

## A struggle for tenure by the “servant class” of Potchefstroom: A study in structural violence

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For a colonised people the most essential value, because the most concrete, is first and foremost the land: the land which will bring them bread and, above all, dignity.<sup>1</sup>

### Introduction

When the initial phase of residence in Potchefstroom was established by white emigrants from the Cape Colony, they were accompanied by their Xhosa-speaking and Dutch/Afrikaans-speaking servants, the latter consisting of freed slaves, their descendants and servants of Khoikhoi descent – all of whom were very low on the social hierarchy. These emigrants settled in Potchefstroom in 1838.<sup>2</sup> The “servant class”<sup>3</sup> was soon expanded by other subservient people, namely “indentured” workers who were the spoils of the *strafekspedisiës* (punitive expeditions) undertaken by citizens of the Zuid-Afrikaansche Republiek (ZAR, or Transvaal Republic). There were probably also some SeTswana speakers in this “servant class” who had returned to their home areas after the Boers and their Griqua and Barolong allies vanquished Mzilikazi and his troops at Mosega in 1837, bringing about a measure of peace in the region.<sup>4</sup>

The white settlers, being citizens of the new ZAR were entitled, among other rights, to obtain an irrigated *burgerreg erf* (civil right stand), a privilege not extended to their servants, who were merely subjects of the republic with very limited rights.<sup>5</sup> Some servants worked for their masters for

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1. F. Fanon, *The Wretched of the Earth* (Grove Weidenfeld, New York, 1963), p 44.
2. The following authorities administered Potchefstroom during different periods: the central government (ZAR), 1842–1869; a stadsraad (town council), 1869–1889; British occupation forces, 1900–1902; a health committee, 1902–1903; and a town council from 1903.
3. At the time, the terms used (often indiscriminately) for servants included “coloureds” (those with darker skins than the “whites”); “kaffirs” (commonly of closer African descent); and “natives” (commonly of closer African descent, but a term also often used for the whole “servant class”). This category shared three characteristics – all were part of a finite underclass and were “not white” (whites were predominantly of European extraction). The term “servant class” will be used frequently in this article, but “native” will also be used as in “native location”. The original settlement of the emigrants (masters and servants) was at Oudedorp, some 15 kilometres to the north-east of the present town.
4. J. Boeyens, “Zwart Ivoor: Inboekeling in Zoutpansberg, 1848–1869”, *South African Historical Journal*, 24, 1991, pp 31–66.
5. At the time, Africans could not own land and this was determined by several laws of the Transvaal Republic (ZAR). See N. Etherington, P. Harries and B.K. Mbenga, “From Colonial Hegemonies to Imperial Conquest, 1840-1880”, in C. Hamilton, B.K. Mbenga and R. Ross (eds), *The Cambridge History of South Africa, Volume*

a wage, and a successful symbiotic relationship also developed between the two classes on many smallholdings; often members of the “servant class” paid rent for a stand or worked for a share by cultivating essential produce. After several decades these economic based relationships between them were endangered when certain white residents of the town indicated that the laws of 1883 and 1886 provided for a separate residential location for “coloured people” and prohibited the “servant class” from living in the towns in the republic unless they were employed as the “domestic” servants of the owner of a stand. Regulations to effect the removal of the “servant class” from the town came into force in Potchefstroom in 1888 when the majority of (white, male) voters decided to create a location (township) for the “servant class” and their children.<sup>6</sup> From 1903, however, the location residents expressed the view that they had attained new privileges in 1888, or at least that there was some understanding regarding tenure in the native location, and that this could now be endangered by the new harsh administrative measures implemented as part of the regulations laid down for the entire Transvaal, which was at the time a British crown colony.

This was because in 1902, after the South African War, a policy was implemented by the British authorities to bring all four colonies, but especially the former Transvaal and Free State republics, in line with British policy as far as people of colour were concerned – a policy also evinced by Lord Milner.<sup>7</sup> On the local level, this commenced with the establishment of a health board and later a town council in Potchefstroom, but when the efforts for the control and administration of the town’s location were resisted and legal action was taken by the residents of the location, Richard Feetham was appointed in 1905 as commissioner to “enquire into and report upon the

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1, *From early Times to 1885* (Cambridge University Press, Cambridge, 2010), pp 319–391. It is likely that whites living on the frontier perceived their relationships with “their dependants in fundamentally the same way that colonists perceived their slaves in the Western Cape” On this see C.C. Crais, *White Supremacy and Black Resistance in Pre-Industrial South Africa: The Making of the Colonial Order in the Eastern Cape, 1770–1865* (Cambridge University Press, Cambridge, 1992), pp 44–45. Cecil J. Rhodes also regarded blacks as “not altogether citizens”. See R. Parry, “In a Sense Citizens, but Not Altogether Citizens”, Rhodes, Race, and the Ideology of Segregation at the Cape in the late Nineteenth Century”, *Canadian Journal of African Studies*, 17, 3, 1983, pp 377–391.

6. Report of the commission appointed to enquire into and report upon the facts relating to the tenure of natives of their stands in the Potchefstroom Native Location (hereafter *Feetham Report*) (Government Printer, Pretoria, 1906), p 2. See also National Archives of South Africa (hereafter NASA), TPB 551 TA1443, for the Proceedings of the Feetham Commission, 1–2 December 1905, Part I and Part II (hereafter *Feetham Proceedings*.) See *Feetham Proceedings*, Article 10 of Law 11 of 1883; and Law 10 of 1886, Article 46 of the ZAR. See also “Drie-en-Dertig Artikels, 1842”, Sworn translation of originals, *Feetham Report*, pp 2–3. In his manuscript, G.N. van den Bergh, “Die Geskiedenis van Potchefstroom”, pp 27–29 refers to several efforts to establish a native location nearby the town from 1877.
7. L.M. Thompson, *The Unification of South Africa, 1902–1910* (Oxford University Press, London, 1960), pp 5–6. See also *Report of South African Native Affairs Commission, 1903–1905* (Cape Town, Cape Times Press, 1905), pp 46–48.

facts relating to the tenure by the natives of their lots in the Potchefstroom Native Location”.<sup>8</sup>

Feetham’s conclusions were duly accepted, leading to the appointment of the (F.W.T.) Armstrong Commission that was charged with validating individual claims, but the local authority was only able to take administrative control of the location from the beginning of 1908 (31 December 1907). In addition to the report of the Feetham Commission, all documentation of the proceedings is available in the National Archives, making it possible for a researcher to analyse a verbatim record of the evidence presented, including a perusal of the supporting evidence and certified copies of documentation submitted to the Commission.<sup>9</sup> This created the opportunity for the author to interpret the various representations made by several categories of witnesses. Furthermore, the generally accepted factual evidence placed before this Commission could be used to reconstruct the historic circumstances around 1888, information that is vital for clarity regarding the tenure of the “servant class”.

The aim was to trace and analyse events from this period and to determine how the perceptions and actions of the “master class” and the “servant class” were in conflict throughout the phase of creating a location, right up to the assumption of control of the location by the local authority in 1908. This may also be early evidence of a loosely-organised effort to struggle for the right to tenure in circumscribed urban areas, later generally described as native locations, based on the perceptions of the “servant class” of the legitimacy of their rights and the clear denial of the “master class” of said legitimacy.<sup>10</sup>

### **Diverse memories of co-existence in town and then “tenure” in the location**

A large number of people in the town were dissatisfied with moving the natives out [of the town, in 1888] but it was the law ... there was a large number of vacant *erven* in the town – I had five or six *erven* – and on each of them a native boy used to live, and it was better for us and for the natives to remain there ... Some of them paid rent, others worked on the half share and we gave them oxen to plough it. All had not the same arrangement ... His wife was perhaps a servant in the house, and if I wanted him to he had to come and work ... Yes, and the people who had those *erven* also liked it, but the majority of the people wished the natives to have this location ...<sup>11</sup>

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8. *Feetham Report*, p 1.

