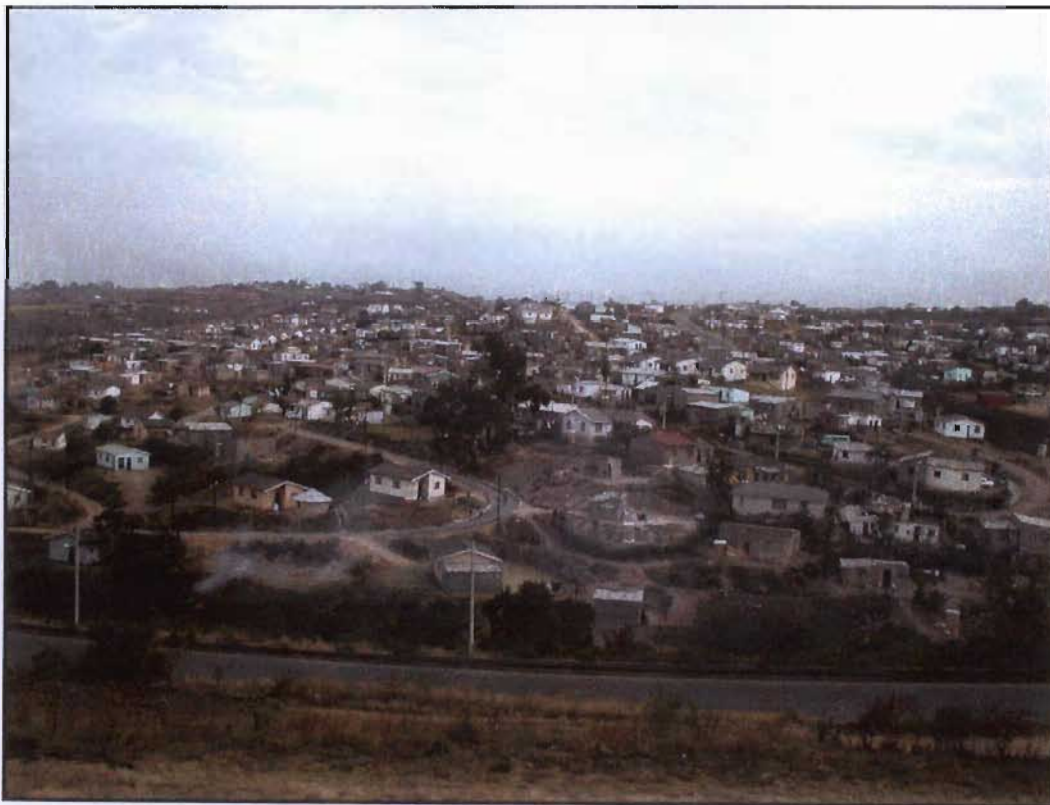


**The Relationship Between Informal Land Markets and Tenure
Security in the Durban Metropolitan Area -
*The Case Study of Folweni***



by Peter Magni

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the Department of Town and Regional Planning at the University of Natal, Durban.**

DEDICATION

This dissertation is dedicated to Andrew, Polly and Bridget Magni for their on going love and support .

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ACRONYMS

1.	ABSA	Amalgamated Banks of South Africa
2.	AFRA	Association for Rural Advancement
3.	ANC	African National Congress
4.	BESG	Built Environment Support Group
5.	CBD	Central Business District
6.	CMDA	Cato Manor Development Association
7.	DALA	National Department of Agriculture and Land Affairs (since 1999)
8.	DDA	Department of Development Aid (Disbanded in 1991)
9.	DLA	National Department of Land Affairs from 1994-1999
10.	DoH	National Department of Housing
11.	ESTA	Extension of Security of Tenure Rights Act
12.	GIS	Geographical Information System
13.	GPS	Geographical Positioning System
14.	Habitat	United Nations Center for Housing Studies
15.	IPILRA	Interim Protection of Informal Land Rights Act
16.	IDP's	Integrated Development Plans
17.	LEFTEA (LFTEA)	Less Formal Township Establishment Act
18.	PTO's	Permission to Occupy
19.	NGO's	Non-Government Organizations
20.	RSA	Republic of South Africa
21.	SABC	South African Broadcasting Corporation
22.	SGO	Surveyor Generals Office
23.	SPP	Surplus People's Project
24.	TPS	Town Planning Scheme
25.	ULTRA	Upgrading of Land Tenure Rights Act

1 INTRODUCTION

South Africa is a country that has a dual land market system. The first, and more familiar system, makes provision for the delivery of formal title, the registration of land and housing and thereby the operation of a market. It is subject to a legislated process of land exchange and use, and is a crucial mechanism in financing development. The second, lesser known, market - which is termed informal - falls outside the official land market framework. Informal land markets are created by a number of factors caused by specific set of historical circumstances and political and social policies. These factors include a lack of access to land, poverty, customary legal processes, the inability to pay for the official land management system, and land invasion. In contrast to its legal partner, the informal land market is characterised by a lack of recognised legality and noncompliance with land use regulations.

1.1 RESEARCH PROBLEM

Since 1994, the South African Government has instituted a programme of land reform based on restitution, redistribution and tenure reform to address inequalities in the land market. However, the policies have not paid much direct attention to the issues of the informal land market and how to regularise it. The current policy framework has a rural focus and subsumes urban land issues into the housing problem. Urban tenure delivery was considered part of the housing process rather than a unique component of urban land matters needing to be directly addressed. There is tacit acknowledgement of the existence of the informal land market within Government Policy, but direct actions to deal directly with this phenomenon is not evident. This research attempts to make more explicit the need for specific strategies to address the workings of the informal land market.

A recent approach linking tenure security to informal land markets is that of the Peruvian economist, Hernando de Soto (2000). He suggests that the experience of

informal land markets should inform government policy. Part of the solution is to give informal land owners easier access to suitable land tenure and in so doing, provide them with opportunity to use their land as collateral. A mechanism to kick start local economic development is then created by providing the land occupier with a valued asset. By providing security of tenure and giving the land official status, the value of land increases four times. The issue put forward for debate by this dissertation is whether a similar approach like that outlined by de Soto is appropriate for the South Africa context. For the purposes of this research there will be a focus on how the informal market operates in the peri-urban context of a metropolitan area, namely the Durban Unicity. It is noted that similar processes take place in other locales throughout the country and particularly within metropolitan contexts. Although the nature of the informal land markets may differ significantly in these places, it is believed that the findings of the research are applicable to other case studies.

1.2 RESEARCH TOPIC

The key question which is tackled in this dissertation is to ascertain the relationship between informal land markets and security of tenure in the satellite town of Folweni within the Durban Metropolitan area of KwaZulu-Natal.

1.3 RESEARCH SUB-QUESTIONS

✖ To tackle the above topic and research problem, other questions are raised and should be investigated. These are outlined below:

1. How can informal land markets be conceptualised in Durban Unicity?
2. What forms of security of tenure currently occur in the Durban Unicity Area?
3. To what extent is de Soto's argument applicable to Folweni?
4. How should findings/knowledge regarding the workings of informal land markets influence policy and procedures related to tenure upgrading and/or land registration?

5. What new land laws or amendments, or institutions are required to make the informal land market the first step in the formalisation process?

1.4 A HYPOTHESIS

Security of tenure does not necessarily mean that the value of land will increase, or that the land can be used as collateral for economic development purposes. Rather security of tenure is determined by the perspectives of the land holder, the nature of transactions taking place and their interrelationship with the informal and formal land markets.

1.5 RESEARCH APPROACH

For the purposes of the dissertation, a broad postmodernist approach will be employed to aid an understanding of the problem and its dynamics. This will be undertaken for the following reasons:

1. Information on informal land markets is relatively limited and spasmodic with many of the available readings been written in the late 1980's to the mid 1990's. As a result a wide literature scan will be necessary to meet this deficiency. The bodies of literature which will be accessed are those dealing with economic approaches to land, or land economics. Specific attention will be paid to the work of Hernando de Soto as well as writings of neoclassical, and other socioeconomic interpretations of informal land markets. The context of this dissertation, is present day South Africa, and here the influence and effects of the informal land market are most evident in the housing sector. Accordingly, particular attention will be paid in this research to the study to specific readings related to the housing and delivery of tenure literature which focus on land exchange and policy response to such exchange.

2. In Towards Cosmopolis, Leonie Sandercock (1998) conceptualises the world in which planners work as both "inferno" and "carnival". Sandercock (ibid.) describes a world which is becoming increasingly diverse where differences between cultures, races, and classes are increasing. She claims that planners have to embrace this diversity, and need to pay particular attention to the marginalised namely, the poor, the disabled and ethnic and religious minorities. Planners must do this or face being placed on the rubbish heap of modernist planning (ibid.).

This dissertation is supportive of Sandercock's argument in that, it is directly concerned with difference between the informal and the formal land markets in South Africa. It recognises that planners have to directly address the issues of the disadvantaged and marginalised in order to develop appropriate and relevant policy and mechanisms for dealing with the informal land market. This research addresses the current circumstance of the marginalised in relation to the informal land market. Mechanisms on how to improve the poor land occupier living conditions will be proposed by looking at underlying exchanges of land. This will require going behind the facade of poverty to see how land exchange occurs.

A further reason to embrace a post modernist approach in this research is an acknowledgment of diversity in informal land markets due to a number of historical actions and external factors. This has made a single solution to the land market in Folweni impossible and undesirable. What is required is a broad based development response which acknowledges the importance of education, information dissemination, political negotiation, service delivery as well suitable tenure improvements.

1.6. METHOD

To address the research problem, three strategies were enacted. The first strategy was a review of the informal land market literature with a focus on South Africa's and Durban's experience of this phenomenon and current responses to it. The second

approach involved holding open-ended interviews with professional practitioners involved with informal land markets. Individuals interviewed included land surveyors, a project manager, a lawyer who specialises in land/legal matters, a community facilitator and an evaluator. A number of financial institutions and Non-Government Organisations (NGO's) were interviewed. ABSA was the financial institution and the two NGO's are the Built Environment Support Group (BESG), and the Cato Manor Development Association (CMDA). These organisations had experience of informal land markets and their effects on housing and tenure delivery within the Durban Unicity.

Other interviews were held with persons involved with the initial development of Folweni in 1981 and those who are involved with the current development project for upgrading the town. A third strategy involved undertaking a socioeconomic survey to research how the informal land market was operating within Folweni. This survey made use of a sample of 360 respondents who were required to answer a structured questionnaire and provide their perspectives about security of tenure and the operation of the informal land market in their area. All three sections of Folweni were included in the survey sample in an attempt to obtain a comprehensive impression of the informal land market in this locale.

It should be noted that these three strategies were not seen in isolation from each other and an attempt has been made for each of these strategies to reinforce the other. In this way, divergent sources, perspectives and potential solutions were researched simultaneously.

1.7 STRUCTURE OF DISSERTATION

This dissertation consists of seven chapters. This initial chapter outlines the context of the study, the approach utilised, an overview of the research questions/hypothesis and methodologies. It sets the scene and provides a brief outline of the structure of the document.

The Second Chapter will determine the nature of informal land markets and the institutional responses to this phenomenon, by drawing on the international literature available. It will consider case-studies in Africa, Latin America and Thailand, to flesh out the concept of informal land markets. Although some of the of international literature concerning the topic is limited and dated, it provides a useful framework or background against which to execute further analysis. To offset this limitation additional and more recent information has been used which provides a commentary on the current thinking and analysis regarding informal land markets (Snijder 2001).

Chapter Three considers one of the most universally accepted government interventions in dealing with informal land markets - which is the formalisation and provision of security of tenure. Hernando de Soto's perspective on the issue, in his recent book, the Mystery of Capital (2000), forms the basis of this chapter. de Soto covers two important approaches: one being the need for legislative reform, and the other being the necessity to take cognisance of the socio-economic situation of those who use the informal land market. However, there are a number of other approaches to providing security of tenure. These focus upon the natural evolution of land markets through market mechanisms, the upgrading and suitable use of the cadastral system, and on political and governmental interventions which are sometimes regarded as interference in an alternative system.

The Fourth Chapter considers tenure security in South Africa and the problems of defining the informal land market which exists in the country. The chapter offers a brief overview of the conditions which brought about the informal land market and how they have followed a cyclical pattern throughout South African history. It then reviews the land reform process and the associated land tenure reform programme that is being executed by the current Government in order to address land market problems. As the informal land market is found operating mainly within housing upgrading project and residential developments, a review of the Housing Departments strategy towards land markets will also be undertaken. Another issue that is explored is the requirements and limitations of the cadastral system in terms of which land registration takes place in the country. Current responses by practitioners to address the informal land market are

outlined. The final section of the chapter considers the informal land market within Durban and focuses on previous research into this area, detailing the evolution of research into this phenomenon.

Chapter Five deals with the case study of Folweni and its role and function within the larger city of Durban. The rationale for using Folweni as a case study area is outlined. An overview of the methods employed in the preparation, execution and analysis of the survey data to examine the informal land market within the area is provided. The analysis considers the nature and extent of the informal land market and the nature of tenure security and land holding within the town. The study also considers the importance of expectations around service provision within Folweni and how this may affect the informal land market.

In the Sixth Chapter specific strategies are required to address the workings of the informal land market in Folweni are detailed. An assessment of the appropriateness of using de Soto's approaches in Folweni and South Africa will be made. Finally, the chapter will consider what appropriate policy, procedures or institutions should be put in place in informal land market reform and its integration into formal processes.

The concluding chapter will draw together the findings of the research, evaluate the contribution of the Folweni study to the understanding of the informal land markets and provides recommendations for further areas of research which could be undertaken in order that appropriate mechanisms and policy for informal land markets can be developed.

2.0 DEFINING INFORMAL LAND MARKETS

Within the socio-economic development literature concerning Third World cities, there has arisen a need to differentiate between the 'legal' city and the 'illegal' city (Hardoy & Satterwaite, 1990). In this dualistic entity the legal city refers to economic and social interactions which fall under the legislation and procedures outlined by the Government of the nation concerned. By contrast, the 'illegal city' represents those actions which fall outside these statutes, but continue with limited intervention from the responsible authorities. Informal land markets are part of this 'illegal city' entity.

For the purposes of this research, it has been necessary to define what is meant by an informal land market. The definition below is suggested as a possible interpretation:

“The informal land market concerns the way land exchange occurs outside official land registration systems, planning regulations and legally accepted procedures for the sale of land in Third World Countries. It is a construct of the government's concern with the functioning of their land market, and perhaps more importantly, of social theorists who perceive the informal land market as a development challenge.” (Magni 2001)

The exchange of land may include barter (Aina 1989) or allocation of land through traditional leaders outside land-use zoning (Ogu 1998). Since the early 1980's, it has been identified that the informal land market has become increasingly commercialised, with monetary exchange being the norm rather than the exception in a number of cities throughout the third world (P. Ward in Angel et al 1983)(Payne 1997)(Jones, 1991). The effect of increased commercialisation is that informal land markets, which have been a housing solution for the poor of third world countries have increasingly included working class individuals, who require a cheaper housing option to that offered by the formal land market. This has largely been the experience of countries within Latin America (van Lindert& van Western 1991). The broadening appeal of the informal land market across income groups is a good indicator that formal land market mechanisms in many third world countries fail to meet the housing needs of the majority of their people (Dowall 1989).

However, the concept of informal land markets is not as homogenous as it may first appear, and, there are a number of different situations in which a land market can be considered informal. Geoffrey Payne (1997) has developed five different topologies for informal land market transactions.

The first is when an owner gives incorrect tenure to a buyer. This could occur in a situation where the incorrect procedure has been followed in obtaining the tenure. For example the land registry may not have been notified of the exchange, or the owner had no legal right to the land but sold it anyway.

The second topology is where the developer who sells the plots lays out the subdivisions outside the legislation pertaining to the national cadastre therefore making it impossible to register the subdivisions and grant title to the occupiers.

A third form of illegal tenure is created when the land-use of a particular site is not in keeping with the zoning or planning scheme of the city or country. This form of informality is not only confined to the third world, but is a common problem in most countries which use free-hold title as basis of land occupation and rights. In so doing, it gives extensive land rights to owners to use the land subject to specific norms and standards, and common law definitions (Kleyn&Boraine 1993).

The fourth topology of the informal land market concerns the failure of sub-divisions to follow the township layout. Such a problem would make transactions in the land illegal, as the land parcel is considered null and void. This could be the failure of those responsible for the land survey. Though more commonly this is due to an owner desiring more space and building over his boundary line into the adjacent sub-division e.g. an encroachment.

A fifth type of informal land transaction occurs where the land purchaser fails to follow standards and procedures laid out by building and occupation codes. This may pertain to building on particular types of terrain such as low lying areas such as swamps or river banks or on steep slopes, or it might concern legislation which outlines what materials an owner building a house may or may not use e.g. building regulations and standards (Ogu 1998).

A final type of informal land market is that of land invasion and the creation of informal settlements. However a land invasion in and of itself, does not necessarily constitute a land market unless the invaders had to pay for the site they invaded as was the case in a land invasion which occurred at Bredell in Gauteng (Donaldson & Jacobs 2001). If money is not paid for the sites which are invaded, the invaded land only becomes a land market when the initial invaders sub-divide, rent or sell that land. Monetary or other value has to be attributed to the land prior to first occupation for market mechanisms to be deemed to have been introduced.

This overview of the actions which constitute an informal land market is not comprehensive. The nature of informal land exchange differs in complexity from country to country and from continent to continent where different mechanisms, and different combinations of illegal land holding may apply.

2.1. EXAMPLES OF INFORMAL LAND MARKETS

2.1.1. African Examples of Informal Land Markets

In the following section examples of the types of informal land markets found in specific African countries namely, Egypt, Kenya and Nigeria are presented. These examples have been identified as being representative of the kind of situation prevailing in north, south and west African countries.

Egypt

The Egyptian experience of informal land market has been one which has been marked by diversity (El Kadi 1988). El Kadi (ibid.) identifies three forms of informal land market which he outlines as follows:-

- the use of private blocks of apartments with ambiguous legal status for sale;
- the small scale production of rental property; and,
- the sub division and subsequent sale of buildings in the old town centres of Egyptian towns.

Possibly the most common illegal action is the construction of housing and the development of spontaneous urban areas in the incorrect land-use zones.

This is particularly serious for land zoned for agricultural usage as only 3% of the country is arable. Most agricultural activity is situated along the Nile or in the Nile delta where the land is fertile. It is as the place where the greatest urban expansion has occurred. The reason for the pressure on agricultural land was that during the 1980's it was more lucrative for peasants to sub-divide their land for housing development than it was for them to farm (ibid).

The creation of the informal land market is due to three factors. The first is that during the 1980s the neo-liberal policies followed by the Egyptian Government froze the development of public housing for the poor (ibid.). This resulted in the informal land market being the only response to the housing need in Egypt. A second factor is that the formal land market is relative young. This sector, in turn, is divided into two sectors: the public sector which is confined to developing large scale government projects and the private sector which is dominated by large companies focusing on prestige projects. The formal sector hence excludes the development of housing opportunities for the poor and the middle class who have to use small scale contractors, builders and sub-dividers who fall outside government legislation to construct their homes (ibid.).

The extent of the informal land market is always difficult to ascertain because of the different forms that the market may take. Mounir Soliman (1987) in a study of land markets in the spontaneous settlement of Arab El Guesr found that informal housing which did not meet Government specification made up 68% of the settlement. Of this proportion 51% of the housing had been built without any planning permission or any legal subdivision. However, these houses did have tenure (ibid). This indicates that the allocation of tenure cannot be the single solution to informality in land markets. The other 17% were squatters on public land who had no title. Soliman's study only focused upon small areas and cannot be seen to be representative of the whole of Egypt. de Soto (2000) using methods of extrapolation and data available in the mid 1990's estimated that 92% of people living in urban areas and 83% in rural areas in Egypt, did not have legal title. This estimate should be seen as a general indicator as it does not include the different informal actions which occur from city to city and from suburb to suburb.

Kenya

The Egyptian example takes for granted the fact that the exchange in the informal land market is monetary in nature. In the 1980's, the informal land market in Nairobi, Kenya was undergoing a process of commercialization. Philip Amis (1984) stated that the reason for this was due to the lucrative nature of the housing market which had enticed capital investment in it, despite the illegal nature of the development. Notwithstanding the move to commercialise, informal land markets within Kenya in 1984, still appeared to be influenced by tribal forms of land holding. This traditional form of tenure had not been incorporated into the variety of legally recognized land holdings and exchange addressed by the national legislation. This type of informality which was detailed by

Amos (ibid) has a number of similarities to those presented as being characteristic of Egyptian experience.

Nigeria

In a survey of Benin City located on the Central Nigerian Coastal Plain, Vincent Ogu (1998) identified a two different types of informal land market. These were:-

- the traditional private dwelling units which fell outside the land-use zoning, or for which there was no cadastral record; and,
- the housing which had been constructed without formal approval, which was either self-help housing or the buildings of villages which were incorporated into urban areas with the growth of the city.

Ogu (ibid.) continues to explain that a major problem which Benin City has experienced due to the informal land market in operation is that, "in recent decades parcels of land in the suburbs have been sold several times to different persons leading to a lot of litigation, claims and counter-claims." (ibid.) A further important land market in Benin City is the renting market which is increasingly overtaking traditional forms of access to land as a cheap alternative to shelter.

In an earlier study carried out by Tade Akin Aina (1989) in Lagos, he emphasises the importance of the renting market within the city. Renting is seen as the preferred way of obtaining shelter other than buying informally or obtaining land through traditional authorities. He distinguishes between renting in terms of being either conventional or unconventional.

Conventional renting is defined as:-

- renting as a shared shelter;
- a shared room rented by a group of tenants;
- a shared room rented by a group of tenants with the owner in occupation; or,
- a shared room rented with other families as joint tenants.

Unconventional renting is defined by Aina as either:-

- the renting of a bed in a shebeen or brothel;
- the rental of a bed in a sleeping place;
- the rental of a shanty place in unfinished buildings; or,
- staying on in a place as a guard or a caretaker.

These often tentative arrangements are controlled by various common agreements detailing what is and what is not allowed depending on the form of rent.

As with Ogu (1998) and the Egyptian and Kenyan examples, Aina states that both the informal sale and rental of land and accommodation has become increasingly commercialised, with a decreasing role played by the traditional authorities. This seems to be a common element found in all the examples. A difference is evident in the type of informal land market with the Nigerian examples focussing upon renting and relationships with family and traditional groups, and the Egyptian examples focusing more on land speculation and the creation of profit. In Egypt, land for construction and agricultural land use is at a premium which aids in pushing up land prices and creating a lucrative land market. In Nigeria, the focus is how to access land for rental and its different forms in the market rather than on competing uses. The Egyptian experience where the informal land market is so commercialised with it's own system of developers and sub-dividers, has possibly more in common with informal land markets found in Latin America than Western Africa, where the informal land market is dominated by rental (ibid)(Snijder 2000)(Tipple & Willis 1991).

2.1.2. Latin America

The commercialised nature of the land market in Latin America is due to a greater acceptance of Western concepts of property. However this does not mean that such concepts are then carried out in terms of the law (Jones 1991)(de Soto 1989). This is not to say that the informal land market is homogenous across Latin America. Rather the land market is determined by the nature of land legislation, the nature of land holding, political interference and interactions between social classes. The influence of each of these variables varies from country to country.

In terms of land legislation de Soto (2000) goes to great lengths to explain how land laws adopted in the 1500's and adapted by the Peruvian Communist Government in the 1980's marginalised the poor and the middle classes in terms of their ability to access land.

Gareth Jones (1991) indicates that land holdings vary from country to country. Whereas in San Salvador and Guatemala City the land is held by a small number of families, in Chile and Mexico there are distinct cultural groups which hold control of the land. While in Caracas and Santiago there are a number of heterogenous groups that hold the majority of land, this is the case elsewhere. All these forms of land holdings will determine how the land is exchanged and how people approach gaining access to it.

One of the issues raised by the literature on informal land markets in Latin America is the political nature of land and access to it (Varley 1998). This is evident in Mexico where the granting of secure tenure has occurred as a means of garnering votes and a quick and easy way of meeting the needs of the landless poor (ibid). Similar actions have been reported by Gilbert (1984) in Caracas.

2.1.3 A Model Land Market for the Third World?

In all the case studies, the informal land market has been located within the broader context of housing delivery. It is within this sector that most of the problems are experienced. David Dowall (1989) argues that an "efficient land market operation is essential to maximise the potential delivery of affordable housing". To obtain this he argues that cities require plenty of land for housing development along with the associated infrastructure of roads, water and electricity. Secondly, there needs to be competition between developers so as to meet the needs of the widest range of income earners. Thirdly, the finances to purchase the house and to mortgage the house must be available and accessible to all citizens.

Dowall (1989)(1992) uses the example of Bangkok in Thailand as an example of a Third World City which does have an efficient land market. During the 1980's, Bangkok was able to provide housing alternatives to its population at the growth rate of the city. The city and country was experiencing a sustained rate of economic growth, and had the necessary funding to execute such an exercise. However, 60% of the housing was built by private developers. Furthermore, due to competition amongst developers the cost of building a house had been cut drastically (ibid).

However, Dowall's contentions have been challenged by Foo Tuan Seik (1992) who argues that Bangkok's apparent efficient land market is the result of an oversupply of housing rather than an efficient land market in itself. He argues that the inability of the housing market to meet the needs of the destitute living in slums, was indicative of this and was due to the inability of the poor to access the necessary funding.

2.2 REASONS FOR THE DEVELOPMENT OF THE INFORMAL LAND MARKET CONCEPT

2.2.1. The Physical Formation of Informal Land Markets

At the level of broad social trends the concept of urbanisation has been a key reason for the development of informal land markets (Boran 1989). There has been a desperate demand for land in cities which the authorities have been unable to meet, and hence the people have undertaken steps necessary to gain that land. A key reason for the demand is that over the past fifty years people in Third World countries have been immigrating to cities due to the increased possibilities for employment within these urban centres as a result of the processes of industrialisation and capital accumulation at these nodes. On the other hand employment and conditions for subsistence in rural areas have deteriorated, encouraging people to move towards cities.

This relationship between the poor and the land was interpreted spatially by Turner in 1968, who was investigating the shelter choices made by low income earners (van Lindert & van Westen 1991). The model shows immigrants to the city moving first to the centre of the third world city where employment opportunities are supposedly highest. This is often through relatives already in the city, where renting is a desirable option. Later, in the domestic cycle, the immigrant shifts to more peripheral areas to take advantage of an opportunity to access cheaper land and the chance to construct a house through an incremental process (ibid).

The concept of spatial migration has been challenged by Brett (1974) (in Lindert & van Westen 1991) who argued that the decisions taken by poor immigrants may be determined more by accommodation supply constraints. This definitely seems to have been the case in Pueblo, Mexico (Jones 1991) where private owners used legislation to protect land from informal land market activity which in turn constrained land supply. This criticism is valid but it does not mean that Turners theory is incorrect. If one were to combine both reasons they may go towards explaining the increased trend in inter-

migration within cities over the past twenty years (Skeldon 1990). The joint reasons may go a long way in explaining why informal land markets are so wide spread in certain cities in the Third World.

Urbanisation in third world cities did not occur in a vacuum. The exchange of land outside the law did not happen with a wave of a magician's wand. Perhaps the key historical event was not so much colonial occupation by Europeans, but the smooth transition between empire and independent state. This does not refer to the political change. That for many nations was violent and still continues violently in countries such as Angola and Afghanistan. But it was smooth in that the underlying legal system, the precepts of common law, were retained by the new states (de Soto 2000). This meant that inexperienced bureaucrats and politicians had to apply legal concepts to societies in which they did not fit. The nature of colonial rule, especially British occupation and its use of indirect rule- though also for French, Portuguese and Spanish rule- made a clear distinction between coloniser and colonised. The apartheid was distinctive and affected every aspect of life including legal systems and access to land.

In French colonies and in Latin America, the European System was placed on top of customary actions pertaining to land without any recognition of the traditional predecessor. By contrast, in British colonies traditional and imposed legal systems would run concurrently depending on the number of traditional authorities in the colony. Not only did the bureaucrats at independence have to legislate for these legal systems, but they also had to make decisions considering capitalist or communist interventions concerning land and land holding in homage to the Cold War between the USA and the USSR. Therefore, in historical terms, it is not surprising that so called informal land markets have appeared in many post-colonial countries which have clung to colonial land legislation that promoted land use, zoning, the preparation of a land registration systems and a land market driven by monetary exchange (G. Payne 1997).

The effect of the colonial city was therefore to create a dualism between a land market run in accordance to legislation, and a land market which fell outside this legal entity and which was run either by illegal sub-dividers (Gilbert 1990) or by communities (de Soto 1989) or by individuals. Despite this dualism, the separate land market cannot be seen as functioning in isolation of one another. Rather the land markets have interacted since independence to form a hybrid form of land access (Durand-Lasserve 1990).

The most obvious form of hybridisation has been the commercialisation of this informal land market (Jones 1991). Originally land would be given or bartered for by traditional authorities, though increasingly the land has become 'commodified' (Ogu 1998). Durand-Lasserve (1990) in a study of land markets in Colombo, Sri Lanka, observes how the formal land market interacted with the informal land market over a thirty year period. He identifies three land markets operating in Colombo being the state land and government housing programme for middle- income earners, the capitalist land market which focused on large projects, and the informal land market which catered for the poor. Due to the OPEC oil crisis in 1973/4, this situation was altered. Over-speculation in land by the capitalist land market had seen land prices rise significantly. This was against a period of global depression, job losses and declining incomes. It was to result in the decline of the capitalist land market and bring an end to the Sri Lankan Government's public housing programme. By contrast, speculation in the informal land market increased, as middle income earners saw security and the opportunity for cheaper accommodation in this market. The net affect of this was that a land market which had been for all intents and purposes free, became a commodity. This had the affect of forcing the destitute out of an accommodation option (ibid 1990).

Another dimension of informal land markets which Durand-Lasserve's (1990) dualistic analysis uncovers is that the informal land market in Sri-Lanka is primarily residential in nature, with other land uses being of secondary importance. In the case of Sri-Lanka the shift from a public housing policy to a self-help housing policy stimulated the informal land market. However, it can be argued that public housing acts as a trend setter, an example of how commercial residential land should be serviced, laid out and sold to those involved within informal market practice. This appears to have been the function of the Ithala and Toyota housing at Folweni in Durban.

The Sri Lankan experience appears to be applicable to other non oil producing countries in Latin America (de Soto 1989) and Africa (Soliman 1991). The Latin American experience has arguably been more polarised than the Sri Lankan case with the informal land market operating across land uses to include commercial structures such as trading centres and other commercial and office buildings (de Soto 1989). Furthermore, the informal land market in parts of Latin America is dominated by land developers which undertake the construction of substandard residential developments upon illegal layouts for middle income earners (Payne 1997). In Africa, the level of commercialisation of the land market appears to be far lower (ibid) and there is greater emphasis placed on family bonds, though there is a declining role of traditional authorities in disseminating land (Ogu 1998).

2.2.2. Informal Land Markets as a Construct of Government Intervention

The dualism between informal and formal land markets has been cemented, highlighted and aggravated by government reaction to the exchange of land which has gone before. Besides the lack of capacity mentioned earlier to deal with the huge demand for housing Third World Governments have undertaken a number of strategies to meet the challenge of the informal land market. These actions fall under the umbrella of the term formalisation. In short, it either means altering actions on the ground to meet the requirement of legislation, or altering legislation to suit the 'illegal' actions (Payne 1997).

The most destructive of these formalisation actions is that of the forced removal of those who have occupied land illegally. The consequences of forced removal are unpredictable and politically dangerous. Gilbert (1984) relates how government attempts to remove an informal settlement in the CBD of Caracas were thwarted by the informal settlers who kept returning and rebuilding in the night. The stand-off that ensued brought negative press to the government's removal and they were forced to back down and let the settlers remain on their site. A further problem with forced removals is that it is expensive and requires the rapid redevelopment of the site following the removal. Another form of reaction is the seizure of material possessions to pay for the non-payment of tax pertaining to land and the use of services. This is a wide spread mechanism used in most countries to expose defaulters.

