID

"PAM 11"

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November 1983

THE NEW CONSTITUTION OF SOUTH AFRICA

and

KILLINGS AND REPRESSION IN "CISKEI"

Statement by H. E. Mr. Vidhya Dev Bhatt (Nepal), Acting Chairman of the Special Committee against Apartheid, at the meeting of the Committee on November 8, 1983

As you know, the new constitution of South Africa was approved in a referendum of white voters in South Africa last week.

The Special Committee has already issued a statement on this new constitution, but we must reiterate our position in view of the misleading propaganda by the apartheid regime and its friends.

The new constitution of South Africa is nothing less than an outrage against the oppressed people of South Africa, against the continent of Africa, and against the principles of the Charter of the United Nations.

Last week's referendum on that constitution, like the referendum on the republic in 1961, was a racist referendum limited to white voters, and can have no legitimacy whatsoever.

The apartheid regime is boasting that the new constitution was approved by almost a two-thirds majority, but that majority is two-thirds of fifteen percent of the population.

The constitution is based on and entrenches racism. It provides for three houses of Parliament on racial issues. The population will need to be divided on racial lines for the elections. The whites will continue to dominate the Parliament and the Government. The Coloured and Indian houses will have only limited jurisdiction. In fact, they are invited to help implement racist laws.

The African people, the coercive seventy per cent of the population, are totally excluded from the political process. The constitution is, in fact, a further endeavour to deprive the African majority of its citizenship rights.

The constitution does not represent a "step in the right direction" or any evolutionary change towards equality, but a streamlining of apartheid and racist

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domination. It does not reflect any willingness on the part of the apartheid regime to move towards equality, but an effort to entice the Coloured and Indian people to co-operate with it against the African people.

The constitution has been opposed not only by the African people but also by the Coloured and Indian people who refuse to become tools of the apartheid regime.

The Coloured and Indian people have for many decades struggled together with the African people against apartheid and have always recognized that the interests of the African majority must be paramount. Many of their best sons and daughters have sacrificed their lives in the struggle and suffered imprisonment and persecution. Their unity with the African people has been further reinforced in opposition to the constitution. The apartheid regime found it necessary to ban all meetings against the constitution.

The new constitution is a prescription for further conflict. Its implementation will be opposed not only by the African people - but by the Coloured and Indian people who will now become subject to conscription in the racist armed forces.

The United Nations has repeatedly made it clear that a just and lasting solution in South Africa can only be based on total elimination of apartheid, the release of all political prisoners, the dismantlement of bantustans, universal suffrage in the country as a whole, and majority rule.

While reiterating its position, the United Nations and the international community must not only denounce the new constitution but also consider effective action to assist the oppressed people in their resistance against the imposition of the new constitution.

Reign of terror in "Ciskei"

I must also draw the urgent attention of the Special Committee to alarming reports concerning the brutal and widespread killings and repression in the bantustan of Ciskei which was granted, in 1981, so-called "Independence" which has been denounced by the United Nations and all Member States.

The unpopular authorities foisted on the Ciskei have resorted to ever-increasing repression against the people and the trade unions.

In the middle of this year, African workers who live in the Ciskei but work in the neighbouring township in so-called "white South Africa" began a boycott of buses in protest against a fare increase. To crush the boycott, the Ciskei police, aided by the army and vigilantes of the ruling party, assaulted, beat and arrested people who used private cars, taxis and trains instead of buses. They even resorted to shooting. It is reported that about 90 people were killed and many more were wounded in the incidents and clashes connected with the bus boycott. Scores of people were detained and tortured at a sports stadium in Mdantsane and one woman was raped. Among the detainees were a boy of 14 and a girl of 11 years of age.

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The authorities have also escalated repression against the black trade unions. They banned the South African Allied Workers' Union with 30,000 members, and arrested its entire executive except for the President who is in hiding.

Repression was also extended to students. In September, when students at Fort Hare University commemorated the anniversary of the killing of Steve Biko, police attacked them and arrested 45 students.

It is reported that over the past few months, more than one thousand people have been detained in Ciskei, including about 20 members of SAAWU, many other trade unionists, students, churchmen, journalists, lawyers and physicians.

As recently as 30 October last, Ciskei police detained Reverend Smangaliso Mkhatshwa, secretary-general of the South African Catholic Bishops' Conference.

The repression has only increased the resistance of the people against the authorities. Recent attacks by ANC against Ciskei's so-called consulates in Pretoria and Johannesburg, as well as the recent petrol bomb attacks on the homes of known supporters of President-for-life Mr. Lennox Sebe, are illustrative.

On behalf of the Special Committee, I would like to appeal to all governments and organizations to take all appropriate action to end the reign of terror in the Ciskei. We must make it clear that we hold the Pretoria regime responsible for the gruesome events in the Ciskei.

The Special Committee will continue to follow the situation and take appropriate action.

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