9. NASA, TPB 551 TA1443, Feetham Proceedings.

10. Another very early instance was in Port Elizabeth where the right to tenure (through occupancy) was a crucial element of dissent. See J.F. Kirk, “Race, Class and Segregation: The 1883 Native Strangers’ Location Bill in Port Elizabeth, South Africa”, *The International Journal of African Historical Studies*, 24, 2, 1991, pp 293–321.

11. NASA, TPB 551 TA1443, Feetham Proceedings, Evidence, Rocher. According to Van den Bergh, “Geschiedenis van Potchefstroom”, p 45, referring to *De Emmigrant*, 2 September 1862, whites could accommodate up to five natives on their stands.

## The servant class of Potchefstroom

In making this statement while presenting evidence at the hearings of the Feetham Commission in 1904, Councillor C.G.C. Rocher aptly explained the diverse interests of the white “master class” in 1888. His view, with reference to the symbiotic relationship between the two classes prior to the establishment of a native location, was not shared by another witness who described the circumstances of co-existence in Potchefstroom town as “unbearable” because:

On some *erven* there were a lot of natives, perhaps half a dozen or more, and they all had to have passes as to in whose service they were. Perhaps one man would have about 20 or 25 natives which he never used [as servants].<sup>12</sup>

When another white witness was questioned about possible objections to coexistence in 1888, “from a sanitary view”, he chose to refer to an unrelated issue by emphasising that co-existence in town had “... become a thorough nuisance ... because the Liquor Law was not in force [and it] was in some places a regular hell on Sundays with the natives ...”<sup>13</sup>

Furthermore, in the discussions between the members of the “master class”, the purpose of the location was seen as preventing “danger and unhealthy crowding together” of inhabitants and buildings in the town and the “securing of proper health regulations and the keeping of order and peace”.<sup>14</sup> These views, as will be discussed, did not in any way correspond with the perceptions of the “servant class”.

Decisive action on segregating a section of the “servant class” was taken at a council meeting in January 1888 when a memorandum submitted by white residents requested the removal of “coloured” people from the town and the designation of a location for them to live in.<sup>15</sup> The town councillors called a public meeting of eligible voters and in February 1888 a decision was taken by a large majority that all natives not employed as “domestic” workers by burghers would be obliged to live in the future location. Obviously, however, the common interests of the “master class” were of

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12. NASA, TPB 551 TA1443, Feetham Proceedings, Evidence, Douthwaite.
  13. NASA, TPB 551 TA1443, Feetham Proceedings, Evidence Douthwaite, Borchers. The so-called “sanitation syndrome” and manipulation of planning regulations to protect working-class white residential conditions was an early mechanism by which South African towns and cities were racially segregated. See G. Baines, “The Origins of Urban Segregation: Local Government and the Residence of Africans in Port Elizabeth c. 1835–1865”, *South African Historical Journal*, 22, 1990, pp 61–81; M. Swanson, “The Sanitary Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony 1900–1909”, *Journal of African History*, 18, 1977, pp 387–410.
  14. “Regulations of the Potchefstroom Community”, *Staats Courant*, 13–20 November 1884, article no. 40; NASA, TPB 551 TA1443, Feetham Proceedings, Sworn translation of original: Meeting of town council, 18 January 1888. See also NASA, TPB SS/O/R203/84 petition submitted by M.W. Pretorius et al. on the necessity of establishing a location because of the possibility that “co-existence with the natives” might lead to the outbreak of small pox in the town.
  15. NASA, TPB 551 TA1443, Feetham Proceedings, Sworn translation of original: Meeting of town council, 18 January 1888.

paramount importance, because it had to be ensured that the white owners of *erven* should not be “hindered in their rights to have their properties cultivated and inhabited”. And indeed, a disappointed councillor who was opposed to the removal of some of his servants to the location, indicated the disruption he expected, given that “we had our own boys in our own *erven*” and “it would be a bother to bring them up from the location at eight in the morning to work”.<sup>16</sup>

The local missionaries were requested to help by providing the numbers of the families in their congregations that needed stands in the native location, but also in order to “ascertain how many wandering natives, who belong[ed] to no church, reside in the town”. At a later meeting of the council<sup>17</sup> a letter from the Rev. Bruno Köhler of the Berlin Missionary Society was read in which he unequivocally explained his ideas for “order” in the new location as follows: “The relevant three church communities of natives should be permitted to reside apart from each other”, because he thought this was the only way for the congregations (i.e. the missionaries) to maintain a sense of “order” and “discipline” among the “natives”. Furthermore, he expressed the view that “no shop or canteen shall be permitted in or in the neighbourhood of the location” because this was necessary for the protection of “decent coloured people and whites – not mentioning the moral ruin” that the functioning of these businesses might have for the inhabitants.<sup>18</sup> Council affirmed the prohibition of shops and canteens and decided that three blocks in the future location would be consigned to the congregants of the Reverends Köhler, Wood and Wainman. It was decided that the occupants of the location would be obliged to pay an annual rent of 10 shillings. The validity and consequences of having to pay this rent became an issue that was hotly debated in later years.<sup>19</sup>

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16. NASA, TPB 551 TA1443, Feetham Proceedings, Sworn translation of originals. This motion was proposed by J.G. Bantjes and seconded by J.F. Borius. The opposing position of the chairperson (N.S. Malherbe) at the meeting of the town council on 18 January 1888 was noted with that of the minority. In 1905, Goetz was against the removal of the servants although others felt it would be injurious to the health of white townfolk to have the “servant class” living amongst them. See meetings of the town council, 18 and 26 January 1888; 7 and 14 March 1888. See also Article 10, Law No. 11 of 1883; and Resolution Executive Council, Article No. 40, 13 October 1884; Letter Secretary R. Solomon – Köhler, 10 March 1888; and evidence of Borcherds.
  17. NASA, TPB 551 TA1443, Feetham Proceedings, Sworn translation of originals, Meeting of town council, 18 January 1888; Meeting of town council, 22 February 1888.
  18. NASA, TPB 551 TA1443, Feetham Proceedings, Sworn translation of originals, Meeting of town council, 18 January 1888; Letter Köhler – P.F. Pretorius (mayor), 15 February 1888. See also A. Mbembe, *On the Postcolony* (University of California Press, Berkeley 2001), p 35, regarding the *right* of the stronger to be generous to the colonised.
  19. NASA, TPB 551 TA1443, Feetham Proceedings, Sworn translation of originals, Meeting of town council, 18 January 1888; Letter Köhler – Office of town council, 15 March 1888; Letter, Secretary Solomon – Köhler, 24 June 1888.

