

Dysfunctional Communal Property Associations in South Africa: The Elandskloof Case

Michael Barry
University of Calgary

FIG Working Week Eilat 2009



Outline

- Political Context
- Communal Property Association – pro restitution and reform?
- History
- Reflective Analysis
- Lessons: law, policy, practice

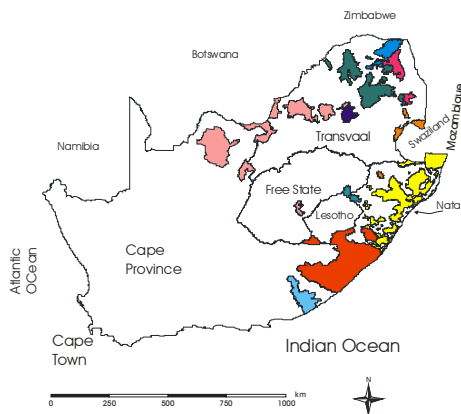


My Role

- Advisor
- Researcher
- Surveyor



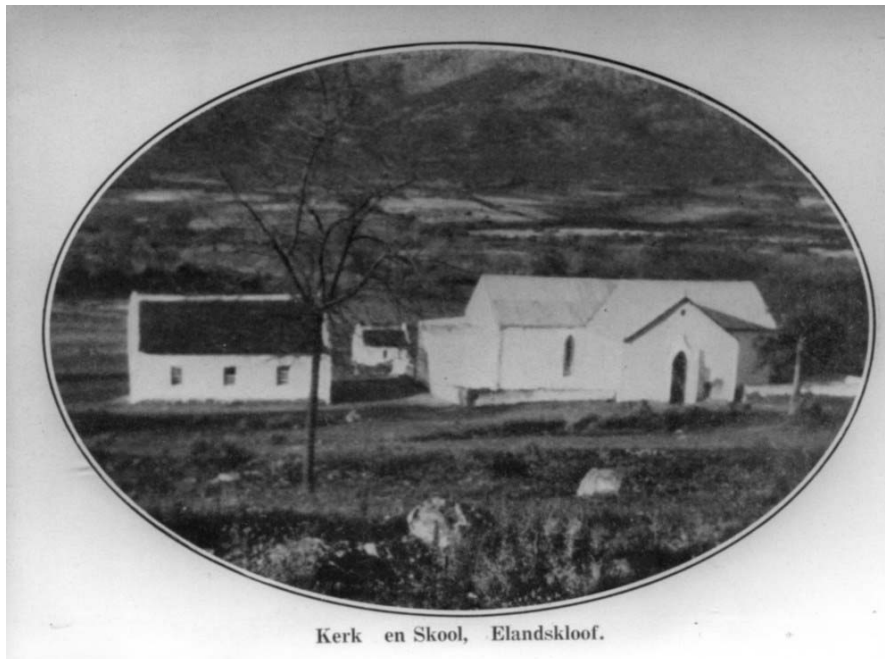
South Africa Post 1994: A Post Conflict Situation?



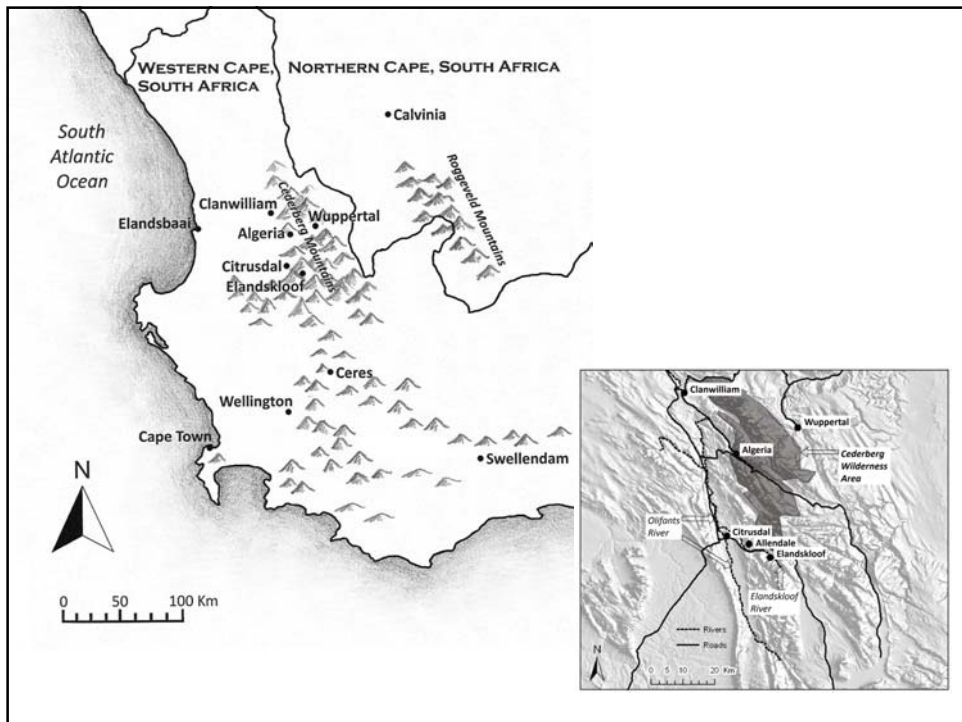
- Spatial, Institutional and Demographic change in government.
- Deliver now!!! Land tenure security equates to political stability