In terms of non-interventionist actions which focus on coercion rather than force, the most widespread solution for formalising informal land markets is giving improved tenure security to those living in settlements which fall outside the legal process (Payne, 1997). The idea is to legalise land markets incrementally, and thereby bring people within the law. The question that should be asked is why are third world governments concerned with formalising land markets in this way considering the long history of a dual land market in many of these countries. There are three key reasons. The first is the commercialisation of the informal land market. Over the past twenty years, the informal land market has come to increasingly incorporate the middle income bracket. For the government, these people represent taxes which fall outside government control. Secondly, land is a finite resource. A nation has only so much land to develop. The most efficient use of the land is required by the Government to ensure that land, the foundation of the states existence, makes the maximum profit for the survival of the state as a political entity. Thirdly, land exchange unlike other products is immovable.

One cannot pick the land up and walk away from it (Kleyn & Boraine 1993). Land requires proof of ownership so that an occupier knows that a particular piece of land is his or hers. Title ratified by law provides security of tenure to the occupier and should in theory ensure that the government receives taxes due to it, and that the land is used optimally.

From a government's perspective, there are other reasons why its citizens should obtain secure tenure. In theory, secure tenure creates a uniform continuous land market across space. This in turn allows for a competitive market with a range of land costs depending on the land use, locality and the desirability of the land for that use. Durand-Lasserve (1990) would argue that such a range of costs would not be able to meet the housing needs of the very poor.

Not only would there be a range of costs of land, but there would also be a variety of tenures which would be incorporated into land legislation. These tenure options (Payne 1997) include:-

- Freehold tenure which gives almost full rights to the owner of the land to do as he/she likes within approved norms and standards e.g the cession of mineral rights to the government;
- Conditional freehold where freehold title is given to the owner after a specific time period and after certain clauses or conditions are met concerning the repayment of the cost of land;
- Leasehold where land is rented under particular conditions for a specific period of time. Usually thirty years is considered the normal lease period. Though in South Africa an example of leasehold would be the 99 year leaseholds (van Wyk 1999). After that particular period, either freehold rights are granted to the occupier or the leasehold is extended;
- Co-operative Ownership is where a community or a company contribute individually towards the purchase of the land but the tenure is held communally;
- Condominium Ownership is similar to Co-operative Ownership as it uses the same notion of communal title. The difference being that condominium ownership is geared for people living in high rise buildings;

A further reason put forward by Government's for the formalisation of tenure is that the security which comes from the title allows for business opportunity in the construction, finance and legal sectors. This is due to people being more sure of their landholding, and in turn being more likely to invest and take risks.

The problem of placing an emphasis on the delivery of secure tenure in formalising land market is that in many cases the government's do not incorporate existing forms of land holding into it. (P McAuslan in Payne 1997) This is particularly the case with traditional authorities with their own ways of holding and distributing land. The government response tends to merely replace original forms of informal tenure, which maintain the informal land market, with new tenure related legislation. In most cases, such as Lesotho (Payne 1997), the informal tenure continues to operate independently due to its functionality. In other cases, the new legislation is challenged politically and becomes redundant. Therefore there is a need to undertake such tenure formalisation in a manner sensitive to the historical land holdings and the land markets which are in operation prior to the implementation of national or regional tenure legislation (Ward 1983).

2.2.3 Informal Land Markets as a Construct of Global Institutions.

Governmental definition of informal land markets and the use of land market formalisation as a strategy has occurred in a number of Third World countries. The reason for this is that land tenure formalisation has been accepted by the United Nations Centre for Housing Studies (Habitat) as crucial in their strategy for the development of third world cities :

"The integration of the informal city is a mid-to long-term process. Specific land tenure regularisation and settlement upgrading projects should be seen as the first step in the process." (Habitat 1995)"

The above quote was taken from the conclusions and recommendations section of the Belo Horizonte Seminar held in 1995. It stated that the focus of Habitat's development programmes would be to meet the needs of the poor in Third World Countries with a continued focus on cities. The Belo Horizonte Report views land tenure formalisation, what Habitat views as 'regularization', as being:-

"the practical expression of the recognition of the right of the state to legally define the social function of property ownership." (Habitat 1995)

Such statements by an international development authority such as Habitat give strength to national government attempts to formalise their respective land markets within a market based approach.

This forms part of a paradigm shift in the United Nations from a focus on the economic development of a third world country as a whole, to a more focused project based approach targeting the needs of the poor. A related shift has been from specifically targeting of projects in rural areas, to projects which have a greater urban focus (Habitat 1995).

Possibly more important in influencing government actions in regard to land formalisation is the World Bank. This is due to the organisations ability to give out loans and its influence over many Third World Countries through the implementation of structural adjustment programmes. The World Bank though acknowledging that in certain instances that an informal land market should be maintained to meet the needs of the poorest groups, advocates the concept of a uniform system of land exchange across a city or country (World Bank 2001). The World Bank advocates the idea that the formalisation of land markets through tenure reform can contribute to economic development (Guindi 2000). The argument is that a title can be used as collateral by which to raise a loan which could be used by people in Third World Countries to invest in economic development. To achieve this, the World Bank have under taken a Residential Mortgage Backed Securitization Programme through their Land and Real Estate Initiative (ibid). This concept put forward by the World Bank considering land formalisation are similar to the ideas of Hernando de Soto, a Peruvian Economist (2000) whose theory on tenure reform will be discussed in the next chapter. This is not surprising as de Soto was formerly employed by the institution.

2.3 CRITIQUE OF TENURE REFORM AS A RESPONSE TO INFORMAL LAND MARKETS

Tenure reform has become a popular way of solving the supposed problem of informal land markets and in a sense, tenure reform has come to define what the informal land market is, which is all land holding and land transactions which fall outside government statutes. However, such tenure reform can be abused and misused. A major problem has been that such reforms are implemented in a blanket fashion which excludes the very poor from accessing housing (Payne 1997). Secondly, reform can be used as a means of suppressing political opposition, as has been the case in Zimbabwe over the past two years (Wily 2000). Thirdly, the experience of tenure reform has indicated that the reform quickly broadens beyond the confines of its original goal (ibid, 2000). This is due to land security not only been defined by tenure but also being a function of service provision, political stability and opportunities for employment and education

(ibid, 2000). Thirdly, in many tenure reform processes the people who live on the land have not been involved in the process itself. This has prevented those on the ground fully understanding or accepting the changes made by government. This is particularly true concerning traditional authorities where in many cases the government's response has been to ignore their form of land holding in favour of a centralised one(Payne 1997)(Wily 2000).

2.4 CONCLUSION

Informal land markets are a widespread phenomenon in third world countries and take a number of forms. Their establishment is due on one hand to the need for cheap housing for the poor and middle classes. On the other hand it is due to the inability of government land policy to deal with, or mimic the actions which occur on ground. This is often a result of antiquated legislation, a lack of administrative capacity, and the chasm between poverty and wealth of the dual city in which land legislation has to function. As a result, of the dual city informal land markets are becoming increasingly commercialised and incrementally inhabited by middle income earners, particularly in South America. Therefore it has become paramount for governments to reform such markets through tenure reform, or lose out on a substantial tax base. Hence informal land markets have been defined by governments in order to execute land reform. Such action is supported by international agencies such as the United Nations and the World Bank who foresee social and economic gains for Third World countries and their poor, accruing from land tenure reform. The following chapter will look more closely at the theory of tenure reforms and how they interact with informal land markets.

3.0 THE NATURE OF PROPERTY

As B Macpherson (1978) has argued the meaning of property, has shifted in recent times. He maintains that:

"The changes are related to changes in the purposes which society or the dominant classes in society expect the institution of property to serve."(Macpherson 1978)

He goes on to argue that the ascendancy of capitalism gave rise to two different definitions of property which have competed for importance over time, hence inducing the above change. The first perspective views property as a thing, an object. This is a commonly held notion linked to the idea of possession, and that things can be exchanged within a market. The second perspective is that position taken by Western common law - that property is a right bestowed equally on individual and group owners alike. This approach prescribes what one may or may not do with property held in ownership. Private property is treated as an exclusive individual right within this framework.

In terms of land, 'the thing', it is tangible entity. As a space on the land's surface it can be touched, felt and built upon. It has a geographical and physical presence. Where land is regarded or defined in terms of rights, land as property is a more ephemeral concept. As has been indicated in the previous chapter, that land is immovable. It cannot be picked up and sold like a motor vehicle or a pencil. Instead different types of rights are sold to buyers as secure tenure. These include freehold, leasehold, communal tenure or condominium tenure (Payne 1997). In the context of this discussion such rights are termed 'usufruct' and relate to the use and function that land may be put to within the confines of a legal system or framework. Each of these tenure forms gives the purchaser different rights concerning what he/she may or may not do with the property.

With informal land markets, Third World governments who represent the ascendant class, through control over the legal system, have a mechanism in land tenure and the cadastral system by which to alter and regulate land and the land market for their own political and economic purposes. Such regulatory intervention has been difficult due to social, political and economic interactions and conditions which juxtapose the stated

ideal and which give rise to informal land markets that fall outside the government's legal framework. However tenure reform cannot simply be seen as a provision of the owner or buyer with a piece of paper detailing his or her rights. It is much more than this.

Any proposed land market reform must first confront the conception of the land as "property being a thing" that may be traded and have value, in order that it may deal with different interpretations of the concept. Land as a valued asset is the starting point. In this regard this chapter will consider the neo-classical economic response to land markets. However this is very much a Western response. Hernando de Soto (2000) offers a similar solution to Third World tenure formalisation, and by default to the informal land market. He does this by fusing the concepts of "property being a thing" with the concepts of "property being a right". In so doing he straddles the divide between the two point of the debate.

In the Western conceptualisation, land goes beyond simply the physical representation. Rights to land are expressed in terms of the cadastral system which is made up of two parts - namely a legal component found in the form of the title deed and a spatial component found in the form of a plan or individual diagram. Collectively the cadastre provides both a technical and legal construct addressing to the issue of land rights. This system determines and governs how legal land exchange occurs and facilitates the land market forming the backbone of this exchange in first world countries but also works in Third World Countries. This chapter will address the nature of the above concepts and how they may be used or modified to meet the needs of the informal land market.

If the nature of property is determined by an elite, land exchange is also about power and is therefore able to be politically determined. This chapter will also seek to establish how the issue of secure tenure has been used as a political tool.

3.1 NEO-CLASSICAL ECONOMIC THEORY AND LAND MARKETS

Neo-classical economic theory tends to emphasise the idea of land markets as a thing which can be traded. Although there is an acknowledgement that tenure is crucial in maintaining a land market (Harvey 1992) Harvey (ibid.) goes on to define the property/land market as,

"the arrangement by which buyers and sellers of virgin land , agricultural estates, industrial buildings, offices shops and houses are brought together to determine a price at which the particular property can be exchanged."(Harvey 1992)

Neo-classical theory tends to assume a smoothly operating land market. It also assumes that government legislation pertaining to land and land exchange is suitable and representative of exchange on the ground, and that the law is a neutral regulator of the market (ibid, 1992). Under a neo-classical definition, the informal land market, it is thus defined as the work of estate agents who makes a deal between a willing buyer and seller, rather than an illegal transaction which occurs outside the law. By contrast, a formal land market would be a state controlled auction of land. The function of the land or property market is seen to be:-

- First and foremostly, to exchange land and property.
- Secondly, would be to act as a barometer of changes in the demand for land and property.
- Thirdly, to ensure that the supply of land or property meets demand.
- Fourthly, to indicate changes in the conditions upon which land and property can be supplied.
- Fifthly, to stimulate demand through improving or altering the supply of land or property.
- Finally, to reward owners of property and/or land (ibid.)

These functions assume a well maintained private and public system of regulating and dealing with land. It assumes a classless, equal opportunity society where capital to invest in property and land is easily available and fluid. Finally, it is based on the notion that there is one system within a country under which exchange occurs.

But how does such a definition deal with the idea of welfare and with difference between income earning groups? It starts from the premise that society's aim is to maximize its own welfare through the efficient use of its limited resources, and the distribution of income between the members of that society (ibid 1992). Such a situation is met when 'Pareto Optimality' is achieved. Pareto optimality occurs when

"no one can be made better off without someone else being made worse off. Thus, any improvement in economic efficiency which involves nobody losing, will represent an increase in welfare." (ibid).

The experience of the land market in the Third World shows that such ideas are not workable as competing interests and the presence of more than one land market have made optimality difficult to obtain, even at local level. Perhaps such a mechanism works within individual land markets within specific settlements within Third World countries, but it may not even pertain to the settlement as a whole.

The usefulness of the neo-classical approach is that it explains land and property exchange in terms of economic rationality and how the exchange would occur materially. The difficulty of the approach is that it assumes efficiency in the market and within the legal system in which it operates. Within the informal land market of the Third World such assumptions are unrealistic and self-defeating.

3.2 HERNANDO DE SOTO'S THEORY OF INFORMAL (ILLEGAL) MARKETS

Hernando de Soto in his book The Mystery of Capital (2000), acknowledges this principle failing of neo-classical economics. However, he does not reject market principles. Rather he embraces such principles and builds them into the concept of 'property as a right'. He begins from the simple question of why has capitalism failed in the Third World? His question comes following fifty years of 'development' in Third World countries which has brought little substantive change to the majority of these countries. Capitalism has had little influence on the lives of the majority of Third World citizens. de Soto (ibid 2000) illustrates the failure of capitalism by pointing to the Asian Crisis of 1997 and the crash of the Argentinian Stock Market. Yet, despite the problems in the Third World, the twenty-five developed countries in the First World have, in contrast, managed to grow their economies.

He argues that the reason for the Third World's inability to embrace capitalism is that property law and land legal legislation in particular does not free the poor's capital so that it can work for them. What is required is reform of the legal system pertaining to property. He suggests that the poor are actually wealthy in the capital, 'the things', they have possession of but that capital is 'dead' in that it cannot be invested back into the capitalist economy due to the illegal nature of the exchange. Often the reason for the

illegality is due to the legal process been too expensive, complicated and bureaucratic in nature. For example to obtain legal registration on state owned land in Egypt, legal access to land would take 5-14 years requiring 77 steps and 31 public agencies. While to build a house on formerly agricultural land would take between 6 and 11 years (ibid.). No wonder then, there is such a widespread informal land market in Egypt as outlined in the previous chapter. Inaccessibility of the formal system results in people reverting to other alternative mechanisms to acquire land.

de Soto's solution is to free this 'dead capital' through the reform of property law, and bureaucratic process and thereby enabling land to be used as collateral. In so doing, the poor would have the ability to apply for a bond or mortgage using their land and property as collateral. According to de Soto's argument, this will in turn stimulate economic development by broadening the role of the fiscus in the land market. Essentially what de Soto argues for is to bring the illegal market, including the informal land market into the legal mainstream, as a means of encouraging economic development, by harnessing the assets of the poor on the ground.

The precedence for his argument is the experience of the developed countries who over a long period of time designed a property system and a land system which synthesized their law with what transpired on the ground. Using the American example, de Soto shows how much land holding in the early to mid 19th century in the United States was considered illegal. He goes on to explain how subsequent legal amendment came to formalise the land market. This in turn freed capital from illegality and enabled it to work for the rights holder.

3.2.1. Requirements for Property Reforms

To achieve the required legal economic reforms, de Soto identifies six property effects that must be obtained in legalising informal markets. First is the creation of a legal concept of the actual physical property. This is an extrapolation of McPherson's (1978) idea of property as right. It gives land a parallel life as an actual thing and as an object which can be used as collateral, or for collecting taxes or/and debts. Secondly, there is the need to integrate informal economy including informal land markets into one system of knowledge. In the South African concept, the third property effect possibly provides the greatest challenge. That is achieved by making people accountable for their actions.

As de Soto argues,

"Formal property's role in protecting not only ownership but the security of transactions encourages citizens in advanced countries to respect titles, honour contracts and obey the law." (de Soto 2000)

Fourthly, a property system by creating this concept of letting property live a separate life, facilitates the use of the property as a financial entity, and bestows on it a value which can be used as collateral. Fifthly, the property systems and the required property reform must create a " network of individually identifiable and accountable business agents."(ibid) This means that property system must number and place property within time and space. As the property is numbered it becomes easier to transact in that property. In terms of the land market, this means a well functioning, accurate and up to date cadastral system. The final element which ensures both a successful property market and 'the network', is that the economic transactions are protected in that,

"all property records (title deeds, securities and contracts that describe the economically significant aspects of assets are continually tracked and protected as they travel through space and time."(ibid)

3.2.2. Actions Required to Free "Dead Capital"

Identifying and prescribing actions on how to reform Third World property systems is one thing. But how is that to be executed on the ground? More specifically, how can be achieved where governments have in the past, failed to stimulate development through other property reform, and land tenure reform. Critical to de Soto's model for economic development is the inclusion of the 'illegal sector' into the legal reform process. A second critical aspect is the need for in depth research into the nature of the informal markets in the Third World.

De Soto Conceptualises his model in terms of the pillars of a bridge transforming 'dead capital' into 'live capital'. The first pillar is that of research. The first research action is to identify the form of 'dead capital' and assess it's extent and location. These interactions between the formal and informal sectors should be ascertained in terms of the informal land market. This point has resonance with the suggestion of Durşard-Lasserve (1990), who proposes that the solution to the informal land market lies in understanding the linkages between the duality of the formal and informal land market.

The next pillar is to sell this concept of property reform to the legal and political establishment, who may have vested interests in the maintenance of the present property system. This will mean ensuring that politicians at the highest level take responsibility for implementing reform, and the subsequent establishment of a body for executing that reform. The body will be responsible for the removal of the bureaucratic bottlenecks mentioned earlier, the identification of commonalities between the formal and informal sectors, and the subsequent drafting of statutes "that lower the costs of holding assets legally below those of holding them extra-legally." (De Soto 2000) Linked to this would be the creation of a mechanism that would reduce risk linked with private investment.

The third pillar is the operational strategies which are essentially proactive in nature. This strategy hinges on communication to all those in authority and requires accessing the right equipment and personnel to inform and educate those within the informal sector. The communication must also reach the business community and the government sector so as to inform, reassure and encourage investment. Linked with this information dissemination would be the creation of investment packages beneficial for the informal sector. Lastly, and perhaps most importantly, the operational actions of the informal land market would need to be stored within a single data base, in an accessible computer system. In terms of the informal land market, this would require the placing all cadastral information on one central database. This would give added strength to attempts to make informal markets acceptable to banks and other lending institutions because the information could be validated.

The path linking the informal and the formal market would be determined by the commercial strategy. This would include a bundle of development interactions including the access of informal markets to banking and loan opportunities; the provision of services and infrastructure like roads, water and electricity; tax) collection systems (including rates); housing and social infrastructure like health and security facilities; and finally the implementation of a national identification system.

3.2.3 Strengths of de Soto's Concept in Terms of Informal Land Markets

There are a number of strengths to de Soto's argument. Firstly, is his positive assessment of the poor. He does not view the poor as destitute, but as holding the key to their own development in the form of 'dead capital'. Secondly, he links social and economic interaction with legal actions, and government legislation to try and

rationalise these relations in a Third World Context. This theoretical linking bridges McPherson (1978) concept of 'property as a thing' and 'property as a right'. A third strength of de Soto's argument is the recognition that the informal land market is severely limited by bureaucratic process, with inappropriate land legislation. This argument gives impetus to the point that the reform of informal land markets must look beyond simple land tenure improvements to broader development actions which include infrastructure and financial adjustment. A fourth strength is that informal land markets should be seen in the context of other informal markets, be it industrial, retail or service markets. This places the informal land market within the context of a broader illegality. Finally, and on a macro-scale, is de Soto's attempt to look for solutions within Third World Countries rather than being dependent on foreign investment or foreign aid, as suggested by neo-liberal approaches to economic development. In a sense, de Soto dares to present a bright picture of Third World economies. But this vision; will require sacrifice and hard work for these economies to implement and bring about economic development.

3.2.4. Weaknesses of de Soto's Concept

However, de Soto's argument does fail in a number of aspects. Firstly is that his theory is a totalising discourse. He basically provides a 'recipe' to economic and social success for any Third World Country. The past success rate of such discourse such as Rostow's Five Stages of Development Model has been dismal. There is also an element of the attitude in de Soto's discourse of if it was successful for the developed world, it will be successful for the Third World. This merely highlights the negative connotation that 'undeveloped' countries carry. Thirdly, one gets the impression that de Soto has over-estimated the ability of economists to win over politicians and lawyers to make the needed legislative changes and engender the necessary commitment.

Politics by its nature is populist. One day it may be politically pertinent to institute reforms pertaining to land markets, and the next day it may not be so high upon the agenda. The proposed legislative change will have to outscore the benefits gained by the regime in power. Fourthly, de Soto's theory fails to analyse actions taken by Third World Governments, especially those pertaining to the informal land market like cadastral reform. These actions may in some way be assisting the poor, such as giving the poor extra security, though may not be liberating their capital. Altering legislation in such cases must be weighed carefully before reform is undertaken. Finally, de Soto does not take into account variations within informal markets which occur between

countries and which may require different approaches when reforming informal markets. In short, de Soto is so busy drawing up his new Third World Order, that he fails to see the diversity in cultures and classes which constitute these countries.

3.3. THE CADASTRAL SYSTEM AND THE INFORMAL LAND MARKET

Having investigated the concept of land as a thing and de Soto's hybrid version, the next approach views 'land as a right'. In third world countries the system which manages, develops and regulates land in the formal land market was imported from the colonizing countries predating political independence. This system is commonly referred to as the cadastral system (Williamson 1997) or the land recording system (Henssen 1995) and supplies a parcel-based, up to date land information system for the country concerned (Williamson 1997). The cadastral system consists of a land registration system, a cadastral survey and/or a mapping system as indicated previously. Land Registration is the way in which the recording of the rights in land through the transfer of such rights in recorded deeds occurs (Henssen, 1995). The traditional function of cadastre is the display of property as separate parcels which vary in size from original grants through major subdivision like farms additional sub-division into townships and individual urban lots.

The cadastre consists of a large scale-map showing the property parcels with a parcel identifier e.g. a grant or farm number which is in turn is linked to a register (deeds register) indicating the physical dimensions of the parcel (ibid 1995). This register forms the geographical basis for the issuing of the title deed against the particular grant, farm or lot. The title deed confers the relevant form of tenure granted to the land in terms of the legislative framework governing its development and use. In some countries this is a single 'Land Act'. In other countries, and more particularly in the Third World Context, there may be a multiplicity of laws governing land development and conferring of title rights.

The form of land tenure, as defined in chapter two of this document, is the nature of rights accruing to a particular person or persons be it freehold title, leasehold, communal or condominium title. The nature of land tenure can vary from accruing comprehensive rights in a plot of land to limited rights (Payne, 1997). Land tenure acts as proof (security) for a owner of a particular land parcel, with a particular identifier represented on the cadastre. In turn, that identifier and title is registered in the land

register.

The nature of the cadastral system varies from country to country where relationships between the elements differ. Jo Henssen identifies four legal principles which occur in most cadastral systems. The first is the booking principle which states that an exchange of a land parcel has not occurred until the right is changed in the land register. The consent principle, is where the former owner must give his/her consent to a change in the land register. Third is the principle of publicity which states that legal registers are open for public perusal. The final principle is the that of speciality, which states that all documentation concerning the title and cadastre be precise and unambiguous. Unless these principles are met the transaction in land can be said to be illegal. In the context of this dissertation this means that if the cadastre, the title, and the registration of the land holdings do not meet one of the above principle, then the transaction of land can be said to be illegal, and therefore part of the informal land market.

In terms of the contents of a cadastral system one can say that it consists of legal, technical, physical and surveying data (ibid 1995). These aspects in turn require specific skills namely that of the notary or conveyancer for the legal data, a surveyor for the physical and surveying data and an information technology manager to coordinate the cadastral system. The development of a multi faceted system requires specific professional expertise and has resulted in the creation of a whole industry based on the legal processing of land and landholding.

The function of a cadastral system varies from country to country. The most widely accepted function though, is to ensure secure tenure and the maintenance of the smooth operation of the land market (Williamson 1997)(Fourie 1993). Another important function raised by de Soto is that a cadastral system 'places people' so that the land can perform the parallel function of fixing investment in space making the holder of the land eligible to mortgage the property, or to receive a bond. A third function is that the fixed location, created by the cadastral system, enables a government to tax its citizen. Therefore from a government's perspective it is paramount for a cadastral system to be accurate and up to date. The above functions have been used as reasons to push for the reform of appropriate cadastral systems in countries which experience an informal land market.

3.3.1. The Use of Cadastral Systems as part of the Land Market Formalisation Process

Williamson (1997) adds further reasons to why cadastral systems and their reform is seen as the primary way of formalising informal land markets. A primary reason is that the United Nations supports Cadastral Reform through the Urban Management Programme and the 1992 United Nations Conference on the environment encouraged the use of cadastral systems for sustainable development. Secondly, cadastral systems make the provision of infrastructure and services more efficient as service providers can target the beneficiaries easily in terms of the parcel based system. Thirdly, the technology needed to establish, run and maintain a cadastral system has become more cost effective, requiring less staff but higher degrees of skill and training. This has occurred with the development of computer technology, and advances in Geographical Positioning Systems (GPS), digital theodolites and photogrammetric mapping (ibid 1997). Fourthly it is argued by Fourie (1993) that cadastral systems encourage sustainability, as the owner knows what his or her rights are and what he/she is allowed to do and what they are not allowed to do. Due to this increased security it is argued that the landholder is more likely to treat the land resources and the ecosystems found on the land responsibly. A final reason for implementing cadastral systems is that it has been claimed by Falloux (in Williamson 1997) that titling increases the price of the land. Of course one would have to seriously consider the impact of rising land prices on the very poor for whom the informal land market is often the only option (Wily 2000).

However, Williamson provides a caveat for the implementation of cadastral systems in Third World Countries. In the first instance, the cadastral system must be appropriate, systematic, sustainable and culturally sensitive to the situation on the ground. Secondly, the management of such systems must be devolved to the local level. Finally, the base map and the technology must be appropriate, and perhaps more importantly they must be flexible to the land markets in which they operate.

3.3.2. Reviewing Cadastral Reform

One of the aspects of cadastral systems is that it is a technical solution to a social and economic interaction of occupying and exchanging land. It provides a definite article, or framework, in which the fluid interaction of the land market and associated legal actions can be operated. The cadastral system provides a tool for certainty which in

turn can improve the productivity of the land market. But in many Third World Countries, cadastral systems have failed as they were not suitable for the land holding and exchange methods of the majority of the people (Payne, 1997). There is therefore a need for a careful study of land markets and land holding within a particular country before a cadastral system is imposed.

3.4. FORMALISATION AS A SOLUTION TO INFORMAL LAND MARKETS

The theories outlined see the solution for informal land markets as the formalisation of those markets through legislative, market orientated or technical mechanisms. In this chapter, this proposal has been framed in terms of a shift in the meaning of the term property, as a general principle, from viewing property as a thing to viewing property as a right. It must be emphasised that though this is perceived as the most acceptable intervention by organisations like the United Nations, there is a critique of such formalisation and its associated interventions which has been outlined in Chapter Two. This questions whether the benefits of the above interactions do indeed benefit the poorest of the poor, and who are the beneficiaries of the informal land market reforms? (Wily 2000)(Payne 1997). Furthermore, it must be recognised that informal land markets are also influenced by political interference which could negate the aims of a cadastral system, or legislative change. Such a case has been detailed by Varley (1998) in Mexico where politicians used land tenure reform, in the form of the distribution of full title, as a way of garnering votes.

The following chapter will take the issues discussed concerning informal land markets and possible remedies and put them within the South African context. It will make with specific reference to the Durban experience of this phenomenon.

4.0. A HISTORY OF INFORMAL LAND MARKETS IN SOUTH AFRICA

As de Soto uncovers through his analysis of the history of land markets in the United States, the construct of informal land markets is not a recent one. Rather informal land markets are indicators of periods where government legislation did not mirror the landholding or the system of land exchange upon the ground. In the past, South Africa has experienced a number of stages whereby those in power have attempted to create a uniform land market through directives related to political agendas. This has resulted in a South African land market which has experienced fluctuating periods of formality and informality.

During the 17th and 18th centuries, African societies east of the Karoo, appear to have experienced a period of relative security with regards to the holding of land (Hall 1981). Access to land was the function of available resources for slash and burn agriculture and for grazing (Bundy 1988), the extended family unit as well as the permission of a headman. These reasons would determine where groups could or could not build housing. During the 18th and 19th century, these societies underwent processes of amalgamation (Readers Digest 1992). The key reasons being the lack of land with the necessary resources to sustain a growing population, periods of drought and famine, as well as competition for trade and land with technologically advanced societies colonising from the East and West (ibid). A result of this was that as societies were disrupted, landholding became insecure leading to migration of groups of people who attempted to secure land holding elsewhere. In specific cases such as with the Zulu, the Sotho and the Ndebele Kingdoms access and holding of land became increasingly centralised in order to secure it and associated resources. In these cases land became more commodified with cattle, military service and western goods been used as exchange for land (ibid). If one accepts that informal land markets are the interpretations of those in power, as to what may or may not be done on a piece of land, the societies East of the Karoo had experienced two periods of relative formality in landholding and exchange and one of relative informality between the 17th century and colonisation by the European in the 19th Century.

By extension of the above argument the first informal settlement in South Africa was in Cape Town in 1652 when Dutch informal settlers occupied land which was under the traditional legal control of Khoi-Khoi groupings on the Cape Peninsula (Elphick and Gilomee 1979) However, once monetary exchange had occurred and the directives

given concerning the exchange of land in Cape Town, the land market became formalised. The subsequent imposition of European Law onto the land market was not smooth. As early as 1657, when grants were given to settlers for agricultural purposes the infant landholding system broke down due to the failure to pay debt on the part of the farmers (Christopher 1976). A further problem with the formation of a formal land market was the Dutch tradition of dividing farms between siblings which rapidly gave way to uneconomic land units (ibid). The net result of this was an outward migration of settlers from Cape Town between 1660 and 1780. Though the Dutch authorities had no control over the newly colonised land, due to distances and the lack of bureaucratic capacity, they granted annual leases from 1720 at 12 Rix Dollars (R20) per annum. Not only was the control from Cape Town tenuous but so was the method of ascertaining a parcel of land, whereby a one hour horse ride from a central point gave the owner occupation of a circular land holding (ibid).

This informal landholding and land exchange system was marked by high levels of insecurity with overlapping land claims being common (ibid). It was only with the arrival of the British in the early 1800s that attempts to survey land holdings were made (ibid) by the new colonial government. The new system introduced, stabilised the land market and improved the governments ability to collect tax, allowing for a more bureaucratic land exchange system to operate within what had then become the Cape Colony.

However, former Dutch emigrants unhappy with the greater control and with increased taxation, cited the British land policy as one of the reasons for colonising the Free State, the Transvaal and for a brief period the province of Natalia which was to become Natal (Readers Digest 1992). In these areas a similar cycle of informal land holding with little direct government control ensued. However the difference was that control over land was disputed directly with those African societies trying to re-establish access to the land. The meeting of colonists and Africans was to form the foundation for the dual land market which is in evidence today.

Yet the informal land market did not end in the more remote areas of the Cape Colony despite the implementation of the British Administration. This was especially true of land holdings in the mining areas of the Colony. In Kimberly areas such as Colesburg Koppie (The Big Hole) were riddled with overlapping claims to the land in the early days of the diamond diggings (Christopher 1975). Similarly, other mining areas like the Vaal Diggers Republic ceded from the British Colony due to dissatisfaction with British land granting policy (Readers Digest 1992).

In the Natal Colony which had been annexed from the Boers in the late 1830s a pattern of dispossessing African communities of their land occurred. In terms of formalising land holding and the land market, this was hampered by the large ill-defined farms occupied by the Boers (Christopher, 1976), the movement of African groups back onto land they claimed to be their own (Bundy 1988) and the imposition of the Shepstonian System - an approach which was a forerunner of the concept of indirect rule used in other British Colonies- which set aside tribal areas ruled by Chiefs who gave allegiance to the Native Administrator of Natal. It was these small locations on relatively poor agriculture land which were to form the backbone of what was to become the self-governing territory of KwaZulu.