## The servant class of Potchefstroom

The demarcation of a location was undertaken “on the rise (*bult*) between the Mooi River Drift and the town erven on the lower side of the wagon road”.<sup>20</sup> The “representatives” of the “servant class” who were not considered bona fide domestic servants were then called to a meeting on the Market Square, “for the service of the town”, according to the “master class”, but actually with the purpose of explaining to them the specific terms of their occupation of the future location, an issue that later proved to be of major significance for the servants.<sup>21</sup> The representatives of the 133 whites in favour of removal called for drastic action and the council resolved that non-domestic servants were to be resettled not later than the last day of January 1889.<sup>22</sup>

A harsh intermezzo from the past, which came to light during the Feetham hearings, reminding the “servant class” of their vulnerability regarding “tenure”, was the inconsiderate, but legal, survey carried out by Curlewis only ten years (in 1897 or 1898) after the location’s establishment. He decreased the size of all the existing stands, and the old stand numbers were annulled, because the Executive Council (of the ZAR, in Pretoria) thought that the natives had too much ground. The residents were informed of their obligation to pay two shillings and six pennies per stand, but passively resisted by not turning up for a meeting with Curlewis. On request, Curlewis agreed to another meeting and then announced that the residents would now have to pay ten shillings per stand. Nor was this all. A solicitor complained that Curlewis had divided the existing stands into four, by “cutting the line right through some of the houses ... or the middle of the

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20. The commission had its work completed by 14 March 1888, and they demarcated three blocks of 72 stands each, measuring 50x25 yards, with one street running lengthwise through the location and two across. Twelve additional stands were made available for the use of church buildings. An area was left open for “wandering natives”, whereas “strangers who came from other parts” [of the country] would in future also have to live in the location. There was also to be a space of 300 feet between the location and the town. (In 1951 it was named Willem Klopperville and was also colloquially referred to as Makweteng.) See NASA, TPB 551 TA1443, Feetham Proceedings, Sworn translation of originals, Meeting of town council, 18 January 1888 and 14 March 1888; *Feetham Report*, Evidence of Botha, Borchers and Köhler, p 9.
  21. All agreed that four councillors were present on 16 March 1888, including both Pretorius and Botha (with two other councillors of the following four who were mentioned by some witnesses: Van Dam, Douthwaite, Goetz, and Bosch). The native representatives who went to “receive the location”, were George (N)Tombella, Wilhelm Lakei, George Timmerman junior, Lucas Hendricks and Jeremiah Rasbeck. See NASA, TPB 551 TA1443, Feetham Proceedings, Sworn translation of originals, Meeting of town council, 18 January 1888; Evidence of Botha, George Timmerman junior, Douthwaite and Hendricks. See also NASA, Municipal files of Potchefstroom (hereafter MPO), File 382, Letter George Timmerman and others – resident magistrate, 7 September 1904.
  22. NASA, TPB 551 TA1443, Feetham Proceedings, Sworn translation of originals, Meeting of town council, 18 January 1888; Meeting of town council, 19 December 1888; letter from Council’s offices – Köhler, 11 January 1889; Evidence of Koster and Douthwaite. One petition was shown away as a “worthless document”, because a large proportion of the signatories were women and children who were not entitled to sign petitions. See meetings of town council, 19 September 1888, 17 October 1888 and 30 October 1888.

street ...”, resulting in unrest among the residents. The location residents were afraid of losing the properties and already *then* argued that the land had been granted to them for a period of 99 years. The civil commissioner of Potchefstroom at the time, J.A.S. Malherbe (who received rents for the location and controlled the change of occupants) could not act administratively upon the survey, and nothing came of this initiative by Curlewis. The fact remains that from the point of view of the “servant class”, extremely harmful measures were a constant possibility, although poor administration on the part of the white officials repeatedly frustrated some of these inconsiderate efforts.<sup>23</sup>

Apparently the situation regarding the existence of the location and the rights of its residents remained unchanged from 1888 until October 1899 when the South African War broke out. After three consecutive British military occupations of Potchefstroom and their concomitant administrations during the war years,<sup>24</sup> a health board was eventually established in 1902 and this was replaced in 1903 with a town council. By 1903, regulations for the administration of all locations in the Transvaal crown colony were promulgated,<sup>25</sup> and these were also applicable to Potchefstroom. These measures entailed the introduction of new stand permits in the location and the payment of money to cover the delivery of water and sanitary services to the properties.<sup>26</sup> When the wishes of the local authority for administrative control were met a few years later, the daily life of the majority of the residents of the location was destined to be restricted even further, clearly heralding a new era of oppression for them and indeed for all “urban natives” living in the four British colonies. These regulations were temporarily abrogated by the resistance of the location residents in 1904.

This article underscores the broad social and political changes brought about by the South African War, which opened up possibilities for resistance against racial discrimination and “shattered the mould of

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23. NASA, TPB 551 TA1443, Feetham Proceedings, Sworn translation of originals, letter J.A.S. Malherbe – Magistrate, 19 April 1899; letter F.D. Conradie – State Secretary, 22 November 1898; letter State Secretary – F.D. Conradie [December 1889]; letter Malherbe – State Secretary, 8 September 1898; Evidence of Curlewis, Malherbe in *Feetham Report*, p 11.
  24. G.N. Van den Bergh, “The Three British Occupations of Potchefstroom during the Anglo-Boer War 1899–1902”, *Scientia Militaria*, 37, 1, 2009, pp 95–112. The first occupation took place on 11 June 1900 and the third lasted up to the end of the war.
  25. Provision was also made for the setting up of urban locations in the Cape Colony in 1902 and for the Natal municipalities in 1904. See T.R.H. Davenport and K.S. Hunt, *The Right to the Land: Documents on Southern African History* (David Philip, Cape Town, 1974), pp iii; 68–70.
  26. The town council did not want to deliver sanitary services and therefore the tariff had to be lowered. NASA, TPB 551 TA1443, Feetham Proceedings, Evidence, Borchers: “... they get surplus water from the furrow, most of them also have wells”, and “they go into the vlei. Almost every erf has a closet, they dispose of the night-soil on the ground”. See also *Feetham Report*, pp 11–12. Councillor Retief saw no necessity for sanitary services, because “they have done without [them] for 15 years, and they could go on for another 15 years”, *The Western Chronicle and Potchefstroom Budget*, 18 January 1905.

subservience<sup>27</sup> in the Transvaal (as in the Free State) where hope and frustration were experienced alternately by the ordinary residents of the location – and voiced by members of the black elite.

### **Resistance, because “We should ... eat some benefit from this”**

In July 1904, P. Molott[o] (headman of the location) criticised the upcoming increased taxation (rent) as a result of the 1903 regulations, pointing to the contribution the “servant class” had made over the years to the progress of the country. He maintained:

I would with all due respect remind your worship [the mayor] that we the descendents of the natives who came in to this country with the old Voortrekkers (sic) deserve consideration as our fathers have with yours borne their shore (sic) in the development of this country ... That the location is the best location in the country is due in a great measure to our own exertion and the industry ... [thus] ... we feel it hard that we should not be allowed to eat some benefit from this.<sup>28</sup>

The health board extended the location considerably in 1904 and all applications for stands were accepted when it was allotted under the new by-laws. The local authority saw the extension of the location as necessary, because the existing location was very full, and there were “a great many natives squatting on its borders”.<sup>29</sup> The inhabitants of the “old location” were resolute and refused to take out stand permits or to pay the newly imposed rent, because they saw this as a breach of the promises made to them in 1888. This suggests that they considered their residence in the native location legitimate although initially this was not based on any legal argument.

Their refusal to pay the dues demanded resulted in the prosecution of nine residents in November 1904, who were then convicted in the magistrate’s court for not being in possession of a location permit. On appeal to the Supreme Court in 1905, however, the conviction was quashed because this was not a location in accordance with the ordinance of 1903 and the regulations therefore could not be made applicable to the residents. The charges against Malope and others for deliberately not being in possession of a location permit, were not only found to be illegal and invalid, but it was also discovered that it was essentially a civil right issue that was being tried, whereas the accused were wrongly convicted in the magistrate’s court on criminal charges.<sup>30</sup> For several years this court case frustrated the

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27. J. Bojé and F. Pretorius, “Black Resistance in the Orange Free State during the Anglo-Boer War”, *Historia*, 18, 1, 2013, pp 2–3. This article refers to a number of other sources in this regard. See for example S. Marks and S. Trapido, “Lord Milner and the South African State”, *History Workshop*, 8, Autumn 1979, pp 50–80.

