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# Mike Coleman Insight

# Cwele Clinic, 15 years of government neglect

"Leaders feud over worst clinic in SA", as reported in the Daily Dispatch on April 17 – this is not the first time – the debate involving the location of Cwele Clinic in Ngqeleni began 15 years ago.

By 2013 the Department of Health had spent R500,000 on consultants for a replacement clinic, but this was done without any prior planning or site authority, either through ignorance or arrogance.

In 2019 the squabbles continue between traditional leaders about where it should be.

A headwoman, a king, public works, contractors, Bhisho, tenderpreneurs, community development forum, provincial health spokesperson, co-operative governance and traditional affairs spokesperson, Nyandeni Great Place, Nyandeni mayor – Daily Dispatch's thorough coverage suggests the complexity and conflict consequent on many interests, but none having authority to make a decision.

Yet the root cause is simple – government neglect of rural people. And the situation itself was also simple 15 years ago – authorise an agreed site for a new clinic.

A simple planning authority decision was needed – who is the owner of the site; what is the land use?

Prior to 1996, a proposed site – agreed to by the community, with this decision supported by the headman and Tribal Authority – would have been pegged by the Department of Agriculture's development team, a reservation certificate issued by the magistrate's office, the tender awarded, and the clinic built.

But by 2004, government had closed the local land administration unit in Nyandeni (as well as 25 others across the Transkei region) and opened one national department office in Mthatha for the whole of the region, which was obviously unable to cope with hundreds of similar site applications for residential, or arable Permission to Occupy (PTO) certificates, nor reservation certificates for government clinics, schools, police stations.

At the same time the Minister of Land Affairs instructed that the land tenure (PTO) Proclamation 26 of 1936 was not to be administered as it was "apartheid legislation" and PTO was supposedly insecure tenure.

Section 25 of the Constitution says: (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of parliament, either to tenure which is legally secure or to comparable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform.

(9) Parliament must enact the legislation referred to in subsection (6).

But government has not done so. There is no land tenure reform on communal land.

Proclamation 26 is unrepealed, still the existing law in 2019, leaving officials in a quandary for 20 years as to whether to follow political instruction or the law.

Without tenure reform, there is no clear-cut answer to "who is the land owner?"

The Transkei Agricultural Development Act was repealed by the Provincial Legislature in 1997, but not replaced.

Consequently there has been a vacuum of planning law for the rural areas of the Transkei region.

(The urban areas fall under Planning Ordinance 33 of 1934, like 26 of 1936, also still in force).

So no consideration was possible of the second planning question either, "what land use?"

The original simple planning questions of 2004 could not be answered, because there has been no tenure and no planning authority for 20 years.

What to do? As the Constitutional Court recently reminded Minister Gwede Mantashe over Xolobeni, there is a way of establishing the community's land ownership rights: use the Interim Protection of Informal Land Rights Act (Ipilra).

**There has been a vacuum of planning law for the rural areas of the Transkei region**

Although painfully bureaucratic, it can be used to obtain a community's legal agreement to a development (and has been increasingly so used as Ipilra advertisements in the Daily Dispatch show. Recently one from Mhlonto showed how community, councillor, traditional leadership and government can work together.)

This is not a decision that a traditional leader or council has the authority to make (much as they would like to) but for the whole community, which includes traditional leaders and councillors as members, in a democratic community resolution organised by the Department of Rural Development and Land Reform.

What else to do? In 2013 parliament passed the national Spatial Planning and Land Use Management Act (Spluma) after 15 years wavering.

This puts planning decisions firmly in the hands of local municipalities, but also requires them to plan "wall-to-wall", ie for the rural areas not just in towns.

Implementation has been slow and incomplete, and many traditional leaders have opposed its implementation.

Nevertheless, this clinic development should now be authorised by the joint Municipal Planning Tribunal of Nyandeni/Mhlonto in terms of Nyandeni's planning by-law under Spluma.

It is symbolic of the government's neglect underlying this case that the Minister of Rural Development and Land Reform Maite Nkoana-Mashabane, responsible for both Ipilra and Spluma, has to personally appear in court on May 17 to explain her failure to comply with a court order regarding the development of District 6 in Cape Town for land claimants.

In a South African court you have to seriously upset the court to get such an instruction.

Simple implementation of Ipilra and Spluma 20 years ago would have cost nothing and benefited 17 million rural people, the "poor and disadvantaged" the government so often cites but totally neglects.

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