A final limiting factor to the formalising of the land market of the then Natal, was the failure of planned settlements such as Byrne, York and Moreland which aimed at providing new homes for settlers. However these schemes which varied in size between 2140 and 11 648 acres were not served by roads, and little attention was made to provide the infrastructure needed to stimulate the growth of agriculture through the provision of necessary processing facilities. (Christopher 1976) Furthermore the land around these schemes was extremely cheap (Christopher 1976). As the developer of Byrne complained:

"farms of 6 000 acres were being sold by the Boers, for a nominal sum; in several instances for a bag of coffee, or sugar or a cask of brandy."

Due to these constraints the majority of these schemes failed. The similarity between these early colonial settlements with informal land transactions and poor access to services and markets, and the present occurrence of informal land markets in KwaZulu-Natal and in the case-study of Folweni is uncanny. It provides credence to the position that informal land markets, even in formerly laid out settlements is not a new phenomenon in KwaZulu-Natal or in South AFRICA for that matter.

4.1. SEGREGATIONIST POLICY AND THE LAND MARKET

One of the arguments used by segregationist policy in the twentieth century for the exclusion of Africans from formal title was that they would not understand the principles of western land holding (Bundy 1988). This attitude contributed greatly to the creation of a dual land market in South AFRICA. However this argument has been successfully

challenge by Colin Bundy (1988) in his seminal work The Rise and Fall of the South African Peasantry in which he shows how Africans particularly the Christian converts, or Kholwa, managed to successfully buy and sell land privately. Using the example of Edendale outside Pietermaritzburg he shows how this land holding enabled these groups to become the primary producers of agricultural produce for the province during the 19th Century. The weakening of these land holdings came as a result of colonial government legislation which overtaxed the black land holder, targeting Africans as a labour resource for the benefit of white commercial agriculture and mining.

Following Union in 1910 possibly the most definitive action was taken to create the dual land market in South Africa. This was the implementation of the 1913 Land Act which set apart seven percent of the land in South Africa where Africans could own land (1999). The aim of the act was to make any landholding or transactions in any other part of the country, made by Africans, illegal. The effect of the act was two fold. It foreshadowed the beginnings of segregationist policy resulting in the overcrowding of these reserves where 76% of the population was suppose to live. Secondly it gave rise to a period between the World Wars of increased labour tenancy whereby African farmers would till a portion of a European's farm for a portion of the profit made from the sale of the crop (van Onselen 1997). However this was officially ended by the Native Trust and Land Act of 1936 though some black labour tenants struggled on till the Second World War (ibid).

Subsequent legislation cemented the system of dual land holding in South Africa and kept Africans out of the European land market. This legislation included the Native (Urban Areas) Act of 1932 which make provision for residential location for blacks in urban areas (Harley & Fotheringham 1999). Linked to this legislation so as to enforce the control of Africans in urban areas was the Slums Clearance Act (1934) and the 1945 Black (Urban Areas) Consolidation Act. In terms of access to land markets the 1937 Native Laws Amendment Act prevented Africans from purchasing land in urban areas (ibid.). Therefore before the National Government came to power in 1948 and systematic apartheid introduced, the legislation for the production of a dual market based on black and white was already in place.

However, before the National Party came to power cracks were appearing in the maintenance of these segregationist policies. This came in the form of land invasions and resistance to removal from so called "black-spots", areas of African freehold in cities. Possibly the best known of these early actions was the land invasions which

took place in Orlando outside Johannesburg in 1943 under the leadership of James Sofasonke Mpanza (ibid.). Mpanza is alleged to have become a shack lord selling off plots and forcing people to join his party (Readers Digest 1992). The cracks were a result of rapid urbanization due to a growing urban population, overcrowding in the Reserves and the availability of employment within the urban areas.

Following 1948, the National Party cemented segregation in terms of land holding. This occurred primarily through the creation of the independent Homelands of Transkei, Ciskei, Venda and Bophuthatswana under legislation in 1956 and the creation of semi-autonomous Self Governing States, one of which was KwaZulu (1999). These actions essentially blinkered the National Government to how land was sold, purchased or exchanged in these 'autonomous' areas by the majority of the population. All the Government had to do was focus on providing a First World cadastral system (Fourie 1994) and the necessary land law through provincial planning ordinances as well as the removal of squatters and 'black spots' (Harley & Fotheringham 1999) in white areas which made up the majority of the country's land surface. The removals were undertaken on a massive scale from 1948 until the repeal of the legislation in the early 1990s ensuring that the races were separated. However, the process usually meant the removal of blacks to specific areas. These 'dumping areas' usually had little or no services and/or public infrastructure. Despite approximately 3.5 million people being removed the exercise was never fully successful as certain 'black spots' like Lamontville managed to remain. Furthermore the creation of informal settlements became increasingly widespread and insistent on rebuilding their shacks and evading eviction following shack removals (Marcus et al 1996).

In terms of the land market apartheid was a mutated form of colonial control which with paper, pen and capital created a system whereby the exchange of the majority of the land was under a sophisticated legal and technical system geared for the efficient functioning of markets, while a small percentage of the land was occupied by the majority under a number of different tenure securities both traditional and those imposed by the Homelands themselves. With the collapse of Apartheid and the amalgamation of these states into South Africa in 1994, the landholding systems of these areas became inconsistent with those under which the majority of the land in the country is held. Hence one is dealing with an informal/formal land market at a sub-national level.

One also deals with the duality at the metropolitan level, where informal settlements which flourished in the 1980s and 1990s and in original 'black spots' are constructed and traded in with no legal mechanisms, adjacent to blocks of flats operating on sophisticated sectional title regimes.

Yet, it is at the level of the individual unit that the greatest level of informal land market activities occurred for both formal and informal housing especially in urban or peri-urban areas (Clark 1996). Either the illegality occurred in that the unit did not meet zoning regulation and building standards, or that it was not registered in the deeds registry, or that the unit was not registered in the name of the landholder.

Similarly the nature of landholding in homelands and within black townships was complex and multi-layered. Essentially, each Independent Homeland and Self-Governing Territory had its own legislation which pertained to land use and land holding. Examples of such legislation would be the Ciskei Land Use Regulation of 1987 and the KwaZulu Land Affairs Act of 1992 (van Wyk 1999). Such acts were initiated under the Bantu Areas Land Regulation Proclamation No. R185 (Adams et al 1999). Much of the land in these areas was the responsibility of Tribal Authorities, under the control of Nkozi or Induna's in the case of KwaZulu. These Traditional Authorities, through tribal law and national legislation were responsible for dispensing rights to land to those living on the tribal land. The nature of the rights varied from place to place but there were three basic forms of tenure.

The first form was the Permission to Occupy Certificate (PTO) which was the most common form of occupation security in rural and peri-urban areas. This form of tenure was issued by the Tribal Authority concerned and gave a person rights to stay on a designated piece of land (interview with Peter Rutsch 2001). However the person was unable to sell the land and could not legally protect the land from actions taken by the chief or Induna. The second and the third forms of tenure related more to urban townships which were laid out in terms of a General Plan, and were deeds of grants and deeds of leasehold. These were a more secure form of tenure than PTO's as the deed of grant was legally enforceable and it gave the individual the right to exclude unwanted individuals from the land (Adams et al 1999). However, one was not allowed to sell these rights in the land (Snijder 2001). In regards to the parcels of land into which the township was divided these were termed general plans and were not considered cadastre as defined by the 1969 regulation (interview with Peter Hoffmann 2001). Possibly, the area most responsible for informality in land markets was the

administration of the landholding in the capitals of the Homelands and Self-governing territories where there was large scale mal-administration of land tenure documentation (interview with Peter Hoffman 2001)(interview with Peter Rutsch 2001).

Juxtaposing the convoluted nature of land holding and land exchange in the homelands was the sophisticated cadastral system in operation in White South Africa that, was geared to the protection of land rights and the promotion of a healthy land market, which is considered to be one of the best in the world (Fourie 1994)(interview with Jonathan Jackson 2001). Though there were other forms of tenure in operation such as leasehold, renting and sectional title the dominant form of tenure was and is freehold title. This gives wide ranging rights to the land owner to do as he/she wishes with the land. These rights are registered in the land deeds registry in the provinces. In turn the land transaction is recognised on the cadastre at a provincial Surveyor General's Office (SGO). This dual system of land registration has proved to be effective in South Africa though it has still to prove itself in catering for the majority of South Africans living in former Homeland territories and in black urban areas.

A further action which has impacted upon the formal land market is that of land-use planning which occurred through the provincial ordinances which has ensured a degree of certainty as regards to pricing of land. This cadastral system has also given rise to an entire property development industry including estate agents, property developers, evaluators, land surveyors, conveyances and planners. The apparent success of this system has highlighted the duality between it and the systems in the former homelands and the informal land markets operating within these areas.

4.2 NATIONAL PARTY POST-SEGREGATIONIST LEGISLATION

The first realisation of the housing crisis by the National Party Government came during F W de Klerk's presidency with the passing of two white papers dealing with Urbanization and Land Reform. In order to implement the proposed land policy guidelines, two laws were promulgated namely, the Less Formal Township Establishment Act (Act No. 113 of 1991) also termed 'LEFTEA', and the Upgrading of Land Tenure Rights Act (Act No. 112) often referred to as 'ULTRA'(Harley & Fotheringham 1999). LEFTEA was tabled as a means of speeding up the upgrading of squatter settlements and formal townships. It also enabled the drawing up, approval and registration of the general plans of these settlements. Whereas LEFTEA was

concerned with the development of informal and less formal settlements and land, ULTRA enables the formalization of tenure within townships, the preparation of the corrected cadastre and allows for the suitable zoning legislation to be implemented in these settlements. The importance of ULTRA for the case-study is that it was the legal framework used in Folweni as the means by which the township would be formalised and tenure could be delivered (von Riesen & Jewell 2001). Both these acts provided, and still provide, tools by which technical changes concerning the delivery of secure tenure and the formalization of land parcel holdings and approval of General Plans occurs, thereby making it possible to initiate land transactions within a formal land market.

As tools of physical change, these two pieces of legislation are not concerned with how interactions concerning land exchange occur on the ground in an informal manner. Rather the legislation is concerned with correcting the physical injustices of limited services, infrastructure and high levels of insecurity, brought on by not knowing the extent of one's property. LEFTEA and ULTRA were conceived during a period when the National Party had recognised the political liability of the Apartheid system under immense external pressure and was in the process of a programme of policy reform that had led to the unbanning of the African National Congress (ANC) and other banned political parties. These actions were to open the door for the establishment of a new political dispensation.

4.3. THE AFRICAN NATIONAL CONGRESS AND INFORMAL LAND MARKET REFORM.

The ANC came to power in 1994 on the back of a popular vote. It promised a "better life for all South Africans" (Harley & Fotheringham 1999) and this included more equitable tenure secure and tenure exchange. Within the Bill of Rights (RSA, 1996) it states in section 25(5) and 25(6) that:-

- "5. The state must take reasonable legislative and other measures within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.**

- 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."**

As the majority of informal land transactions occur in residential property the two aspects pertaining to housing in the Bill of Rights are also important in understanding the nature of informal land markets. The first is that:-

"26 (1) Everyone has the right to have access to adequate housing"(RSA, 1996)

and that,

"26 (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions." (Ibid 1996)

This final guideline in the Bill of Rights is of particular significance as a primary way in which to prevent the wide scale removals which had previously occurred under the National Party Government, and which ensured a 'formal' land market only in White South Africa . In theory the Bill of Rights makes removal more difficult, giving the occupier of the land increased security in his/her landholding. It can also be regarded as under-pinning the new concept of a 'right in land' through long term occupation or use rather than land rights as outlined in the purely legal sense. This 'right in land' is now awarded a legal status thereby recognizing rights previously ignored under the prior administration.

It is not surprising that the issues raised in the Bill of Rights pertaining to land and housing specifically address the improvement of the security of tenure and access to housing, considering how tentative access to land rights has been for the majority of Africans in the past. The question is how are such high ideals obtained? The national departments responsible for addressing the fulfilment of the above rights are the Department of Agriculture and Land Affairs (DALA) previously called the Department of Land Affairs (DLA), and the Department of Housing.(DoH) Each of these departments have followed separate strategies which cover different aspects of

reforming land markets (Marcus et al 1996). One would expect that the DALA should have sole jurisdiction over the issues concerning land markets as the department is responsible for the country's cadastral system. But due to the huge demand for housing, the need to ensure mechanisms such as subsidies and the need to plan and develop housing projects, the Housing Department has been drawn into issues surrounding land exchange particularly in the urban context.

Evidence of this is the fact that issues related to the delivery of urban tenure have been subsumed in the White Paper on Housing and only mentioned in passing in the White Paper on Land Reform. In addition, the latter policy document shows a clear rural bias, and relies on the linkage of urban tenure and housing delivery as a combined package rather than addressing urban land complexities and the informal land market directly.

4.4. THE DEPARTMENT OF AGRICULTURE AND LAND AFFAIRS APPROACH TO LAND MARKETS AND TENURE ISSUES

The national Department of Agriculture and Land Affairs is responsible for actions relating to the country's cadastral system and for meeting the past imbalances as far as land is concerned. Its task is huge due to the vast scale of the problems and to the emotive nature of the land issue (Department of Land Affairs 1997). The Department's goals, as far as the White Paper on Land Policy (1997) is concerned, is to deal effectively with:

- The injustices of racially based land dispossession of the past;
- The need for a more equitable distribution of land ownership;
- The need for land reform to reduce poverty and contribute to economic growth;
- Secure tenure for all; and,
- A system of land management which will support sustainable land use patterns and allow for land to be released for development.

Though the White Paper on Land Policy does deal specifically with the land market, none of the goals deal directly with normalising land markets. The specifications of tenure reform and an improved land management system may however go a long way in regularising land markets if it is effected in a suitable manner.

The Department's focus till this point in time, has been on meeting the first two goals through its land restitution and land redistribution programmes. The Land Restitution Programme has focussed its attempts on either returning land or obtaining compensation for people who were forcibly removed from their homes after 1913 through the use of the Restitution of Land Rights Act (du Toit 1999). Similarly, the Land Redistribution Programme aims at making land available for formerly disadvantaged communities on the basis of willing-buyer willing-seller or through the use of state land (DLA 1997). Due to the long legal process and the difficulties in the identification of beneficiaries, the restitution programme has been slow in showing results (du Toit 1997). While the redistribution programme is still to get off the ground. The DLA programme which would arguably have the most direct affect on the formalisation of the land market (DLA 1999) is the Tenure Reform Programme. The function of the programme is to improve security of land holding and better the systems of land management in the former homelands and self-governing territories. A number of new laws have been passed to ensure that tenure reform is executed. These are:-

- The Land Reform (Labour Tenants) Act (Act No. 3 of 1996), which provides for secure land rights for labourers in rural areas on commercial farms (Harley & Fotheringham 1999);
- The Communal Property Association Act (Act No.28 of 1996), which is for groups of people who would want to hold their land collectively. This is mainly for rural areas as an alternative to tribal land holding (ibid);
- The Interim Protection of Informal Land Rights Act (IPILRA) (Act No.31 of 1996) secures the land holding of those with tentative rights to land (ibid); and,
- The Development Facilitation Act (Act No. 67 of 1995) which made provision for the fast tracking of land development through initial ownership (Department of Land Affairs 1995).

LEFTEA (Act No. 113 of 1991) and ULTRA (Act No. 112 of 1991) legislated under the National Party Government have been retained as interim pieces of legislation by the DALA and form important tools for securing tenure.

However, there have been attempts to place the tenure reform programme under a single overarching piece of legislation through the Land Rights Bill which was first tabled in 1998. The Bill was subsequently withdrawn as there were concerns that it focussed too much on tenure reform in rural areas at the expense of urban areas (interview with Peter Rutsch 2001). The Bill covers the protection of rights of previously

disadvantaged groups, the transfers of ownership of state land, the management of land rights and the resolution of disputes as regards tenure (Department of Land Affairs 1998). The Bill introduces a number of new functions and structures (Department of Land Affairs 1999). These include:-

- The concept of a Rights Holder which would be persons who have established occupation, use or ownership of land;
- The concept of a Land Rights Holders Structures similar to a community forum which would be a vehicle by which role players can move towards securing tenure in a community; and,
- A Land Rights Officer, who would be responsible for investigating and solving issues pertaining to tenure at the municipal level in the former Homeland areas.

The argument behind the act is to create security of tenure in a situation where there are overlapping claims to the land. At present, the Bill is still in hiatus waiting for its passing. Though apparently the new bill will not differ greatly from the original (interview with Peter Rutsch 2001).

During the writing up of this dissertation the successor to the Land Rights Bill, the Communal Land Rights Bill was released in November 2001 (Forrest 2001). Despite indications that there would be greater emphasis on urban land tenure reform, the bill has continued to focus on rural land tenure reform in an attempt to appease Traditional Leaders (ibid.). The bill has been heavily criticised by Ben Cousins of the Programme for Land and Agrarian Studies of the Western Cape as being an appeasement to the Traditional Authorities and if enacted will be to the detriment of those people living on land located within administrative ambit of the Tribal Authorities (ibid.)

But what is the DALA's take on land markets? In chapter three of the White Paper on Land Policy (1997), the DALA outlines its approaches. The department acknowledges the difficulties of dealing with a dualistic land market. On the one hand, there are the poor, those whose landholding security has been minimal who call for a radical redistribution of land. On the other hand, there are those who stand by the land market, driven by the concept of willing buyer/willing seller. According to the DALA,

"The challenge is to find a way of redistributing land to the needy, and at the same time maintaining public confidence in the land market."
(Department of Land Affairs 1997)

In other words, the DALA's policy towards land markets attempts to walk the fine line between a market driven approach and an approach based on government assistance to the most needy. The White Paper put forward a number of proposed interventions. The first is a R15 000 settlement/land acquisition subsidy for claimants of formerly disadvantaged communities to go towards the purchase of land. The DALA does however recognise that the amount is insufficient, and that people would need to pool grants (DALA 1997) in order to achieve sustainable development. The second intervention is to lower land transaction costs which are seen as preventing the poor from registering transfers of ownership. This is a significant action and will involve the lowering of cadastral survey costs, valuation fees, conveyancer fees, stamp duty (payable on leases, mortgage bonds and collateral bonds), deeds registry fees and transfer duty. A further cost reduction which the DLA contemplates is the lowering of estate agent costs, though the Department admits that this will require extensive negotiations with estate agent representatives. A third proposed intervention is the introduction of a rural land tax in rural areas which would be administered at a municipal level. The argument given is that

"Land taxes can exert a downward pressure on land prices. They can also be a disincentive to speculators holding land merely with a view to selling it when prices rise." (Department of Land Affairs 1997)

The implementation of this tax following the 2000 elections is going to be difficult due to the culture of none payment in African areas which became dominant during the 1980's and because whites in rural areas have never had to pay municipal rates and tax before. Of course the tenure programme outlined in the previous paragraph is also seen by the DALA as playing an important role in the creation of an environment for the efficient operation of the land market.

Most of DALA's programmes have been slow to get off the ground since 1994 (du Toit 1999). This is in part due to the immense scale of land inequality in South Africa (Cousins et al 1999). But it is also partly due to a lack of institution capacity, the inexperience and under staffing in the DALA itself (Marcus et al 1996). With the seizure of farms in Zimbabwe for redistribution, the DALA has received a significant wake-up call and has taken extraordinary steps to move on its reform programme (interview with Peter Hoffman 2000). However, action on tenure security particularly on the legislative side and in terms of actions to improve the land market have been slow and piecemeal.

The DALA is also responsible for the operation and coordination of South Africa's cadastral system. There have been a number of suggestions as to how the system should be reformed to meet the needs of the majority in the 21st century. This has been because some have seen the system as being backward in terms of some of its technical aspects, and that the system should be fully computerised to increase efficiency and deal with the irregular nature of land holding in those areas which were previously excluded from the records and data base (Radloff 1999). However, others argue that the comprehensive system of survey is adequate and requires no change (interview with Peter Hoffman 2001). But, Hoffman recognises the problems dealing with informal transactions which occur outside the cadastral system. His solution is for the implementation of local land registries at a municipal level so that people have easier access. Clarissa Fourie in a report written in 1994, agrees with Hoffman for the need for a local land registry but also suggests the use of a mid-point system of land survey which requires the surveyor to only take one coordinate (latitude and longitude reading) per land parcel using a Global Positioning System (GPS) instead of a comprehensive survey process. The argument being that this will be more cost-effective and will therefore make the cadastral system more accessible to the poor in South Africa who would in turn place greater trust within the cadastral system.

Comparatively, Jackson (2001) takes the concept of mid-point survey and local registries a step further by linking two computer based land data systems with personal identification documents. He proposes that the cadastral system and the local registry which includes the form of tenure be maintained at municipal level and linked in a single data base to the homeowners' identification document. Rates and services payment can also be recorded in this data base which would draw on the information currently being set up in terms of the housing subsidy system. Jackson refers to this new comprehensive data set as the 'Householders Record. If the house is not serviced the owner would receive a 'Household Certificate' as opposed to a 'Record'. A two tier record of transactions can be kept. The rationale for linking what appears to be diverse data sets is to provide financial institutions with secure information, guaranteed by the municipality. In a similar way to the mortgage system poor people will then have easier access to housing finance and the banks have greater security. The debates surrounding the cadastral system are still in a process of development and probably will take more time to come to fruition (Radloff 1999)

4.5. THE NATIONAL HOUSING DEPARTMENTS APPROACH TO LAND MARKETS AND TENURE SECURITY

It is within the housing sector where the majority of informal land market transactions occur (Clarke 1996). This is because housing/shelter is a necessity. Therefore residential holding automatically holds value. However due to the complex nature of a formal land transactions and the expense and bureaucratic inefficiencies in past regimes, the poor have been forced to obtain housing outside legal mechanisms. Despite these limitations the National Housing Department, unlike the DLA has made significant physical progress in the construction of core housing for poor people who meet housing subsidy criteria. According to the housing minister Sankie Mthembu Mahaye, between 1994 and December 2000, the Department constructed 1 129 612 houses and issued 370 000 titles (Streak 2001). A further 350 000 houses are supposed to be completed during 2001 (ibid.). It is apparent that the department has been focussed on delivery of housing. As the people who require the housing are the poor earning approximately R3 500.00 per annum (Department of Housing 2001a), the housing is heavily subsidized and the resultant homes which can be bought are small core units inadequate for large families. Hence, the constraints on size and quality of the housing are largely a function of the department's access to finance(Department of Housing 2001b). For the subsidy there are six variations from which the provinces can choose (ibid.). In terms of the tenure offered this is either rent or freehold (Narsoo 2000). This narrows the choice which people have in terms of rights to the land on which the house is built.

Though the Housing Department has had success in putting units on the ground, it recognises that there are problems associated with the housing processes. Firstly, they acknowledge the sheer scale of the demand for housing which is estimated at 3.8 million units (Housing Department 2001b) with an increase of 204 000 units per year, though some reports have put the estimate as high as 7.5 million units (SABC 2001). A second issue to be addressed is the high level of unemployment and poverty, the relatively high cost of buying a house and the realisation that for the poor, the acquisition of a house is very difficult. Thirdly, is the lack of suitable land located near places of work where the necessary services and infrastructure can be constructed to linked to existing systems at low cost. Finally, is the reluctance of banking institutions to become involved in the financing of bonds and mortgages in low cost housing projects due to the perception that there remains a culture of non payment (Housing Department 2001b)

This final constraint is of particular concern for a smooth functioning land market, especially in the context of a housing process driven by commercial principles. If individuals cannot obtain finance there is little means by which wage, or potential wage earners may improve their housing arrangements. In such circumstances it does not matter if one has secure tenure as one is unable to obtain the benefit of a mortgage which should accrue to the owner. At present de Soto's (2000) notion of using housing/land as an asset which can be mortgaged, and the proceeds of the loan used to stimulate the growth of a business or another form of economic upliftment, would not work in South Africa. This is due to the financial sectors reluctance to offer finance to low-cost housing without both secure tenure and steady employment. At one level one can understand the banks reluctance to lend money, due to the uncertainty of whether the poor person will be able to pay back the loan. Of additional concern is what the actual market price of the house would be in an area where servicing has yet to take place.

The question concerning valuation raises another dimension to why banks are hesitant to fund housing (Interview with Felix Mtshali 2001). Valuers will only mortgage a house or give out a bond on a house if the land is serviced to particular standards in terms of access to roads, water, water-borne sewerage and electricity (interview with Felix Mtshali 2001). Furthermore, if a suburb or a section of a township has a high percentage of non-payment on a bond or mortgage, the area will be 'relined' and loans will not be made to properties within that area (interview with Felix Mtshali 2001). In a case of high levels of poverty like South Africa such actions make the informal land market a viable alternative rather than having to go through an expensive land registration system which does not offer any potential for economic advancement (Gumede 2000). At present the main stream financial institutions and the National Housing Department are caught in a double bind. The Housing Department needs to show financiers that the low cost housing is a viable and a reliable investment. But they cannot do this unless the banks show faith in the ability of the poor to deal responsibly with their housing finances (Mail & Guardian 2001). A step to solving this impasse has been the passing of the Home and Loan Mortgage Disclosure Act (Department of Housing 2001c) which provides for fairness in the lending practices by the financial institutions to low cost housing beneficiaries.

However, the Housing Department has also been forced to step in directly and deal with the informal land market in the sale of subsidy houses, where units have been sold for prices way below their market value. The sale of home for less than it is worth lowers

the value of all adjacent houses in the neighbourhood and nullifies the title deed, as often the name of the new owner is not recorded in the Deeds Registry Office (Snijder 2001). The Department's attempt to deal with this has been the passing of the Housing Amendment Act (2001) (Department of Housing 2001a) which prevents people from selling subsidy houses below their market price for a period of eight years. Such a long period may actually encourage poor people living in poor communities to sell their land illegally as they have no other choice.

Beyond this third amendment to the Housing Act(2001a), the Rental Housing Act (50 of 1999) and the Housing Consumers Protection Act are also concerned with regulating the land market in terms of the renting and the sale of residential holdings (Department of Housing 2001a). These acts concern particular variations within the housing market focussing upon the lower end of the land market.

Considering the skewed nature of the informal/ formal land market, it is surprising that a single Department has not attempted to either improve informal land markets through a comprehensive programme, or to have developed a strategy for the South African land market as a whole. Rather the strategy towards the land market/s has been fragmented. This has been seen in the DALA's focus upon security of land tenure aspects of the land market, though claiming in the White Paper on Land Policy (Department of Land Affairs 1997) to include land markets holistically. Whilst the Housing Department has focussed on preventative interventions to protect low income housing developments and their security of tenure, rather than focussing on the nexus of issues surrounding land markets (Department of Housing 2001a). What is required is interdepartmental cooperation between these two key departments in order that a comprehensive strategy to deal with the complexity of the land market can be addressed. It had been hoped that the new Land Rights Bill and its successor would be indicative of more integrated approach however this has not been the case. Current indications are that issues related to the land market and urban tenure will be dealt with on a piece meal basis rather than a holistic manner.

4.6. INFORMAL LAND MARKETS ON THE GROUND IN SOUTH AFRICA

Legislation concerning land markets is one thing but what is occurring on the ground in a land affected by two land markets? Firstly there is an overwhelming demand for land from the poor (Mthembu-Mahanyele 2000)(Mail Guardian 2001). This has resulted in disenchantment with perceived government inaction and the continuance of illegal

land occupations and transfers (wa ka Ngobeni, E & Merten M 2001) There are numerous examples of such land invasions. Such land hunger has been used for political gain by certain parties. Probably the best example in the past year, has been the Bredell land seizures in Gauteng Province, where thousands of squatters paid the Pan African Congress a R25.00 'administration fee' for services to a piece of illegally occupied land (ibid). Overnight a land market was created and overnight the land market ended with the removal of the shacks. When one 'buyer' was asked why he wanted to occupy land rather than purchase or qualify for a house one of the invaders replied:-

" Houses or land? The land is more important. When we are staying here we are paying no rent. With that money we at least buy something for our children." (Donaldson A & Jacobs C 2001)

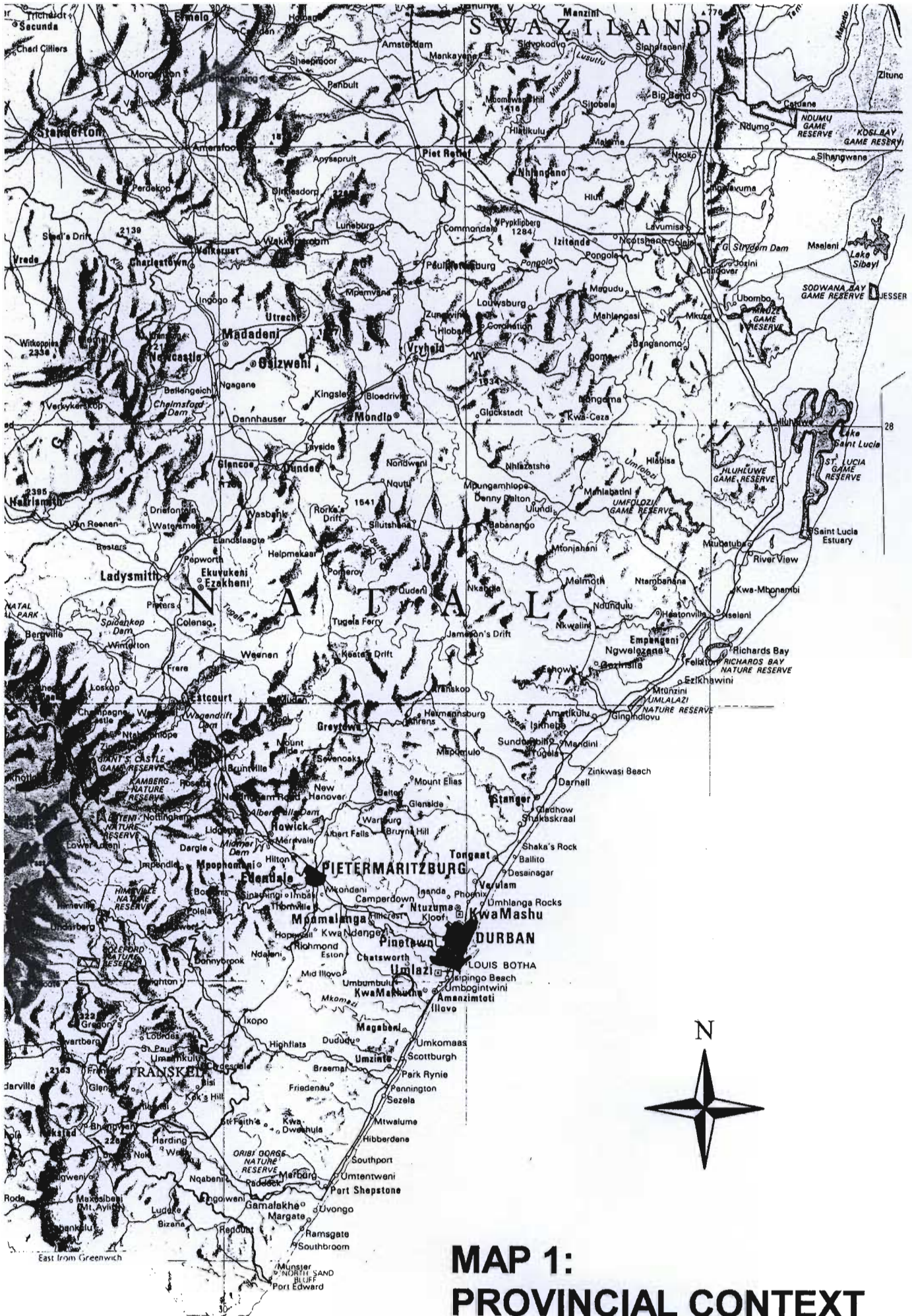
The example of Bredell highlights the importance of politics and power that characterise the housing issue and show that informal land markets in South Africa can be created and driven by political motivation under the guise of a legitimate concern for the landless.

Yet possibly, a more critical issue is that governance at a local level is yet to fully grapple with the issue of access to shelter and has a tendency to seize property, and land on the grounds of non payment for services in accordance with apartheid by-laws (Purshotam, R 2001)(Merten, M 2001). Public health issues or planning reasons have also been utilised as legitimate reasons to move communities e.g. the Alexandra relocation process where people were moved from the banks of a Jikskei River on the pretext of them being in danger from flooding (McGreal, C 2001)(Zulu, D 2001). Local government needs to be paid for services so that the Authority can function effectively. The collection of rates and rental is evidence of this need. However, land markets can not operate smoothly in a situation where housing is under the constant threat of seizure due to non payment. Lack of employment and economic recession also contribute to people's inability to pay and therefore conform to the rules of the formal land and services game. Non-payment of services then leads to local governments seizing homes and assets The issues raised above merely outlines some of the major points which can impact on the informal land market. What will now be addressed is how the informal land market operates within a particular metropolitan context within South Africa. The focus of the next section will be on this phenomenon in the context of Durban Unicity - KwaZulu-Natal.