28. NASA, MPO, Files 2/1/33 382; P. Molott[o] – Mayor of Potchefstroom, 4 July 1904.

29. Transcript of Malope v Potchefstroom Municipality, Supreme Court of the Transvaal, Pretoria, 28 March 1905 (hereafter Malope v Potchefstroom Municipality, TS 1905).

30. Malope v Potchefstroom Municipality, TS 1905. The consent of the Lieutenant-Governor was necessary in terms of Section 37 of Ordinance 58 of 1903. The observation on civil rights was made by Judge J. Mason.

local and colonial authorities in their efforts for the strictly legal administration and forceful control of the native location.<sup>31</sup> However, in order to establish the facts and legality regarding the events of 1888, and not the issue of the legitimacy of their tenure (as was often stated by the residents) the authorities in Pretoria appointed Feetham as an investigative commissioner.

### **Feetham Commission: Evidence regarding the promises of 1888**

The passive resistance and legal action by the location residents were brought to a head in October 1905 when Feetham was appointed to enquire into and report on the circumstances of the establishment of the Potchefstroom location.<sup>32</sup> Hearings were held in 1905 and evidence was given by ten white people and six claimants living in the native location.<sup>33</sup> Members of the Potchefstroom town council at the time of the creation of the location also gave evidence, as did several municipal officials and ministers of religious missions in town.<sup>34</sup> Some white residents stressed that “coloured” servants living in town before 1888 were a “nuisance” with the

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31. See P. Maylam, “Explaining the Apartheid City: 20 Years of South African Urban Historiography”, *Journal of Southern African Studies*, 21, 1, 1995, pp 19–38. Ultimately he sees some of the functions of (later) segregation as the political need for control of the black under-classes.
  32. Richard Feetham (1874–1965) was appointed by the Lieutenant-General of the (Crown Colony of) Transvaal. During the South African War, Feetham served with the Inns of Court Rifles. After the war he was one of the young lawyers selected by Lord Milner to assist him in the policy of reconstruction following the Peace of Vereeniging. This group of lawyers became known as Milner’s Kindergarten. Feetham was later a lawyer, politician and judge in South Africa. On the role of Feetham and the Kindergarten, see S. Dubow, “Colonial Nationalism, the Milner Kindergarten and the Rise of ‘South Africanism’, 1902–10”, *History Workshop Journal*, 43, 1997, pp 53–85.
  33. *Feetham Report*, p 1. Council for the claimants (Crots) agreed that: “The case of a native was the case of all.” See *The Western Chronicle and Potchefstroom Budget*, 8 November 1905. The residents of the location that gave evidence before the Commission were Lucas Hendricks; Wilhelm Lakei; George (N)Tombella; George Timmerman (senior); Jeremiah Rasbeck; and George Timmerman (junior).
  34. NASA, TPB 551 TA1443, Feetham Proceedings. Councillors who gave evidence were F.C. Botha; G.G. Koster; C.G.C. Rocher; and M.A. Goetz. Officials who provided evidence were A. Borchers (at some time superintendent of natives and who later also functioned as a member of council); J.A.S. Malherbe (the civil commissioner of Potchefstroom from 1890 to 1899, who received rents for the location and controlled the change of occupants); and W.S.V. Hoskins, who served as town clerk from 1903, when the town council was set up. Prior to that he served consecutively as secretary of the health board; and superintendent of the location from February 1903 to the end of 1904. Other officials involved in the hearings were C.M. Douthwaite (who was at times alternately deputy mayor, field cornet and sub-native commissioner.); and the state surveyor, J.F.I. Curlewis. Religious ministers who gave evidence were Archdeacon A. Roberts (English Church); Rev. E. Carter (Wesleyan Community); and B. Köhler (Lutheran Mission). According to Feetham, the municipality was established in 1869 and functioned until 1880. From 1880 to 1884 there was no council and the government ruled the town; the town council was again established according to a law of 1883. Town regulations were passed in 1884; council was then dismantled in 1890 (according to Borchers in 1889). See Evidence of Borchers and Hoskins; *Malope v Potchefstroom Municipality*, TS 1905.

consequent petition by white inhabitants to have them removed from town, although Feetham also accepted that many of the white residents had wanted to avail themselves of the opportunity of becoming tenants of specific stands and were therefore in favour of the removal of some of the “servant class” competitors. Members of the “servant class” had been unwilling to move out of the town to a native location, probably indicating their quest for some reassurance of tenure in the future. The views and actions of the missionaries in town had a tangential but clear practical influence in favour of the stance of the authorities. Köhler, for instance, not only gave evidence to the Commission in this vein, but had already in 1888 requested that the three different church communities of natives should be allowed to reside apart from one another in the new location, for the sake of “order” [i.e. control].<sup>35</sup>

There was a wide variety of opinions and recollections among the white witnesses when it came to the assurances given to location residents in 1888 on their tenure in the location that was about to be established. Councillors<sup>36</sup> said a promise was given after the religious ministers asked for a fixed period of stay, but “as long as they remained there, it remained a location ... It was more an explanation to the natives to get the[m] to go quietly” and not “a lease they were getting, or 99 years’ tenure”.<sup>37</sup> An example of an opposing and extreme view by a white witness regarding the intention of the council of 1888 was that provided by A. Borchers, a town council official who probably had a better grip on the leeway (or lack thereof) in the law and the regulations – but was therefore probably more rigid in his approach. He merely stated that “they [the town council] could not do it [promise tenure to the residents] because the law was quite distinct”. The commissioner finalised this issue by quoting from town regulations (Article 33), thereby affirming that the town council was not at liberty to sell or encumber public land unless an express decision was taken in this regard at a public meeting and with approval of the (central) government.

As for the evidence provided at the Feetham Commission hearings by the residents of the location, most said they understood that they had been accorded a 99 year lease on their stands. Resident Lakei, and also Botha and Douthwaite, partly confirmed this by saying that a son could succeed a father in this right of occupation, “as was only natural”. Mayor Pretorius was

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35. *Feetham Report*, pp 3-4. The motives of missionaries were often of a complex nature, including evangelism and aid, civilising their congregants, and control and protection of their congregants. They also had to accept as a given some of the local conditions, such as the implementation of segregation. See N.S. Jansen van Rensburg, “Inclusion of the ‘Other’ into the Fold: Early Mission Churches and Society in Makweteng, Potchefstroom, South Africa”, *Anthropology Southern Africa*, 28, 1/2, 2005, pp 39–48.

36. NASA, TPB 551 TA1443, Feetham Proceedings, Evidence of Douthwaite and Goetz. However, Botha said: “it was forever ...” and “it was for him, George Timmerman and his children”.

37. NASA, TPB 551 TA1443, Feetham Proceedings, Evidence of Rocher and Goetz. This was indirectly supported by Köhler, who in giving evidence admitted that “they [said they] were afraid at first to go there”.

often quoted as having said to them: "... you will not outlive it, nor will your children's children".<sup>38</sup>

Feetham placed serious doubt on the proper administration of the location's affairs, noting that no copies of regulations could be found by him in 1905, and this also pertained to the contradictory evidence from officials regarding the precise number of stands that were laid out after the initial creation of the location in 1888. (Furthermore, somewhat later, the Armstrong Commission also had difficulty verifying contradictory information given by officials in this regard.) Even on the crucial matter of the length of the tenure given to the natives who were resident in the location, Feetham found no written evidence and no documents of title; there were only receipts for the rent the residents had paid over the years.<sup>39</sup> While the legal position as stipulated in the town regulations was clear to the commissioner, the poor administration; widely divergent testimony; and the obvious intention "to make them go quietly" to the native location probably explained why the location residents had formed the perception of their future tenure as being an improvement regarding their position in town. These members of the "servant class" argued that their occupancy was legitimate and also claimed that the level of quality of their housing in the location added to their argument that they were "permanent" residents.