Communal Property Associations

- *Communal Property Associations Act 28 of 1996 (CPA Act)*
- A need for specific legal entities for group or collective ownership for land reform and restitution
- CPA registered to hold, acquire and manage property for collective benefit.
- Membership list and membership criteria
- Management Committee elected and Constitution drawn up
- Effective, democratic governance must be demonstrated to Director General Agriculture and Land Affairs' satisfaction
- Can be placed under administration or dissolved.



Kerk en Skool, Elandskloof.







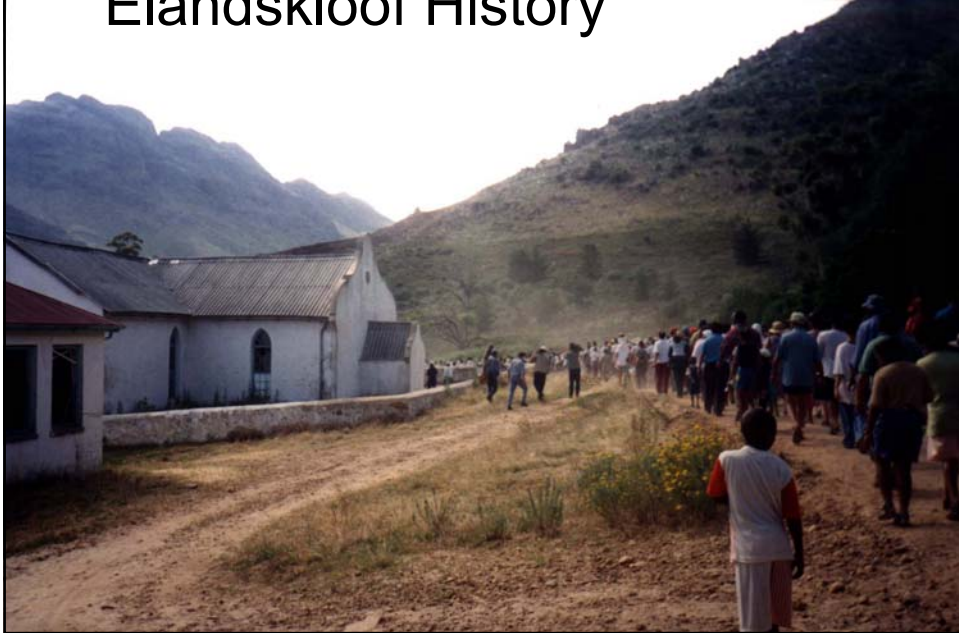
Arable land - 300ha of 3100ha in total



Limited water supply



Elandskloof History



Reconstructing the Community

- Communal Property Association (CPA) constitution was adopted in October 1996
- A management committee of nine is elected for two years
 - mandated to adjudicate membership of the CPA
 - manage the assets of the Association
 - resettle the community
 - provide appropriate infrastructure, housing and other social services
 - develop agriculture and other economic opportunities

Reconstructing the Community

- Definition of the different rights to allocate
- Establishment of a register of who qualifies for different land rights
- Creation, administration and policing of different rules
- Insufficient arable land - 300ha of 3100ha in total

Reconstructing the Community

- Planning and decision making was done by the committee
- Conjunction with planning consultants (SetPlan) and an NGO (Surplus People's Project) – initial 7 months brief
- Meetings of all claimants to membership were held on the site at regular intervals