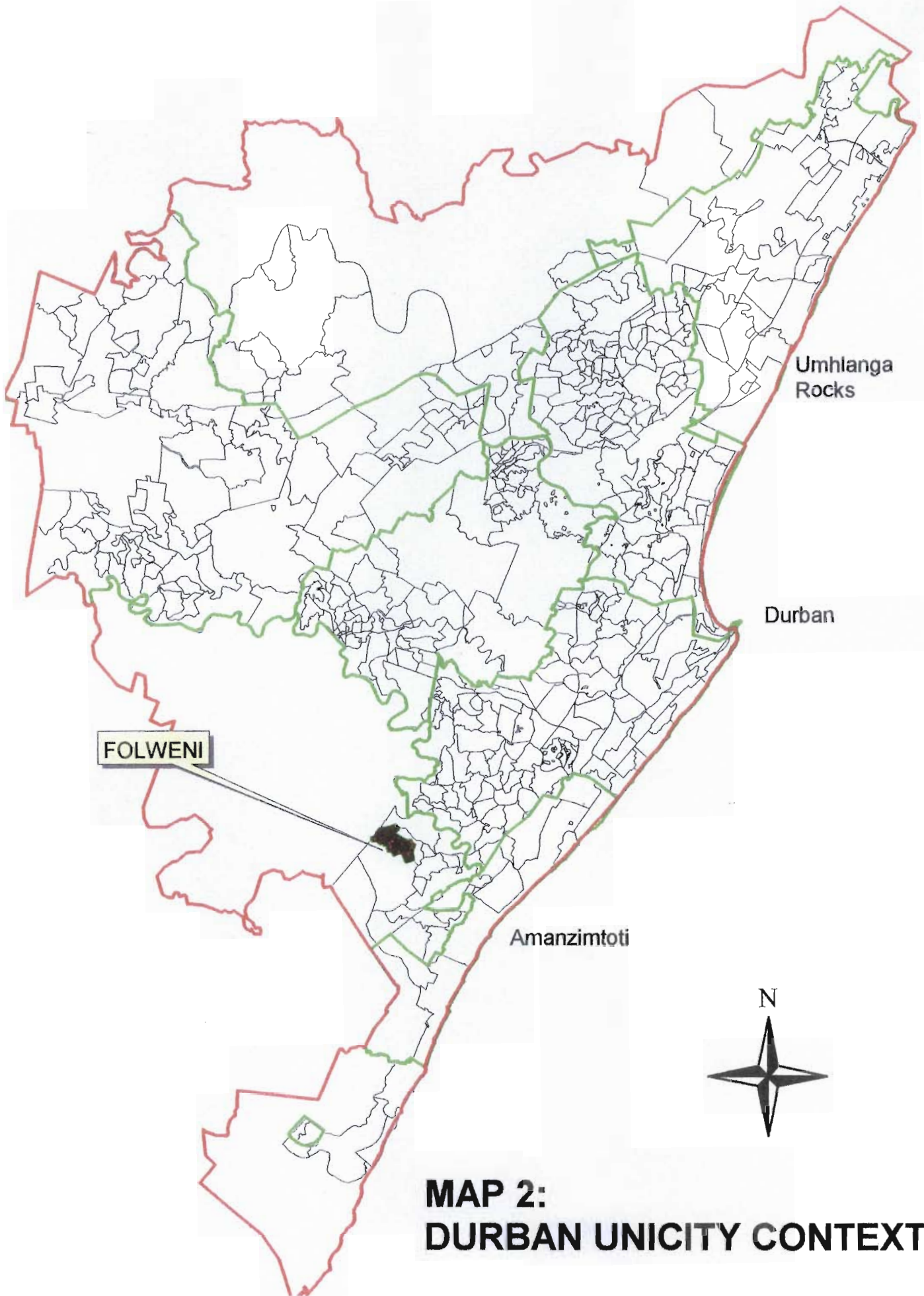
4.7. INFORMAL LAND MARKETS IN DURBAN

Durban is situated on the East Coast of South Africa and is the largest city and port in the Province of KwaZulu-Natal (Map 1 and Map 2 on the subsequent pages). The city is administered by the Durban Unicity (also called the eThekweni Municipality) which in turn consists of five operational entities. In terms of the spatial division of wealth- the wealthier, well serviced areas, are located in a narrow corridor along the coast which extends inland towards Pietermaritzburg along the N3 highway. These areas tend to be the former white and Asian areas designated under the Apartheid Government. Significant exceptions are the low cost housing and informal settlements at Cato Manor and at Lamontville. By contrast, the poor occupy the periphery of the metropolitan area and in the adjacent Tribal Authority (TA) areas which were under the jurisdiction of the former KwaZulu Government. These areas were put aside for African by the Apartheid government. In 1994 and again in 2000, large areas of Tribal Authority in the former Umbumbulu Tribal Authority to the South and North, including Folweni, and Inanda Tribal Authority were incorporated into the Durban Metropolitan Area as part of the demarcation process for a new local authority. It is within these lower income settlements where an informal land market is most likely to occur and there are a number of reasons for this.

Firstly, Durban is undergoing a process of migration into the city (Snijder 2001) of low income earners looking for employment who require cheap easily accessible accommodation. Secondly there are substantial processes of in-migration between low income settlements which suggests that land exchange must occur (Clark 1996). Thirdly the very poor who do not qualify for a housing subsidy require means of obtaining shelter which has been accommodated through the creation of informal settlements. Fourthly, areas incorporated into the municipality from the former KwaZulu, administered land development and tenure rights in terms of different legislation and tribal and customary laws. Similarly, the townships operated in terms of Proclamations and Regulations related to apartheid laws and had their own cadastral systems (general plans) which were not well maintained (Smit et al 1996). Fifthly, there has been growing recognition by NGO's and scholars of the existence of informal land markets within Durban, though at present this research is limited and there have only been a few attempts to define Durban's Informal Land Market. (Snijder 2001)(conversation with Pauline Stanford 2001)(interview with Neil Hazel and Adrian Masson 2001).



**MAP 1:
PROVINCIAL CONTEXT**

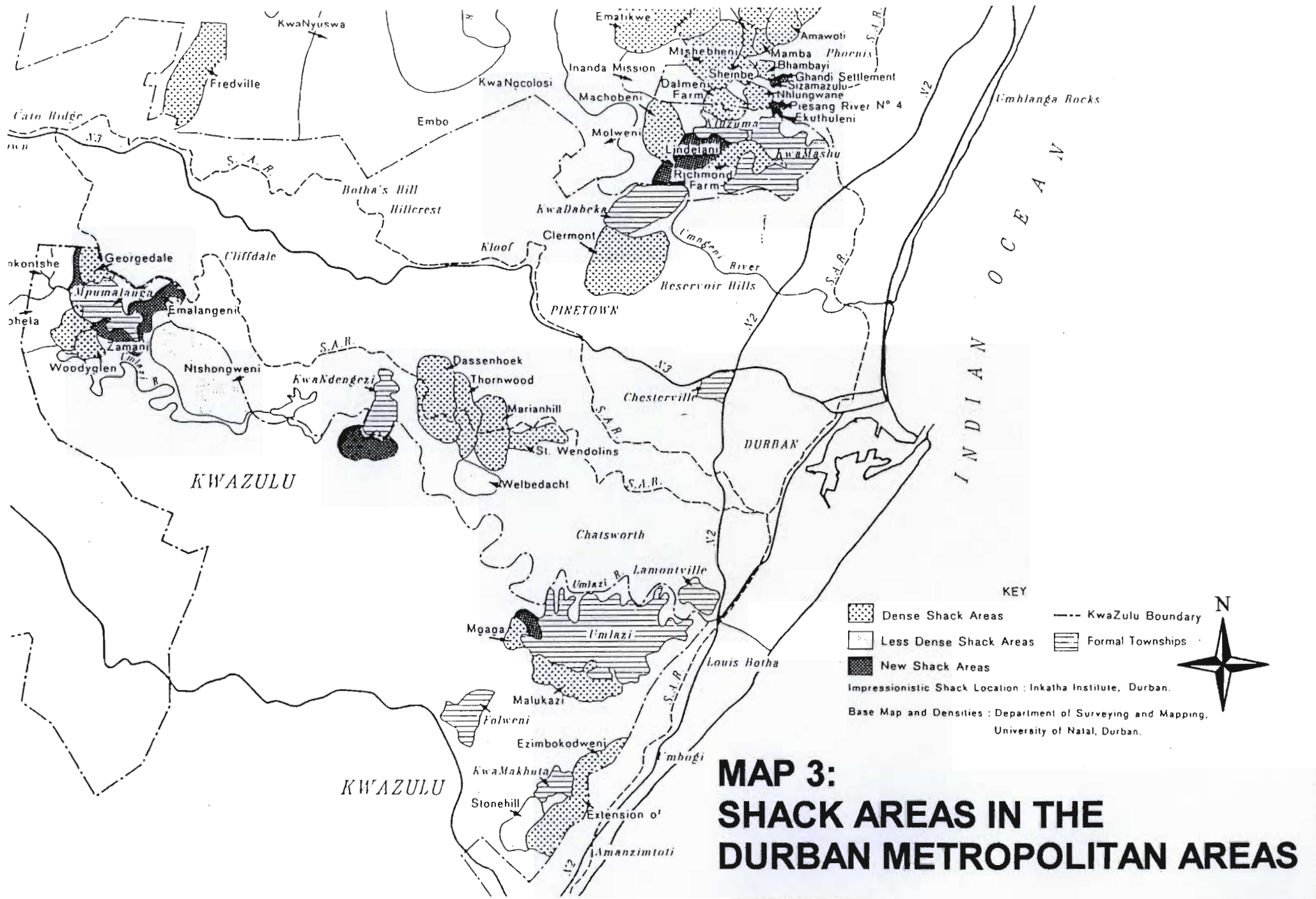


4.7.1. Defining Informal Land Markets in Durban

In last twenty years, Durban has experienced a high growth in the development of informal settlements within and adjacent to its administration boundary (see Map 3 on the following page). In 1995, Sarah Motladi in an Urban Planning Masters Dissertation entitled "Informal Mechanisms of obtaining Land in Cato Crest", found that informal settlers used the strategy of land invasion, subsequent illegal sub-divisions of the land, followed by the renting out of shacks they had built as a means of obtaining land and income from renting. This dissertation confirmed the findings of Makatini (1994) that an informal land market would develop within informal settlements if the settlement had reached a mature stage whereby original settlers could sub-divide and control the influx of people into the settlement.

In a similar case study to Motladi, Sara Braude (1996) investigated the nature of backyard shack development in Umlazi Township South of Durban's CBD. Using orthophoto analysis and interviews she noted that there had been a significant increase of backyard shack densities in Umlazi in the decade between 1985 and 1995. She notes that the majority of these backyard shacks were constructed in contravention of planning by-laws and therefore were deemed illegal. Further Braude indicates that the majority of shacks were rented out, the price being dependant on the quality of the shelter. What Braude shows is that even in a formal township like Umlazi which does by enlarge has access to services, secure tenure and finance, that an informal land market is in operation. This is indicative of the supply of formal land and housing markets failing to meet the demand for these commodities.

Arguably the most detailed study on informal land markets within Durban to date, has been Craig Clark's (1996) study of property transfer processes in formal and informal settlements in Metropolitan Durban for the Built Environment Support Group (BESG). BESG is a Non Government Organisation (NGO) dealing with issues concerning peoples access to shelter. In the study Clarke undertook 50 questionnaires in four settlements within the Durban Metropolitan area. Two of the areas were informal settlements without legal tenure located at Geza on the Northern Boundary of Umlazi and Old Dunbar Road within the Cato Manor Annexe. The other two settlements had formal tenure and were located at Klaarwater, a small formal township in the Mariannhill area and Besters Camp an upgraded settlement in the vicinity of Kwa Mashu. While the previous two examples given were concerned with specific types of transfer relating to particular housing actions, Clark was concerned with how land was exchanged on



the ground. To this end he tried to build a picture by posing a number of question and addressing issues concerning;-

- Who was in control of land exchange within a particular area?
- How did one enter the land market?
- Perceptions concerning tenure; and,
- Rates of in-migration

In response to these core issues Clarke made a number of findings which are outlined below:-

- Firstly that on-migration creates a constant supply of sites available for an informal land market;
- However lack of access to information prevents the continuous filling of this property, where families play a key role in obtaining land or/and housing.
- There are two broad informal land markets in operation - one where people just help themselves to land whilst the other occurs in well developed informal settlements or formal settlements where the owner gets access to property and rights to settle informally.
- The second form of access is monitored through a form of access control a governing body and may involve a newcomer signing an agreement. This may or may not include payment
- Clark asserts hat such verbal arrangement result in increased insecurity as the occupier does not know what his rights are.
- That householders consider that their home is worth more than they paid for it.
- That the transactions focus on access to land for occupation and use, rather than for housing.
- That instances of vacant houses being occupied, or downward raiding, was uncommon.
- That the cost of housing on the informal exchange market ranged between R2 000 and R5 000 in informal settlements studied, and up to R20 000 in formal settlements. This cost of housing on the informal market for formal housing is equivalent to ABSA valuation estimates for the better located houses in Umlazi (Interview with Felix Mtshali 2001).
- Due to insecure tenure owners tend not to upgrade homes.
- That experience of formal forms of title had been negative particularly that of renting. Yet full title was considered the most desirable form of tenure.
- Finally, that informal land markets are a cheaper more efficient way for low-income earners to enter the land market than the formal market.

By enlarge Clark's Study confirms some of the main observations of the Folweni study especially the contention that informal land markets exist because they are the cheapest or easiest option considering the circumstance of low income earners. However the sample used was small and may not have picked up the major trends within the settlements studied. Secondly Clarke's study occurred before the subsidy housing development had built up momentum. Furthermore Clarkes's study did not include houses which had been bonded or which were financed, such as in the case of Folweni.

In 2000 the Built Environment Support Group commissioned a report which investigated consolidation processes affecting Government subsidies in 'in situ' and green field housing projects in Durban (Walker 2000). This report focussed upon home improvements made by subsidy beneficiaries in 500 households, and the factors that aided and constrained such consolidation. Though the study did not specifically deal with the informal land market, the study did raise a number of issues experienced by the low income earners interviewed that impacted on the land market some of which were borne out by the Folweni Study:

- Firstly, 60% of the group sampled had found that their financial position had worsen since they had moved into a subsidy unit.
- Secondly, only 9% of the survey saw the unit as an investment.
- Thirdly, 5% percent were not the original subsidy beneficiaries and therefore had gained the house illegally.
- And 47% of the sample said that it would be more difficult to sell the unit.

The report shows the difficulties experienced by the poor in selling their property despite being located within the formal market system. However the extent of the informal sale of subsidy housing in Durban is still in the process of being assessed. In a study carried out by the Durban Metropolitan Council of a subsidy housing scheme at Quarry Heights consisting of 1856 subsidies it was discovered that two percent of the subsidies were involved in informal transactions (Snijder 2001). Of these transactions:

- Three units were sold on for R4 000 rand well below the subsidy price.
- Three units were occupied by friends or relatives.
- In three instances units had been swopped.
- While one empty unit was simply occupied.

The misuse of subsidised housing within the informal land market does not appear to be an isolated case, as Neil Hazel of the Cato Manor Development Association (CMDA) has attested to. He has stated that subsidised housing in Cato Manor is part of the informal land market (interview with Neil Hazel 2001). However, he states that due to fear of reprisal people do not speak to the authorities about the informal land exchange (ibid). Similar misuse of subsidised housing have been identified by James Copely and Paul Brink at Besters Camp in Inanda (interview with James Copely and Paul Brink 2001) and by Leonard Balakisten at Piesangs River. (Interview with Leonard Balakisten 2001).

In 2001, BESSG executed a further small scale survey of informal land markets in Cato Manor and in Edendale in Pietermaritzburg (Snijder 2001). Three issues were investigated. First was the land lords perception of landholding. Second, tenants were asked how they acquired their dwellings. Thirdly a household profile was developed. Due to the small scale of the sample it was difficult to draw conclusions though it was apparent that informal land markets occur both in Cato Manor and in Edendale. Ownership of land was through inheritance, while rental was provided in the form of backyard shacks, as was the case in Umlazi. Advertising was done through a social network, or through lawyers. In Cato Manor there was the situation where the land lord would provide rental though he did not own the property. This observation was confirmed through anecdotal information from Neil Hazel and Adrian Masson (interview 2001) who related how a man acting as 'a caretaker' for a house in Bellair Road sublet the house to seven others and constructed two further buildings over the plot boundary to accommodate these people. Finally, there was a general reluctance amongst owners interviewed to sell their houses as the owners had occupied the sites for extended periods of time.

A critique of this study is that it chose too small a sample to establish meaningful patterns of informality in the areas investigated. Furthermore, comparing Edendale which has never been under the threat of removal, has a longer history linked to colonial missionary land and freehold title and is more directly linked to the adjacent rural areas, with Cato Manor - the main restitution claim in the centre of the busiest city in the Province - is like comparing opposites. Perhaps what would have been a better approach would have been to build on the research of Clark (1996). An investigation into how informal land markets function in other settlements especially those in peri-urban areas so as to form a composite collage of informal land mechanisms across the Durban Metropolitan Area would have been more appropriate for current debate.

A further dimension to the land market in Durban, which has been described anecdotally and that has been mentioned in passing is the disregard by homeowners of their boundary lines (interview with Hazel 2001). This can include the altering of the boundaries and, therefore the recorded cadastre, to allow for a drive-way through a public park (ibid) or the construction of buildings over building lines (ibid). Of course such transgressions are not limited to low-income housing, but are still examples of how informalities may influence the informal land markets. In the case of ignoring boundaries, this effectively means increasing the size of the property or building which will in turn increase the value of the unit.

4.7.2 Provincial and Local Actions Affecting the Informal Land Market

There are a number of actions both legislative and administrative that have been undertaken by the National and Provincial Governments as well as by the Durban Metropolitan Council which directly influence how land markets function in the city.

The regularisation of the land market in the peri-urban areas has been severely limited by the 1994 Ingonyama Trust Act which placed the control of the development of land within the former KwaZulu in the hands of the the Zulu King (Harley & Fotheringham 1999). No development upon a piece of land can occur without his consent (Smit et al 1996). This has constrained development within former KwaZulu areas due to the long periods it took for the King to pass development application forms. An added difficulty, has been the mistaken inclusion into the Trust of the former R. 293 urban towns. As a result of the requirements of the Act governing all areas included in the Trust, all housing development and service upgrading ceased until the necessary land agreements could be concluded with the King.

In order to address the shortcomings of the Trust, two amendments to the Act have subsequently been passed so as to speed up the development process (ibid). The sole trusteeship of the king has been replaced with the creation of a Board who have developed policy guidelines to consider development applications on land falling inside the Ingonyama Trust. The former R 293 towns were in terms of a proclamation transferred to the province and municipality to allow housing and other development to take place. With the increase in size of the Durban Metropolitan Area following the work of the Demarcation Commission in 2000, a large portion of land which was formally under KwaZulu, the Ingonyama was ceded to the Durban Metropolitan Council to administer, which in turn has speeded up service delivery in these areas (interview with Leonard Balakisten 2001).

A further constraint to development in formalising tenure and land markets in Durban and KwaZulu-Natal as a whole is that the Provincial Department of Traditional Leaders and Environment Affairs does not recognise LEFTEA (1991) as a means of speeding up and formalising land development in the former KwaZulu. In the rest of province LEFTEA is applicable though a peculiarity of KwaZulu-Natal is that the act is interpreted in terms of its first chapter, treating settlements as informal settlements and not using the provisions of the second chapter of the act (Smit et al 1996). ULTRA (1991), however, is able to be used in KwaZulu-Natal (ibid).

Another unique challenge to dealing with land issues in the Durban Metropolitan Area and in KwaZulu-Natal as a whole is the use of Zulu Traditional law in describing and executing land transactions. According to Peter Rutsch (interview 2001) this law is based on the notion that one has a right to the occupation of the land and that no one can take that right from you unless you die or commit a crime. That right to a specific piece of land is inherited through the family while a family manager/ kraal headman will be responsible for recognising the holding of that land. This is significantly different to the modern system of tenure linked to a cadastre which is supposed to be the national norm and gives one differing levels of rights to land. It is not surprising that there is an informal land market if the land laws within a community do not match with the official law. In a sense, this inconsistency strengthens de Soto's (2000) call for traditional legal concepts of property to be brought within current 'official' land law.

At a Metropolitan level, a set of projects have been developed by the Durban Unicity Housing Department to meet the 'housing gap' between the minimum standards for housing laid out by the KwaZulu-Natal Provincial Housing Department and the standards required by the Metropolitan Authority for the maintenance and provision of basic services (interview with Peter Hoffman 2001). This has resulted in a number of projects which seek to formalise informal settlements and to upgrade former in situ-housing developments. One of these is the Folweni Upgrading Project (interview with Leonard Balakisten 2001).

4.8 CONCLUSION

It is apparent that the question of the informal land market is complex and occurs in a number of situations and levels, from the exchange of shacks located in informal settlements through to subsidized housing. The defining feature of the informal land market in South Africa is that it is synonymous with poverty and that it occurs in a

system which has a legal system geared towards the creation of capital from land that in general ignores the poor, placing land prices and legal registration of land out of their reach. In effect, the present land legal system accentuates the dualism between the informal and formal land market. This has been despite government efforts at National, Provincial and Local Level to meet the land and housing needs of the poor. In turn, the poor have created numerous informal arrangements to obtain land that fall outside the land legal system. From this perspective, there is a desperate need in South Africa for a legal framework which interprets, accepts and regulates the real land market transactions on the ground. Such a framework would be guided by the arrangements and principles of the informal market and amalgamate the appropriate aspects of it into the mainstream system. In order to do this there has to be a clear understanding of how the current informal land and housing market works and Folweni provided a valuable opportunity to research this problem.

5.0. FOLWENI'S CONTEXT

Folweni is a formally laid out satellite town located ten kilometres West of Durban's South Industrial Basin in what was the former KwaZulu Self-governing territory in the Umbumbulu Tribal Authority. The town is located adjacent to the R603 road which links Durban, Umbumbulu and Pietermaritzburg, with the Mbokondweni River flowing to the North East of the settlement (von Riesen & Jewell 2001). The topography is characterised by steep sided valleys and ridges. It is upon such a ridge that Folweni is draped (see photo 1). As flat land is at a premium, certain sections of the town are located on the steeper gradients of the valley sides. The following introductory section provides the contextual analysis for Folweni, which includes a historical overview of the settlement and some of the influences that have affected its development. It is followed by an outline of the method undertaken in executing a socio economic and land within survey the casestudy. An evaluation of the data and some conclusions about the operation of the informal land market are then drawn out.

Photo 1:

Example of steep sided topography in Section C. Note the provision of electricity and the eroded nature of the footpaths in the area.



When the township was initially constructed in the early 1980's, it was built on land which formerly jointly belonged to the Amanzimtoti Mission Reserve and Sobonakona Makhayana Tribal Authority. The R603 main road forms the north and north eastern boundary of the town. In its initial phase, the town was administered by the township manager offices located in Umlazi. (ibid. 2001)(see Map 4 on next page)

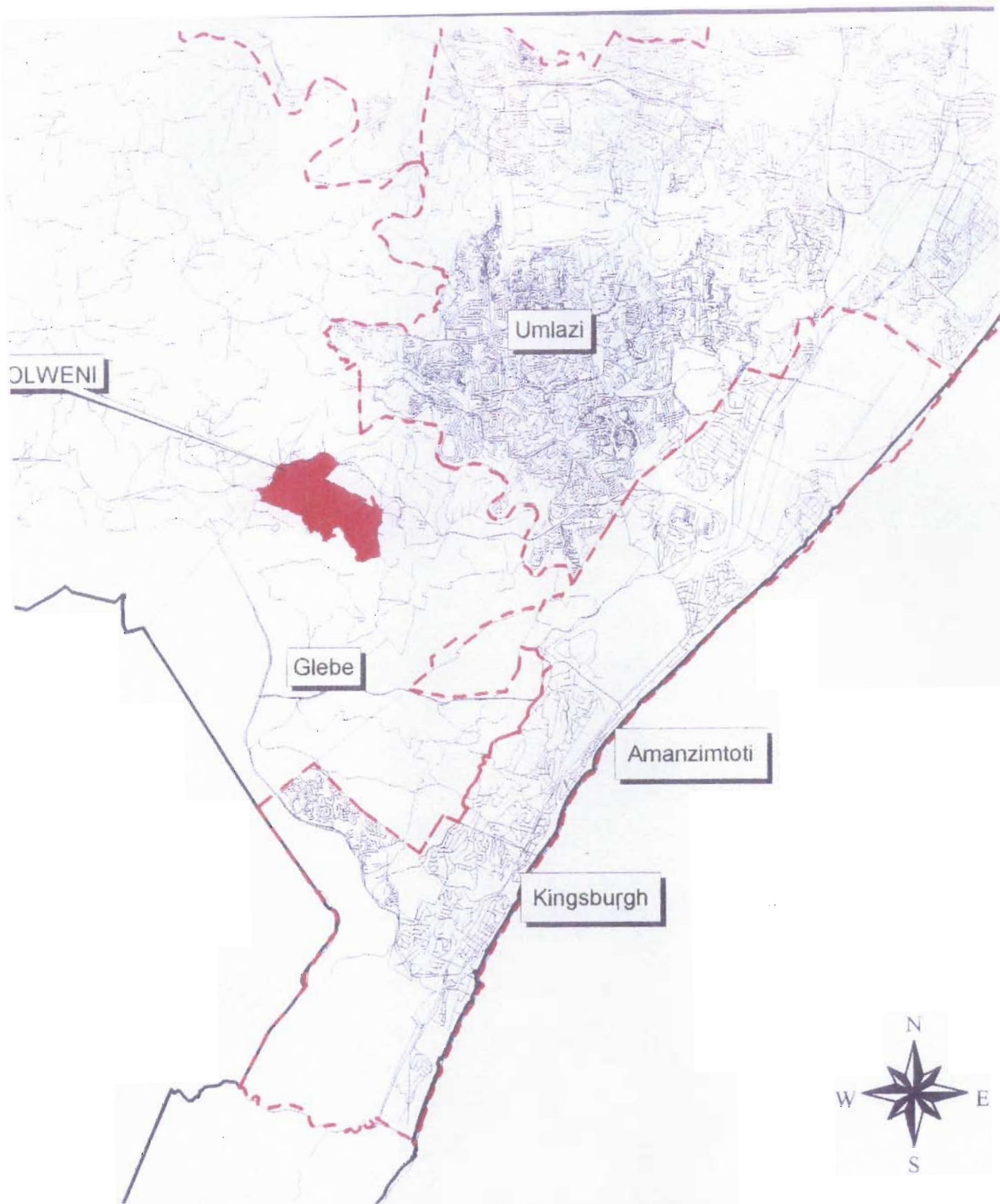
Folweni itself is divided into three sections: with A Section to the West, being the oldest section, B section as the middle unit, and C Section to the South East being the most recent addition to the town. Individual plot sizes in the town are approximately 12m by 16m (Surplus Peoples Project 1983). Housing stock in sections A and B are mainly owner built whilst of those dwellings in Section C, a number were privately constructed. These houses were built in the early 1990s by private sector companies such as Toyota and GUD Filters who gained access to the land through an agreement with the Tribal Authority and financed the housing for their employees through Ithala Bank. In Sections B and C there are also a few temporary emergency houses which were constructed in the wake of the Demoina floods in 1984 (interview with Peter Rutsch 2001). In all the sections of the town, there is evidence of multiple dwellings being built on individual lots. As the sites are small and the size of households large, encroachment onto adjacent property has become a common problem.

Service levels vary across Folweni, though standards tend to be low in comparison to other towns such as Umlazi to the North. Water is provided in the form of stand-pipes; electricity is available across the settlement though there are problems regarding nonpayment (photo 1). Generally

Photo 2:
The placement of pit-latrines is problematic and is responsible for much of the encroachment in Folweni, as in this photo,



where the toilets are clustered against the boundaries (section B).



FOLWENI TOWNSHIP: SOUTH OPERATIONAL ENTITY

LOCALITY PLAN

Atelier Von Riesen
3 York Road
Clifton Park
Gillitts, 3610 Ph. 031-767 1308

Date: August 2001

Plan No. 2

sewerage disposal is through use of onsite pit latrines, though in C section there is a package plant which serves the houses built by the private companies. The disparate services levels are a matter of concern to the community. Part of the development project that is currently underway in Folweni aims to provide water borne sewerage to every one of the 5 520 sites in the town (photo 2). Besides the main tarred roads through the settlement, the other roads are gravel or dirt, which was a particular concern to a number of respondents from the community.

In terms of public infrastructure Folweni is lacking. Though there is provision for three clinic sites, only one is operational and has erratic hours. This is totally inadequate to serve the current population of approximately 40 000 (von Riesen & Jewell 2001) particularly since the impact of the HIV infection is beginning to show itself within the

Photo 3:
A Laundry and a hair salon operating within Section B.
This is part of the limited business activity occurring in



community. There is no police station in the town, and there are calls for better schooling facilities (respondents). As far as business and job creation in Folweni are concerned, these are limited to small shops, general stores and service businesses such as a laundry (photo 3).

There is a petrol station adjacent to the main entrance to Folweni but it does not allow Folweni residents to use it as it is operated for taxis. (personal

communication with Thulane Mthembu 2001). In a recent storm the external structure of the garage were destroyed and there are plans to rebuild it. It is proposed that an additional site for a Petrol Filling Station will be found as part of the upgrading of the town. Furthermore land which was earmarked for business or industrial use has not been developed because of the lack of security of tenure.

In a sense, Folweni is a typical example of apartheid planning where Africans were placed in satellite towns, as labour for white industry and commerce. For Folweni residents they were supposed to supply labour to the businesses in Durban and in Durban's South Industrial Basin. The population in Folweni is poor. A socio economic survey undertaken as part of this study, showed a 75% unemployment rate among respondents, though the majority of those who were employed worked in the South Industrial Basin. Politically, Folweni is aligned to the ANC which indicates that it is a working class settlement. This is unusual as the township finds itself within the former administrative area of KwaZulu which tended to support the Inkhata Freedom Party (Folweni Project Rally 2001)(Peter Rutsch 2001)(interview with Copley et al 2001). Though the settlement was originally under the governance of KwaZulu as part of the Trust holdings, since 1998, the township has been under the administration the Durban Unicity when the land was transferred from the Ingonyama Trust Act to the municipality as part of major land agreement.

5.1. THE ESTABLISHMENT OF FOLWENI

The history of Folweni is strongly influenced by late apartheid planning and the programme of forced removals instituted in the early 1980's in KwaZulu. In 1979, Malukazi, a dense informal settlement immediately South of Umlazi was incorporated into Umlazi by the South African Government (Surplus Peoples Project 1983). Those who had holding rights to the land were subsequently offered alternative accommodation in Umlazi. However, the tenants of the holders of land rights, who consisted the majority of the informal settlers, were not given any alternative shelter. These people managed to stay on the land for a further two years. In 1981, the KwaZulu Government, not National Government, gave three months notice to the approximately 27 000 people, then demolished the settlement (ibid.). Those people who met certain criteria were dumped at Folweni. According to the Sunday Tribune (24/08/81)(in Surplus Peoples Project 1983.)

"Only people who are legally married, either by Christian rites or customary union, qualify for plots at Folweni. The fate of the others - there are thousands of them - hangs in the balance."

