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URBAN LAND TENURE AND PUBLIC POLICY CHALLENGES: THE CASE OF ACCESS, OWNERSHIP AND USE IN PHOKENG.

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Dissertation submitted to the School of Governance, University of the Witwatersrand, in partial fulfilment of the requirements for the degree of Master of Management in Public Policy

Supervisor:

Prof. Pundy Pillay

4TH September 2015

DECLARATION

I declare that this research report is my own unaided work. It is being submitted in partial fulfilment of the requirements for the degree of Master of Management in Public Policy at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in any other university.

Ivan Kadungure

……day of September 2015

ACKNOWLEDGEMENTS

I wish to acknowledge the role played by various people in this project. This includes the leadership of the Wits School of Governance that motivated to Council that I be permitted to complete my studies.

The panel for my proposal led by my supervisor, Prof Pundy Pillay challenged me to use Royal Bafokeng Nation (RBN) as a case study, and despite time and financial limitations I wondered why not. Phokeng, a village in traditional Royal Bafokeng Nation was ideal to undertake the research because very soon it might become a secondary town of Rustenburg.

I wish to acknowledge the role played by my supervisor in encouraging me to get the research completed. I am very grateful and indebted to Professor Pundy Pillay for all the contributions he has made for the successful completion of the research.

DEDICATION

I dedicate the research to my extended family who tolerated the mess I kept in the house and my absence from family activities, especially my wife Tsakane. Hats off to nephew Percy Murwisi who became an out and out professed disciple of De Soto, it kept me on my tenterhooks. My niece Rukudzo Pamacheche did the secretarial and my daughter Rudo also helped with some computer applications.

As I complete, my thought goes to the MM: PP first year class of 2008 who, because of their young average age I would jokingly introduce myself as ABET, short for Adult Basic Education because of my advanced age.

ABSTRACT

The study focuses on the lived experiences of indigenous and traditional community of Phokeng in the process of urbanising. It is a community affected by unclarified policies and documents to secure their tenure. Phokeng community in Rustenburg is approximately 200 km to the west of Johannesburg. The research revealed that the rural and marginalised of Phokeng is now becoming urbanised and that there is inadequacy of legislation or policy to guarantee security of tenure in an area a under traditional authority. The community has historically depended on oral information and storytelling. A total of thirty informants were surveyed in the community. The study elicited information on informant's understanding of security of tenure, the role they played to secure tenure to their land. It also probed, their awareness of developmental policies affecting their activities and expectations. The study revealed that people did not have title to the land they occupied but were very content that they were safe from evictions because the traditional leader and his traditional authority provided the guarantee. There is need for further research on why people in traditional authority areas that are in the process of urbanising would be content to live on land on which they do not have registered tenure rights.

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ABBREVIATIONS

ANC – African National Congress

ATR – Asset Transfer Regulations

CLT – Communal land tenure

DFA – Development Facilitation Act

Concourt – Constitutional Court (of South Africa)

DRDLR – Department of Rural Development and Land Reform

GEAR – Growth Employment and Redistribution

LGWP – Local Government White Paper

MDB – Municipal Demarcation Board

MFMA – Municipal Finance Management Act

NDP –National Development Plan

PAR – Participatory Action Research

RBA – Royal Bafokeng Administration

RBN – Royal Bafokeng Nation

RBH – Royal Bafokeng Holding

RDP – Reconstruction and Development Plan

RLM – Rustenburg Local Municipality

SARS – South African Revenue Services

SPLUMA – Spatial Planning and Land Use Management Act of 2013

CHAPTER 1: INTRODUCTION

1.1 Background

Arguably, the contestation for land has been a perennial sphere of struggle since time immemorial irrespective of spatial or geographic location. Recently in South Africa this contestation has become acute in areas experiencing rapid population growth whether urban, peri-urban or rural. According to the United Nations Department of Economic and Social Affairs (DESA) the world has been experiencing rapid urbanisation since the second half of the last century rising from a mere 30 percent in 1950 (UN DESA 2014: 1). And for the first time in history the global urban population equalled and surpassed the rural population in 2008 (UN-Habitat HSP 2009: 8). Currently (in 2014 a mere six years later) it is 54 percent (UN DESA 2014: 2). In Africa and Asia urbanisation is currently 40 and 48 percent respectively (UN-Habitat 2009). Africa is expected to achieve 50 percent urbanisation by 2030 and global urbanisation 70 percent by 2050 (Ehlenz 2014).

Urbanisation is good for the growth of nations. It is in cities that the Gross Domestic Products (GDPs) of nation-states is concentrated, and it is currently 70 percent globally (Frontier Advisory 2014), although in Africa it stands at 55 percent (UN Habitat 2008: ix). For this reason it is desirable and necessary that public policy be a strategic and dynamic tool and instrument to address urbanisation to meet political and socio-economic challenges and demands of vulnerable indigenous, traditional and cultural communities in an environment characterized by massive poverty, grave unemployment and stark and gross inequalities including land deprivation.

Hollamby (1993: 1) quotes an apt statement attributed to Sachs (1990) that “Land is the land”. Land is a given natural resource, limited in supply, and fixed in spatial and geographic location and is therefore not fungible. Land has numerous attributes, potential and collaborative functions and contending uses. It has surface, aerial (space) and subsurface uses and resources. Land is a critical ingredient for the realisation of first generation political rights.

Legal access to land is a strategic prerequisite for the provision of adequate shelter and for the development of sustainable human settlements, affecting both urban and rural areas. Failure to adopt appropriate urban and rural policies and land management practices is a primary cause of inequity and poverty (UN-Habitat 2003: 7). The challenge is in the cities of the developing world where more than half of the urban population lives in informality, slums or squatter settlements not legally recognized by city authorities (UN-Habitat 2003). Consequently the city becomes exclusive by separating the poor from the rich thereby calling for state intervention in public policy matters. Land rights are a continuum and cannot be separated between legal and illegal although legal formulae guarantee security of tenure and in the process should protect poor communities (UN-Habitat 2003). Land is therefore politically sensitive, socially emotive and economically empowering. Wars have literally been fought over land for access, use, trade, exchange, or ownership within socio-economic, political and ideological contexts.

With rapid urbanisation in the new millennium, demands placed on land have increased putting pressure on the inexorably linked land tenure and land security (Ehlenz 2014). The process of urbanisation cannot be left to the vagaries of the unfettered markets because they are not flawless and are motivated by profit rather than public interest. Through public policy the state can intervene in instances on market failure without replacing the market.