### ***Feetham Commission evidence: Good houses and compensation***

In their claim to tenure and special treatment because of their lengthy occupation in the location, the protesting residents saw the quality of their housing, and also that of the church buildings, as an important issue of appraisal in the evidence given to the Commission.<sup>40</sup> Because the inhabitants of the location had in the past (until 1905) not paid property taxes, there was no reason to assess the houses, but Feetham found many "houses of good size, solidly built, usually with walls of brick or clay and roof of thatch or iron, and well kept", and he acknowledged that this pointed to evidence that they relied upon the assurances which they had received on the permanence of the tenure they were to enjoy.<sup>41</sup> His views were also supported by white witnesses who said that within three or four years after moving there, brick structures were duly erected. Douthwaite said in

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38. NASA, TPB 551 TA1443, Feetham Proceedings, Evidence of Lakei, Hendricks, [N]Tombella, Botha and Douthwaite. On another occasion Hendricks also said: "If the municipality could have turned us out in a year, I would have made a reed hut." See evidence in *Malope v Potchefstroom Municipality*, TS 1905.

39. *Feetham Report*, pp 4, 9. Rocher said that some of the council meetings were not even recorded. See NASA, TPB 551 TA1443, Feetham Proceedings, Evidence of Rocher.

40. The Wesleyan church had buildings worth £500 or £600 pounds, or maybe even as much as £800 to £900 while the buildings of the English Church were estimated at £300 to £400. In 1905, the value of specific residential buildings was estimated by some residents as being "between £100 pounds and £430 pounds"; a "little over £100 pounds"; "close to £100"; and, in another case, "£430". On this see NASA, TPB 551 TA1443, Feetham Proceedings, Evidence of Borcherdts; Lakei, Rasbeck, [N]Tombella, Roberts and Carter.

41. NASA, TPB 551 TA1443, Feetham Proceedings.

mitigation for some rather modest housing, that there was a stipulated time in which they could get into the location<sup>42</sup> and councillors Botha and Rocher as well as resident Hendricks, recalled that they were admonished to build good houses and because of this, “instead of building round houses they built a decent house and planted trees. Some had clay walls with thatch roofs, others were of brick and iron ...”.<sup>43</sup>

When Borchers was asked by the commissioner why he thought – in the case of no permanence being envisaged in 1888 – that the ministers of the churches would undertake the building of churches (also used for education) to the value of £600, £700 and even £800, Borchers answered dismissively: “That is their look-out. The law, or the regulation, is perfectly clear.”<sup>44</sup> The most negative evidence with regard to housing, its quality and its significance, was given by the civil commissioner in 1888, Malherbe, who insisted that residents could not sell even their own property on the stands, because there were no good houses in the location, only huts, and therefore compensation could not have applied. Another reason he gave that no decent houses were sold in his time was that he would not have allowed it, because: “We were afraid ... it would be a speculating affair [if compensation was given]”.<sup>45</sup>

In contrast Rocher and resident Lakei were convinced of the opposite regarding the possibility of compensation. In any case, in the evidence presented Feetham found no clarity on the question of possible compensation in the event of eviction or of leaving the location without compulsion, but in his personal notes, showing a degree of fairness, he remarked that under common law the natives would probably have been entitled to compensation in the case of eviction. Although it was apparent that the residents were asked to build good houses and this then strengthened their position, it was quite clear to him that the ground was only given to them for occupation per se and the residents of the location themselves did not contend that they could sell their stands.<sup>46</sup>

### ***Feetham Commission's conclusions: Legality or legitimacy of tenure?***

As far as the “old location” was concerned, where stands were first allotted in 1888, Feetham concluded that some members of the local council did

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42. NASA, TPB 551 TA1443, Feetham Proceedings, Evidence of Douthwaite. Also *Feetham Report*, pp 7, 8. Douthwaite expressed a contrary view when giving evidence during the Malope trial when he said: “The ministers wanted a stipulated time – I think 99 years – but that was refused.” If it had been a yearly tenure it is unlikely that the churches would have been built. See also Malope v Potchefstroom Municipality, TS 1905.

43. NASA, TPB 551 TA1443, Feetham Proceedings, Evidence of Hendricks, Botha, and specifically Rocher, who said: “The Kaffirs in those times were just beginning to make a sort of house.”

44. NASA, TPB 551 TA1443, Feetham Proceedings, Evidence of Borchers. When questioned on the erection of the Wesleyan Church he said: “I did not take notice of the Kaffir education because I do not believe in it.”

45. NASA, TPB 551 TA1443, Feetham Proceedings, Evidence of Malherbe.

46. *Feetham Report*, pp 5, 6, 7.

indeed give “verbal assurances to the effect that they [the residents] were given a perpetual right of occupation ... as long as they paid their annual rent”. Apparently, these assurances had led the residents of the location to believe that their rights practically amounted to “tenure in perpetuity”.<sup>47</sup> Because the “servant class” were unwilling to move out of town, efforts were made to entice them to do so by the size of the stands offered. It seemed that the idea in the minds (of all but one) of the members of the council who gave evidence, was that the location was to be a permanent residential area.<sup>48</sup> However, Feetham also found that the council had reserved the right to eject them from the location on payment of compensation. Furthermore, if a resident chose to leave the location compensation was also payable. These conclusions were based on the generally accepted fact that the council had urged the residents to build good houses on their stands, to which they had reacted positively. These positive conclusions corresponded with the views held by the residents of the location, but were not enough to swing the ultimate conclusions, previously based on exclusion of the “servant class” from the tenure system of the “master class”.

Feetham put forward several reasons why the strictly legal right to stands in the location was not valid, namely that the informal assurances by the members of the council were not legally binding on council; and that the council had no power itself to grant long leases on land belonging to the town without first obtaining the consent of the public at a meeting of voters, and secondly the consent of the Executive Council of the ZAR.<sup>49</sup> He also concluded that no clear promises had been made to the residents of the “old location” regarding the future rights of their children in the “new location”. Here he was referring specifically to a reserve with additional stands set aside for future extensions to the location. One councillor and Rev. Köhler declared that such a reserve had in fact been created, while two other councillors strongly denied this.<sup>50</sup> (In 1905 there were also 39 occupied stands described by the surveyor, Curlewis, as being inhabited “merely [by] squatters”. Feetham, however, decided that these 39 occupants in the eastern and western wings of “the old Location hold on the same terms as the [other] holders”).<sup>51</sup>

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47. *Feetham Report*, pp 5–6, 13.

48. NASA, TPB 551 TA1443, Feetham Proceedings, Evidence of Borcherds: “The natives went out reluctantly more or less. You know what natives are. They always have some difficulty or excuse...” See also *Feetham Report*, pp 5–6; 13; and NASA, TPB 551 TA1443, Feetham Proceedings, Sworn translation of original, Feetham – Curtis, 5 January 1906.

49. *Feetham Report*, pp 8–9, 13.

50. NASA, TPB 551 TA1443, Feetham Proceedings. Douthwaite, again, thought the discussion might have been about an area created “not to have them abutting on the town” or about a large commonage later used as a “coolie bazaar”, and Botha referred to a reserve plus another place for “strangers coming into the district”. Evidence of Douthwaite, Borcherds, Botha, Köhler and Malherbe. Also *Feetham Report*, p 9; and *Malope v Potchefstroom Municipality*, TS 1905. Here, again, Malherbe thought natives coming in from outside could squat on the open ground.