The resettlement to Folweni in 1981 to Section A and parts of Section B was only for 1 600 sites. Though later in 1982/3 the rest of Section B and a substantial portions of Section C were laid out. Though the Folweni settlement was seen by the KwaZulu Government as a model for site and service housing schemes, where the Government provided the services and the people built their own houses (SPP), the KwaZulu Government downplayed the fact that people had been moved against their own will (ibid.). In the case of Folweni, KwaZulu in collaboration with thte then Department of Development Aid (DDA) provided the layout and general plans for the settlement, a dirt road network and water in the form of stand-pipes. However whereas site and service schemes in other developing countries have been seen as a way for under-resourced Governments to deal with rapid urbanisation, the Folweni site and service scheme was merely an excuse to fulfill apartheid segregation policy with minimal expense. This interpretation is strengthened in that it was only due to the intervention of the project team that water was actually provided to the sites. (interview with Barry Isherwood 2001)

Originally, Folweni was to be designated as a formal R293 town like Umlazi or KwaMashu, with the occupiers receiving deeds of grant as tenure (interview with Peter Hoffman 2001)(interview with Peter Rutsch 2001). However, due to the intervention of Chief Sobonakona-Makhanya, whose land the new town was on, and who wanted to retain tribute from the owners of the plots, the town was never designated as an R293 town (communication with Annette von Riesen 2001). As a result, the 'owners' of the plots received tribal tenure in the form of Permission to Occupy Certificates (PTO's). This meant that legally the owner was not allowed to sell his or her house or use the land as a means to obtain finance from banks. As will be shown, these limitations have been ignored by a proportion of owners of properties in Folweni. A further anomaly with the laying out of Folweni was that no-one appeared to investigate the nature of the underlying cadastre, and that the General Plan of Folweni was simply layed on top of land holdings from the old Amanzimtoti Mission Reserve (interview with Barry Isherwood 2001). Similarly, it was reported that people who had used the land prior to the establishment of Folweni, had very little compensation for the land used for

Nazim
Case

the housing development and were bitter, concerning the loss of agricultural land (Surplus People's Project 1983).

The remainder of the period of the 1980's was marked by waves of violence between the ANC and the Inkhata Movement in Folweni and in large parts of KwaZulu. This violence was only brought to an end with the implementation of a Government of National Unity in 1994. Due to the violence and a lack of resources in the relevant government departments little development occurred in Folweni. The exception to this lack of development, was the construction by certain major private business in the early 1990s, most notable Toyota, to construct homes for their employers (von Riesen & Jewell 2001). This project was financed with the aid of Ithala Bank and the Urban Foundation (Interview with Barry Isherwood 2001) and was undertaken in C section. Irregularities related to land tenure rights and the quality of the construction did however emerge concerning this development. The repercussions of these shortcomings are still being dealt with today. Those who bought houses under the scheme were promised that they would receive freehold title from the transaction. However, what the buyers ended up receiving were PTO's (interview with Peter Rutsch 2001). This resulted in a legal challenge by the holders of the land against Ithala Bank (interview with Peter Rutsch 2001), and a bond boycott on the repayment of the houses by those who mounted the challenge. The case still continues ten years after the docket was first opened.

The election of the National ANC Government brought the promise of development to the majority of South Africans. This was especially so for ANC communities such as Folweni. But development was slow to come to this town. This was due partly to the extent of the development backlog, but also because Inkhata controlled both the Provincial Government of KwaZulu-Natal and the Ilembe Regional Council under which Folweni fell, which made it more difficult to receive development assistance for ANC communities. In terms of the Umbumbulu Sub-Regional Strategies Development Plan for Ilembe Regional Council, Folweni was interpreted in terms of being part of a hierarchy of rural service centres (MXA-VISTA 2000) with Umbumbulu Town, to the west of Folweni seen as the key service centre for the subregion. Instead of seeing Folweni as a satellite town of Durban, the town was interpreted as a Small Emerging Rural Centre (ibid.). The Regional Development Plan does however recognise that the responsibility for the development of Folweni would devolve to the Durban Unicity. Subsequently, with the national demarcation of local and regional government in 2000,

the southern portion of the Ilembe Regional Council has been subsumed into neighbouring Local and Regional Councils. Folweni and the surrounding areas then became part of the Durban Unicity. The politics of land control and access to development of land in Folweni also occurred at another level. In 1994, prior to the establishment of the Government of National Unity, the KwaZulu Ingonyama Trust Act was passed, which meant that any development in Folweni had to be sanctioned by the Zulu King. This placed further chains on the development of Folweni despite amendments to the Act (von Riesen & Jewell 2001). In 1998, a land availability agreement was signed between the Durban Unicity and the KwaZulu-Natal Provincial Administration releasing Folweni from the Ingonyama Trust Act, so the town could become the development responsibility of the Unicity.

This action has led to the initiation of an extensive development project which was first proposed in 1998, but only commenced in 2000, and has been championed by officials in the South Operational Entity (formerly the South Local Council). It focussed on service provision, and more importantly for this study, on the upgrading of tenure. The formalisation of tenure was undertaken in terms of ULTRA (Act 112 of 1991) which had only been used previously in Groutville, located on the North Coast. In order to utilise this law, there had to be an existing General Plan and some form of lesser tenure like a PTO - which is deemed an 'occupational right' in terms of Act - was in existence. Folweni had both these requirements. The required amendments would be made to the General Plans of Folweni in terms of correcting encroachment and making the General Plans compatible with the national cadastral system. The use of the Act also enabled the upgrading the titles of those in Folweni from PTO's to freehold title. One complicating factor has been that a community land claim has been lodged on certain plots in Folweni under the Restitution Act (1994)(von Riesen and Jewell 2001). This is due to irregularities in the original layout of the township. In all likelihood, these claimants will receive monetary compensation or alternative land. A more important complicating factor, and the reason for this case study, was that residents in Folweni have unequal title. Some do not have a PTO, or they had lost the PTO, or the PTO in possession were registered in someone else's name (interview with Peter Rutsch 2001). This means that people have either just moved in and occupied sites illegally and/or there is an informal trade in land in operation.

It is noteworthy that It was the first time that ULTRA has been successfully used in KwaZulu-Natal to actually deliver title. (personal communication with Annette von

Riesen 2001). As indicated previously the Act is also being utilised to formalise tenure inequalities in Groutville.

5.2. METHOD UNDERTAKEN FOR THE CASE STUDY

The case-study arose out of the assumption that people in Folweni were involved in informal land exchange outside the rule of law. Considering that the town had been in existence for just under twenty years it seemed feasible that some form of land exchange must have occurred. To establish the nature and the extent of the informal land market, and to test the validity of the assumption, a questionnaire survey was undertaken.

Initially, it was decided to undertake a sample survey of 80 questionnaires using a quantitative approach, with 40 sites in Section A of Folweni, and 20 each in Sections B and C. It was decided to spread the sample in this way, because section A was where the original serviced sites were layed, and was the most likely place to have an informal land market. It was also the section which had been occupied the longest. Sampling procedure would require questioners to visit every x-site depending on the number of sites in each section. If that person was not present, the site to the left would be used for the purpose of the survey.

Since the initial method was decided upon, there were a number of changes, which came into effect as far as the survey was concerned due to: financial limitations, the intervention of the Folweni Project Committee and the people employed to execute the questionnaires. Firstly the size of the sample increased from 80 to 360 sites. Secondly, the number of field-assistants required rose from one to six. The field assistants - Andreas Maphumulo, Octavia Lembedi, Nompumelelo Mthembu, Sibusiso Nkomo, Happy Nene and Sandile Dube were chosen from 46 applicants all of whom were resident in Folweni,. They were people who had access to local information and had tertiary education.

At a training session lunch for the field assistants the background to the study was outlined and the nature of the survey explained. This was followed by a trial run of the questionnaire, and information as to what to do on the completion of the questionnaire was discussed. The session also included a workshop on how to execute an interview which expressed the importance of the introduction; the need to listen carefully; the

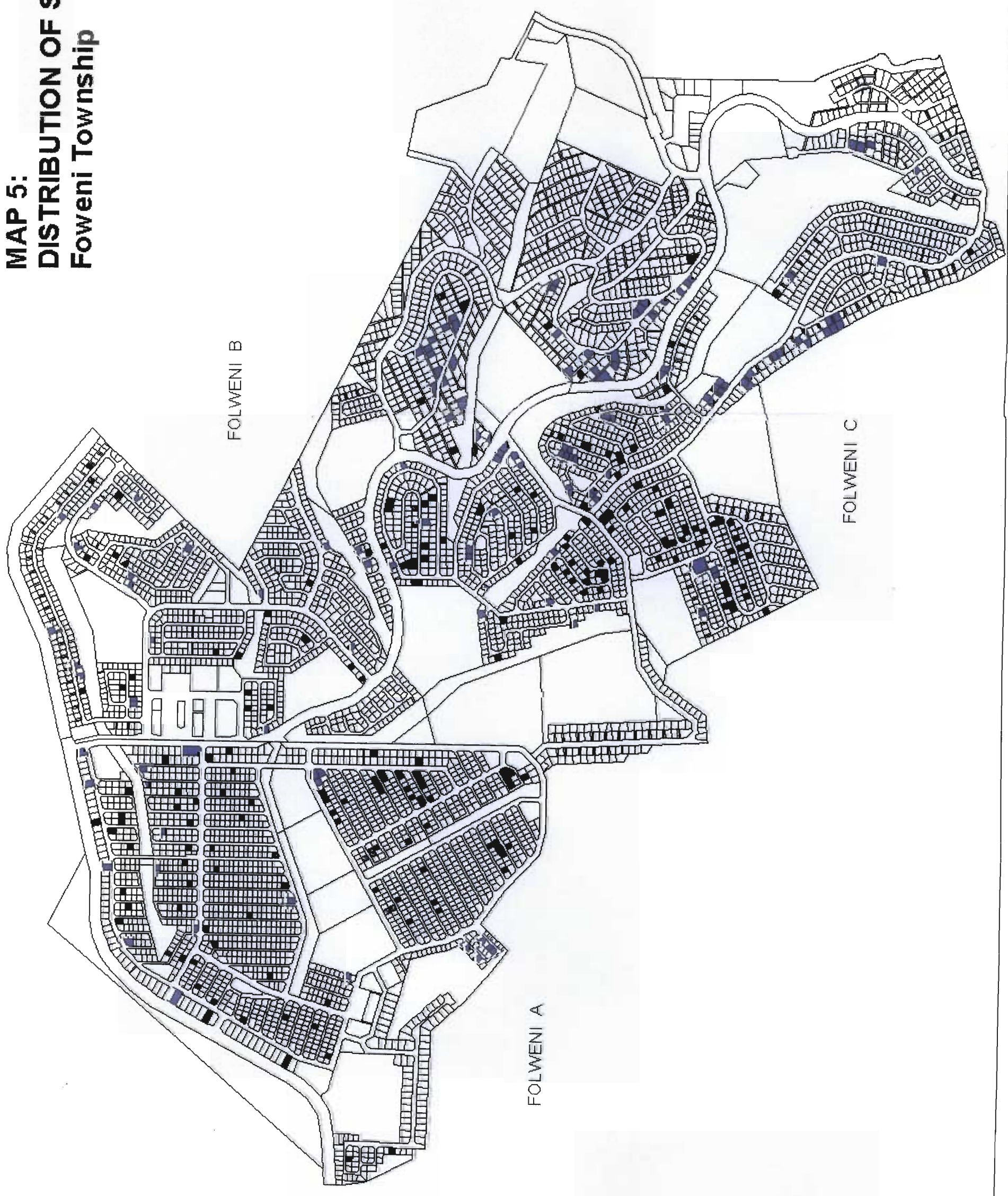
need to get people interested; to express empathy with those interviewed; to execute the interview when people are most likely to be in; to record what people said accurately and if the researcher did not know the English word to simply write the answer in Zulu. Furthermore, the field-workers were asked to illicit an answer or get a response to the following questions and issues:-

- How do people exchange houses/land in Folweni?
- Is it the houses, or land or both which are being exchanged?;
- Are there estate agents at work in Folweni?;
- If yes what do these agents do?;
- Are you interviewing an owner or a tenant?
- Ascertain the relation between the people and the land; and,
- Finally to describe any issues concerning access to land.

As a result of the training session a number of changes were made to the sampling procedures. Due to the field assistants wanting equal pay for all, it was decided to have a sample of 120 sites per section so as not to bias the payment of one individual. Though this does bias initial assumptions, that the informal land market would be most pronounced in A Section, this change helped to ascertain more accurately what was occurring in Sections B, and C where housing was built by companies for their workers. These changes aid one in assessing the level of trade in low cost housing especially in light of Walker's (2000) and Snijder's (2001) observations of the market in low cost housing schemes.

Not all the field assistants had mapping skills so it was decided that the questioners should focus on distinct clusters of houses in each section instead of counting every seventh site. If the person was not in or unable to answer the question the researcher went to the next house. Furthermore it was decided that there should be a team of two researchers per section One researcher should be from the section (e.g. A Section) and the other should be from another section of the town (e.g. B or C) so as to obtain a balance between the advantage of being familiar with a particular area, and the advantage of being a neutral observer in a relatively unknown section. Each of these researchers then chose different areas within each section. The resultant sample was remarkably well spread across the town as is shown in Map 5 (see next page) Only a small area in the Northeast corner of Section C was not included in the sample. Prior to the researchers going out into the field the researchers were told not to raise the

**MAP 5:
DISTRIBUTION OF SAMPLE:
Foweni Township**



expectation of the respondents as to what would be delivered. Furthermore, the respondents would be told that the information collected would protect their anonymity and they would therefore be safe in providing their names and personal details.

In terms of the questionnaire itself, it was set out as a quantitative sample of 56 questions with a number of single responses and a number of open-ended questions (see Appendix 1 for examples of a questionnaire.) Part One of the questionnaires considered demographic information, looking at issues concerning gender, and employment and the respondents level of education. It must be noted that a distinction was drawn between the length of the stay in Folweni, and the length of the stay on the site to ascertain whether or not there had been substantial movement within Folweni itself. In other words a distinction was drawn between those residents who had moved into Folweni from other areas in Durban and beyond, and those who had simply moved site inside the town itself. In Part Two, background questions looking at issues of migration and feelings towards Folweni were considered. Part Three concerns tenure related issues and dealt with ways of obtaining access to land and housing, the form of land holding and cost related issues. The final section, Part four, considered service provision and the respondents' knowledge of the development project in Folweni, and the respondent's opinions of tenure issues.

Following the training session, the field assistants executed the questionnaire in Folweni. All 360 of the forms were returned completed within a month despite that they had been given a sixty day period to complete the work. In an assessment session after the completion of the questionnaires, the researchers said the respondents had been suspicious of those asking the questions, especially when asked about the amount paid for the house or land. There was also agreement amongst the researchers that people did sell their houses to others, though the majority had built their own houses. However, the issue which appeared to be raised most by the respondents to the field researchers was the need for the provision of specific services like sewerage and better roads.

In terms of an overall assessment, the standard of the data was remarkably high considering the limited supervision given, the one month time period in which the study was completed, and that English was a second or third language for the researchers. A shortcoming in the collection of the data became evident in questionnaires 240-300.

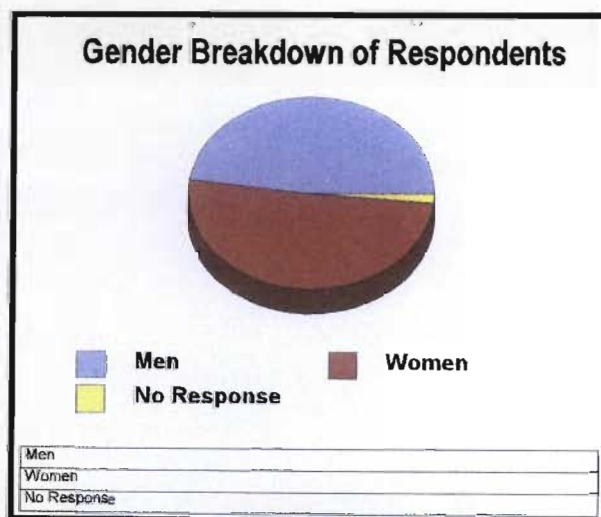
It is clear that the field worker doing data collection in a portion of Section C began to use generic answers to the open-ended questions. This has inevitably skewed the data as regards to the validity to the responses to these questions and could be considered as a shortcoming. It must be recognised when the results for these questions were included in this report, they will exclude the flawed responses in questionnaires 240-300. The level of deviation in the sample is presented in Appendix 2. It must be emphasised that the deviation is only for specific open-ended questions while the rest of the data appear to be correct. On the whole, the sample for the case study was remarkably free of problems considering the relatively large size of it, and the reliance on outside researchers who were untested.

The 360 responses were interpreted through the use of a SPSS database package. This meant transcribing the data output onto the database, then using basic statistics to obtain general relationships pertaining to the sample. Use of this software enable the drawing of conclusions concerning the Folweni sample, and more importantly the nature of the informal land market in that town. A strength of the sample in the analysis stage, was its size and the wide spread of it across the three sections of town, which gives the generalisations made, greater weight. This is likely to provide a truer reflection of what actually occurs in Folweni as regards the land market.

5.3. THE NATURE OF THE SAMPLE

5.3.1. The Respondents

In terms of the gender of those who were interviewed 48.6% (175) respondents were men, and 50.8% were women(183) whilst two respondent's (.6%) gender was not recorded. The pie chart shows the percentage breakdown in graphic form. This is a remarkably well split sample. Part of the reason for this, may be that three of the field researchers were men, and three women. Arguably it would have been easier for each researcher to speak to



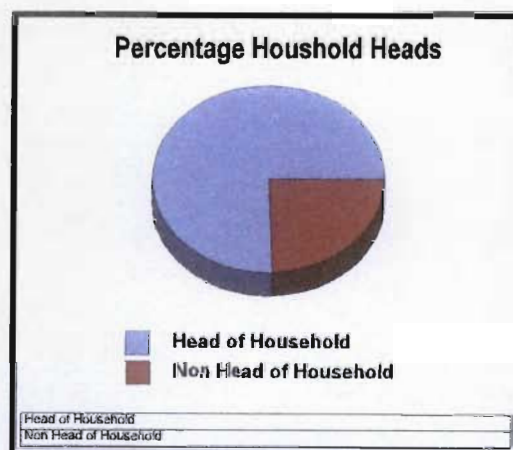
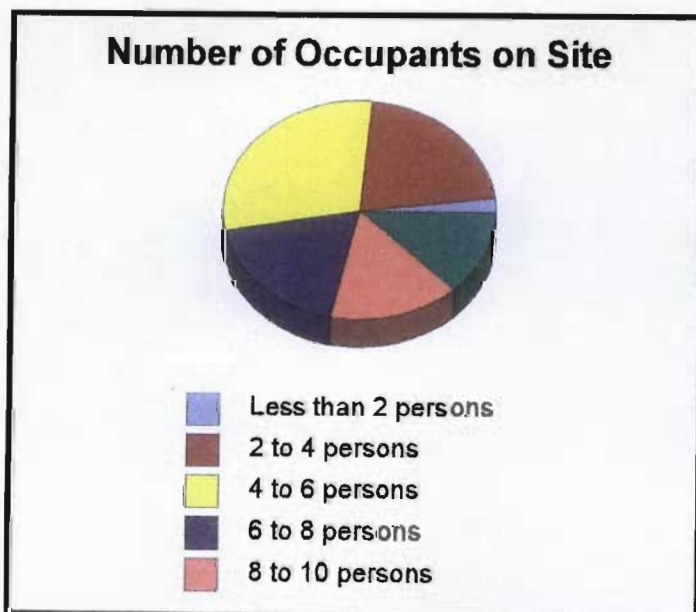
Graph 1

their respective gender, and hence the near equal numbers of women and men questioned in the sample.

In terms of age, 48% of the sample fell within a range between 35 and 55 years of age. Outside this age range the next most important categories were the 55-65 age group and then the 25-35 age brackets. The least represented age groups in the sample were the 18-25 age group (5.6%), and those older than 65 years old (7.8%). As the field workers had been asked to target the head of the respective households, this range of ages could have been expected, as it represents those people who might be employed and be able to establish a family.

The majority of those sampled claimed to be the head of the household (76%) which indicates that the researches had carried out their mandate. This high figure is significant for the study as it is the head of household who would be most likely to take the decision to sell the house or to rent it. Of course, defining what a 'household head' is, can be problematic in that it may be interpreted in a number of different ways. Within this study, it was taken

Graph 3



Graph 2

to mean the person who took decisions about the site on which the house/s was built. The breakdown of head of household is shown in the adjacent diagram.

5.3.2. Nature of the households

The quality of homes of those living in Folweni vary greatly across the settlement. In some circumstances, homes are substantial in size and have been built by professional builders. However, the majority of the households, constructed the buildings themselves and the standard of these dwellings also varied from substantial houses of a high standard, through buildings constructed of wattle and daub, to shelters built of corrugated iron sheeting (see photos 4 - 7). The sites as mentioned, are on average, small in size which places a physical limitation to the number of people who might occupy the site. Of the sample, 105 respondents (29.2%) had between four and six people on the site, whilst 78 respondents had 2- people on the site. Yet the remainder of the sample (46%) had more than five people staying with them. 12.5 % of the sample had more than ten people in residence on the site. This suggests that there is an overcrowding problem within Folweni, and that as a result, there would be pressure for people to move out of these houses and find houses of their own. This assumption is borne out when the respondents were asked what the benefits of the project would be, and a number said that the project would enable family members to get sites and housing of their own(Photos 4-7 located on the next page) thereby reducing the overcrowding presently being experienced.

Not only are the households large in size, but many of them have been in existence for more than ten years, with 29.7% having been in occupation since the settlement had been laid out in the early 1980's. There does however appear to be a substantial number of respondents who had been staying on their particular site for the last five to ten years (21.4%). This may be related the building of company housing in the early 1990's. Over the past five years, 18% of the respondents had moved onto the site. It suggests that despite the overall sedentary nature of households, a number of respondents have moved onto their present sites recently, indicating the existence of a recent land market system in which they have taken part.

Photos 4-7:
Examples of differing standards of housing in Section A: 4. well constructed house; 5. corrugated sheeting shelter; 6. wattle and daub backyard shack; 7. example of dense housing settlement in Section A.

4.



5.



6.



7.



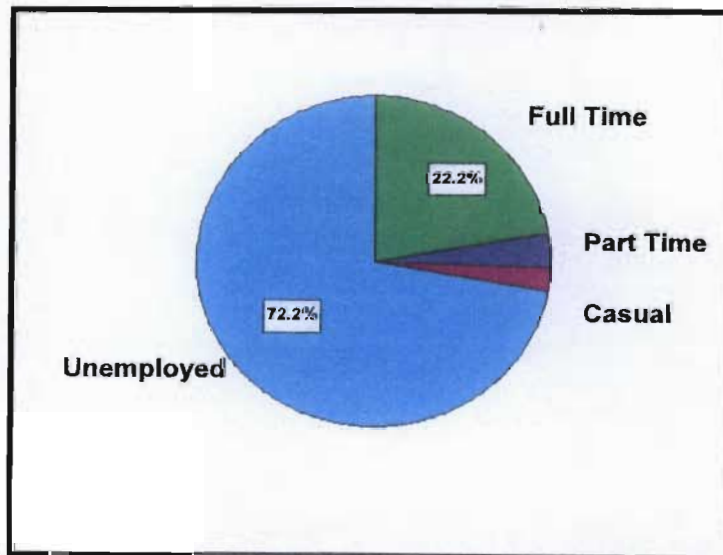
5.3.3. Migration to Folweni

A reason given for the formation of informal land markets is rapid urban in-migration from rural areas, which would increase the demand for housing in cities and in turn, stimulate the land market. This has not been the case in Folweni, where 80% of respondents came from other areas of the Durban Unicity. A contributing factor to this was the forced removals from Malukazi, where 23% of the respondents came from. Another important area within the Unicity is Umlazi where 15% of the sample originated. This may be due to its close proximity of the town to Folweni. The area of Umbumbulu and Hammersdale are considered to be part of the Unicity, though their inclusion is recent, and these areas fell outside the metropolitan boundary till 2000 when the new edge was demarcated. What the data indicates is that migration from within Durban is more important to the growth of Folweni than migration directly from rural areas.

Only 61 respondents came from outside of Durban. Southern KwaZulu-Natal was the main source of these migrations with those sampled coming from places like Illovo, Ixopo, Izingolweni, Pietermaritzburg, Port Shepstone and Richmond. Arguably Folweni's peripheral nature and location, would make it more desirable for those residents wanting to maintain a link to these areas within southern KwaZulu-Natal.

5.3.4. Employment and Poverty

Graph 4: The Level of Unemployment in the Folweni Sample



Unemployment in the sample stood at 72%. Only 22% had full time employment. A further 6% were employed as casual labourers or worked part time. The figures represent a major problem for Folweni as far as dealing with poverty is concerned, and in terms of the capacity of the community to meet its basic needs. For those who do have jobs these tended to be low paid relatively unskilled employment. The majority of those employed work in Durban. A large number of these work in factories in the South Industrial Basin. The most prominent company who employed respondents was Toyota. Other forms of employment included taxi and bus drivers, security guards, green-keepers as well as more professional employment such as nursing. In terms of the trade in land and housing, the high level of unemployment and the greater levels of dependency would correlate which means that the cost of housing is relatively low. In comparison to other areas where there are higher employment figures and greater savings power, the exchange of land and housing in Folweni is a rare occurrence. But this does not detract from the fact that there may be a land market in operation.

5.3.5 Arrival in Folweni

Considering that Folweni A and B were established in the early 1980's it is not surprising that 73% and 66% of the respondents arrived between 1980 and 1989 in these two sections. During the same period, 33% of those living in Section C entered the town. It was only during the 1990-1999 period that the majority of the respondents (57%) arrived in section C. Though during this period 22% of the sample in Section A and 30% of the sample in Section B arrived in Folweni. In the past three years 7% of respondents have arrived in Folweni: 2% in section A, 1% in Section B and 4% in Section C. This means that almost 10% of the representative sample arrived in Folweni in the past three years and suggests that there is a recent movement of people into Folweni who have need of shelter.

Despite this recent influx of respondents, what the above figures point to is a largely stable community who have been in occupation for approximately twenty years. This relatively long period of occupation since the 1980's, may increase the potential for a land market to develop as some people will want to move on, or have used their long period of occupation to create a rental market by leasing their sites or dwellings. What may mitigate against these assumptions is the level of poverty in the township and an inability to pay for a system of land exchange. The large size

of households may also hinder the ability of household units to move. Though, as has been indicated, there could also be pressure for children and their families to leave parents homes and get their own places to stay.

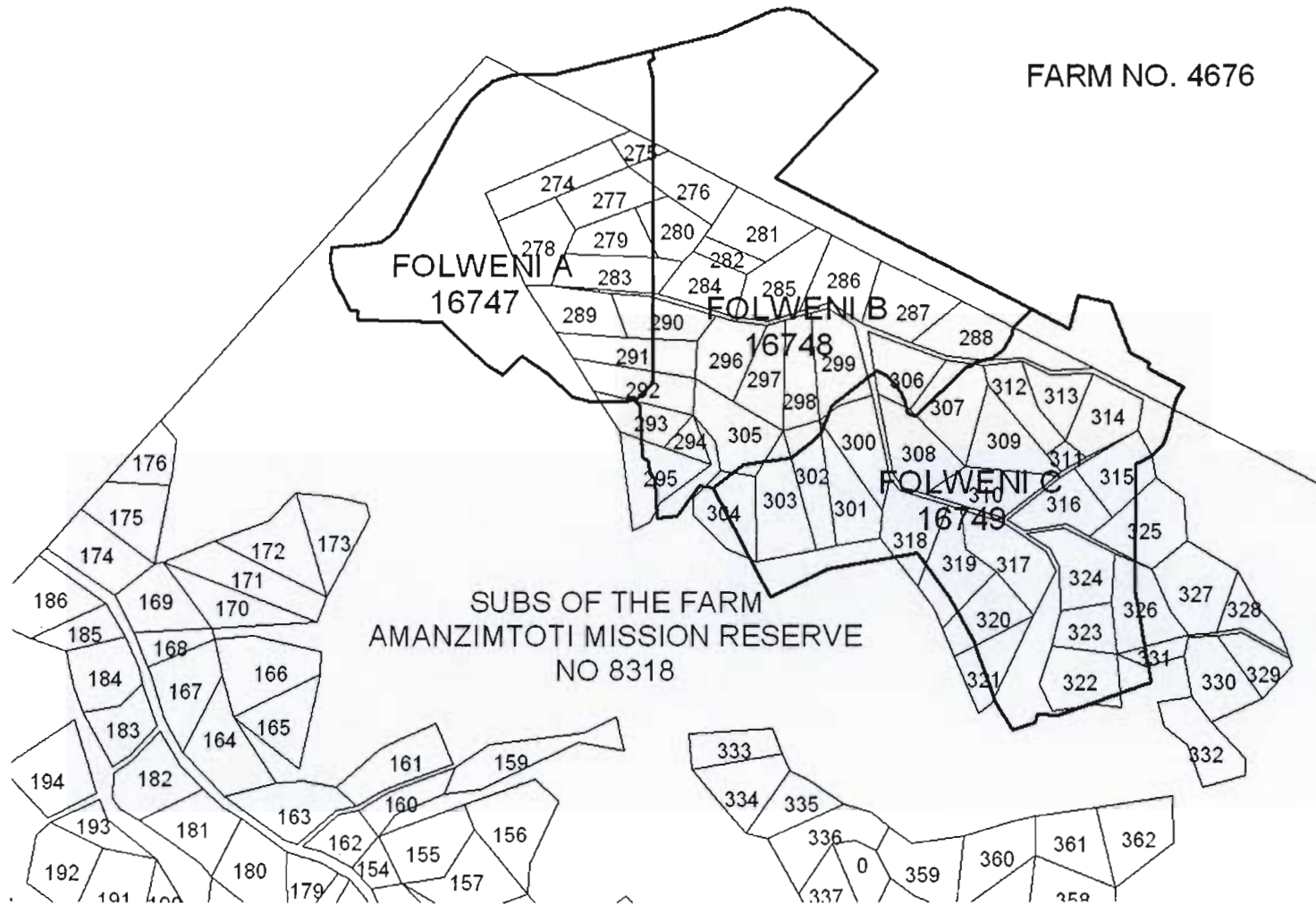
Despite the hardships and the levels of poverty in Folweni, over eighty percent of those in the sample indicated that they were happy to stay in the town. Yes, problems and concerns were raised by most, but when asked about their feelings towards the place the response was positive. It is impossible to estimate whether this response was made to please the field worker, though this is a possibility. Perhaps this positive response should be seen in relationship to the hardship which Folweni previously experienced in terms of forced removals and violence during the 1980's and expectations of the pending development project.

5.4. THE FORM OF INFORMAL LAND MARKETS IN FOLWENI

5.4.1. Overlapping Cadastre

Before one even considers informal land exchange in Folweni, the transactions would be considered illegal (ie. informal). The first reason for this is that the cadastre as laid out for Folweni displays no relation to the historical cadastre beneath (Map 6). When Folweni was initially surveyed, the surveyors ignored the underlying sub-divisions in the area which was jointly under the administrative control of the Sobonakona Makhanya Tribal Authority and the Department of Development Aid (interview with Barry Isherwood 2001). At the time of the establishment of the town, the land was considered to be 'tabula rasa' meaning without any sub-divisions or legal rights and this was not true. A number of PTO's had been allocated within the former mission reserve of Amanzimtoti No. 8318 also called Adams Mission. The creation of the new planning layout and General Plan ignored these original subdivisions of the Reserve and planned over it thereby creating an overlapping cadastre. Although the underlying PTO's were not formerly registered, it is a historical fact that freehold subdivisions made under the mission reserves were made null and void by National Government in the early 20th century and it is possible that these sub-divisions are of that nature. The planning of Folweni would have displaced the some of residents in occupation, whilst others continued to farm and occupy the land when it was incorporated in the new development. (Surplus People's Project 1983)

FARM NO. 4676



**MAP 6:
OVERLAPPING CADASTRE**

A further complicating factor was that Folweni was never designated as a town under regulation R. 293 due to insistence of the Chief. This meant that the town never had legal status and the administrative responsibility and jurisdiction over the town shifted between the Department of Development Aid, the Natal Provincial Administration(now called the KwaZulu Provincial Administration), the KwaZulu Government and the Durban Unicity. In terms of tenure all residents within Folweni received PTO's

One of the challenges which the current upgrading project has had to address is the land tenure reform. As part of its work, it has been faced with dealing with the issue of a restitution claim lodged under the 1994 Restitution of Land Rights Act for compensation for land lost to the original development of Folweni. At the time of writing these claims had not been resolved. Within the sample, there were 2% of respondents in section A, 2% in Section B and 6% in Section C who had occupied the land prior to 1980, which adds weight to the argument that the cadastre of Folweni is problematic.