This chapter introduces the research topic focusing on the need for urban land in urbanizing communities and the need for informed public policies to intervene in the space taking cognizance of the backgrounds and informed by the affected stakeholders and beneficiary communities. These stakeholders come from situations that include post-conflict, post-colonial and post-apartheid experiences and other types of oppression and discrimination as well as cultural, traditional and indigenous communities whose land tenure, ownership type, use, trade and exchange are in conflict with the formal and formalities of urban life as Simons & Malmgren (2008) point out.

1.2 Justification for the research

The incorporation of peri-urban and rural land into the urban, town or city and in the process the urbanisation of cultural, indigenous and traditional communities including ethnic minorities and sometimes racial majorities is a motivation for this research. This requires public policy which, as former SA President Mbeki adroitly put it, should be shaped on a “strong public policy agenda predicated on sound planning and evidence-based policy and decision-making (Njoh 2014: 23).

Urbanisation in a global context

By comparison global rural population is receding and according to John Wilmoth, “managing urban areas has become one of the most important development challenges of the 21st century” (UN DESA, 2014). Urbanisation process and the overwhelming nature of cities and towns and the advancements in technology and modernity have given rise to the need for deliberate and conscious planning for urbanisation within public policy contexts.

Urbanisation has affected the different geographical areas differently. In Northern America urbanisation has grown by 82 percent, and Europe has experienced a 73 percent growth (UN DESA 2014: 1), ethnic minorities have either been deliberately excluded or assimilated in the process resulting in civil war or conflict. Jerusalem in the Middle-East is the most racially or ethnically conflicted city in the world and is deliberately precluded for reasons of complexity in diversity and adversity. Suffice to say that it can be juxtaposed and compared to South African cities under apartheid (Bollens, 1997).

Access to and ownership of affordable land for the rapidly growing population of developing world cities remains a moving target (Midheme 2012: 2). The Latin American and the Caribbean cities are an enigma in that although they are found in developing countries, they are at the same level of urbanisation as the western and northern country cities, with up to 80 percent urbanisation (UN DESA op.cit.). Africa and Asia are the only

continents that have lagged behind although they are expected to urbanize faster than the rest of the world (UN DESA 2014: 7).

In the north and western towns and cities the benefits of industrialization driven urbanisation have been demonstrated through freehold tenure and property ownership. The rules of land ownership, tenure security, use, trade and exchange are well defined, observed and adhered to in most instances and informality has been an exception. The challenges of informality are mostly found in the cities of developing Latin American countries. However the issue of land access, ownership and use by indigenous ethnic minority communities has remained a challenge and sometimes unresolved with some being litigated globally.

The African context

African countries are still in the developing mode and African cities are the least urbanized, 40 percent at 2011 figures ((Parnell & Pieterse 2014: 1). Urbanisation has been successfully implemented in the western and northern cities of Africa. Only East Africa and sub-Saharan Africa are still very rural with the majority not urbanized.

Globally Sub-Saharan Africa is the least urbanized arguably because it was the last to shed itself of the shackles of colonialism. In most cities and towns of Sub-Saharan Africa the local native people were housed and sheltered on the periphery of the city as temporary sojourners as in apartheid South Africa and Southern Rhodesia now Zimbabwe. The city was the exclusive domain of the colonial masters and oppressors at the expense of the majority local native groups and it was untenable hence the wars of revolutionary struggles that followed.

The South African context

Ruhiiga (2014) and Zuma (2014) place the RSA urban population at 61.7% based on the StatSA 2011 census (Statistics South Africa 2011). The World Bank however, shows the urban population figures to be slightly higher, having risen from 62 percent in 2009 to 64% in 2013 (The World Bank 2014).

In 1985 South Africa had already surpassed the 50 percent urban population mark (Turok 2014). This is in line with the Index Mundi (2014) that shows a change in gradient of the RSA annual urban population in 1985 at 49.37 percent of the urban population, although the World Bank data shows that RSA made the demographic transition to above the arbitrary 50 percent urban population during 1987-8 period compared to the world population in 2007. Most urban residents live in slum areas, informal settlements and are involved in informal as well as street trading business, are known to have high unemployment rates, massive poverty and inequality (Beloff 2014). Consequently, in response to these challenges the post 1994 democratic government passed a battery of laws informed by the White Paper for Local Government (LGWP) policy of 1998.

The LGWP policy made provision for wall-to wall municipalities irrespective. [It was the cross-subsidisation of financial resources that was the force behind the LGWP, yet (user-pay) services charges went up drastically in certain areas or locations, for example in Tshwane (then Pretoria) graves charges went up from R71,00 to R505,00 for Atteridgeville residence, an increase of 700 percent in 1998 (Sowetan, 25/05/1998: 4)]. The policy replaced structured racism apartheid and was the start of the degeneration of urban policy (Bond 2003: 40). For Bond (op.cit: 45) the LGWP was a political document which depoliticized urban problems since it considered only a series of residual challenges as subject to policy intervention which he summarized as follows:

"Skewed settlement patterns and extreme concentrations of taxable economic resources. ….huge backlogs in service infrastructure…great spatial separations and disparities between towns and urban sprawl…. new municipal institutions which recognize linkages between urban and rural settlements … entrenched modes of decision-making, administration and delivery … Inability to leverage private sector resources for development … substantial variations in capacity …. need to rebuild relations between municipalities and communities".

Arguably, besides the DFA and the Growth Employment and Redistribution (GEAR) policies, the LGWP is South Africa's foremost policy document which, through various

pieces of legislation (which are well captured in Bond's summary above) have either enabled or stifled service delivery in South Africa, and they include the following:

i) Municipal Demarcation Act (27 of 1998) – in terms of which the independent Municipal Demarcation Board demarcates across the board all land in a municipality. The contradiction is that there are rural areas in South Africa and even when the definition of metropolitan area precludes rural areas, the latter does get included. The process can be used for gerrymandering boundaries and wards as cited by Twineyo-Kamugusha (2012).

ii) Local Government: Municipal Structures Act (No 117 of 1998) – it sets out the municipal structures institutions and governance structures as well as structures for public participation including the participation of ward committees. Section 81 of the Act is the participation of traditional leaders and the MEC for the province has to determine the number of traditional leaders who will participate in Council. Council has to consult the traditional leader before making a decision in his area.

iii) Local Government: Municipal Systems Act (No 32 of 2000) – which sets out the work of the Council in terms of which the traditional leaders can provide services to the municipalities in terms of a service level agreement (SLA) to deliver on the Integrated Development Plan (IDP).

iv) Local Government: Municipal Finance Management Act (MFMA) (No 56 of 2003) – in terms of Section 14 of the Act the Council can make available land under very strict condition. Section 3 of the Act covers institution to which the Act applies and traditional leaders are not mentioned. This legislation and the Asset Transfer Regulations are used for the alienation of land by Councils. The limitations of the MFMA results in Councils putting out land on tender. The poor cannot afford to compete with rich elites (Appendix 2 is an example of how Councils invite tenders for land alienation from City of Joburg).

v) Local Government: Municipal Property Rates Act (MPRA) (NO 6 of 2008) – sets out conditions under which Council may rate its properties for rates purposes and how indigents may be assisted.

vi) Municipal Asset Transfer Regulations of 2008, Gazette No 31346 read together with MFMA stated above.

vii) Other national and provincial legislation that has a bearing on service delivery at local government level, e.g. schools, hospitals, police stations etc. as well as the functions of the Deeds Registry office and the Surveyor General Office etc.