51. *Feetham Report*, p 9. The view held by Curlewis also applied in Natal in the second half of the 1800s, at which time Africans were seen as refugees or immigrants, and not as citizens with a claim to urban land rights. See D. Welsh,

As was to be expected, the Feetham Commission's recommendations did not include the question of the legitimacy of the location residents' position as mere subjects rather than full citizens (with a claim to urban land rights) of the Transvaal Republic.<sup>52</sup> This profound issue was mentioned by officials in only one instance. Based on the opinion of Feetham in his report that: "... the natives attach if anything, less importance to the amount of the rental than to the permanence of [their] tenure", a certain L. Curtis had agreed that there should at this time be some adherence to the spirit of the pledges that were made in 1888. However, Curtis took issue with H.M. Taberer's negative views regarding the (possible) creation of a privileged class in this native location, arguing that "the whole question at issue is whether certain natives in Potchefstroom location have equitable vested rights or not", and furthermore:

I believe that anyone who will look at the location and go into its history will admit that although other contributing causes exist, the great advance made by these natives would not have been made had they not have believed that they enjoyed security of tenure to their land. I should be very glad to see the natives in all Municipal locations, were it possible, enjoy a similar security of tenure.<sup>53</sup>

All the efforts, and even the occasional goodwill of officials, only extended the period of time before a section of the residents who appealed on the basis of their special status as very early residents, were also partitioned off into the same state of urban landlessness as their other black compatriots, as can be seen in the events leading up to 1908, and thereafter.<sup>54</sup>

### ***Armstrong Commission: Validation of individual claims***<sup>55</sup>

For eighteen months after the Feetham Report had been made public and concurrent with the work of the subsequent Armstrong Commission, the office of the colonial secretary and town council of Potchefstroom endeavoured to reach some level of understanding on how to implement the

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*The Roots of Segregation: Native Policy in Natal, 1845– 1910* (Oxford University Press, Cape Town, 1973), pp 2– 3.

52. C.W. de Kiewiet, *British Colonial Policy and the South African Republics, 1848– 1872* (Royal Empire Society, London, 1928), pp 244-245. In 1857 the US Supreme Court held that African Americans, whether slave or free, could not be American citizens. The 14th Amendment reversed this decision. See *Dred Scott v Sandfort*.
53. NASA, TPB 551 TA1443, Feetham Proceedings, Letter, H.M. Taberer – Assistant Colonial Secretary, 16 February 1906; L. Curtis, Memorandum [ca February 1906]; Letter Assistant Colonial Secretary – Colonial Secretary [ca 1906]; H.M. Taberer – Assistant Secretary Native Affairs [ca 16 February 1906].
54. See the Native (Urban Areas) Act, No. 21 of 1923 and the Native (Urban Areas) Consolidation Act, No. 25 of 1945.
55. The High Commissioner for South Africa and Governor of the Transvaal (Milner) commissioned sub-native commissioner Armstrong. NASA, TPB 551 TA1443, Feetham Proceedings, for the Proceedings and Report of the Armstrong Commission, 23 July 1907 (hereafter Armstrong Proceedings and Armstrong Report). Assistant Secretary Native Affairs – Assistant Colonial Secretary, 16 February 1906; Armstrong Report, pp 1–7.

Feetham Report. One significant recommendation by the government was that specific natives resident in the “old location” be given tenure for another fifteen years. But in spite of repeated reminders, the town council did not act on any of these recommendations. It high-handedly rejected the recommendation to allow a fifteen-year tenure, arguing that:

the natives have been living for the last eighteen years on good land [where they had been forcibly moved] in the enjoyment of a water supply as good as is given to the European inhabitants of the town [but for the most part they only used the surplus water] and other [meagre] services, paying very little for these privileges.<sup>56</sup>

Notwithstanding the municipality’s lack of co-operation in 1907, and based on the conclusions of the Feetham Report, Armstrong was commissioned to enquire and report on the specific claims lodged by natives to “occupy their stands at a rental of ten shillings per annum”.<sup>57</sup> The Feetham Report was considered a fair basis on which to base Armstrong’s investigation. In the run-up to the Armstrong investigation both the municipality (“defendant”) and the residents (“claimants”) decided that professional legal representation would not be necessary, and initially the municipality decided that the town clerk *and* the superintendent would act as the representatives of the defendant (town council).<sup>58</sup> Then, for reasons unknown, Armstrong allowed the superintendent to become the representative of “a considerable number of respectable [Christian] natives”. There are strong indications, apart from this problematic procedure, that other aspects of the Armstrong Commission’s work were not only messy, but arbitrary.<sup>59</sup>

Leading figures among the claimants were required to reiterate that the understanding and practices begun in 1888 should be the same for the present holders – although this issue had already been concluded by Feetham.<sup>60</sup> Inexplicably, there was disagreement between Armstrong and officials of the town council regarding the exact number – and possibly the exact location – of the stands that he had to report upon. The officials felt

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56. NASA, TPB 551 TA1443, Feetham Proceedings, Letter Assistant Colonial Secretary –Colonial Secretary, 20 November 1906. See Mbembe, *On the Postcolony*, p 35, on the colonised being consigned to the fringes of the nation and thus becoming virtually a stranger in his/her own home.

57. NASA, TPB 551 TA1443, Armstrong Report, 23 July 1907, p 1.

58. Armstrong Report pp 1, 1–4. The Basuto Committee said the residents did not deem it necessary to have professional legal representation. This committee, an activist organisation, was based in Johannesburg.

59. NASA, TPB 551 TA1443, Armstrong Report, p 6: “The Superintendent of Natives [acting as representative for the residents/claimants] then called any witnesses he wished to have in order to *refute* [author’s emphasis] the statements made in any particular *claim* [author’s emphasis], and the claimant cross questioned such witnesses for the defence as he desired to question.”

60. NASA, TPB 551 TA1443, Armstrong Proceedings, Handwritten notes; Armstrong Report, pp 9–10. Jacobus Pieterse, native minister of the Church of England; Lucas Hendricks, formerly headman of the location; Philip Keck [Kock], formerly interpreter; P. Molotho [Molotto], formerly headman and then still acting in this capacity. See also Evidence, Malherbe.

his enquiry should also apply to what they described as the east and west wings, of the “old location”, known as the 39 stands. They pleaded with Armstrong not merely to limit his work to 216 stands because they intended working according to the stipulations of the Feetham Report and also received rent from the inhabitants of these 39 stands. If the inhabitants were now refused a hearing they would “feel it a hardship and the municipality would also be [placed] in an unfortunate position”. Armstrong was persuaded, heard the claims of the 39 stand holders and reported separately on them.<sup>61</sup> Not surprisingly, Armstrong reported on an “undercurrent” among the residents who felt compelled to make claims for the stands they were occupying, “whether entitled to it or not, [or] they were liable to be ejected and the improvements thereon would be lost to them”.<sup>62</sup> This undercurrent soon became a reality with a number of additional claimants; more than 200 residents could thereby occupy their stands by paying a rent of ten shillings per year.