5.4.2. Encroachments

The second problem with the cadastre of Folweni, which in turn affects housing markets is that of encroachments (Photo 8)(see map 7 on the next page).

Photo 8: Example of Encroachment where the house has been built into the road reserve. For an idea of the road reserve use the street lights in the



MAP 7: EXAMPLE OF AN ENCROACHMENT PLAN PREPARED FOR SECTION A - FOLWENI TOWN



Not only would encroachments be unacceptable in the more developed areas of the city where a formal land market of Glenwood or Unhlanga Rocks, they would be constrained by the existence of by-laws and buildings regulation that are in force. This is not the case in areas like Folweni where someone who constructs over his building line can charge more for a bigger plot, or more buildings placed on the extended plot. It gives the seller an unfair market advantage over the neighbour first and foremost, but also over those who build within their surveyed sites. In Folweni encroachment is rampant, particularly in Section A where a mix of small plots, big families, the prerogative to build given under the original self-help housing policy, the need for land to dig pit latrines and twenty years, have combined to make the problem serious. Whereas in section A the encroachments tend to be characterised by building into the road reserve (see Photo 8) or construction into adjacent property, in Sections B and C there is a tendency to build in public spaces adjacent to sites, or simply to invade open space (Map 7).

5.4.3. Tenure

The third technical issue which influences the informality of the land market is that of tenure. Sixty-seven percent of those surveyed claimed to have PTO certificates as a form of tenure. As has been described previously, one cannot transfer a PTO. It is a right conferred on 'subjects' by the Inkhozi or Induna. Therefore, the majority of those surveyed are legally not allowed to sell their homes. Yet some have continued to buy houses and rent out in contravention of the legal limitations of the PTO.

To rectify the above problem the current development project is correcting the cadastre bringing it in line with national standards, and perhaps more significantly, giving the occupiers of Folweni freehold title so they can become owners of their plots (von Riesen & Jewell 2001). In so doing, the project is correcting the past technical problems and addressing a historical legacy of unequal land rights, which prevented the legal sale of land.

What will now be engaged with is the issue of how the land market has operated in the past and how it currently operates, beginning with an investigation of tenure in Folweni.

5.5. TENURE IN FOLWENI

Form of Title/Ownership

	Frequency	Percent
PTO	241	66.9
Sales Agreement/Receipt	23	6.4
Letter from Councillor	16	4.4
None	14	3.9
Certificate of Occupation	7	1.9
Valuation Certificate	5	1.4
Waiting Title	2	.6
Lost Proof of Title	2	.6
Tenant	2	.6
PTO/Title	1	.3
GUD Filters Form	1	.3
Total	314	87.2
Missing from System	46	12.8
Total	360	100.0

Of the 360 respondents, 280 claimed to have proof of ownership. While 75 (21%) said that they had no proof, and five gave no answer. The 75 included people who had lost their form of tenure, and those who had occupied the land without tenure. As has been stated previously, two thirds of the sample had PTO's. The other 'forms' of tenure can be said to be informal. Of the remainder of the sample, 6% had a receipt, or a sales agreement on the transfer of the property which they held to have the same status as a PTO certificate. Sixteen respondents had received letters from councillors as their form of security. Seven percent who were mainly from C Section had emergency housing built after the 1984 floods and had Certificates of Occupation. Five claimed that valuation Certificates made by an evaluator was their form of tenure which provided security. There were less significant forms of 'title'

including two respondents who saw renting as a form of tenure, a respondent who had a form from GUD filters, the company who had built his house and a person who could not remember whether he had a PTO or free-hold title. These findings are outlined in the table above.

The first comment that can be made of these figures is to acknowledge the great importance given to a piece of paper which indicates, however tentatively, a right to stay in a certain plot is. This is possibly due to the experience of eviction from Malukazi which many experienced, and the insecurity which this engendered. Secondly, the data shows that the elected councillors have taken over the role of chiefs and Induna's in the allocation of land which has further negated the legal position of PTO's. Thirdly, and most obviously, none of the alternative 'forms of tenure' are in fact forms of tenure recognised by the law. They are forms of tenure which are recognised by the respondents themselves having a 'de facto' legal status. In the strict legal sense, only an original PTO certificate can be upgraded in terms of ULTRA.

A Better Form of Tenure

	Frequency	Percent
Full Title	328	91.1
Grant	6	1.7
Unsure	3	.8
Confirmation Letter	1	.3
Total	338	93.9
Missing fromSystem	22	6.1
Total	360	100.0

When asked what a better form of tenure would be 90% of the sample said that they wanted freehold title while 2% wanted Deed of Grant, and one respondent saw a Confirmation Letter from a councillor as the most secure form of tenure (see table above). This overwhelming support for freehold title may have been due to publicity surrounding the development project, though this is unlikely as a number of

respondents claimed not to have heard about the project. Or, it may have been a fault of the survey where the field researchers had to explain the concept of freehold and this was accepted by the respondents as the correct answer. Alternatively, it may have been as a result of observations on the part of the respondents in regard to freehold tenure operating in the formal land market where people never appear to lose their land or home. Support for this argument and for increased security through freehold tenure comes from the answer of respondent 315.

" I think this form that we have is undesirable because there are some people who were recently evicted by the police from their house. So I feel we are not safe with this form of ownership. We have need for another one. A more secure one."(Folweni Respondents 2001)

The need for security in terms of housing arrangements is highlighted when the respondents were asked to explain the difference between their present tenure and freehold tenure. Thirty-four percent said that freehold would bring the owner greater security. Another important reason given was that freehold would allow the owner to do what he or she wanted to do with the land(10%). As respondent 208 reiterated:

"Having ownership of the land will lead to freedom of living."(Folweni Respondents 2001)

Possibly a point of concern is that 67 respondents said that they were uncertain of the difference between the two forms of tenure, while 80 respondents (22%) did not answer. This means that approximately 40% of the sample did not know about tenure issues, or were unwilling to answer this question. A number of responses confirmed this assumption, which included: " Document that shows ownership", "freehold title is the only way that it is done" and "PTO is determined by Nkosi, title by the Government". If this sample is representative of Folweni, there is a limited interpretation of the Western concept of tenure and the responsibility to register the tenure at a provincial level when land is exchanged. This lack of knowledge of the tenure system is highlighted by respondent 213 who said,

" People are applying for title therefore you buy the site, you get a title and nothing else more." (Folweni Respondent 2001)

There is no dynamic interpretation of land holding as a historical process from the respondents. This is not surprising, considering that many of the people living in Folweni were informal settlers at Malakazi who were forcibly removed and were then handed a PTO as 'security'. The community has little experience of tenure as a continuing process. The concept of tenure which appears to operate in Folweni, on evidence from the respondents, is more akin to the traditional Zulu concept of land holding - discussed in the previous chapter - which gives use rights to the land. This concept can be seen in an answer by Respondent 216:

"If you own the land, no rules can bind you."

Which implies the freedom to do as one wants with the land within the confines of traditional law and one's life.

Actions Taken on PTO

	Col %
Will Apply for Title Deed	38.5%
Will Keep PTO	21.5%
Return PTO	10.6%
No Need for PTO	10.0%
Do Nothing	9.7%
Unsure	4.5%
Have Lost PTO/ No Proof of Ownership	3.6%
No Answer	.9%
Need Information on Tenure Issues	.6%

The need for security and freedom as far as tenure is concerned is also apparent when respondents were asked what they would do with their PTO's. As can be seen above in the table, 39% of respondents said that they would apply for a title deed and 11% said they would return their PTO, indicating a need for perceived additional security and freedom. However, 22% said that they would keep their PTO indicating

a degree of caution, not wanting to lose what they had already gained. Interestingly, 10% of respondents said that they did not need a PTO and that full title would accrue directly without any effort on the respondents part. This is quite perceptive as the upgrading project will, as a matter of course, regularise all titles within the settlement.

In conclusion, concepts of tenure in Folweni are driven by the need for security and freedom in a context of poverty, lack of access to information and a history of removal. Ideas concerning tenure appear to be developed from traditional notions of land holding and the experience of the formal land market outside Folweni as far as ideas of freehold tenure are concerned. Despite the concept of tenure not been fully grasped by the majority of respondents, the concept of land markets exists and occurs on the ground.

5.6. THE LAND MARKET IN FOLWENI

5.6.1 Access to Land in Folweni

Permission to access land can be a market in itself. In Folweni access to land in the past has been the responsibility of the traditional authorities. Since 1994, this function has been taken over by local councillors who show prospective residents to vacant sites and also facilitate the sale of sites. However, when asked whether the respondents had approached the Traditional Authority or Magistrate for permission to live in Folweni only 28.6% of the sample had asked a chief or magistrate for this. This suggests that though access is obtained through Chiefs, and more recently through councillors, it is not the only way to access land, and people have simply occupied or bought sites available by word of mouth.

5.6.2. Building or Buying a House in Folweni

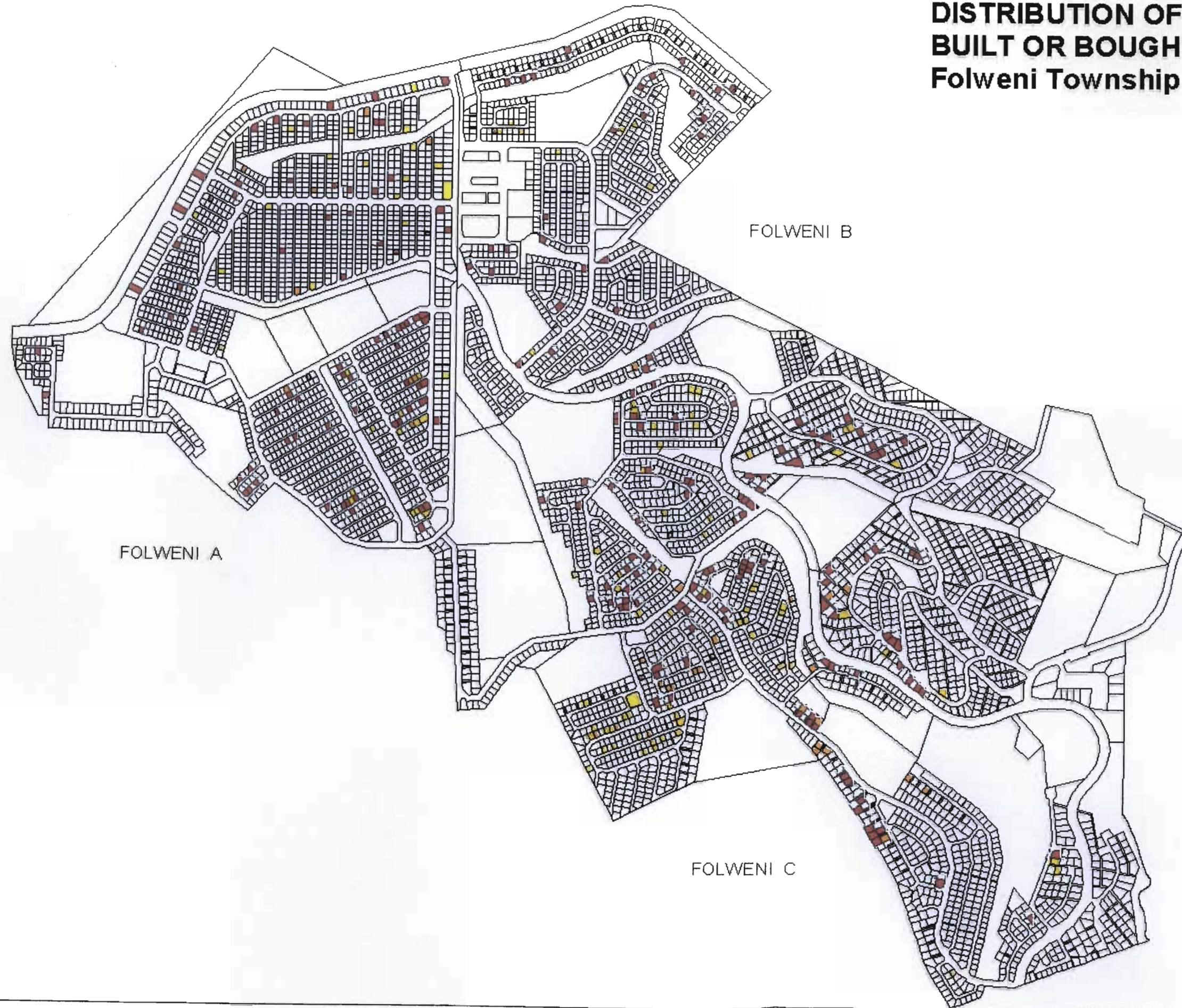
Those that Built or Bought their House

	Frequency	Percent
Built	221	61.4
Bought	100	27.8
Other	35	9.7
Total	356	98.9
Missing	4	1.1
Total	360	100.0

When asked whether he or she had either built the house or bought it, 61% of the sample said they had built their house, whereas 28% had said that they had bought it (see table above). There were only four respondents who did not answer this question. It is not surprising that 61% of the sample had built their houses, as the original inhabitants of Folweni were dumped and were simply expected to build their own homes. What is unusual is the high percentage of people who have bought their homes when considering the informal land exchanges investigated by Clarke (1996) where the figures of exchange were much lower. This especially pertinent considering the high level of unemployment in Folweni.

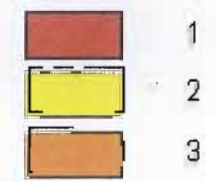
In terms of the distribution of those who built a house or those who bought one, a number of observations can be made (Map 8). In Section A, there is a broad spread of those that bought and those that built, though those who built are by far in the majority. This is in keeping with Folweni A being the original section where people were expected to build homes for themselves. The houses which were bought by the respondents appear to be 'mixed' with the built houses with no specific clustering. This may be an indication of the beginning of a more extensive land market in time to come.

**MAP 8:
DISTRIBUTION OF RESPONDENTS WHO
BUILT OR BOUGHT THEIR HOMES:
Folweni Township**



Respondents

Fol_new.shp



Legend:

- 1 - Build
- 2- Buy
- 3- Other

In section B the built houses are clustered along the northern boundary or the original parts of Section B, with only a few homes which were bought by respondents. In the southern part of Section B there is a greater mixture of bought and sold sites. Yet in the case of Section B there appears to be clustering of built and bought houses. It is difficult to determine the cause of this, though it may be indicative of people selling their homes through word of mouth in the neighbourhood which may result in neighbours following the lead and also selling. It may also be a function of the sampling process that the researchers undertook in Section B, though the pattern is probably too pronounced for this to be the sole reason.

Section C has distinctive areas of built, bought and 'other' means of obtaining housing. The built area of section C is clustered around the northern parts of the section where the early parts of section C were laid out as extensions to the original settlement. The bought houses are clustered in the south-western part of Section C. These are mainly the company houses built for employees in the early 1990's who had to pay Ithala Bank for the houses. Though there are other 'bought houses' which are scattered individually in C section. The 'other' sites are emergency housing built for the respondents following the Demonita floods in 1984 (interview with Peter Rutsch 2001). Overall, section C appears to be where the buying of houses is greatest, though this seems to be a function of the company housing in the Section. But the buying of housing appears to be more mature in Section A, with a greater mix of bought and built housing. B Section appears to have experienced the least sale of housing according to this data.

In an attempt to differentiate between the sale of the house and the sale of the land, the respondents were asked whether they had bought the land from another person. Ninety-three people said that this was the case. This, would in theory, exclude the company houses. However, this 25% is near to the percentage of those who bought their houses. This suggests that those who acknowledged having exchanged their property, did not necessarily distinguish between purchasing a house and purchasing land.

Bought from Another

		Frequency	Percent
Valid	Yes	93	25.8
	No	159	44.2
	Unsure	9	2.5
	Total	261	72.5
Missing		99	27.5
Total		360	100.0

Not all the respondents built or bought their homes or land, and 62 respondents thought it expedient to specify what 'other' meant. Though as will be eluded to later a number of people did not specify the way they had obtained housing. Of these remaining respondent, 17 persons said that they paid rent. This is significant as it represents an entirely different land market to the permanent exchange of houses and land. Six had "Red Cross housing" which is the emergency housing, though not all the respondents with emergency housing specified the nature of their housing as 'other'. Five respondents said that they had bought the land from the Tribal Authority who had been in control of Folweni before the Durban Unicity had taken over administration. Perhaps more interesting was that five respondents, who had bought land from the councilors at the office in the township, and a further four who had bought land from 'Mr Langa' - a local estate agent - who turned out to be a local councillor (information from Thulane Mthembu 2001). Seven of the respondents specified that they had obtained their houses through the company housing project. Furthermore, two respondents said that they were "paying off" their houses and this suggests that they do not perceive a house to be theirs until the house is fully paid for.

5.6.3 Methods of selling a house

When asked how they would sell their site if they were to leave Folweni 71.4% said that they would let others know through word of mouth. While only 5.6% said they would advertise their house in a newspaper. Some people did misinterpret this question and told the field researchers that they did not want to leave no matter what. This is another indication of insecurity felt by those living in Folweni.

However, when asked how they would evaluate the price of their house it was evident that people placed emphasis on different aspects of their land and house collectively. Some indicated that they would use a combination of these factors. These determining aspects included:

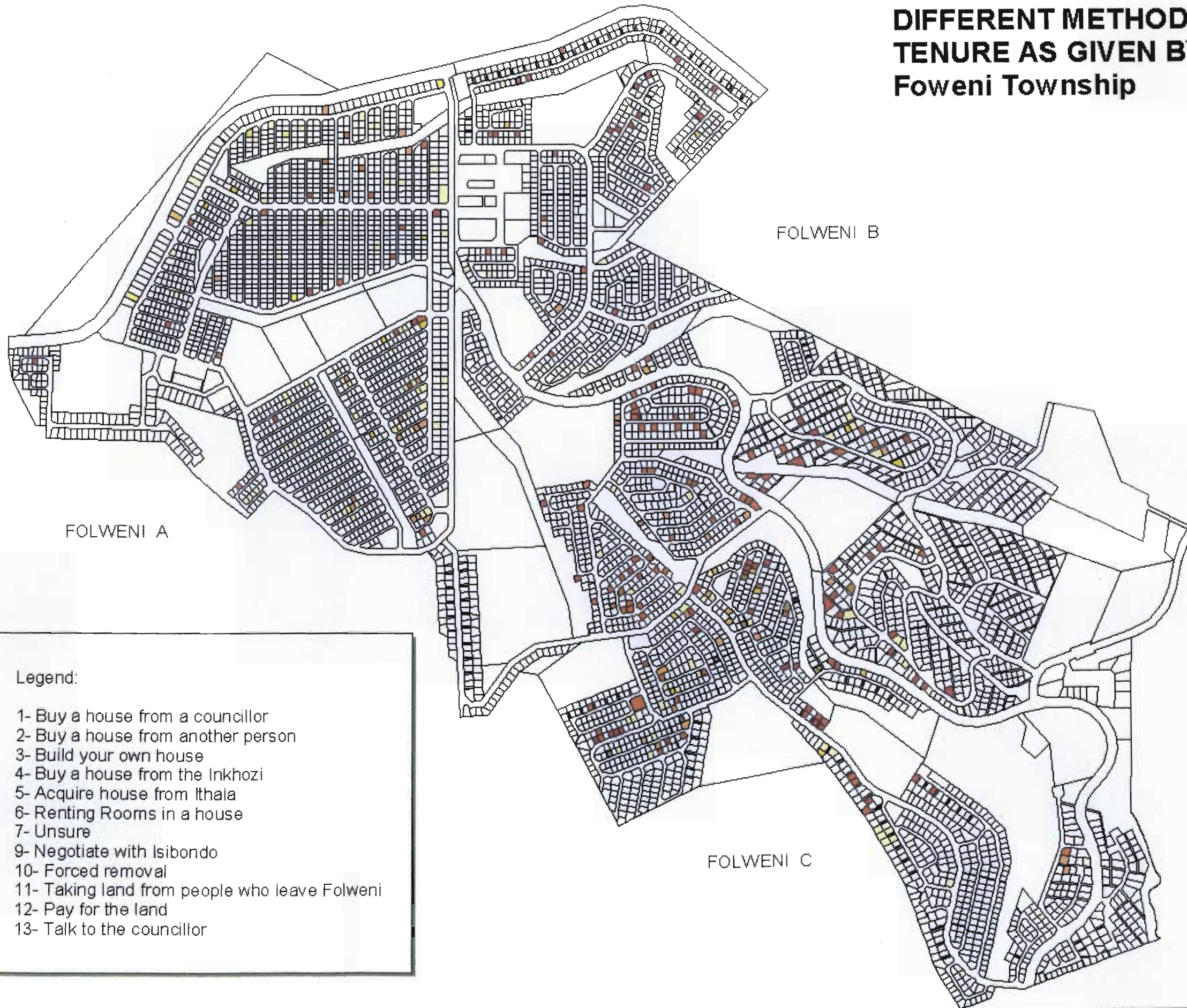
- The number of rooms in a house - 132 responses;
- The size of the site-131 responses,
- The number of buildings on the site - 77 responses
- The location of the house and the site - 61 responses;
- The materials used in the construction of the building - 56 responses; and,
- Current uses undertaken on the property - 26 responses.

The importance given to the first three aspects is another indication of the need for space. The emphasis on the number of rooms and housing also indicates a recognition that investment in the house on the part of the owner, should be rewarded by a higher sales price for the dwelling.

5.6.4. Respondents Perspective on Land Markets

When asked whether the way they had obtained the land was a common method of accessing property, the majority of people said yes. In a way this response was expected, as no one wants to be perceived for being out of the ordinary. Then the question " what other ways are there of obtaining land in Folweni?" was asked. This question asked the respondent to look over his or her neighbours wall and beyond and provide a community picture as to how the land market functioned in Folweni. As a result of people's curiosity and interest in other people's activity 273 of 360 respondents had something to say which was a remarkably good return for the open-ended questions. The most common alternative way of obtaining housing according to the respondents was to buy a house from another person. These respondents were located mainly in those areas where houses had been built, particularly in A Section and parts of C (Map9 see next page). The next highest response from the sample was to " buy a house from the councilor". This was most pronounced in section B and C. This involvement by the councillors appears to be, the councillor taking the functions of the Induna and/or Chief in controlling access to land and housing by being an allocator of land and an information source on land and housing within the township.

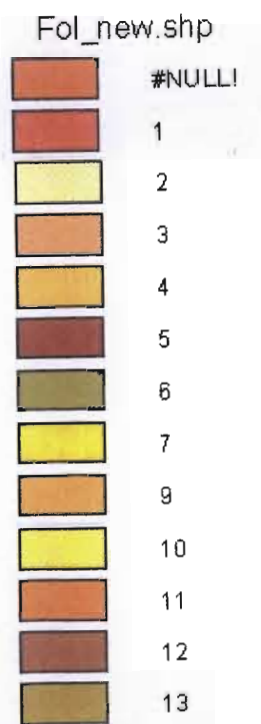
**MAP 9:
DIFFERENT METHODS OF OBTAINING
TENURE AS GIVEN BY EACH RESPONDENT:
Foweni Township**



Legend:

- 1- Buy a house from a councillor
- 2- Buy a house from another person
- 3- Build your own house
- 4- Buy a house from the Inkhozi
- 5- Acquire house from lthala
- 6- Renting Rooms in a house
- 7- Unsure
- 9- Negotiate with Isibondo
- 10- Forced removal
- 11- Taking land from people who leave Folweni
- 12- Pay for the land
- 13- Talk to the councillor

Respondents



"Build you own house" was cited by thirty-two respondents as another way of obtaining a place to stay. These respondents came from Sections A and B, where a large number of houses surrounding these respondents have been self built. Only thirteen claimed to be unsure of other methods of obtaining land. This could be due to being new to Folweni or could just be ignorance as to what is happening within the town as regards land exchange. Nine respondents said that others still obtained land from the Nkhosi. This is a clear indication of the decline of the Nkhosi's influence over land matters in Folweni since it became controlled by the Durban Unicity and the ANC. Interestingly only five people said that renting rooms in a house was a means of obtaining a place to stay suggesting that rental market is less well developed. From other information, renting is a relatively common way of obtaining a place to stay. Probably the reason why it did not elicit great response was because it was not seen as a desirable method of obtaining a house. These perceptions of respondents give clearer indications of the mechanisms of obtaining land and housing in Folweni.

5.6.5. Costs of Buying a House

Besides building, buying a property appears to be the next most common way of obtaining housing and land in Folweni. Yet ,as has been described, the monetary exchange of land and housing is still in an early stage of development. It is definitely a growing method by which one can obtain a place to live as expressed by respondent 311:

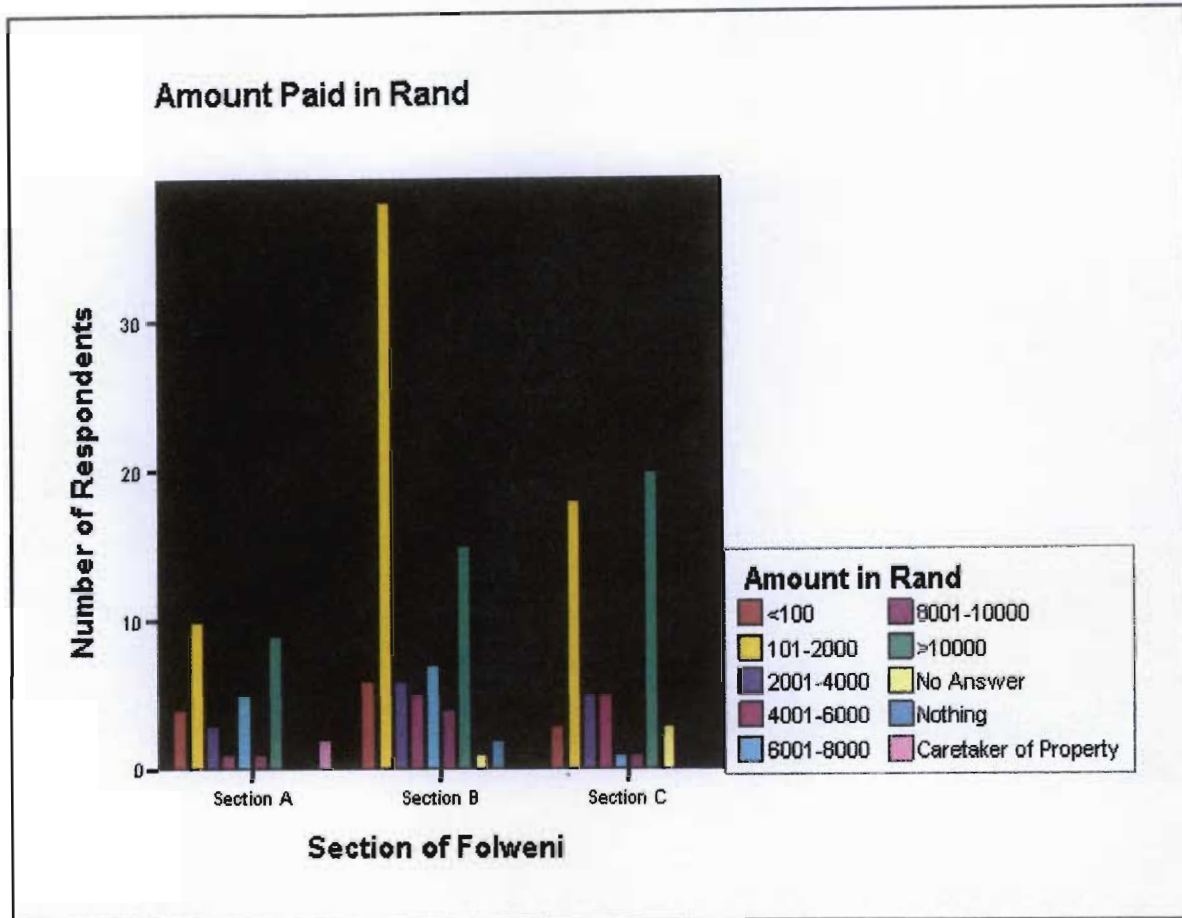
"I will say yes it was a common way in those days because if you wanted land you go and speak with the Induna and Nkhosi. But now all that has changed. If you want land nowadays you have to go to the councillor and you buy that land for a big amount of money and if you are not working it is very difficult to have land." (Respondent Folweni 200!)

What this quote highlights, is firstly the increase of the monetary land market, secondly the increased importance of councillors within this market and thirdly the inhibiting cost of that land. Despite what the respondent says about the increased cost of buying land, the cost of land in Folweni is relatively low. Comparatively, the cost of land in other formal townships such as Umlazi varies between R10 000 and R40 000 (interview with Felix Mtshali 2001). Determining the amount paid for houses was constrained in that only 175 of 300 respondents answered the question which does not aid in getting as clear a picture of the cost of housing and land, as might be

desirable. What it does indicate is that the large majority built their homes without paying an initial land cost. In the cases of those who did buy there was a hesitation in divulging land prices. A further constraint was that one was dealing with information which spanned a twenty-year time period.

In a section by section break down of the amounts paid per site it was clear that the most common price bracket for a site was between R101 and R2 000 (see Graph 5). This was particularly marked in Section B though it was also the most common price bracket in Section A and the second most common price bracket in Section C. The most common price bracket in Section C was any price greater the R 10 000 and with ceiling of R120 000. This is largely a result of the company housing built in the early 1990s which appears to have stimulated prices in Section C. Furthermore, in Umlazi newer houses are evaluated at higher prices (interview with Felix Mtshali 2001) and this maybe what has occurred in Section C. In Section B, the price range between R 2000 and R10 000 is relatively constant, while there is greater differentiation in these price ranges in Sections A and C. Overall Section C, has the most vibrant land market in monetary exchange terms. While section B has the largest informal land market in terms of the number of people, who sell their land. A Section appears to have the lowest average amount payable for land of the three parts of the town. What does appear to occur is that there is irregular competition within individual sections across Folweni in contrast to what one might expect to be the case - prices to be constant for a particular area.

Graph 5: Property Prices for Folweni

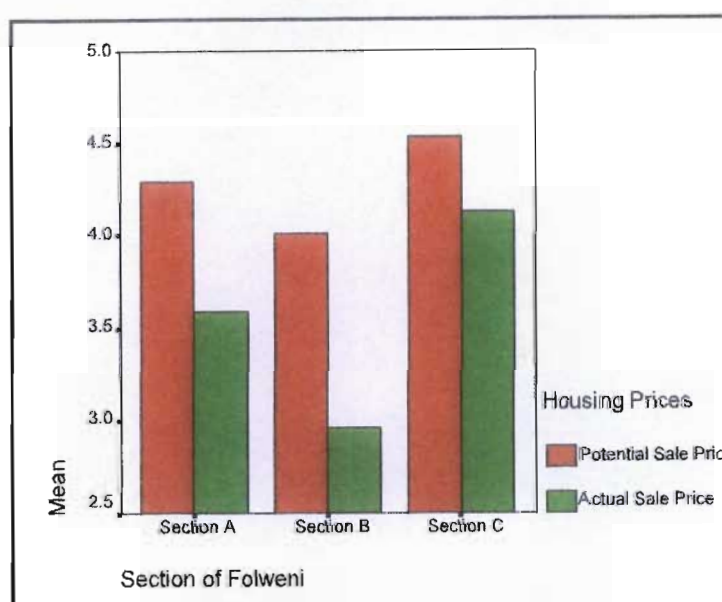


As one might expect the lowest range paid for land (less than R100) was paid out during and prior to the 1980s. This was probably paid to Induna's or to the Nkhosi for occupation rights. Furthermore, the majority of respondents in the R101 - R2 000 bracket, which was significant in B Section, occurred during the 1980's. Finally, the

greater than R10 000 bracket only came to importance during the 1990's and with the construction of company housing in C Section. What this information shows is that there has been a substantial increase in prices paid for land and housing in the past twenty years.

Though respondents, were reluctant to divulge the amount paid for land, they were far more open in saying how much they would sell their property for.