Despite the LGWP introducing wall-to-wall local authorities, the role of traditional authorities have not been adequately addressed in policy and is therefore flawed. The process of policy formulation in relation to the above listed statutes is well understood and will be covered below so as to dispense with immediately without further interference with the focus of the research which is access to land by marginalised indigenous, traditional and cultural communities.

The South African Constitution and other land related policies like the Land Restitution and Redistribution Policy and allied legislation are cited and heralded as the best democratic dispensation documents in the world (Roux 2008; Habib 2013; Mamdani 1996). These include restorative justice (Roux 2008) in the Restitution Policy as well as the Truth and Reconciliation Commission which addressed non-land related matters though they had to work in tandem in terms of restorative justice.

Failure of restorative justice has resulted in delayed or a suspended revolution in the transitional democracy in South Africa in particular (Habib 2013). Democratic transition theory ala Habib (2013: 243), is based on "the need to simultaneously pursue both human rights and historical redress" which is key and fundamental to this research, and of secondary importance are the doctrine of responsibility to protect (R_2P) and the principle of sovereignty. These are better supported by adequate, appropriate and well-articulated policy options, choices and interventions for urban land reform.

Informality has grown exponentially in recent times as demonstrated by the levels of unemployment, poverty and inequality as well as the frequent sometimes violent "service delivery protests" (McLennan 2009). This includes peri-urban and rural areas which are

urbanizing. In the process beneficiaries have been soothed and smoothed with the provision of RDP housing and social grants (Pithouse 3/3/2014) which given, have been a positive contribution. But in the main, the daily experience in South Africa's urban areas has been one of evictions and confiscation and demolition of poor peoples' shelter, goods for sale, informal trading areas and shelters, and anything else considered informal. This situation is exacerbated by the fact that in terms of the (LGWP) policy and attendant raft of legislation, no amount of soil is outside a municipality as the policy established wall-to-wall municipalities throughout the country, they have created a problem for leadership in traditional areas.

The Judiciary has been called upon to consider litigation on public policy matters, in particular the South African Constitutional Court (Concourt), which, has reflected badly on the public policy front in that, in the process, policy is set by precedence. Four judgments beg mentioning in other sectors such as socio-economic rights (Grootboom 2000); HIV/Aids case against the 'state's Aids denialism policy' (Treatment Action Campaign 2002); the Gauteng Freeway Improvement Project (GFIP 2013, 2014) e-Toll roads policy; and the contest on authority to plan (City of Joburg and Gauteng Development Tribunal 2009). All these various factors contributing to these public policy failures, conflicts, contradictions, incoherencies are a justification for the research.

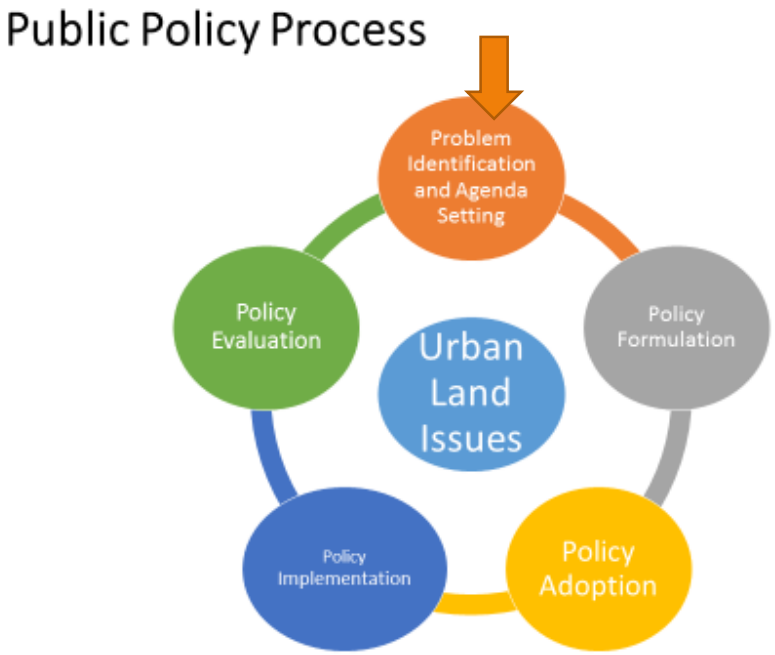
The public policy formulation process

The public policy formulation process is well understood in academic, technical and professional circles. But it is better practiced in the developed world because these are mature democracies. The failure to follow the process in the developing world is a result of cultural, social, economic and political variables like political dominance, ignorance, uneducated civil society etc., that dominate (Cloete 2011: 66). Hill (2014) points out that public policy process is located where policy and politics interact, how politics in the widest sense can make policy fail or succeed; it is about what governments do or not do. Consequently a pragmatic approach to policy is required (Hill 2014: 6).Policy is about power and politics.

South Africa adopted constitutional democracy which places civil society at the centre of decision-making. For Hill (op.cit) problem identification and agenda setting is the most practised and is easy to manipulate or placate participants. Agenda setting it becomes the subject of political attention and easily subjected to process (Hill op.cit; 8). The process is complex and changeable but necessary.

The diagram below is an adoption of the public policy process by Anderson (2006). Although it is presented as a linear process, it should not be regarded as a stages model or policy cycle (Hill op.cit: 7). What is important is that the stakeholders should be gatekeeping activists who ensure that at every stage of the process the problem as identified and the agenda set is kept true to form. The issue is not the process *per se* but how to identify the problem and ensure that their outcomes are in line with the agenda set. Iconic Greek political philosophers like Socrates promoted public debate in the polis or city state. Anderson's approach is appealing because it identifies problem identification and agenda-setting as an issue at the start of the process. However, he presents his process as linear but because of the linkages and feedback loops desirable it is adapted accordingly. See figure below

Figure 1.1



Adapted from Anderson (2006: 3) (**Problem identification and Agenda setting as key**)

Urban land or rural land undergoing urbanisation as the issue has to be addressed at every stage of the process and shall be central to it. At each stage and throughout the process democratic participation is sustained by focusing on the problem identified and agenda-set by the beneficiary communities and stakeholders. Of significance is how the problem may become the target of public policy; how some problems get agenda status and others not (Anderson 2006:3).