***Native Affairs: Removal of Muthle from location and assumption of control of the location***<sup>63</sup>

Having successfully surmounted regulatory and legal obstacles, the municipality only assumed control of the location on 31 December 1907.<sup>64</sup> These circumstances would now also apply to the 246 stand holders who would duly be issued with stand permits by way of rent, on the payment of ten shillings per the assumption of control as a local authority, the municipality had to deal with Lazarus R. Muthle – the “secretary” of the native location – who approached several high-ranking national officials to intervene to alleviate the plight of the location residents. These officials included the minister and secretary of Native Affairs, and Dr W. Mortimer (a respected member of the Legislative Assembly for Potchefstroom and member of the Het Volk Association). The petitioners described their status as being “only poor Natives and Coloured people ... loyal to our Government and King”.<sup>65</sup> In all these petitions (on behalf of residents) Muthle asked for interviews with officials and again referred to the contentions regarding the

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61. NASA, TPB 551 TA1443, Armstrong Proceedings, pp 1–7, 11. See also, Evidence, Malherbe. Malherbe supported the 39-stand contention in favour of the claimants.
  62. According to *The Potchefstroom Herald* of 14 August 1908, only 175 natives lodged claims, of which 131 claims were allowed and 44 were disallowed. This information does not tally with the number of 246 stands that were listed in official documents, neither does it refer specifically to the contested 39 stands or correspond to the above total of 255 stands. See also NASA, TPB 551 TA1443, Armstrong Report, p 12.
  63. NASA, MPO, File 554. Superintendent – Town Clerk, 18 July 1908 and 4, 6, 7, 17 August 1908.
  64. NASA, MPO, Files 2/1/33 and 543. But right up to September 1910, the municipality’s attorney had comprehensive correspondence with an advocate on these issues. The legal position of the municipality, or the application thereof, was still not resolved in 1908.
  65. NASA, Secretary of Native Affairs (hereafter SNA) 394, Native Affairs (hereafter NA) 76/08 and NA114/08, Letter Muthle – Johann Rissik, 13 January 1908; Petition Muthle – Secretary for Native Affairs, 18 January 1908. Muthle wrote on behalf of Stephen Mpama, George (N)Tombella, and other residents who “elected” him to represent them as secretary in their affairs.

216 and the 39 stands – matters already investigated and reported upon by both the Feetham and Armstrong Commissions – arguing that some claims were disallowed because of Armstrong’s recommendations. The petitioners now complained that they were of advanced age and unable to pay the newly required dues on their stands, and even when they tendered the necessary payments they had been told they still had to leave. Their children consequently lost their right to occupy the stands of their fathers and mothers.

Since they argued their claims were being unfairly disallowed, they now (once more) called on the minister to conduct the affairs of this controversial location “as regulated by the late [ZAR] government quite independent from other native location[s]”.<sup>66</sup> It seems as if the secretary for Native Affairs considered specific complaints as valid, because the advanced age of complainants had presumably not been taken into consideration, something which Armstrong denied. (The subject of old age is not recorded at all in Armstrong’s notes that are on file.)

Muthle’s brave intervention on behalf of the residents can only be appreciated when it is underscored that he had already applied for naturalisation as a British subject by August 1905, with the supporting declarations of two officials that he was “in every respect a worthy man”.<sup>67</sup> It is not clear under what circumstances Muthle had remained in Potchefstroom after September 1906 when the assistant colonial secretary, in response to this application, indicated that natives could not apply for naturalisation.<sup>68</sup> After his failed attempt for naturalisation he was very vulnerable when he wrote the above petitions in 1908, but still, he became such a serious stumbling block for the local authority that municipal file 554 was inscribed as: “Native Affairs: Removal of Muthle from Location and assumption of control of Location”.

It is quite clear that the location superintendent had no intention of granting Muthle a location permit in 1908, for he had found him “not a desirable person” to reside in the location; it was stated that he was “too interested in other people’s business”. Presumably it was alleged he was despondent about the ruling on his own fate, and thus became involved in writing the petitions. Complaints were at this time also lodged against

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66. NASA, SNA 394 NA 76/08 and NA 114/08, Secretary Native Affairs – Armstrong, 25 January 1908; Muthle – Sub-Native Commissioner, 18 February 1908; Armstrong –Secretary Native Affairs, 19 February 1908; Secretary Native Affairs – Muthle, 3 March 1908; Letter Mortimer – Minister Native Affairs, 29 April 1908. See also NASA, TPB 551 TA1443, Armstrong Proceedings in Feetham Proceedings. In the petition to Mortimer, elaborate complaints are directed against the local authority regarding washing licences for women, taxation and rating, and also stand permits. Mortimer acted in favour of the residents on some of these issues.

67. NASA, CS597 3870 and CS597, Certificate J.F. van Aardt, 16 September 1905; Declaration J.H. Corbett, *Government Gazette*, 18, 25 August 1905.

68. He failed in his application for naturalisation, but he died in Phokeng, Rustenburg in 1916, at the age of 45, as a very poor man (NASA, TAB 34698, 1916; NASA, CS597 3870; CS597, Application Muthle, for naturalisation British subject, 26 August 1905).

Muthle by a number of missionaries including Kuyler, E. Carter, D.T. Terburgh, and J. Durno, who alleged that the reasons for his expulsion as a teacher at the Dutch Reformed School were that he “had seduced a daughter”, clearly not a criminal issue. The missionaries had a range of other complaints, among them the purported indiscipline at Muthle’s new private school and the possibility of the “seeds of disaffection [being] sown in the minds of the scholars”.<sup>69</sup> Nonetheless, Muthle had, under difficult circumstances, interceded on a national level on behalf of the residents of the Potchefstroom location and was probably removed from the township because of the complaints lodged against him by missionaries in Potchefstroom and because he had been declared an “undesirable” person.<sup>70</sup>

The implementation, much later, of Ordinance 58 of 1903 did not only severely diminish the social space of residents of the location, but it was also the beginning of a long, rough road that awaited the residents of all urban native locations (townships) in South Africa. The ordinance stipulated that only very limited compensation was possible in the case of the cancellation of a stand permit; all those residing with a stand holder had to be included on a list with the superintendent, and their possession of bicycles also had to be noted (within twelve hours); visitors to the location

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69. It is likely that Terburgh was trying to find a position for the “undesirable” Muthle elsewhere in the school of his own church. See NASA, MPO, File 554 and also SNA 394 NA 93/08, Muthle – Secretary of Native Affairs, 18 January 1908; Muthle – Minister and Secretary of Native Affairs, 7, 13 and 18 January 1908; Petition Muthle – Mortimer and *Het Volk*, 18 April 1908; Carter and Others – Mayor and councillors, 25 June 1908; Muthle – Superintendent, 6 August 1908; Superintendent – Muthle, 6 August 1908; Muthle – Town Clerk, 7 August 1908; Native superintendent – Muthle, 7 August 1908; Superintendent – Town Clerk, 18 July 1908, and 4, 6, 7, 17 August 1908; Town Clerk – Terburgh, 16 August 1908, and 7 September 1908; Town Clerk – Chairman, Public Health Committee, 17 August 1908. See also N.S. Jansen van Rensburg, “Protest by Potchefstroom Native Location’s Residents against Dominance, 1904–1950”, *Historia*, 57, 1, 2012, pp 22–41.
70. Surprisingly, officials and councillors of the local authority, at this time of severe dispute, cared about their public image of fairness (and supremacy) as can be surmised from the angry rebuke of a low-ranking official, one Kock, who was responsible for his actions to the superintendent, and who had said to residents of the location that if “they had money to spare for lawsuits they had enough with which to pay their dues to the Council”. The town clerk then wrote that he actually agreed with the junior official’s remark, but that it was not the junior’s right to say exactly that; Kock only had to carry out instructions. The chairman of the “Native Commission”, when expressing his agreement with Kock’s views, then advised the town clerk to remove this one paragraph from a letter that may have become public property and could have given the impression that “we were bullying them [the natives] a bit”. The superintendent, who reported the unacceptable actions of Kock, had ostensibly over-reacted in his “anxiety” over Kock’s indiscretion, by suggesting to his superiors the forming of a commission in order to prove to the residents of the location that this remark was not uttered by council, because acting on the superintendent’s advice in this way would surely have been “a sign of weakness”, and that should not be allowed, according to the town clerk. In this regard see NASA, MPO, File 554, Town Clerk – Superintendent, 11 September 1908; Memo, Glen W. Scorgie, chairman [Potchefstroom] Native Commission, 12 September 1908.

should, when staying for more than six hours, report their presence; being in the possession of liquor or home-brewed beer could result in eviction; the condition of those inhabitants suffering from any infectious disease had to be reported to the superintendent; the medical officer, local officials and police had access and the right of inspection of location houses at all times; and all residents were to obey a night-time curfew.<sup>71</sup> Later, in the 1950s and 1960s, black people from the Potchefstroom location were forcibly removed to Ikageng (in terms of the Native Urban Areas Act of 1945), while coloured people were relocated to Promosa (in terms of the Group Areas Act of 1966).