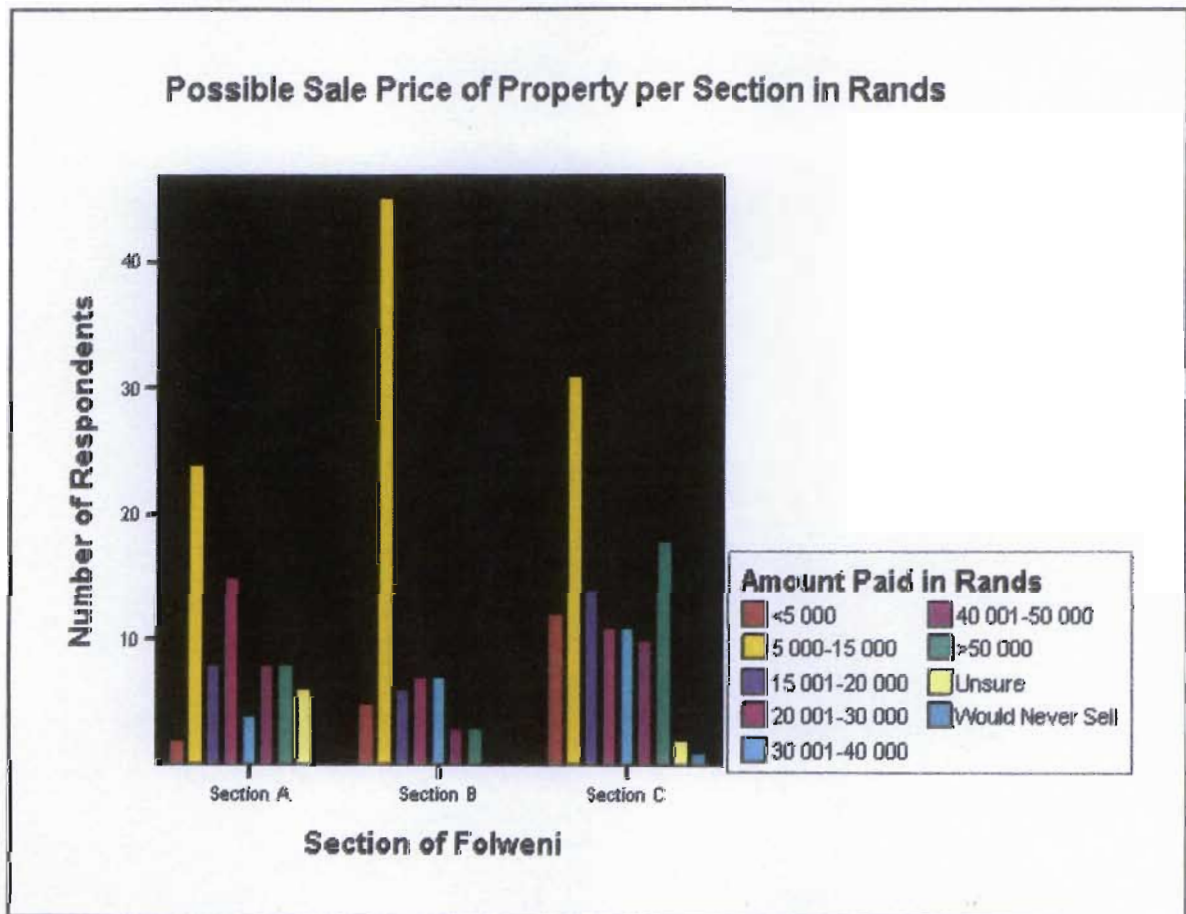
Graph 6: Showing the Relationship between potential and Actual Sale Price per Section.



As can be seen in Graph 6, these price estimates outstripped the actual price paid especially in Section B where prices were highly inflated. In Section C, there was a closer relationship, possibly due to the effect of the company housing which had raised the prices of housing inside these areas. These findings collaborate findings of Clarke (1996) who also found that respondents overestimated housing/land prices in informal land markets. In a sectional breakdown of the potential prices, a mirroring effect to the actual land price was apparent. With the majority of respondents in

Section B falling within a single category in the R5 000-R15 000 range. In Sections A and C the R5 000-R15 000 range is also the modal price for a particular site. While respondents in section C had the highest expectation for a sale price on their property (more than R50 000).

Graph 7:



5.6.6. Renting

Compared to the building of housing and buying a site, renting does not appear to be significant as a way of obtaining shelter, amongst the respondents in Folweni. When asked whether they rented a house or a room thirty respondents (8%) in the sample, where only five respondents were missing, said that they did rent. When the household owner was asked whether he or she rented, 24 (6.7%) in the sample, where only one respondent was missing, said that they did not rent. This means that in the sites surveyed 15% were involved in the renting market. The figure suggests that renting doesn't appear to be as significant as Clarke deduced from his study (1996). However, there is evidence from individual respondents to suggest that the figure may be higher than these statistics suggest. Respondent seven when asked what the effect of the development project would be, stated that:

**"Lot of people at Folweni rented rooms so they will get their own house."
(Respondent Folweni 2001)**

There also appears to be a general level of dissatisfaction with rental as a form of land exchange, as indicated by the following comment:

**"Because many people don't have houses of their own. I am sick and tired of being a tenant. I would like to have a place of my own."
(Respondent 316 Folweni 2001)**

This dissatisfaction appears to stem from the monthly loss of income. In Folweni, the cost of rent varies between R50 to R120 a month. Of the renters interviewed, the majority lived with other renters in the same house with the land owner living elsewhere. In at least one case in Section C, in what was a company house, the landlord lived in Umbumbulu and rented the house out. Why the owner left his house is not made explicit. Due to the difficulties experienced by others in paying off this form of housing in Folweni (interview with Peter Rutsch 2001), it is likely that the owner of the house rented out the property in an attempt to pay off his bond, or avoid paying his bond.

5.6.7. Lodging

A differentiation is made by the field researchers between 'Renters' and 'Lodgers', where lodging is the occupation by an individual or a group of individuals who have kinship ties with the land owner which allows them to occupy the site for free. This situation, due to the high levels of unemployment and the lack of housing, has contributed to the large household sizes. When asked whether obtaining tenure was part of service provision, the majority of respondents said that it was. The main reason given for this response was that children, or the individual respondents themselves would get sites. In turn this would lessen overcrowding in the existing dwellings. As Respondent 33 of Section A expressed:

"I'm tired (of) living with granddaughters so their parents are going to get sites." (Respondent 2001)

Lodging appears to be an important way of obtaining a place to stay in Folweni and is a widespread phenomenon.

5.7. SERVICE PROVISION

Though service provision is not strictly a part of the informal land market, it was of importance to respondents where in a question concerning comments on land, housing and service issues; 45% of the modified total indicated the need for specific infrastructure, the need for better service provision, the need for onsite services, as well as a range of other service needs such as health care and traffic control. This desire is not surprising considering the low level of service provision in Folweni. Issues which were raised throughout the three sections were the need for improved road access to individual units, the need for onsite water, the need for water borne sewerage to replace pit latrines and the need for due consultation between the water and electricity providers and the residents before cutoffs of respective services occurred. In terms of the land market, service provision should add value to the sites and homes. It will also enable homeowners to have their homes evaluated. According to Felix Mtshali of ABSA, all that Folweni requires to be seen as a formal town and to be eligible for such attention is the provision of water borne sewerage, which is one of the projects under way at present.

5.8. RESPONSE TO THE DEVELOPMENT PROJECT

When asked as to how the project would alter the status of the land, the majority of respondent (227) were positive about the impact on the proposed service delivery projects, tenure upgrade and the alteration to the cadastre. In a sense this response may be interpreted as not wanting to disappoint those undertaking the survey. Twenty-nine percent of respondents said the project would make Folweni a better environment in which to live, Ten percent said they thought the project would provide a secure land market, while five percent of the sample said that the project would provide a more lucrative land market. The responses that are perhaps more interesting in determining a reaction to the project, were those of the 83 who did not believe that the project was a good idea. Twenty-two stated that they were not aware of any projects under way in Folweni, so how could there be any improvement. Fourteen respondents indicated their lack of faith in delivery and development in general. One disgruntled respondent said,

"If I had much money I will be out of Folweni because there is no development that we need most. They started with the thing we don't need most".(Respondent Folweni 2001)

Similarly, ten respondents wanted to see results on the ground before they passed judgement. Linked to the disbelief that there was a development project underway, was the contention that not enough information had been made available on the project. Other concerns raised were that the project would not change the status of the land, that people will be forced to pay rates and that houses must be built first and then the tenure be handed out.

In terms of the outcomes which the upgrading project is perceived to bring, 59 said that the initiative would improve standards of living, while 44 said that it would create employment. This is an issue that the project consultants need to be aware of especially in relation to raising false expectations. The project is mainly a service and tenure upgrade project and does not focus specifically on employment creation (von Riesen, Jewell 2001). Thirty-eight respondents said that the project would guarantee ownership, while 17 said that the project would enable one to borrow money from the bank, indicating knowledge of the requirements of financial institutions to secure loans. Such knowledge of the banking system and the desire

to access finance would be perceived by de Soto (2000) as a means of sparking economic development.

5.9 CONCLUSION

What this chapter has provided is an overview of the operation and mechanisms of an informal land market in Folweni. It has shown that in its functioning, an informal land market can occur at a number of levels and be influenced by a number of issues. These include: the cadastre, the form of tenure, the local history of the town, and interventions by political leaders. It is not just concerned with the different forms of exchange of land between individuals, which is the conventional explanation given for the development of informal land markets. Rather, the informal housing and land markets in Folweni are a complex and heterogenous web of transactions dependent upon both traditional and common law interpretations on land holding, a deep-seated fear of removals, family and friendship networks and injections of formal housing, through the company housing development, which have collectively influenced the exchange of land and housing on the ground.

The findings of this Chapter and the previous chapters provide the basis by which to make suggestions on how the issue of informal land markets is approached and dealt with, by the relevant role players. This debate is taken up in the following section.

6.0. PREVIOUS ACTIONS TAKEN ON THE GROUND

By its definition the informal land market suggests that it is a set of processes in need of reform. The purpose of land tenure reforms' to date has been to bring such land markets under the rule of law through the upgrading of title. This approach has been supported by the United Nation's organisation HABITAT, as well as the World Bank, over a twenty-year period (World Bank 2001)(Habitat 1995). However, tenure upgrading has been criticised in that it has been proposed as the single solution, its implementation has occurred at a national level and executed in a blanket fashion ignoring local specificity. Secondly, it has been argued that bringing informal land markets into the legal realm is often a costly, lengthy and bureaucratic process. The poor are robbed of a means of obtaining shelter on a market due to the expense of the administrative transactions involved in making their title legal. Thirdly, it has been argued that tenure reform and access to property have been treated as a political issue. The use of tenure in such a manner has been detailed by Varley (1998), in the case of Mexico, where it was used as a means of garnering votes. A more recent example was the sale of land by the Pan African Congress to land invaders at Bredell in Gauteng early in 2001 (Donaldson & Jacobs 2001).

Further government response to informal land markets has been the removal of the settlement itself. This was a widespread action undertaken under the National Party Government. The most notable affects of such intervention, in the case of Folweni, has been to heighten insecurity over land holding and land tenure, which in turn dissuades people from becoming active within a land market and encourages people to hold onto what they already have. From the perspective of increasing land market activities and making trade in land a viable and accessible activity for the majority, forced removal and eviction must be avoided at all costs.

The theoretical approaches to informal land markets considered in this dissertation all perceive tenure reform as necessary, or an intrinsic part in the functioning of a formal land market. This is the position of a neoclassical land market approach that requires a well functioning land legal system, so as to maintain the dynamics of supply and demand in property and thereby, develop and maintain a formal land market. In terms of land market reform through the implementation of changes to the cadastral system, tenure reform forms part of the legal process of what is mainly a technical exercise. The difference between the above approaches and those undertaken by national governments over the past twenty years is the neoclassical belief in the market's ability

to correct itself, equal access and knowledge of the market itself, and that reforms should aim to aid the functioning of the market. Whilst proponents of cadastral reforms focus upon mainly technical solutions, such as an improved cadastre linked to technical advancement, such as Geographical Information System (GIS) and GPS, and improved forms of land registration.

A third approach to the informal markets and informal land markets in Third World countries is that of Hernando de Soto. The key tenant of his theory is that land exchange upon the ground should guide the formulation of land legislation. Once the informal land market has been brought within the legal system, financial institutions will far more readily allow the poor to use their property as collateral. De Soto expresses the operation of his theory in four stages. Firstly, there is a discovery stage where the nature of the informal land market is assessed. Secondly, a political and legal strategy where a national body is set up to deal with the issue, while the necessary political support is garnered. Following this, is an operational stage where the reform is put into practice. Finally, there is a commercial strategy where information and enforcement actions are undertaken to make sure that projects function properly.

Weaknesses of de Soto's argument are that it is a totalising discourse and tends to gloss over the variation between nations, regions, cities and rural areas. It is also strongly influenced by Western concepts of law and landholding. Thirdly it over estimates the strategy's ability to influence and bring about political change.

However, there are strengths to de Soto's argument. Firstly, is de Soto's positive attitude to the poor, where the poor are perceived as wealthy in terms of capital but unable, due to legislation, to see that capital becomes a wealth generator. Secondly, has been de Soto's attempt to link social and economic issues on the ground, with legal action. While a third strength is that de Soto does recognise the constraints of the bureaucratic land registration process, but still proposes a workable strategy to manage the informal land market despite these limitations.

6.0.1. Applying de Soto's Argument to Folweni

In the context of Folweni, there are a number of aspects of de Soto's argument that ring true. Some individuals in Folweni (see Photo 4), do have substantial amounts of capital tied up in their properties. By the same token, other dwellings are of a lesser quality indicating only limited investment in the property (Photo 5). Furthermore, the

land market that does operate in Folweni is a closed market in that it involves a limited number of people in a specific geographic space. A final area in which the theory interprets what occurs on the ground in Folweni is that capital, or more specifically property in the town, can be said to be 'dead' as it has until recently fallen outside the legal cadastre, and many of the owners have encroached over their boundary lines. Possibly, the biggest constraint to the formation of a formal land market in Folweni is that because of the type of tenure held by the majority of people, they cannot access finance from banks, or use their property as collateral to raise a loan. This is a major constraint in creating a 'parallel life' (de Soto 2000) for the property as an investment. An issue that compounds the problem of making the property an asset is that South African financial institutions are reluctant to make finance available to the low cost housing market due to the perceived high risk nature of the market. Even for evaluators to consider costing a particular property, requires that the settlement be formally laid out and provided with particular services and infrastructure (interview with Felix Mtshali 2001). At present, Folweni does not meet these minimum requirements, though it is a formally laid out settlement but it still requires the provision of water borne sewerage to the town for it to be considered eligible for the property to be evaluated and therefore to be brought into the mainstream financial market.

A fourth constraint to the implementation of de Soto's ideals in Folweni is that the land market is still in its infancy. De Soto assumes in his argument that informal markets and informal land markets are well developed in Third World countries. In the case of Latin America and Egypt this appears to be a suitable assumption (el Kadi 1988)(Gilbert 1984). Yet, in Folweni, this is not the case. Slow growth of the land market in Folweni is due to prohibitive controls under chiefs that prevented the sale of land, a lack of money in a situation of poverty and the need for security rather than investment due to history of forced removals. Only over the past three years has it become easier for a land market to function in Folweni, since the town was brought under the jurisdiction of the Durban Unicity. As the case-study confirms, it is only in the past three years or so that the land market activity has increased. These observations confirm that it would be difficult for de Soto's approach to be put in place at a national level due to the great variation in land market interactions that occur on the ground. A lack of maturity in these land markets is also a contributing factor. Of course, it is difficult to assess the extent of the variation within the broader Durban Metropolitan context, as this is only a single case study. Past studies suggest that there have been significant variations between settlements, particularly between formal and informal settlements (Clark 1996).

In conclusion one can say that Folweni can be seen as proof of de Soto's theory of 'dead capital' and the need for land tenure reform (de Soto 2000). The difficulty arises in applying de Soto's solutions to the diverse land interactions within the case study area, Durban and South Africa as a whole.

6.1. PROPOSED APPROACH TO INFORMAL LAND MARKETS IN SOUTH AFRICA

From the above theories, formalisation through tenure reform has and is a popular approach to solving problems associated with informal land markets. It must also be recognised that there have been problems with this approach. Hence more diverse approaches have been proposed by theorists such as Williamson (1997) and de Soto (2000). Also, from the experience of the Folweni study, it is at the level of the town, and individual interactions that reform is necessary, though this is not downplaying the need for national government reform and intervention.

6.1.1. National Government Strategy

The function of the relevant national government departments is to lay out and execute the necessary policy and legislative frameworks to ensure that local governments have the necessary capacity to bring about change within informal land markets. The aim would be to ensure that the cadastral system is able to cope with upgrading of tenure and the formalisation of towns under the relevant acts.

It is not deemed necessary for a new national body to be established with the sole purpose of focussing upon tenure and land market reform in the South African context, as advised by de Soto. This is because there is already a substantial tenure reform programme in place within the Department of Agriculture and Land Affairs. Furthermore, there is little reason to regard the present tenure reform programme as lacking, until it is fully operational and its impact on the existing problem measured. Rather, what is required is to strengthen the tenure reform programme in a single act which deals with urban tenure reform in former Black towns. Within this act there should be a specific chapter dealing with informal land markets. The assumption being that the informal land markets are most likely to occur in urban areas where there is relatively more employment, and hence capital, available for purchasing property, and the hold of Traditional Authorities is not as great as within the rural areas.

The proposed legislation would be the twin of the recently propose .Communal Land Rights Bill (Forrest 2001) that is focussed on the role of Traditional Authorities in holding land. Such an act would include the precepts of LEFTEA and ULTRA in terms of tenure upgrading and town formalisation. The inclusion of section of the Development Facilitation Act as regards initial ownership and the fast tracking of development applications would also have to be included within proposed legislation.

Yet, the major difference will be that the focus will not solely be on tenure delivery. Local economic development initiatives will also need to be introduced. The provision of the appropriate basic services for the houses which meet the requirements for evaluation by financial institutions, must be included as an integral part within a formalisation project. By undertaking this reform people will be automatically eligible to put a toe into the financial sector. Though this, does not tackle the reluctance of the finance companies to give loans in the low cost housing sector, or to redline particular areas where the risk is considered to high.

A further strategy which should be included in the proposed act is that tenure security should be linked to one's identity document (interview with Jonathan Jackson 2001). This would allow citizens and banks to know the form of tenure, and give security to the property owner by linking it to a local registry managed by the local and metropolitan government where the necessary institutional capacity can be seen to exist. The local authorities which would be considered to have the necessary capacity to establish these registry would be the Type A and B Municipalities as defined the Municipal Structures Act.(Act No.117 of 1998). If a reform of this nature were to be affected, the necessary transfer of administration and financial support to the responsible local authorities must form part of the legislation.

Metropolitan and larger local authorities are the bodies targeted, as they are perceived to have the necessary capacity to administer such a registry and will require the least financial support from national government in comparison to other local governments. The implementation of a local registry for metropolitan areas and large urban centres will require substantial amendment to current legislation pertaining to land registration. Changes to the hierarchical nature of the land registration will need to be made, from one with a national and provincial registry system, to one that includes a metropolitan registry. The reason for a local registry is so as to make exchange in land easier to access, and more relevant for those living within the metropolitan area.

A further issue that must be covered by a proposed 'Urban Tenure Reform Act' is to outline a balance between proactive strategies to address the complexity of urban land issues whilst simultaneously indicating what procedural mechanisms which would regulate land occupations deemed to be illegal. In other words, the law would lay the ground rules for evictions, and set a time limit by which people who have constructed and occupied a piece of land may stay on that land and receive title for that land. One of the key issues raised by the Bill of Rights is that eviction of people must be minimised. Secondly one of the main issues raised by respondents in Folweni was the need for security in land holding. There is still a deep seated fear of removal which only heightens the need to hold onto what one already has, rather than interact in a land market.

Another section of the proposed act must lay out the roles and responsibilities of councillors and civic leaders as regards to land exchange. It must consider what role these community leaders have in allocating land, selling land and guiding people to vacant sites or to willing sellers. The law must also free the metropolitan and local authority to take the necessary steps to stimulate land markets in formally laid out towns that meet minimum infrastructure requirements.

Similarly, the act must also consider how Traditional Authorities within metropolitan or large local governments areas can be incorporated within the local registry system. This will require substantial discussion with the relevant Tribal Authority and relevant pressure groups to reach agreement on how they might engage with the new system.

Beyond the proposed act the Department of Agriculture and Land Affairs should undertake a mass education and training programme on the process of land exchange, and the value that is inherent within one's property. Such an education campaign must function at both a national, provincial and at a local government level.

The Department of Housing also has a particularly important role to play in dealing with the informal land market. To date, the nature of property market reform has been pragmatic, with legislation being enacted when required. Such an approach is worthy though what is need is a coordinated strategy with the Department of Land Affairs that integrates government reaction to all aspects of the land market, rather than having two departments undertaking differing strategies to deal with the same problem of land market reform. An issue which the Housing Department may have to reconsider is the recent Housing Amendment Act (Act No.4 of 2001) which places an eight-year

moratorium on the sale of subsidy housing (Streak 2001). This is a particularly long period of time and does not take into account the death of an owner, the need to move to a new employment or the freedom to live where one wants to. The legislation may even encourage the informal land market in the long term. It is suggested that this amendment be scrapped and replaced by an education campaign that places a greater emphasis on the rights and responsibilities of a home owner.

In conclusion, National Government must play the role of facilitator in encouraging the development of a land market in those areas where one did not exist previously, or where it functioned outside the law.

6.1.2 Provincial Response to Informal Land Markets

The proposed strategy does not perceive any specific function to accrue to the provincial level under the proposed Urban Tenure Reform Act. In terms of deeds registries, the provincial deeds' registry office will take on the role of monitoring the standard of the metropolitan and local government registries. It is hoped that local registries will relieve the pressure from the provincial registry which will retain the responsibility of collating and maintaining the title deeds and records of plans. In essence the Deeds Registry and the provincial office of the Surveyor General (SGO) will act as quality control for the entire province, so as to ensure that there is no breakdown in quality within the cadastral system.

6.2.3 Local Government Reform for Informal Land markets

Possibly the most significant proposed change is the establishment of a local land registry in metropolitan and certain urban areas. This will require the deployment of significant capital and staff to a newly created department within a metropolitan or local administration. Besides enabling easier access to the land exchange, a local registry enables local authorities to respond to variations within land markets within the metropolitan area, rather than a broad brush national government response. Furthermore, the establishment gives greater control to local government in terms of the information available concerning who lives where, as well as data that would benefit rates collection. It also goes against the trend towards increasing centralisation of administrative power in the hands of National Government which has increasingly led to local levels of government been unable to tackle their own problems (Friedman 1999).

Of course, the implementation of such a registry will require extensive research into how people hold land, the extent of the need for tenure reform, and the extent and nature of both the formal and informal land market across urban areas where the system is to be introduced. Careful attention will also need to be paid to how the informal land market and formal land market interact with one another.

Research will also need to go hand in hand with tenure formalisation. As indicated under the proposed act, such tenure formalisation must occur with infrastructure, service and economic development projects. This will require extensive negotiation with the necessary service providers as well as the banks, so that town upgrading and greenfield projects can meet the banks' specifications.

A further function that the local and metropolitan authorities will have to undertake is to ensure that information concerning property ownership and registration reaches the communities. Being closer to the local circumstances and people, metropolitan and local authorities are far better placed to undertake the task of disseminating information or directing specific knowledge to specific areas.

Another action that local government will be responsible for is in the formulation of by-laws that will lay out regulatory guidelines for the eviction of people from their shelter. This must detail how the council undertakes such evictions, why the evictions are occurring and what is the circumstance of the people involved in such removals. Any such by-law would have to be framed within the proposed national legislation.

A final issue raised by the proposed new act is that of guidelines for councillors, civic leaders and traditional leaders who fall within the urban area. Negotiations will be sensitive and probably vary considerably from settlement to settlement. They will also require input from the responsible national, provincial and community bodies. It must be remembered that land is a sensitive issue and is often the means by which individuals exact power over a particular town or community.

A practical action that metropolitan authorities, or other local governments may use is to initiate local government supervised property sale days when the local land registry department or provincial Deeds Registry and SGO's department makes itself available within a particular community to deal with any issues pertaining to tenure exchange. The registry could set itself up on a pension day, or if there is a regional market in

place, on that day. At these monthly or bi-monthly events a bill board could be set up advising those at the gathering who are selling or renting their property within the settlement. People could also negotiate a price for their property at the table. No handling fee for the service would be the ideal, though councillors' pressure may mean that a nominal fee is paid for the advertisement and use of the service. Reduced fees would also be paid for the transfer of tenure. The primary aim of this exercise would be:-

- To stimulate the land market in a town by making the land market open to a far greater customer base;
- To create an awareness of the correct legal procedure to be followed in obtaining land, and at the same time taking into cognisance various methods of land exchange within a particular town;
- To increase the likelihood that a bank will provide finance to low income housing markets, if the sales occur within a formal structure; and.
- Finally the event will provide a foothold for property practitioners such as estate agents, conveyancers and evaluators.

A question that may be asked is how does a municipality manage informal land market reform? Of course in metropolitan and local authorities', the implementation of a property sales day would be the function of the local registry's department. But how are the proposals of the act to be put into action? The key management tool in this regard is the Integrated Development Plan (IDP's).

At present tenure reform has been included within IDP's in the form of land involved in land restitution claims, and land that needs to be identified for land redistribution. IDP's have already been used as a means to plan for the formalisation of towns and the provision of certain essential services and infrastructure (MXA-VISTA 2000). What is required is to work the changes under the proposed act into the time frame and budget for the metropolitan and local areas. Of course, a problem with the first phase of IDP's was that they occurred at too broad a level for the implementation of individual project interactions. Considering the complex nature of the interactions of informal land markets, a far more detailed approach to projects with carefully planned timetables and budgets is essential. Not only will such projects need to include tenure reform, but cadastral formalisation and amendment, service provision, improved education resources and opportunities for economic development. Such action will be of particular importance for the development of a local registry. It is hoped that the IDP's will provide a framework into which the issue of informal land markets, can be brought within the mainstream of municipal decision making.

6.2. ACTIONS REQUIRED BY NON GOVERNMENTAL ORGANISATIONS ON INFORMAL LAND MARKETS.

Since 1994 non-governmental organisations (NGO's) have had funding cuts due to Government being perceived by donors, and itself, as the only legitimate body for the socio-economic development in the country. This situation is true for NGO's involved in housing and property issues for the poor such as the Built Environment Support Group and the Association for Rural Advancement and the National Land Commission. Despite funding cuts, these organisations have a vital role to play such as:-

- Through constructive criticism of government policy and government action.;By providing information to communities in which the organisations are involved concerning tenure, land registration and their rights as far as land is concerned;
- To offer alternatives to government solutions and work in partnerships with communities and with the relevant political parties and government departments in solving land market and land tenure problems; and,
- To provide information on how one might be able to obtain finance for housing and land, and at the same time be involved with the movement to obtain financing for land from financial institutions.

6.3. ACTIONS WHICH THOSE LIVING WITHIN AN INFORMAL LAND MARKET CAN UNDERTAKE

When a land transaction is undertaken, the most important persons are those undertaking the transaction itself. It is therefore paramount that they know what they are doing and are secure within the transaction process. In the first instance, they must know whether they are eligible for finance through a bank, or whether they can use the land as collateral. Secondly, they need to know the form of the tenure they have, what rights it gives the buyer and how to transfer such a document. One needs to know who to contact when one's security is threatened: be it a lawyer, a local authority or an NGO. Fourthly, people must understand that the larger the audience that the land is advertised to, the more likely one will have of selling the property. Finally, those who are involved in the low cost housing market must be aware of the importance of saving money, particularly when dealing with such a large investment such as property. These points are just some basic ideas that buyers and sellers of property must keep in mind when operating within a land market.

6.4. CONCLUSION

The above chapter has outlined particular strategies for the various spheres of Government, NGO's and individuals within the informal land market in South Africa. The ideas and principles proposed have been based upon strategies which have been executed in the past by the Government and which have merit, theoretical perspectives on informal land markets as well as information gained from the Folweni casestudy. It is recognized that the ideas put forward do not address all the issues raised, however it is suggested that they to provide a starting point for a debate on approaches and attitudes towards informal land markets.

7.0. FOLWENI AND TENURE SECURITY

Why should Folweni warrant so much time and effort? It is a small insignificant settlement clinging to the periphery of a large urban area. There is little employment opportunity and poverty is high. People have a strong dependence upon low paying employment and social networks. Yet, in so doing a person's passing is marked by their physical presence on the ground, and in turn occupation requires relationships with a number of different people, neighbours, family, friends, councillors, Traditional Authorities and Provincial, National and Local Government. Until recently, these relationships have been informal, they were mainly words based on power relations that played themselves out upon the ground with little effect beyond the immediate community of the town. There were no rustling webs of legal and technical papers which concretely verified the whispered transactions on the ground. Such lawful recognition would give far greater security and peace of mind to those involved in the process, and much needed recognition from the world for Folweni, which for all intents and purposes, is a political and social anomaly within a Tribal Authority area.

From a Local and National Governments's perspective, legal recognition for Folweni would add to the tax base of Government, increase and strengthen political solutions and control in the town, and aid in the social and economic development of the Folweni community.

Then the question is how should the paper be shuffled? International experience and National Government action has tended to endorse a similar solution, namely land tenure reform with the subsequent 'formalisation' of people's responses to land exchange. Motivation for such reform is often economically and politically motivated whether it is for increasing the tax base, garnering votes or providing minimal assistance in the name of cost-cutting. Despite the dark side of bureaucracy, land tenure reform can play an important role in providing security for nervous communities. In South Africa land tenure reform may provide the mechanism, if properly implemented, to offer a means to a long term sustainable method of meeting the housing shortage in the country through the creation of an efficient land market. This can only occur if due recognition is given to the importance of informal land transactions and the role they play in providing an extra-legal method of land exchange within a specific community.

What is needed is not a blanket approach through national legislation or some commission that divides and conquers and rewrites all the statute books, but an approach that through research considers how land exchange occurs in marginalised settlements, such as Folweni. Such information should be collected at a local government level and must inform what interactions are required for appropriate strategies that are acceptable to a majority of people within a settlement.

7.1. AN EVALUATION OF THE PROJECT

Has this study been valuable in contributing to the debate on informal land markets? Yes, the research project has been a success in that it has provided a view of land exchange and an understanding of a land market in a poor community outside the aegis of the law and the formal economy. This study of informal land markets has provided an insight into a field of study that has had little preceding research, specifically in the South African and Durban context. However, the project did fail to reach a consensus on the desirability of formalising informal land markets through tenure upgrade. Rather, what was suggested was that tenure upgrading should be linked to a broader package of reform, including service and infrastructure provision as well as the stimulation of economic development within specific settlements. When tenure reform is executed as part of a development package, careful attention should be paid through detailed research, to how land markets operate and how land is valued by those making the exchange. It must also be recognised that certain communities will be unable to afford the continued maintenance of the title because of the inaccessibility and cost of the official land registration process. In South Africa, where traditional interpretations of landholding, and poverty aid in the creation of informal land markets, tenure reform must be flexible and socially aware of the actions occurring on the ground.

7.2. CONCEPTUALISING INFORMAL LAND MARKETS

In considering the term 'informal land markets' this dissertation has conceptualised the phenomenon from a Government's perspective of land exchange, be it monetary or otherwise, that falls outside the official land registration system with its planning regulation and legally accepted procedures. Actions which have been considered to constitute the informal land market include: incorrect tenure given to buyers; illegal subdivision; disregard of land use zoning; failure to follow building and occupational standards (Payne 1997); and the illegal occupation of land which has been exchanged

without following government procedure. Through such a definition of informal land markets, the dissertation consequently interprets the concept in terms of the dualism between the legal and illegal cities in Third World countries, and debates concerning formal and informal markets that operate in such countries.

In the Folweni case study, the above categories were apparent in specific forms, while other expressions of the informal land market were noted. Though no small contractors were subdividing land illegally, councillors in Folweni appear to be taking over the role of chiefs and allocating sites to people and helping buyers meet sellers. Such services are executed for a fee, though this form of exchange appears not to have reached significant proportions yet.