1.3 Problem statement

Most poor, marginalised and vulnerable communities steeped in tradition and culture come from indigenous backgrounds, are sometimes unregistered, unregulated and undocumented. These communities depend on unreliable oral tradition and word of mouth storytelling for evidence of ownership of land and therefore security of tenure. They practise communal and peasant lifestyles. This goes beyond indigenous communities to include the livelihoods of poverty stricken individuals in urban slums, informal settlements,

informal business activities and street trading. They are excluded from mainstream and conventional planning processes most of which are inherited from former colonial occupiers as well as planning policies, processes and approaches developed in the west This results in urban informality seen as a generalised mode of metropolitan urbanisation with the “unplannable” city presenting a state of informality as a state of exception in the developing world (Roy 2005: 147). Policymakers should be content that urbanisation of informality in the developing world is now not only the exception but the norm. De Soto presented this informality as “heroic entrepreneurship” (Roy op.cit: 148) but poverty persists.

The problem statement takes cognizance of the fact that in South Africa the post-apartheid democratic government created expectations that democratic participation and civil society engagement would be the game changer in terms of formulating public policy. The research unravels whether there was a paradigm shift from a top-down approach to a civil society centred and people driven democratic participatory approach.

1.4 Aim

The aim of this research is to undertake an exploratory and qualitative investigation. It utilizes elements in the studies undertaken by Payne et.al (2008) on land titling and Urban LandMark (2008) on land access and use in certain areas of cities in Gauteng Province in South Africa to arrive at an enriched conclusion because the studies are the first attempts since the establishment of the South African democratic government in 1994 to research urban land issues and informality affecting the marginalized in the urban areas. This qualitative study seeks to explore how and to what extent poor, vulnerable and marginalized communities steeped in tradition, culture and indigenous lives access and secure urban land for socio-economic sustenance in the absence of holding formal title documents to the land settled on and used, alternatively transition from rural to urbanisation on tribal land. By identifying the location of the rural or informal settlers’ social contract, the significant tenets of their alternative so-called informal tenure, and how it is enforced, the existing and alternative types of leadership in the settlements and the so-

called informal business and street trading as well as the interface with the formal system will be exposed.

A measure of the agency of policies will be pursued and through policy analysis the study will reflect to what extend public policy has not been transformative and redistributive by not improving the lives of the poor and downtrodden in urban and rural areas now urbanising. Consequently, the democratic transition has been delayed because of the pursuance of policies that have perpetuated segregated colonial and apartheid outcomes of the urban spaces. This also applies to indigenous and traditional communities whose lands get incorporated into the urban areas in most instances on terms set by the big city/ town/ urban corporates and capitalist magnates and multinationals. It is argued that a disempowering neoliberal stance is apparently pursued and it may fail the democratic dividend and transition.

1.5 Research question

The research question is: How do people access land with secure and guarantee tenure in informal settlements and/or rural village settlements transitioning and undergoing the process of urbanisation?

The sub-objectives stemming from the main objective are:

1 What do communities in informal settlements and rural traditional areas protect, enforce and police informal settlements, urbanising rural villages and business?.
2 What are the threats to the communities?
3 Did stakeholders participate (had a voice) in their formulation and if yes to what extent?
4 Do informal communities and businesses interface with formality and their structures?
5 How can needs of communities in informality adapt to formality?

In South Africa it is laudable that a distinction was made between types of rights enshrined in the Constitution. Property and land is entrenched under Section 25 and housing under Section 26 and the two should be treated as separate. The availability of land has remained an albatross in the developing world and urban policy could not be proxy either, hence the need and desirability of an urban land policy.

1.6 Definition of concepts

The definitions for the key concepts are guided by definitions provided in UN-Habitat (2008: 5). These are:

Land access – It is the ability of an individual to occupy and gain access to and enter exchange and trade in land and/or fixed property and hold inalienable rights to it irrespective of use. It is "opportunities for permanent or temporary occupation of land ……." (UN-Habitat op.cit).

Land rights – Socially and legally recognized entitlements access, control and use of land, including oral and traditional information. Includes land ownership.

Property rights – Recognised interest in land and property and can apply separately to land

Land ownership – Method of accessing land and/or holding title including unregistered and undocumented customary and oral tradition.

Land use – The acceptable authority to which land can be utilized without infringing on other people's rights to enjoy same whether on private or public space.

Public policy – Authoritative articulation and allocation of resources and potential or not, for the benefit of the majority thereby removing arbitrariness in decision-making. It is a function and activity performed by government. Public policy is about power and politics and contestation for limited resources.

Urban land – Land found in urban area and close to it within municipalities

Informal urban settlement – Any settlement that was never establishment in terms of legislation and includes villages and rural settlements and there are no approved building plans for the top structure

Formal urban settlement – Settlements established in accordance with the law and has approved building plans for top structure.

Urbanisation – (This definition mostly depends on the country). The process of growing the urban area whether by in-migration of people from all over especially rural areas and foreign nationals. The process of urbanisation includes encroachments into peri-urban and traditional areas and the imposition of modern lifestyles including modern architecture and design alien indigenous and traditional communities. (In South Africa under apartheid the definition of urbanisation excluded homelands and people in townships who were defined as temporary sojourners until the Rikhotso judgment of 1985).

Democracy – Over and above periodic elections includes participation in decision making that affects the beneficiaries of decisions made and the democratization of processes.

Nationalization – Ownership of land by the state including underground and above-ground natural mineral resources.

1.7 Significance of study

Indigenous/ native/ cultural/ traditional/ tribal and ethnic communities including foreign nationals have existed despite modern urban society. Although wars and conflict in rural areas and villages resulting in land dispossession have been acknowledged though unreported and unrecorded in history, it is the urban or city that is important for the study. The former is about peasant and subsistence farming as opposed to commercial farming. Commercial farming in post-colonial and post-apartheid democratic dispensations has contradictions of its own because it has been driven by regimes of white racist and colonial origins and has not been conceptualised in indigenous terms.