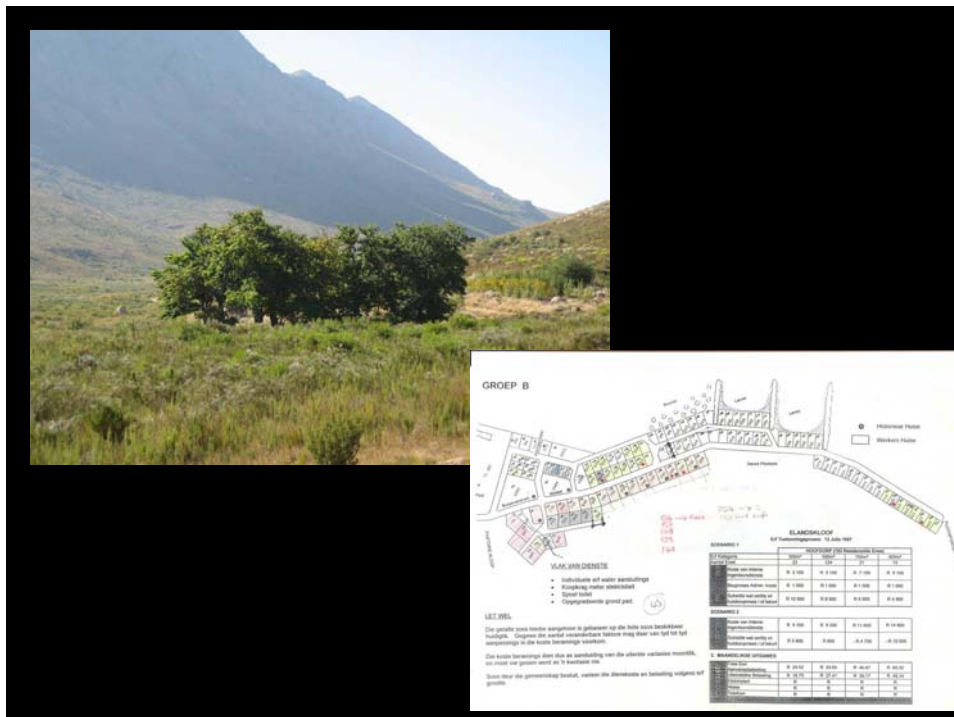
Squatters on their own land. Allendale group occupied land before rules could be established

Membership

- Initial claim to Advisory Commission on Land Allocation – 125 families in early 90's
- List of 308 beneficiaries in Land Claims Court ruling in 1996
- By 1997, 350 families had their names on the register, membership then restricted to:
 - Those and all their direct descendants who were part of the original Elandskloof community
 - Those who left prior to eviction and/or one descendant
- By June 2007 membership not finalised; 76 families on site.

Reconstructing the Community

- Groups / factions formed according to family ties, geographic areas (e.g. Allendale), class/education, and political affiliations.
- Major conflicts over membership, legitimacy of the committee, legitimacy of the decision-making processes, and status of certain individuals at general meetings
- Many decisions that were ratified at general meetings were later challenged and ultimately certain groups chose to ignore them
- No taxation system or communal land use rules



External factors

- In 1999 - new Minister of Land Affairs
- Change in emphasis in land tenure policy.
- Numerous changes in government institutions and personnel who were responsible for Elandskloof
- Promises that had been made to the Elandskloof community were not kept – housing, services, training, utilities
- Unfulfilled expectations resulted in anger and frustration in the dealings with the authorities

Dysfunctionality & Administration

- Elandskloof became dysfunctional
- Placed under Administration of Land Affairs 2005 – 2009
- “Friends of Elandskloof” left
- Interviews in 2007 – what are the problems; how do you see this place in 10 or 20 years; what will you do if the state offers no further assistance?
- State must stop lying and fulfill its promises; bitterly disappointed.
- Restitution means getting back what you lost, not just the land
- But ... if you don't work you don't eat.

CONCLUDING REMARKS

- Participatory development - problems, limitations and frustrations
- Reconstructing a community - difficult to arrive at a set of clear, coherent objectives for a settlement. Rules? Who agrees? Who enforces? What do "we" do if consensus cannot be reached?
- Some 50% of new business ventures fail; land restitution is far more complex and pressures on leaders are far greater. Where do you find such a legitimate leader?
- Trauma counselling and emphasis on responsibilities are critical
- Community coherence centred around victim consciousness; internal strife created a second wave of this as insufficient land.
- Second wave of securing power by portraying themselves as victims extinguishing rights of other claimants.
- Must be system where community members contribute; use or lose membership..... But how do you evict a transgressor?