## Conclusions

After the establishment of Potchefstroom in 1838, the precarious tenancy of the “servant class” started off with their living on the stands of their employers or so-called “masters” and the stands of other white people with whom they had a business relationship. They were in no way entitled to own these stands, but up until 1888 they lived on these stands in the town until, having no choice, many of them were moved to a “native location”. Although the “servant class” of Potchefstroom were mostly in an unenviable position regarding their right of residence over the entire period from 1838 to 1908, specific events in 1888 – generally poor administration; followed by a devastating war of three years; passive resistance and legal action by several residents of the location; and the work of the Feetham and Armstrong Commissions – all coincided to give many of them some degree of respite from strict control and “administration” by their white masters. The Feetham Report can – in a very limited way – be seen as fair in establishing their “rights”, but incessantly their representations were weighed down by the interests, power position and representations (“officialese”) of their white masters and their exclusion from the regular tenure system.

The insecurity of the “servant class” is underlined by the representations made by some of their masters who looked upon them as a “thorough nuisance” and depicted their presence in town as a health risk, although the local authority never seriously considered delivering the most basic health services by establishing rudimentary sanitary services for the location over this entire period from 1888 to 1908. For the most part, the

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71. Municipal Corporations Ordinance of 1903. Regulations for Potchefstroom were promulgated in 1904 and were intended to be applied in January 1905. They were applicable to “natives” (defined as “any person both of whose parents belong to any Aboriginal race or tribe of Africa”), but “Coloured persons of South African origin” were also allowed to reside in this location. See also N.S. Jansen van Rensburg, “Limited Access to Land Rights for the Powerless in Potchefstroom”, *Koers*, 60, 4, 1995, pp 593–618. In practice, over the period from 1901 to 1952 the alternative residential area created for “natives” and “coloureds” always had glaring deficiencies, compared to the white part of town. This encompassed, among other things, inferior roads, houses and sanitation. At one time (possibly from 1896 to 1944) residents of the location were not allowed to use the pavements in town and severe restrictions were placed on the use of water and trade in the location. Furthermore, there was severe overcrowding from the 1930s and this became very serious in the 1950s.

position of the “servant class” regarding rights were underplayed or ignored by not appreciating their value as workers or their ability to create proper housing. Their regular pleas regarding the circumstances that impacted negatively on their quality of life were also ignored. It could even be argued that the conditions under which they lived and the structures in terms of which they were administered, had very real totalitarian characteristics, devised not only for controlling their occupation of the location, but for controlling all aspects of their lives. In this oppressive process the missionaries gave moral and practical support. Indeed, the “servant class” were tolerated for the sake of their service to the town, but often regardless of their broader interests. The value of a symbiotic relationship in the use of the stands in town was often underplayed, as was the fact that they were also removed from town because they were competing for the same resources in a totally unwanted way. After 1903, their tenure of the native location was seriously endangered, when, within the encompassing social process, Feetham – restricted by the very clear confines of his commission – sorted out and weighed evidence, and then came to reasonable conclusions. But he was not expected to consider the legitimacy of their tenure in the town.

The resistance to the harsh restrictions regarding tenure, imposed on the “servant class” was well illustrated in the exceptional but seemingly inadequate endeavours of Muthle, who paid a high price for his mediations. But modest actions such as these contributed to the gradual development of a new social background in the struggle to have meaningful access, as full citizens, to the same privileges enjoyed by white people.<sup>72</sup>

### Abstract

The “servant class” of Potchefstroom intermittently struggled for some measure of security of the right of occupation and the use of urban land. They first relied entirely on the favour of their masters, then seemingly acquired long-term tenure in a native location. However, they were eventually consigned to the mass category of “urban natives” without tenure, initially under British rule after 1903. When accompanying their white masters on their trek from the Eastern Cape, they were never considered citizens of the republic that was to be constituted in the interior or as having any claim to land in town. Thus they lived with their masters on their *burgerreg erwe* (civil right stands) until 1888, when a native location was created for them, availing them with some basis for claiming security of tenure in an alternative system. However, partly because their claims of security of tenure were contentious when the location was planned and then established, a legal battle ensued between location residents and the local white authority after the South African War. This clash necessitated the appointment of the Feetham Commission in 1905 and the Armstrong Commission in 1907. These two commissions established certain limited and temporary benefits for location residents in Potchefstroom, partly based

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72. Jansen van Rensburg, “Protest by Potchefstroom Native Location’s Residents”, pp 22–41.

on their claims as very early residents of the town. This article covers an early and significant instance of the resistance of the “servant class” in southern Africa to the overarching, harsh social and legal structure in which the legitimacy of their tenure of urban land was ruled out.

**Key words:** Potchefstroom; native location; urban land struggle; township; tenure; Feetham Commission; Armstrong Commission; Transvaal Republic.

### Opsomming

Die “dienskneg-klas” in Potchefstroom het vir onderbroke tye ’n stryd gevoer om ’n mate van sekuriteit vir die gebruik of selfs net die besetting van dorpsgrond. Eers was hulle slegs aangewese op die goeie guns van hulle meesters, daarna het hulle reg in die lokasie op die oog af verbeter, om net daarna deel te hê aan die lot van alle inwoners van lokasies onder aanvanklike Britse beheer na 1903. Alhoewel hulle hul wit meesters vanuit die Oos-Kaap vergesel het, is hulle nooit as burgers gereken van die republieke wat in die binneland tot stand sou kom nie, en waardeur hulle ’n reg tot dorpsgrond kon bekom nie. Daarom het hulle saam met hul meesters op burgerreg-erwe gewoon tot in 1888, toe ’n lokasie vir hulle tot stand gebring is binne ’n alternatiewe stelsel wat hulle gemeen het aan hulle ’n basis vir bedinging gegee het. Die omstredenheid met betrekking tot die omstandighede waaronder die lokasie gestig is, en wat hulle as reverdiging vir hulle verwagtings beskou het, en die latere teenoorstaande eise, het die aanwysing genoodsaak van die Feetham-kommissie in 1905 en die Armstrong-kommissie in 1907. Hierdie artikel hanteer ’n vroeë en betekenisvolle geval van die weerstand van die “dienskneg-klas” in suider-Afrika teen ’n oorkoepelende en kras sosiale en regstruktuur waarin die legitimiteit tot die gebruik van stedelike grond uitgesluit was.

**Sleutelwoorde:** Potchefstroom, natuurlike-lokasie, grondstryd; township; eiendomsreg; Feetham-kommissie; Armstrong-kommissie; Zuid-Afrikaansche Republiek.