The study is significant because not only are cities and towns in the developing world urbanizing at an unprecedented scale, but rural towns, villages and traditional areas are also urbanizing. The challenge is that post-colonial cities are planned formerly in a modern legalistic Roman-Dutch frame of reference and land ownership and access are determined by proof of title and town planning schemes or other formal land use management systems. In the process a complex situation like the Baganda occupied

Kampala arises where there is conflict in land tenure types (Muinde 2011; Mamdani 2009). Do or can the conflicting land tenure types remain in conflict or can they be harmonized and co-exist? In South Africa homeland settlements were never considered to be cities or towns hence the emphasis on urbanisation and in townships in African cities.

The study is also significant because western urbanisation models as well as housing and urban policy are presented as urban land policy but have failed to sort out the poverty in urban areas especially in developing countries. The failure to change the apartheid and colonial spatial fabric, the peripherisation of urban poverty and low income housing is blamed on urban policy yet South Africa has produced a plethora of these urban policies when in actual fact the problem can be attributed to failure to produce an appropriate urban land policy not dominated by neoliberalism and free market policies that have no regard for the poor, vulnerable and marginalized in the process of the commodification of land.

The public policy discourse on the land agenda should focus on radical urban land transformation in areas under pressure in developing countries. In the new millennium, the 21st century, it is the traditional communities that are now getting urbanised whether voluntarily or through pressure, yet it is in the city that they are discriminated, marginalised and are vulnerable. The moot question is how they can be accommodated and access land in the city, given their customary, traditional and indigenous land tenure systems that are based on unrecorded storytelling/ oral tradition which get stigmatised in the city. The UN has passed a resolution on the right of indigenous communities in 2005 to protect them against attack and criminalisation. Such indigenous communities the Roma or Gypsy Travellers, Canadian first nations, American Indians, Australian aborigines and the Maori of New Zealand although in the minority in their communities, as well as the Khoisan and the Basarwa of Southern Africa whose lands are urbanised without their consent or involvement or any acceptable bottom-up democratic and democratisation process. The term indigenous community is used in an inclusive way to include poor and vulnerable slum communities in the city. Conventional approaches to urban planning impose land policies which do not take cognisance of the traditions and cultures of poor

and indigenous communities. Instead, traditional cultures are stigmatised, criminalised and prosecuted on the basis of illegality.

The global UN organisation has placed urbanisation on the agenda since Habitat 1 Conference convened in Vancouver, Canada from 31 May – 11 June 1976 as governments began to recognise rapid urban developments and the challenge of human settlements, (coincidentally five days before the Soweto, Johannesburg riots of June 16, 1976), for nation-states to deal with. This made the urban area or city an important cog in the development 'wheel'. But in spite of this global interest, urban land policies have not taken centre stage in post-colonial countries.

Lastly, land reform has been on the agenda of revolutionary struggle governments against colonialism and apartheid/ however the focus has been on rural restitution and land redistribution. While revolutionary governments have established institutions for rural land reform, no such institutions have been set up for urban land transformation. The post-colonial and post-apartheid local government and municipal administrative structures have not been explicitly mandated to formulate land release policy which can only be guided by national public policy, it is argued. It is expedient and requisite that evidence based research, coherent and integrated policies be formulated based on credible research and data. This is the challenge of social sciences in that they cannot simulate society or human beings. Watts (2010) points out that in the natural sciences there are laboratories which are non-existent in the social sciences. Human behaviour and social settings are not reproducible or replicable and can be unpredictable.

1.8 Ethical considerations

This is an exploratory research study concerned with the dearth of the urban land transformation agenda in developing countries. It is most desirable that policy-makers, legislators or law makers be interviewed; however most researchers interview these people at the expense of the people who experience the outcomes of policy or the non-

existence of it. Instead the people who experience poverty, inequality and unemployment are the targeted for interviewing.

The focus is therefore on the people in informal settlements, rural villages and peri-urban areas and informal businesses and street trading. The issue of informality is and has been in the public domain of post-colonial and post-apartheid governments. With the common understanding though hostile that has existed between the state and the informal operators does not raise or cause ethical issues. This matter has been researched before, without raising ethical issues and caution will be maintained throughout. The research will be pursued in that light. The Royal Bafokeng Nation (RBN) in Rustenburg in the North-West province of South Africa is the chosen site for the case study research. Further, the participation of interviewees will be voluntary.

The questionnaire is drafted in English. However the interviews will be conducted in the language the interviewee understands. The researcher is also the interviewer. The researcher, having an understanding of the subject will ensure that there is consistency in the interviews.

1.9 The structure of the research study

This first chapter covered the introduction to the report. The second chapter entails the literature review. The literature review includes a review of literature on indigenous/ traditional communities and their lifestyles and prominent and relevant research that has been undertaken in South Africa, particularly two studies that were conducted in Gauteng being the Payne et al and Urban LandMark studies will form part of the literature review. Chapter 3 details the context of the study and the methodology. The issues of indigenous social practices of the marginalised through the urbanisation process including indigenous knowledge systems and intellectual property is covered. The questionnaire survey is also undertaken. Chapter 4 describes the case study area. Chapter 5 deals with the data collection and analyses of the main findings. Chapter 6 will cover the conclusions and recommendations.

CHAPTER 2: LITERATURE REVIEW, CONTEXT AND THEORY

2.1 Introduction

This chapter provides a broad scan of the literature on matters pertaining to the urban land question and the challenges with public policy with a special focus on South Africa. The context of the study as well as the summary on the democratic transition theory already alluded to, being the democratic participation of the affected stakeholders and beneficiary communities. In this chapter other aspects will be included and that is the urbanisation of indigenous, cultural and traditional communities as their lands get incorporated into the urban area or is captured through colonized or other oppressive act of dispossession. The research will reflect on issues that affect the case study area in Rustenburg, the fastest growing city in South Africa and how it affects the traditional community of the Bafokeng or Royal Bafokeng Nation (RBN).

In South Africa, various writers, authors, researchers and commentators have called for the urban land question to be placed on the agenda of public policy and they include Hollamby (1993); Dolny (2001); Centre for Development Enterprise (CDE)(June 2005); Walker (2008) and more recently Zenn (2014) and Pithouse (2014). The whole volume of The People's Law Journal (PLJ) Issue 2 of September 2014 is dedicated to the unresolved "urban land question" in South Africa, and so does Moyo (2006). The urban land question pertains to access, ownership use, trade and exchange and issues associated with it have escaped the public policy agenda in urban areas, cities and towns of developing countries in general and South Africa in particular.

