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Challenges of Private Capital Investments in the Transkei Area in South Africa and the Effects of Customary LAND Tenure on Real Estate Development

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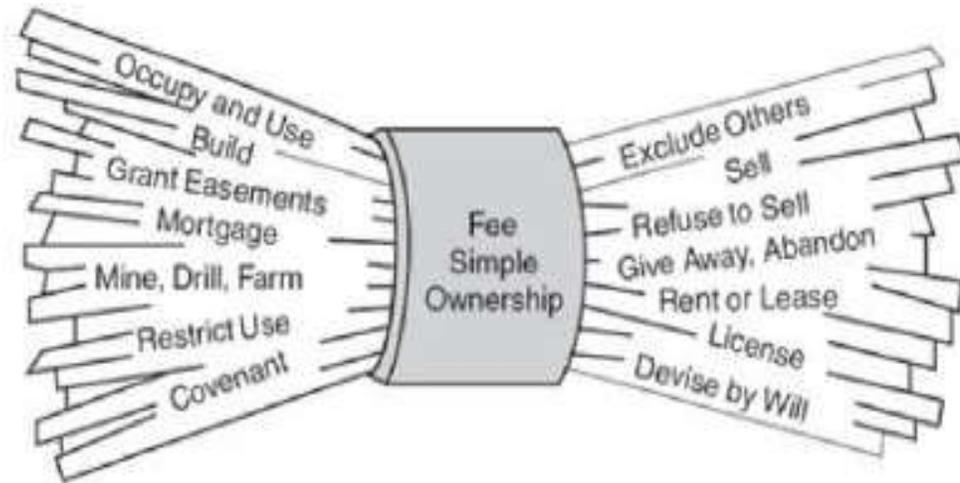


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Presentation Outline

- Background
- Objectives
- Methodology
- Findings
- Discussion
- Conclusion



Bundle of rights

Background – RSA Land Tenure System

- Dual land tenure system, due to colonial conquest and dispossession
- Majority of black population have customary land rights
- Legacy created skewed development landscape comprising highly developed and highly underdeveloped
- Former Homelands (Transkei) characterised by under investment & under development
- Due to unclear & transparent land management systems
- Majority hold informal and customary land title rights not = to cadastral based title
- Dearth of private real estate investment in the former Transkei in RSA

Background

- Land tenure system of South Africa functioning in a dual land tenure system, due to Colonial conquest and dispossession on African land tenure system
- Majority of black population given customary land rights through their tribal lineage
- This legacy created skewed development landscape within South Africa consisting of highly developed former "white" South Africa, and a highly underdeveloped "black" South Africa

Objectives

- Aims to identify barriers to private capital investments in South Africa's former Transkei area & how customary affects real estate development
- Identify types of land tenure systems operating in the former homelands
- Examine processes involved in the acquisition of land tenure rights and respective legal and social recourse available thereof.
- Study seeks to highlight barriers constraining private investment in some regions in SA

The study

- Land tenure systems are used to regulate access and the exploitation of land and resources attached to it
- South Africa's land policy environment post 1994 is shaped by the Bill of Rights as captured in the Constitution of 1996
- Main land policy challenge is how to reconcile individual with group rights - customary law and common law
- Secure property rights are a catalyst for investment and economic growth

Methodology

- A pragmatic philosophical worldview (Mixed use)
- Purposive sampling involving 32 role-players
- Research population was restricted to professionals and officials involved in the private real estate property development industry within the former Transkei.

Role Players	Estate Agents	Property Developers	Financial Institutions	Local Authorities	Traditional Leaders	Business Councils
Number	6	6	6	7	4	3
Consolidated	Total number of respondents = 32					

Results

Perceptions on investing in the former Transkei						
Qt. No.	Question description	Quant. results			Qual. Code & phrases	Triangulation outcomes
		No	Ntrl	Yes		
2.i & 2ii	How / Are there peculiar risks in investing in the former homelands?	6%	12%	82%	<ul style="list-style-type: none"> Tenure insecurity (42%) Lack of infrastructure (33%) Funding challenges (17%) High business expense (8%) 	<p># Strong Convergence</p> <ul style="list-style-type: none"> insecure tenure. lack of bulk infrastructure
2iii	Are the above responses based on lived experiences?	19%		81%		
2iv	If yes explain circumstances.				<ul style="list-style-type: none"> Tenure risks (55%) Bureaucracy & corruption (23%) Poor record keeping (9%) Others (13%) 	<p># Strong Convergence</p> <ul style="list-style-type: none"> Customary tenure. Governance a shared responsibility between govt, traditional leaders & communities.
2v	How / Does history play a role in the perceptions or facts at play?	0%	18%	82%		History is a major factor
2vi	Would you advise private investment in the former Transkei / What do you think	9%	9%	82%		Many opportunities