The provision of unsuitable tenure is perhaps the most widespread problem in Folweni. This is as a result of PTO's being the most widespread form of title in the town. PTO's only allow people to occupy a particular site. It does not allow the person to sell or gain finance through occupation of the land. Despite this limitation, at least a fifth of those living in Folweni have transacted in their property. An expression of dissatisfaction of PTO's came through a court case brought against Ithala Bank by certain residents of Folweni, who claimed that the bank had promised them Freehold Title, on the construction of their homes, but the residents had subsequently received PTO's (interview with Peter Rutsch 2001).

In Folweni, the disregard for zoning was inevitable, because when the town was originally laid out no provision was made for a Town Planning Schemes (TPS), or land use management plan. This has been ignored in a number of cases where spaza shops and service oriented businesses have been erected in land zoned for residential purposes.

Due to overcrowding in the town, encroachment of boundary lines has been rife within Folweni (see map), and little attempt had been made, until recently, to address this administrative and physical problem. In terms of illegal occupation of land this is a constant threat, considering that the town is a formally laid-out enclave within an area controlled by a Traditional Authority whose settlement patterns are informal.

A further category of informal land market was created in Folweni through the overlaying of the general plans over underlying land holdings. When the official cadastre for the town was established, it took no cognisance of previous subdivisions

in the Amanzimtoti Mission Land, or of those occupying the land when the town was initially built in 1983. An effect of this has been the opening of restitution claims, for parts of Folweni. It also gives another layer to the informality of the land market, because the cadastre is incorrect, by default any exchange occurring within the town can be said to be informal.

International case studies indicate that informal land markets are not isolated to South Africa. In Egypt, Kenya and Nigeria informal land markets occur because titles were not registered in the name of the new occupants though he or she might have the title deed. This makes their holding illegal, and hence informal. In Durban, illegal sales of property have occurred within the subsidy housing schemes (Watson 2000) (Snijder 2001). Government has responded to this by passing the Housing Amendment Act of 2001 (Streak 2001), which places an eight-year ban on the sale of subsidy housing. In Folweni it is clear that such selling on of property occurs, in those houses constructed by private companies, as there is a general misinterpretation of the land and housing process, or because the owner is unable to repay the amount owed for the property as was the case with some housing within C Section.

In a study of Lagos Nigeria (Aina 1989), one of the key features of the land market was the renting out of houses, rooms and beds. This industry appeared to be popular and driven by supply and demand. In Folweni, a rental market manifests itself in terms of a site or a room of a house, and only made up approximately 15% of transactions within the sample in terms of those that rented a place to stay, and those that rented out their property or part of their property. Renting in Folweni also had a negative connotation associated with it, where a number of respondents preferred a site of their own. This dislike of renting as a form of tenure in Durban's informal land market is supported by the findings of Clark (1996) who also noted the dislike of renting as a form of land holding.

An international trend related directly to informal land markets has been the increased commercialisation of these markets. Experience of this trend has been noted within Egypt, Kenya, Latin America and in Thailand. This process has been due in part to middle income earners moving into the informal land markets, and in Latin America to the success of illegal land developers.

In Durban, the informal land market is nowhere as commercialised as in these countries. This is due to laws and tenure that prevented the sale of land. Whilst this

conclusion was reached by the findings of the case-study, a reluctance to speak about the sale and cost of the land also contributed to this finding. Clark, in his four study areas in 1996, estimated that eight percent of those surveyed were involved in the selling of property in an informal land market. In the Folweni study carried out five years later more than twenty percent had bought their property from another person. This represents a significant increase. However, this increase in informal land market activity in Folweni must be seen in the context of:-

- Folweni being a formally laid out town and having parts of C Section being formally constructed which appears to have artificially increased prices in this section;
- That Clark (1996) investigated two formal towns and two informal settlements where amounts paid for property, and the intensity of the land markets in operation varied greatly; and,
- that furthermore, Clark (1996) was writing in the period prior to the effect of subsidy housing being felt, and the influence of the 'selling on' of these units in a number of cases in Durban had been identified (Watson 2000)(Snijder 2001).

However, one key indication that the monetary exchange of land in Folweni is on the increase is that seven percent of land exchange by respondents across all three sections has occurred in the past three years. This must be seen the context of very specific periods of land purchases around the early 1980's when the town was first laid out, and in the early 1990's when company housing was constructed. The increase in selling over the past three years may be indicative of a freer market following the loss of administrative power, over Folweni, by the local Traditional Authority. Yet, despite this increase in land market activity, Folweni's past land exchange has been dominated by people building their houses without paying for the sites. The majority of expenditure has gone into building costs, or giving the Nkhosi or Induna's 'a gift' for occupation of the land.

7.3. FORMS OF TENURE

If the informal land market represents all that is illegal, then the formal land market is that which falls within the laws of a particular country. In terms of land, this means conforming to a cadastral system and meeting particular requirements of pieces of legislative and common law. The cadastral system itself consists of a cadastre, a graphic display of the land parcels, and a land register that records the legal aspects

of a land transaction. Critical to this is the type of tenure (title) which a person may have over a parcel of land. This determines the rights that a person has over that land, and what they may or may not do with it. The traditional response to informal land markets has been to formalise the plots which are being traded in, by giving the owner a more secure form of tenure. In so doing, this brings the person into the legal land framework.

More recent arguments have seen the provision of comprehensive and well maintained cadastral systems, rather than focussing on the narrow issue of tenure formalisation as a means of formalising land markets (Williamson 1997). The argument for these technical and legal reforms is that it will make the provision of infrastructure easier, that the land market will be more lucrative and increases in property prices will occur.

Such reform has been criticised in that a market which is formalised becomes too expensive for the poor (Wily 2000), as the poor are out competed from their homes and that the beneficiaries are middle-income earners who have been forced into the informal land market. Furthermore, similar reforms in the past have been used as political point scoring and a means of obtaining votes (Varley 1998).

In a similar way to many countries around the world, the ANC Government has sought to implement a tenure reform programme in an attempt to formalise and regularise the land market. This has come through a number of pieces of legislation such as the Land Reform (Labour Tenants) Act (Act No. 3 of 1996), the Communal Property Association Act (Act No. 28 of 1996), the Interim Protection of Informal Land Rights Act (Act No. 31 of 1996) and two earlier laws passed under the National Party Government, the Less Formal Township Establishment Act (Act No. 113 of 1991) and the Upgrading of Land Tenure Rights Act (Act No. 112 of 1991). These acts sought to bring development to Black towns. The aim of ULTRA was to upgrade tenure. This was a result of separate systems of tenure which operated separately from the cadastral system in operation in formerly White areas where freehold tenure - near full rights to land - was implemented. In black areas there were three lesser forms of title in operation namely, PTO's, a Deed of Leasehold and a Deed of Grant.

In Durban the formalisation of tenure was complicated by the passing of the Ingonyama Trust Act (Act No. 3 of 1994) that decreed that any development application in the former Self-Governing Territory of KwaZulu had to be passed by the King. This constraint has restricted development and upgrading of settlements within the peri-

urban areas of the Durban Unicity. The situation has been compounded in that certain pieces of national legislation aimed at speeding up the development of formerly disadvantaged areas, such as LEFTEA, were not allowed within KwaZulu (Smit et al 1996).

Folweni was no different - in that under a special arrangement in 1998, - the land was transferred from the Inyongama Trust and the influence of the Traditional Authority of Chief Sobonakona Makhanya to the Durban Unicity (von Riesen & Jewell 2001). Subsequently the area was subsumed within the Durban Unicity in 2000 under the new demarcation boundaries for the Durban Metropolitan Council. These actions led to the initiation of a service and infrastructure development project, and more significantly a tenure upgrade initiative under ULTRA as well as an upgrade to the cadastre of the town.

7.4. HERNANDO DE SOTO AND FOLWENI

One of the commentators on informal land markets who has been discussed in this dissertation is Hernando de Soto (2000). His approach is a variation on the formalisation concept. His basic argument is that bureaucracies wanting to formalise their land markets and stimulate economic growth must do so by implementing land legislation that mimics the principles under which land exchange occurs on the ground. By undertaking this action, and bringing extralegal land into the legal framework, the owner becomes able to use his land as collateral, and financial institutions are then willing to give finance to low income earners as the owner has been brought within the ambit of the law.

Within Folweni such an approach may be useful to an extent in that people trade land in more than one way. The basis for exchange is the need for security, and the need for recognition within the immediate neighbourhood. Mechanisms for deciding on price varied from respondent to respondent, while advertising in Folweni is the function of word of mouth and interaction with family, friends and neighbours. Furthermore, the legal basis for exchange amongst respondents was either through a traditional legal interpretation of land, or a hybrid version of the national legal system. To bring about land legislation that teases out these different strands of understanding, land exchange and land tenure in Folweni alone, especially from a national perspective will be a huge challenge. The inclusion of exchange mechanisms in other settlements within the Durban Unicity and within other cities in South Africa where traditional interpretations

of land may differ, will be just about impossible. Therefore de Soto's suggestions for the implementation of a national body to undertake a tenure reform programme is therefore impractical in the case of South Africa and Folweni. A further factor which would prevent the success of de Soto's strategy in Folweni, and similar towns in the country, is that financial institutions have been unwilling to take the risk of providing finance, or providing collateral, on low-income earners property. In the case of Folweni, a contributing factor is that the town does not meet specific infrastructure requirements, specifically in terms of sewerage, for Banks to evaluate the price of the property (interview with Felix Mtshali 2001).

These two aspects appear to mitigate against the use of de Soto's theory in Folweni. In assessing de Soto's theory, one must remember that it is a totalising discourse, that it sets itself up as 'the answer' for economic development in Third World Countries. The Folweni case-study indicates, that though certain aspects of his approach are relevant to Folweni, executing the theory in practice in the South African context will be extremely difficult. Rather, aspects of de Soto's argument should be used at the level of a city or town, where they applicable.

7.5. ACTIONS TAKEN ON INFORMAL LAND MARKETS

A prime question around actions taken on informal land markets is whether to formalise such markets or not. The argument against formalisation is that it forces those out of shelter who are unable to pay for the tenure upgrade, where informal land exchange is the only viable option for the poor (Wily 2000). Such arguments are valid. Yet, in South Africa, there are a number of factors that suggest that a programme of formalisation through tenure upgrade, coupled with suitable service provision and concrete attempts at employment creation is a more desirable approach.

- Firstly, is that formalisation has been successful in the past in South Africa in terms of reforming the Dutch land Holding system.;
- Secondly, the past attempt to separate tenure holding systems under apartheid, through forced removal was a disaster, both in societal terms and in terms of creating a formal land market;
- Thirdly, in the sample at Folweni there was an overwhelming call for Freehold Title. One does need to approach this response with caution as there may have been other factors responsible for this. But it is clear that the experience of forced removal from Malukazi has led to the need for increased security within

the town; and,

- Finally, further evidence from the case study indicates that service and infrastructure provision is perhaps of greater need than tenure reform. Therefore it would be expedient to execute tenure reform as part of a broader development programme focussed on local economic development and service provision.

If Folweni is indicative of other towns within the Durban Unicity, it is clear that a project-based interaction is required that covers a number of the aspects of development, rather than focussing solely on tenure reform.

7.5.1 National Government Response to Informal Land Markets

Such development initiatives would require interactions at all levels at which power is exercised in the transfer and exchange of land.

National Government's function must be to:-

- Layout and execute the necessary legislative and policy frameworks for informal land markets to operate;
- To ensure that local governments are delivering and have the necessary capacity; and;
- To ensure that the cadastral systems are able to cope with the formalisation process.

Specific interventions or non-intervention which must be undertaken by National Government are that:-

- Eviction is to be seen as a last resort.
- The role of councillors, civic leaders and Tribal Authorities within the development of a land market must be defined.
- The facilitation of a national educational programme to inform persons on property ownership and their responsibilities must be organised.
- The development of a local registry for metropolitan areas.
- To avoid the establishment of a National Body to oversee land tenure reform, as suggested by de Soto.
- Development of a proposed 'Urban Tenure Reform Act'.

This act must include the following aspects:-

- ▶ A chapter on informal land markets in urban areas;
- ▶ That tenure reform is seen as an intrinsic part of development that includes the installation of infrastructure, employment generation and education;
- ▶ Land registration and land transfer costs are minimised; and,
- ▶ To facilitate the development of a local registry.

7.5.2. Proposed Change at the Provincial Government Level

The proposed strategy does not propose major change at the provincial level. This is because reform of informal land markets is seen as a national issue, but an issue that has its expression at the local level. The change at provincial level will be that the Provincial Deeds Registry and SGO offices will take on the role of monitoring the quality of the local urban registries, while been able to focus on the upgrading and maintenance of rural areas, particularly those in former Homelands, or Self-Governing States.

7.5.3. Proposed Changes at a Local Government level.

In terms of the proposed strategy the local government, and particularly Metropolitan Authorities and Category B Municipalities are the key bodies by which to execute reforms necessary to address the informal land market. The actions to be undertaken are:-

- Undertaking studies into the nature of informal land markets within particular areas and the best possible ways to address these land markets;
- Implementation of an ongoing education campaign;
- Local Government property exchange days;
- The drafting of bylaws outlining the roles of civics and councilors in the land market;
- A local Government policy on evictions; and,
- The establishment of a local registry to make the bureaucratic process cheaper and more accessible to the poor.

The mechanisms that can be used to coordinate, package and budget for the proposed informal land market reform already exist, and fall under the auspices of Integrated Development Plans. These provide the frameworks into which the above changes can be placed.

7.5.4. Non-Governmental Organisations and Informal Land Markets.

Despite being sidelined by National Government and foreign donors, NGO's have a critical role to play in ensuring that those who are most in need are catered for in terms of access to land. This is particularly true for title and land market reform. NGO's can be responsible for informing specific communities about land exchange and the steps which are needed to be undertaken for the land holding to be legal. Secondly, NGO's can be responsible for collecting and interpreting information, as an independent source from data collected by government. Thirdly, these bodies can provide a useful critique of government land tenure policy. Finally, NGO's can play a role as a broker between government and community interests in particular circumstances.

7.6.5. Citizen Involvement in Land Markets

Of course the most important persons involved within a land market are the buyer and the seller. In the context of an informal land market these persons have to be aware of the following issues :-

- The buyer must know whether he or she is eligible for a bond or a mortgage on the property;
- The buyer and seller must know what rights accrue to the particular property concerned;
- Both parties must know who to contact when the land holding or their security is threatened;
- They must understand the correct procedures required to legally own a property, how much this costs, and where to go to have this done; and,
- Finally the seller must know the best way of how to reach the widest customer base possible.

7.6. AREAS OF FUTURE RESEARCH

Little recent research has been done on the issue of informal land markets particularly in South Africa (Snijder 2001). Though some work has been done on informal land markets in Durban (Clarke 1996)(Snijder 2001) and some research has been undertaken on aspects of the informal land market (Motladi 1995)(Braude 1996)(Watson 2000), there is a need for a comparative study of informal land markets across the settlements which make up Durban Unicity. The reason for proposing such a study is that it would pick up variations across settlement types and would determine how the formal and informal land markets would interact over space. Similar research should be undertaken in other metropolitan areas so as to form a national picture of informal land markets and informal land market interactions and mechanisms. Other issues that would have to be considered are the:-

- Extent of commercialisation within informal land markets;
- The functioning of informal land markets within subsidy housing schemes;
- How councilors/civic leaders function in selling land and/or directing people to land;
- How formal housing projects affect the property prices of older in-situ buildings in informal land markets; and,
- And finally the extent and nature of renting within informal land markets.

7.7. COMMENT ON THE RESEARCH APPROACH

One might argue that this dissertation has failed to keep within the parameters of postmodernist theory. This may be true in that the concept of land markets has been presented in terms of a dualism of the informal/formal land market. This is a particularly structural approach to a socio-economic problem. Yet, this must be seen in the context that this dichotomy is part of a wider dichotomy between the formal and informal markets, which in turn is a part of an even broader dichotomy of the legal and illegal city. Furthermore, the power relations and interactions which fuel these dichotomies are myriad and complex both in terms of time, space and process. Therefore informal land markets are quite difficult to define and can vary depending on whether one perceives the construct from the government's perspective, or from the point of view of one involved within an informal land market transaction. Hence, for the purposes of this dissertation, it has been necessary to use the structure of informal/formal land markets, so as to 'capture' the meaning of the concept.

It is hoped that through the case study and its context that part of the complexity concerning informal land markets has been peeled away and an image of these markets revealed. Previous intervention concerning informal land markets involved the imposition of distinctive technical mechanisms and legal structures. The contention of this dissertation is that these solutions should not be altered radically but should be moulded to aid the land market interaction on the ground, rather than enforcing the law of the market process. From the above discussion, it is apparent that a postmodernist approach was attempted in the execution of this dissertation, though for the best part the writing focussed upon unpacking the concept of informal land markets.

7.8 CONCLUSION

Notwithstanding the limitations of not using a strict postmodernist approach, this dissertation has been successful in unpacking the concept of informal land markets particularly in the context of Folweni. It will make a valuable contribution to further research in this area and specifically understanding the phenomena in the Durban Unicity

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ANNEXURE ONE

EXAMPLE OF THE QUESTIONNAIRE FOR FOLWENI

FOLWENI QUESTIONNAIRE - 2001

PART 1 - DEMOGRAPHIC INFORMATION

1. Respondents' Number (1-360)							
2. Name	First Name				Surname		
3. Gender	Male				Female		
4. Address							
5. Section of Folweni	Section A			Section B		Section C	
6. Head of Household	Yes				No		
7. Employment	Full Time		Part Time		Casual	Unemployed	
8. Level of Education	Primary School	High School	Matric	Post Matric	Tech/University		
9. Occupation							
10. No of Occupants on Site	Less than 2	2-4	4-6	6-8	8-10	+10	
11. Length of Stay in Folweni in Years	Less than 1	1-2	2-5	5-10	10-15	+15	
11. Length of Stay on Site in Years	Less than 1	1-2	2-5	5-10	10-15	+15	
12. Age in Years	Less than 18	18-25	25-35	35-45	45-55	55-65	65

PART 2 SITE - BACKGROUND QUESTIONS

13. When did you arrive in Folweni?		
14. Have you come from another area/town in Durban?	Yes	No
15. Where did you live before?		
16. Have you come from elsewhere - another town or city out side Durban?	Yes	No
17. If yes, then where did you live before?		
18. Are you happy staying here?	Yes	No
19. If no, why not?		
.....		
.....		
.....		

ART 3 - TENURE RELATED QUESTIONS

20.	Did you need to speak to the magistrate or chief about getting land?	Yes	No	Unsure
21.	Did you build this house or buy it?	Build	Buy	Other
22.	If other, please specify.			
23.	Were you the first person to live here on this site?	Yes	No	Unsure
24.	If No - Did you buy from another person?	Yes	No	Unsure
25.	If Yes - how much did you pay? (To a nearest round figure)	R		
26.	Is this a common way of getting land/housing in Folweni?	Common	Uncommon	
27.	What other ways are there of getting land to stay on in Folweni?			
28.	Do you own this property?	Yes		No
29.	If no - who is the owner?			
30.	Do you have a form to show that you are the owner of the site or house?	Yes		No
31.	What form of title/ownership have you got?			
32.	Is this form of proof desirable?	Desirable		Undesirable
33.	Why do you say that?			
34.	What would be a more secure/better way of having proof that you owned the site?			
35.	Do you rent out part of your house/lot?	Yes do rent any		Do not rent any
36.	If no, are you a tenant and pay rent?	Yes		No
37.	If you were to leave Folweni tomorrow, how would you go about selling you're house?	Advertise	Word of Mouth	Other
38.	How much would you sell it for? (To nearest round figure)	R		

39. How would you decide what you would sell for - the price of the house or the land and house?						
Size of Site	Locality	No of Buildings	No of Rooms	Current Uses	House /Materials	Other
40. If other, please specify the aspects						
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41. What would do about the PTO or form you have?						
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PART 4 - SERVICES

42. What services (water, electricity, roads, sewerage have been provided since 1994?)				
Water	Electricity	Sewerage	Roads	Other
43. Have there been any problems with these services?				
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44. Do you consider laying out sites for houses a service?			Yes	No
45. Why do you say that?				
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PART 5 - PROJECT UPGRADING

46. Are aware that there is an upgrading project in process in Folweni?	Yes	No	
47. Do you think that this project will change the status of the land?	Yes	No	
48. If yes, then how?			
<p>.....</p> <p>.....</p> <p>.....</p>			
49. If no, why not?			
<p>.....</p> <p>.....</p> <p>.....</p>			
50. Do you know what freehold tenure or title is?	Yes	No	
51. How is it different from what you have now?			
<p>.....</p> <p>.....</p> <p>.....</p>			
52. Is the project a good thing?	Good	Not Good	Unsure
53. Reasons			
<p>.....</p> <p>.....</p> <p>.....</p>			
54. Will the changed status of the land make it easier to sell this site or buy other land in Folweni, if you want to?	Easier	Not Easier	Unsure
55. In what way?			
<p>.....</p> <p>.....</p> <p>.....</p>			
56. Any other comments about land/housing and services issues.			
<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>			

ADDITIONAL NOTES

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ANNEXURE TWO
COMMENTARY ON INACCURATE DATA -
QUESTIONS 240 - 299

APPENDIX 2

NOTES CONCERNING INACCURACIES WITHIN QUESTIONNAIRES 240-299 AND THE REMOVAL OF SPECIFIC QUESTIONS FROM THE ANALYSIS

Though the majority of the questionnaires were well answered, one of the batches of responses had generic answers for certain of the open-ended questions. Even so, this did not affect the general data collected, or all of the open-ended questions in the batch of questionnaires.

Attached are the tables of results for the open-ended questions that appeared to be most affected by the anomaly. The tables present two sets of the same data. One column (the left) represents answers of respondents that includes the affected data, and the other column (the right) excludes the affected information. The 'Frequency' represented is the number of responses to a particular answer to the question. The questions from the study which were recognized as being infected were questions 48, 49, 53, 55 and 56. What will follow is a brief commentary of the manner in which the inaccuracies represented themselves, through the use of the relevant tables.

Table 1 and Table 2

Question 48 (Table 1) and 49 (Table 2) asked the respondents to give an expanded answer as to why they had answered positively or negatively, respectively, when asked about the effect that the Development Project would have on Folweni. At a glance, both tables appear reasonable. However, in both questions very few responses for either question was given, as is evident in the lack of change in the data, once the 120 questionnaires are removed. In fact the only major answer for both question 48 and 49 was the response in question 48, that " Folweni will become a better Environment to live in" which had six responses.

Overall in this study these two questions had a poor response from the all 360 respondents but in the batch under review, the lack of response is unacceptably high.

Table 3.

Table 3 represents the responses to question 53 which sort to determine whether the respondents thought that the project was a good idea. In this question there were two generic answers being: "will be expected to pay more" (10 responses) and "Have no idea of what is going on." Previously in the other 240 respondents only six and three responses had been garnered. This suggests that either there had been a specific anomaly in the data, or the data was skewed. Considering the nature of the data, it is likely to be the latter reason. Though these two responses stand out, two other responses were used in this batch more than twice. These were the response that the project would Improve standards of living, and that the respondent was "unsure".

Table 4.

Firstly Question 55 concerning the affect of the project on land holding was particularly poorly answered within the whole questionnaire. The single most used answer was that the project would make it "easier to purchase/sell a house (ten responses). The other responses used were "unsure", (one response), "Will be able to sell/buy land without consulting Nkhozi (one response), "will enable people to borrow from a bank" and that land holding would be easier under Durban Metro (one response). In all, only thirteen responses were obtained for the batch of survey papers under review.

Table 5.

The clear generic answer used in the question 56 regarding general comments on land holding and tenure issues was the answer that the respondent required a Government

Subsidy (eighteen responses). At one level, this is valid answer and it might be an expected response. Yet, prior to the batch of questionnaires in review there had been only one other similar response. This fact makes these responses questionable. The two other generic answers were that there was poor service provision in Folweni (eleven responses) and the need for infrastructure in Folweni (twenty-one responses).

As has been indicated, there are particular problems with these questions in this specific batch of questionnaires. Answers given are generic in nature and in certain of the questions, there have not been enough responses to add to the validity of the respective questions. As a result, these questions have been excluded, when the data related to them was used. For the rest of the questionnaires the open-ended questions were generally well answered.

Table 1. Comparison of responses to Question 48 concerning positive changes to the proposed project will bring, with and without the suspected inaccurate questions.

	Frequency	without 240-299	Frequency
with 240-299			
Folweni Will Become a Better Environment to Live in	93	Folweni Will Become a Better Environment to Live in	87
Receiving Title will Enable Access to Finance	5	Receiving Title will Enable Access to Finance	5
Project will Secure Title	31	Project will Secure Title	30
No Answer	2	No Answer	2
Will Know Extent of Property	9	Will Know Extent of Property	9
Will Provide a More Lucrative Land Market	18	Will Provide a More Lucrative Land Market	16
Do Not Know About Project	6	Do Not Know About Project	6
Non Applicable	6	Non Applicable	6
Will get Free Houses	4	Will get Free Houses	3
Sites Will Become Available	5	Sites Will Become Available	5
Will Receive Onsite Services	9	Will Receive Onsite Services	8
Sponsors will Become Available	5	Sponsors will Become Available	5
Will Create Jobs	10	Will Create Jobs	8
Will Encourage People to Improve Their Houses	7	Will Encourage People to Improve Their Houses	7
Will Have to Pay Rates	8	Will Have to Pay Rates	8
Will Remove Land from Those who Took Land Illegally	2	Will Remove Land from Those who Took Land Illegally	2
Will Obtain Housing Subsidy	7	Will Obtain Housing Subsidy	7
Durban Metro will Initiate Development	1	Durban Metro will Initiate Development	1
Housing will be More Expensive	3	Housing will be More Expensive	3
People who Own Three Sites will be Prevented from doing this	1	People who Own Three Sites will be Prevented from doing this	1
Easier to Sell/Buy Property	5	Easier to Sell/Buy Property	5
They Think So	1	They Think So	1
Will Change the Status and Value of Land	1	Will Change the Status and Value of Land	1
Beneficiaries Will Be Secure in Event of Death	1	Beneficiaries Will Be Secure in Event of Death	1

Table 2. Comparison of responses to Question 49 concerning negative changes to the proposed project will bring, with and without the suspected inaccurate questions

		Frequency	without 240-299	Frequency
with 240-299	Non- Applicable	17	Non- Applicable	17
	Unsure	7	Unsure	2
	No Projects are Occuring in Folweni	24	No Projects are Occuring in Folweni	22
	Wants to See Results of Development	10	Wants to See Results of Development	10
	Lack of Faith in Delivery	14	Lack of Faith in Delivery	14
	Project will not Change Status of Land	3	Project will not Change Status of Land	3
	Will be Forced to Pay Rates	3	Will be Forced to Pay Rates	3
	Must Build Good Houses First and then Hand out Title	3	Must Build Good Houses First and then Hand out Title	3
	Lack of Information About Project	9	Lack of Information About Project	9

Table 3. Comparison of responses to Question 53 concerning reasons for feelings towards the project, with and without the inaccurate questions

		Frequency	without 240-299	Frequency
with 240-299	Guarentees Ownership	40	Guarentees Ownership	38
	Secures Tenure	12	Secures Tenure	10
	Project will Improve Standards of Living	64	Project will Improve Standards of Living	59
	Will Improve Services/ Infrastructure Provision	21	Will Improve Services/ Infrastructure Provision	20
	Unsure	23	Unsure	11
	No Development has Occured Yet	7	No Development has Occured Yet	5
	Will Create Employment	44	Will Create Employment	44
	Will Enable One to Borrow from a Bank	19	Will Enable One to Borrow from a Bank	17
	Uncertain as the Product of the Project is unseen	8	Uncertain as the Product of the Project is unseen	8
	Will Have More Knowledge of what's Going on	5	Will Have More Knowledge of what's Going on	5
	Have no Knowledge of what's going on	16	Have no Knowledge of what's going on	3
	Will be Able to Build Without Restriction	4	Will be Able to Build Without Restriction	3
	Land Registry will be in Folweni	1		
	Folweni will Become Township	6	Folweni will Become Township	6
	Uncertain as to what will Happen to Renters	4	Uncertain as what will Happen to Renters	2
	Will Reduce Land Disputes	9	Will Reduce Land Disputes	9
	Will be Expected to Pay More	16	Will be Expected to Pay More	6
	Need a Well Constructed House not Title	1	Need a Well Constructed House not Title	1
	Will bring back Violence	1	Will bring back Violence	1
	Will Bring Free Building Materials	1	Will Bring Free Building Materials	1
	Will get Subsidy from Government	2	Will get Subsidy from Government	2
	Title will ensure that Children Will not be evicted	2	Title will ensure that Children Will not be evicted	2
	Need Employment Project Most	1	Need Employment Project Most	1

Table 4. Comparison of responses to Question 55 concerning ways in which the project will change the status of landholding, with and without the inaccurate questions

		Frequency	without 240-299	Frequency
with 240-299	Will Bring Secure Tenure	32	Will Bring Secure Tenure	28
	Will Increase Value of Land	2	Will Increase Value of Land	2
	Easier to Purchase/ Sell House	76	Easier to Purchase/ Sell House	67
	No Answer	3	No Answer	3
	Unsure	32	Unsure	31
	Will be More Difficult to Purchase/ Sell House	11	Will be More Difficult to Purchase/ Sell House	11
	Will be Able to Sell/Buy Land Without Consulting Nkosi	21	Will be Able to Sell/Buy Land Without Consulting Nkosi	20
	Will not have to Consult Counsellors/Inkosi	7	Will not have to Consult Counsellors/Inkosi	7
	Process of Formalisation Perceived as Difficult	5	Process of Formalisation Perceived as Difficult	5
	Full Title will Mean that We have to Pay for all Services	1	Full Title will Mean that We have to Pay for all Services	1
	Will Enable People to Borrow from a Bank	10	Will Enable People to Borrow from a Bank	9
	Situation will Remain the Same	5	Situation will Remain the Same	5
	Corruption and Unkept Promises will still remain	4	Corruption and Unkept Promises will still remain	4
	Do Not Know About Full Title	5	Do Not Know About Full Title	5
	Easier- Land Under Metro Controls	1		
	Will know who you are Buying From	19	Will know who you are Buying From	19
	Prevent Fraudulent sale of Land	2	Prevent Fraudulent sale of Land	2
	Need for Explanation on Process from Councilors	8	Need for Explanation on Process from Councilors	8
	It was Easy Easy To Obtain Land On Arrival	1	It was Easy Easy To Obtain Land On Arrival	1
	Development will Improve the Land Market	1	Development will Improve the Land Market	1
Will be able to Sell House with Your Will	2	Will be able to Sell House with Your Will	2	

Table 5. Comparison of responses to Question 56 concerning comments on landholding and tenure issues, with and without the inaccurate questions

	Frequency	without 240-299	Frequency
with 240-299			
Need Homes of Higher Quality	5	Need Homes of Higher Quality	3
Poor Service Provision in Folweni	32	Poor Service Provision in Folweni	21
Waiting for Free Houses	7	Waiting for Free Houses	6
Need Employment Oportunities	3	Need Employment Oportunities	3
Require Specific Infrastructure to be Provided	112	Require Specific Infrastructure to be Provided	91
Onsite Services	14	Onsite Services	9
Lack of Development	5	Lack of Development	4
State Assisted Housing	3	State Assisted Housing	2
Need for Holistic Development	44	Need for Holistic Development	44
Lack of Information from Community Leaders	7	Lack of Information from Community Leaders	2
New in Folweni- Difficult to Comment	1	New in Folweni- Difficult to Comment	1
Improved health and safety measures are essential	8	Improved health and safety measures are essential	8
Land Registry offices must be Nearby	6		
Require Sites for Children	1		
Fears having to Pay Rates	3	Fears having to Pay Rates	3
Sites are too Small	1	Sites are too Small	1
Free Sites for Renters	1	Free Sites for Renters	1
Require Government Subsidy	19	Require Government Subsidy	1
Development Must Consider Communities ability to pay	2	Development Must Consider Communities ability to pay	2
Folweni Will Look Like a Township	3	Folweni Will Look Like a Township	2
Better Transport Services- NDC Buses	1	Better Transport Services- NDC Buses	1
Traffic Calming Mechanisms for Children	1	Traffic Calming Mechanisms for Children	1