Rapid urbanisation in the twenty-first century is characterized by rural to urban migration; natural demographic growth; decrease in infant mortality rate in urban areas and; modernization of rural villages whose populations are exploding. It also involves encroachments into peri-urban areas by expanding urban areas; the need for new centres for administration of community affairs and capital cities and towns for national and provincial or local government administration. Also linked to urbanisation is the

emergence of new urban centres derived/evolving from or linked to commodity extraction/mining/processing such as platinum and/or coal accompanied by internal displacement of villagers from affected sites and natural resources and game preservation; and the general benefits of agglomeration economies and economies of scale.

In light of the above challenges, two issues arise. The first is who sets the agenda for substantive public policy formulation; and secondly, what (academic, intellectual, technical and literacy) skills are required for drafting public policy in terms of process; linked to it. Also who is mandated to formulate public policy (taking cognisance of traditional and indigenous ways of policy making)? Whether western models of urbanisation can co-exist with traditional ways of land ownership, access and use instead of stigmatizing, criminalizing, evicting and prosecuting the latter as primitive, illegal and undesirable in the urban area, is typical in Africa lately as cities brand themselves competitively and jockey for 'world class' city status that has the potential of displacing the urban poor (e.g. City of Joburg/ Johannesburg – world class African city; City of Lagos' vision – Africa's model Megacity and Global Economic and Financial Hub). Such tendencies are also evident in Ekurhuleni's push towards developing world class African aerotropolis and even incorporating the Gauteng city region. This sought after world class city status cuts across traditional and indigenous areas and in the process "peripherise" the ownership of land by the poor, marginalized, vulnerable, traditional and indigenous communities, and in the process culminating in an exclusionary city or urban settlement. This tendency is tantamount to vague policies aimed at catching up with the developed world, as measured by GDP, and will not work (Turok 2014: 203).

This literature review chapter is framed from a post-conflict, post-colonial, post-apartheid perspective with reference to the developing world, particularly the post-revolutionary struggle governments of Sub-Saharan Africa with South Africa as a point of focus. In this regard the land restitution policy of South Africa will be the point of departure and the literature review is informed by it and includes a brief presentation of other cultural, traditional and indigenous communities seeking restorative justice for land dispossession,

e.g. the Romani/ Gypsy Travellers of UK and Europe and the First Nations of Canada and others.

In South Africa apartheid was a system of governance the denied Africans access to the white man's town or city based on race. Africans were regarded as temporary sojourners in the urban areas. Through forced removals and influx control measures the African was denied permanency in the city. Impermanent measures and policies were put in place to allow certain categories of people to have access to land with the introduction of 30 year leases of improvements and not the land and after the Soweto uprisings of June 16 1976 a 99 year leasehold system was introduced to appease Africans in cities, towns and urban areas. In the process the landmark Rikhotso case of 1985 won the day and made Africans permanent in urban areas. But thirdly and most importantly is the fact that chiefs or traditional leaders had authority in the homelands or native reserves which were regarded as rural but they built towns in these homelands. The examples are Thohoyandou, Giyani and Bisho just as examples although still Africans could not own land on a permanent basis. Some native reserves or rural areas were more densely populated than the urban in such instances some chiefs or traditional leaders used their authority to allocate land and some "could declare a certain plot of land to be a 'township'" Oomen 2005: 70). The Rikhotso judgement resulted in two pieces of legislation being passed, the first was the Abolition of Racially Based Measures Act of 1991 and the Upgrading of Land Tenure Rights Act 112 of 1991. These two statutes started the erosion of the powers of the traditional leaders because as the Zulu King said, "without communal land, there is no traditional leadership" (Oomen op.cit. quoting SABC news of 20 August 2003).

Apartheid for Marxist theorists resulted in the underdeveloped and dependency and economic exploitation of former colonies by the capitalist colonial powers (Cloete 2011: 69). The post-apartheid government pronounced itself as people centred and as one that would promote and encourage public participation in the production of policies, plans and strategies and the literature review pursues this in the rest of the chapter.

2.2 South African land reform policy: point of departure

The land reform policy of South Africa would be a logical point of departure to frame and inform the literature review even though South Africa was the last post-colonial country to be freed from apartheid shackles of subjugation. In South Africa, in the first instance, property rights are enshrined in the Constitution, under Section 25 of the South African Constitution Act 32 of 1996. To be exact, in anticipation of the final Constitution cited above, Parliament passed the land reform policy to give effect to the Interim Constitution and the outcome was the Restitution of Land Rights, Act 22 of 1994. There are three pillars to the act which are also enshrined in the Constitution as basic human rights and they are: Restitution; Redistribution; and Land tenure. These will be discussed separately below. Parallel to the land reform policy was the Truth and Reconciliation process which is important for restoration of past injustices such as land dispossession.

Land restitution and restorative justice.

Land has historically, always been central to conflict and wars in the world and it is not an exception in post-colonial Africa. Where land was dispossessed, it is desirable that it be restored to its original owners. In this regard property rights rectification is seldom influenced by theory, but "… property theorists, for all their abstractions, often spell out the implications of their theories for real-world problems" (Roux 2008: 171).

Roux (2008) refers to Robert Nozick's historical entitlement theory of property as the point of departure in assessing the South African scheme for restitution. For Roux (2008: 145-148), the Nozickian theory for the rectification of apartheid and colonial disposition is limited because it is special rights (SR) rather than general rights (GR) based, which is summarised below as follows:

a) It does not go beyond what is historically known and therefore is in agreement with the 19/6/1913 start date for restitution claims as provided for in terms of Section 25(7) of the RSA Constitution for which there would be restitution of the

property or redress, and 1998 was the first cut of date for land dispossession rectification without restorative justice.

b) Ethical and moral self-development is denied because uncompensated and unjust land or property transfers are not addressed. There is no corrective justice.
c) Compensation may be paid or a substitute property right is found but does not address the victim's Personhood which reflects the relationship between people and property (Roux: 2008: 151).

For Roux the Nozickian approach failed land restitution in the urban areas of South Africa because people got financial compensation for the majority of restitution claims (72 percent) were from the urban areas of South Africa Roux {2008: 161). Land Claims Commission data assessment revealed that urban claims were 80 percent and not 72 percent, and that instead of restitution, the nature of the restoration was difficult to negotiate and victims opted for what was called "disparagingly 'cheque-book restitution'" Walker 2008: 217) which basically is the financial or cash payments, e.g. Sophiatown in Johannesburg. This for Roux was a reflection on the shortcomings of the Nozikian theory with the exception of a few who had their land restored e.g. District 6 in Cape Town. In this regard Roux concludes that the contribution of restitution to reconciliation was a desired side-effect rather than a central policy goal. This flaw in policy was corrected by the Truth and Reconciliation process which became a substitute for land restitution to close the gap for victim suffering and redress when the socio-cultural dimensions of property rights failed (Roux 2008: 160).