The land tenure systems in the former Transkei						
Qt. No.	Question description	Quant. results			Qual. Code & phrases	Triangulation outcomes
		No	Ntrl	Yes		
3i & 3ii	Are permission-based tenure systems conducive to private property investment?	73%	0%	27%	<ul style="list-style-type: none"> Cumbersome Process (36%) Land Claims (tenure security) 36% Corruption (28%) 	<p># Strong Convergence</p> <ul style="list-style-type: none"> PTOs are a weak tenure. Community & traditional process open to clashes & corruption.
3iii	Are PTOs titles acceptable for bank funded investments?	68%	14%	18%	<ul style="list-style-type: none"> Tenure risks (68%) No response (18%) Other responses (14%) 	<p># Strong Convergence</p> <ul style="list-style-type: none"> Capital markets do not support weak tenure. Informal processes open to contestations.
3iv	Is community involvement in PTO processes investment friendly?	59%	23%	18%	<ul style="list-style-type: none"> Land Claims risks - 3X (33%); No response - 2X (22%); Difficult to get consensus - 1X (15%) Cumbersome process - 1X (15%) PTO not fundable - 1X (15%) 	<p># Convergence</p> <ul style="list-style-type: none"> One's character is a factor to getting land from community. Time consuming, goes through tiers of approval. Prone to contestations between stakeholders.
3v	Is community or traditional leadership involvement user-friendly for women and the youth?	32%	18%	50%	<ul style="list-style-type: none"> Vulnerable groups get land (37.5%); No response (25%); PTOs not user-friendly (12.5%); Only males get land (6.25%); PTOs are an African way of managing land (6.25%); No conclusion - 1X (6.25%); PTOs pose own set of problems (6.25%). 	<p># Weak Convergence</p> <ul style="list-style-type: none"> A small majority agreed that women do have access to land. A sizable neutral position shows a lack of full understanding of the situation on the ground. The extent of access to land by single youths without responsibilities differs from one area to another.

Results

- Findings shows that there are peculiar investment risks involved in investing in the former Transkei
- Risks include; tenure security, lack of infrastructure, funding challenges and high business expenses.
- Permission to occupy (PTOs) were considered not conducive for property investment = cumbersome process, risks of tenure security
sense of corruption attached to the customary processes
- PTOs were deemed not to be bankable
- Previous investments which were based on prospects of high economic returns, were mostly on legally recognised tenure and that were premised on self-funding
- Upgrading of Land Tenure Rights Act (1991) was found to be ineffective in improving private investments
- Leaseholds were regarded as conducive for investment but subject to a number of conditions that sought to improve the tenure security

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Results

Factors Influencing private property investment						
Qt. No.	Question description	Quant. results			Qual. Code & phrases	Triangulation outcomes
		No	Ntrl	Yes		
4i	What compels the organisations to invest in the former Transkei in the face of seemingly insecure tenure systems?				<ul style="list-style-type: none"> Prospects of high economic returns (41%); Developments were legally tenure (36%); Investments done through self-funding (8%); Other reasons (15%). 	<p># Divergence</p> <ul style="list-style-type: none"> Underdevelopment leads to good returns due to lack of competition. Investment might be mainly on legally recognised that attracts bank funding.
4ii	Has the Upgrading of Land Tenure Rights Act (1991) improved the appetite for investors to develop property in the former Transkei?	32%	45%	23%		
4iii	Long term leases are a cheaper means of gaining access to land in the former homelands. Are these conducive for developing property?	38%	19%	43%	<ul style="list-style-type: none"> Leases acceptable with conditions (29%); Depends on lease term (18%); Leases are risky (18%); Leases are legally secure (11%); Leases are acceptable but not ideal (6%); Fluid land custodianship dynamics (6%); Duplicate lease risks (6%); Extra-legal leases not secure (6%). 	<p># Weak Convergence</p> <ul style="list-style-type: none"> Literature showed leasehold to be secure investment, but not reflected by research data. High number of neutral responses from research data. Those in agreement almost equal to those disagreeing.
4iv	Does the formal financial services industry recognise these government issued long-term leases in the former homelands?	36%	28%	36%		<p># Divergency</p> <ul style="list-style-type: none"> Leasehold rights are lawful and recognised by capital markets. No strong reflection of the banking industry's support for leaseholds in the research data received. High level of the neutral position (those not sure), not in line with the legal position as per literature review.
4v	The lack of economic development in the former Transkei is a big challenge since 1994.				<ul style="list-style-type: none"> The lack of bulk infrastructure (35%); Tenure insecurity (13%); The lack of economic activity (13%); The lack of proper municipal planning (9%); Poor government services (6%); Cumbersome consultative process (6%); Lack of understanding of the prevailing tenure (6%); 	<p># Convergence</p> <ul style="list-style-type: none"> Literature review confirms research data, tenure security is an investment risk. Whilst a lack of infrastructure is a cost to development costs
4vi	What advice would you give prospective commercial investors when looking to acquiring development land in the former homelands?				<ul style="list-style-type: none"> Ensure tenure is secure (31.5%); Develop close to bulk infrastructure (10.5%); Ensure lease is more than 15 years (5.3%); Employ registered professionals (5.3%); Investors need to understand business culture (5.3%); Understand limitations of municipal & govt. services (5.3%); Develop partnership with local businesses (5.3%); Do through due diligence (5.3%); Provide alternative technology for power & sanitation (5.3%); Understand the types of tenure used (5.3%); Work with the communities (5.3%); Invest for the long term (5.3%); 	<p># Convergence</p> <ul style="list-style-type: none"> Research data in line with the literature reviewed. A strong connection between tenure security & private investment. Access to bulk infrastructure reduces property development costs.

Conclusions

- Findings attributed the dearth of private property investment to a number of risks mainly; insecure tenure (synonymous with customary tenure), dominant land ownership type in Transkei.
- Associated risks are not conducive for long-term and capital-intensive investment class such as property development.
- Financial systems not in favour of the PTO ownership type which makes it difficult for investment
- Factors influencing Private Investments:
 - Tenure security, Access to bulk infrastructure, Economic activity Quality of municipal & government services,
 - Improved tenure systems, innovative provision of bulk infrastructure together with reliable municipal services
- Potential for high income to be generated in the former Transkei due to the historic underdevelopment of the area
- Economic development should be encouraged by addressing structural limitations to development (SDGs)