Reasons for failure of land restitution

At Kempton Park's CODESA negotiations on the eve of the 1994 democratic elections, the restitution policy was formulated, stakeholders, and most marginalised and poorest sectors of society were not part of policy development (Weideman 2004:219). Restitution policy and its translation into statutory form was lawyer driven, which was about reversal of a "particular set of unjust transfers, rather than the need to redress the deeper social and psychological effect of apartheid land law" (Roux 2008: 159). Only with the

participation of beneficiaries and stakeholders would it be possible to attain the goal of full and "substantive citizenship" (Earle 2011) and full and fulfilling democratisation. The failure of restitution has delayed democratisation beyond electoral rights.

The state being aware of the inadequacies of the submissions for land restitution, has legislated the extension of the policy in 2013. This has created problems for the state because chiefs and traditional leaders are submitting absurd requests on behalf of subjects as well as the fact that multiple generations up to four are also applying for the same piece of land. The latest submissions being made include land in the cities of Johannesburg to its south where the Tswana community, the Bakwena ba Mare a Phogole tribal group is claiming land on which some of the city's elite suburbs are built (Sifile L in Sowetan 11/11/2014: 7) and another Tswana group under Chief Victor Lekhuleni is claiming approximately 20 000ha of prime Tshwane (Pretoria) urban land at which has been gazetted at the behest of the statutory Land Claims Court (Hosken Gin The Times24/02/2015). The Zulu King is claiming the greater part of the KwaZulu Natal Province including towns for the Zulu tribe (Ingonyama Trust vs Amahlubi Tribal Council, KwaZulu-Natal High Court 2009). Restitution had minimal restorative justice effect and the land question remained unresolved in the face of past apartheid dispossession.

Land redistribution.

Land redistribution would also have limited success because it focused on commercial farms to achieve the democratic dividend. The objective was to have 30 percent of commercial farm land redistributed (Krueckeberg and Paulsen 2000: 11, Weideman 2004: 224) within a period of 5 years from 1994 which was informed by the World Bank market-based land reform programme (Weideman op.cit) but it has not been a success either because by 2005 only 1,5 percent had been redistributed (Roux 2008). The department of Rural Development and Land Reform (DRDLR) is purchasing agricultural land and redistributing to all without regard to income status. Note should be taken of the fact that there is no "U" for urban in DRDLR. Consequently the target for urban land to be redistributed was never set whilst that of rural land was 30 percent as stated above. However land redistribution is enshrined under Section 25(5) of the Constitution stipulates

that: “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” and there are no preclusions. It is in this regard that Weideman (op.cit) refers to the commitment by the ANC to fiscal restraint which compromised the land policy. The failure of pursuing the land policy especially in urban areas is apparent and obvious in the Growth Employment and Redistribution (GEAR) economic policy and White Paper on Local Government policy (LGWP).

In the urban areas there has not been movement because DRDLR is not urban focused, its focus as stated in its vision which is: “vibrant, equitable and sustainable rural communities”, and the mission is “to unite, facilitate, coordinate, catalyse and implement an integrated rural development programme”, which are quite ambitious in light of rural poverty in the developing world, and nowhere is urban mentioned in the vision and mission. The institutional arrangements at national level (in DRDLR) do not favour urban land reform yet DRDLR provided the Spatial Planning and Land Use Management Act (SPLUMA) (Act 16 of 2013) which is a key urban policy for urban development post 1994. SPLUMA still does not cover urban land reform.

Many indigenous (defined in broad terms) South Africans are attached to the land in general, and the lands of their ancestors in particular, an attachment that has to be respected, it is a socio-political fact only the foolish would ignore, however for CDE it should not be equated to wanting a farm for a living, obviously a shortcoming of the land reform policy and the restitution legislation on which the land reform programme was developed [Centre for Development Enterprise (CDE) 2005: 14]. The CDE report indicated that only 9 percent of South African blacks want to farm, and only 5 percent of farmworkers want to farm and in the survey only 2 percent of blacks indicated that they wanted to farm (CDE op.cit.). By implication many other people wanted to be in full-time employment and better jobs which are in most instances found in urban areas,

In the CDE research revealed that employment was 57 percent in priority; urban land and housing was 35 percent and all services and infrastructure was 60 percent and these

services are overwhelmingly concentrated in urban areas (CDE op.cit). This reflects that South Africans prefer an urban life and by 2005 there were 60 percent South Africans were urbanised (using a narrow definition) and by 2014 it was expected to be 70 percent (CDE op.cit.) and it was already 64 percent urbanized in 2014. It can be concluded that by 2005 already urban land should have been redistributed in the context of land reform. The reason being that "…..most South Africans now see land as a 'place to stay' rather than a place to farm", because they regard jobs and housing in urban areas as more important priorities, yet the supply of land in urban areas has not kept pace with demand resulting in informal settlements, illegal land encroachments, invasions and occupations that pose threats to the residents, law and order and investors' perception of instability (CDE 2005: 14-15). Instead land reform is about "rural romanticisation" by wanting to place people in commercial farming (CDE 2005) or according to Walker (2008: 232) "misplaced agrarianisation". This is a situation lamented by Pithouse (2014), Zinn (2014) and the article by People's Law Journal (PLJ) (2014) who raise the urban land question in light of the forced removals and evictions of informal settlements during the winter months as it happened with the people of Lwandle in Cape Town and EThekwini municipalities in winter 2014. These evictions go against the human rights culture enshrined in the Constitution and fails land redistribution.

For Weideman (2004) land reform policy was a result of the distribution of power within the negotiating parties at CODESA. For him the National Party wanted the redistribution of state land to poor and marginalised Africans and the Abolition of Racially Based Measures Act of 1993 was passed to achieve this purpose whilst limiting the redistribution of land owned by whites to be made with full compensation. The ANC initially supported the nationalisation of land in 1985 and 1991 at the Harare Declaration but now debunked it in favour of the development of a black commercial class based on a neo-liberal or home grown structural adjustment policy instead of a programme directed towards the significant social and economic transformation of society (Weideman 2004: 225-226). In the process the quest for urban land has deepened and it manifests itself in urban protests and attacks on perceived outsiders in certain given localities.

Land tenure reform

If restitution and redistribution could not deliver land reform, land tenure as the 'third leg of the pot' to land reform was expected to. Again this land tenure, enshrined under Section 25(6) of the RSA Constitution, was informed by the need to reform rural, agricultural and commercial farming land. In support of tenure reform the protection of farmworkers was legislated in terms of The Extension of Security of Tenure Act (ESTA), 62 of 1997, the Prevention of Illegal Eviction and Unlawful Occupation of Land Act (PIE), 19 of 1998 and other laws which protected and genuinely so, farmworkers. It, land tenure, was going to be used to grant property rights to people in the former homeland areas through the Land Rights Act whose major objective was the democratisation of the indigenous land tenure (also known as communal tenure) system in those lands known as Bantustans which are effectively controlled by traditional leaders (Krueckeberg and Paulsen 2000). This empowered the tribal chiefs to allocate land in their areas through the Tribal Land Act of 2004.

Krueckeberg and Paulsen (op.cit) contend that in the urban areas of RSA the delivering of freehold tenure to urban low-income households comes not from a popular struggle for rights but from the dominance of a particular intellectual position developed by the Urban Foundation in the late 1970s. Again it should be noted that housing delivery is not an urban land policy but is subject to the availability of urban land. In this regard Krueckeberg et.al (op.cit) quoting Berrisford (1999) points out that ESTA was a rural program and what is needed is an urban equivalent and the moral conviction to make it work. However Krueckeberg et.al (op.cit) wants to attribute land development to the principles of the Development Facilitation Act (DFA) but the DFA failed to deliver land and housing to the poor and marginalised but delivered exclusive Golf estates and the DFA was declared unconstitutional as a result by the Concourt in 2009.

It can be argued that in the absence of a properly articulated urban land reform policy, the provision of RDP houses which are provided in accordance with the housing policy in RSA forms the basis for land titling informed by De Soto (2001) "Mystery of capital" thesis.

De Soto's thesis appealed to the government as it is in line with its neoliberal thinking and it was bolstered and driven by the Growth Employment and Redistribution (GEAR) policy. De Soto's argument being that if homeowners had title to their land, then they would invest in property and use property as collateral for mortgage bonds and this would result in growth in the economy and the developing countries would be at par with the developed west. But RDP home owners are the poorest of the poor and cannot provide collateral using the house and if unemployed. Unfortunately the protracted financial and economic crisis that started in America in about 2007 brought about by the failure of homeowners to service their bonds brought home the fact that unfettered markets could not be depended on to leverage growth which De Soto (2001) was advocating for the developing world in his "Mystery of Capital" to which he attributed to title deeds. In South Africa failure to service debt by homeowners results in the repossession.

The "mystery of capital" thesis seeks the formalization of land tenure in the developing countries to bring to life 'dead capital' through land titling (De Soto, 2000: 7). Capitalism for De Soto is the difference between formal and informal economies. Home and Lim (2004) argued in the contrary because by their very circumstances the poor did not have capital. The global financial meltdown of 2008 discouraged Payne and others from testing the De Soto thesis because land titling and property ownership debate was sailing in calm waters by 2006, but: "Just a year later, the scene is very different. The sub-prime landing crisis in the USA and UK has led to fears of a global economic recession ….." Payne et al (2008:1). For Payne et al (op cit) this loans crisis was a rude awakening for capital and the 'Mystery of capital' thesis and the RDP housing developments are seen as entitlement rather than a mystery of capital.

The housing policy which assumed that ownership fostered civic pride and the provision of municipal services was seen to be conditional upon using that ownership to identify owners so that they can pay for services Krueckeberg et.al (op.cit). The test for the success or failure of this housing policy came when the Concourt had to rule on the matter (Phiri community vs City of Joburg on water metering, 2010). However for new homeowners, the housing policy relieved overcrowding in certain areas since housing is

provided to nuclear rather than extended families in support of De Soto's thesis. The challenge remains the pattern of non-payment for services rendered that and the recognition of the new homeowners as indigents by the government.

Land tenure reform challenges to land titling in traditional areas

The democratic dispensation extended universal franchise and adult suffrage to all irrespective of race in South Africa in 1994. This requires that individuals exercise their right to political representation which extends democratization and substantive citizenship. The challenge in a knowledge and technology economy is that the developing world has not developed intellectually to the same level as the west. In communal areas under traditional leaders there is also a challenge were individualization through property ownership threatens the authority of the traditional leader (Krueckeberg et.al (op.cit: 16). This view is supported by Oomen (2005).

The provision of free low-income RDP housing to low-income and indigent people in the urban areas with full title by the ANC government has been most welcome because it added to the growth of the city and is an addition to poor people's social and economic needs. It is important to note however that land tenure is about land, and housing or shelter is merely an improvement on land. This is the approach taken by Brazil whereby land is provided to home seekers and they provided their own shelter because shelter is improvement over land (Krueckeberg et.al, op.cit.).

Synthesis

The post-apartheid land reform programme in South Africa was not designed to solve or resolve the urban, rural, tribal areas or peri-urban land pressures in the face of demographic growth. Alternatively the failure of the land reform programme is unintended or the policy is flawed. For example land in urban areas cannot be provided without going through the cumbersome exercise of inviting tenders or proposals from the public in terms of Section 14 of the Municipal Finance Management Act (MFMA) of 2003 and the provisions of a physical house and formation of cooperatives circumvents this anomaly. Instead the solution was left to housing and urban policy and in the process beneficiaries

of free government issued RDP housing sell them and end up back in the slums and informal settlements, a phenomenon well researched by for example Boaden and Karam (2000).

In his State of the Nation Address (SONA) the State President stated that “land has become one of the most critical factors in achieving redress for the wrongs of the past” (SONA 12 February 2015). This excluded foreign nationals from owning agricultural land but only residential land in urban areas. Yet it did not affect those foreign nationals who are planning to buy homes or residences” and multinational corporations are affected only if their future property purchases consist of agricultural land (State President Zuma (President Zuma in Parliament 19/02/2015). In urban areas the MFMA restricts the provision of land by Councils. But traditional leaders enter into land negotiations with investors yet they are not part of the state which is a policy anomaly (Oomen 2015).

2.3 Urban land policy inadequacies or flaws in RSA: Alternative policies, debates and other research

Introduction

In the developing world and RSA in particular, there is paucity of literature on the urban land policy agenda or urbanising rural communities, especially as it relates to access by the poor and marginalized, dispossessed, voiceless and powerless. Most of the available literature addresses urban policy, approaches, practices and strategies without tampering with the land relations although land might be mentioned in their narratives. Consequently housing and urban policies pass as urban land policies.

The Spatial Planning and Land Use Management Act (SPLUMA) of 2013 and the much heralded Chapter 8 on Human Settlements (Housing) in the National Development Plan 2013 are planning instruments that also falls short of addressing the urban and urbanising communities land issues. In fact Chapter 8 of the NDP is a replication of Outcome 8 of the Presidency’s Monitoring and Evaluation Office. It is more amenable to housing delivery aspect of Human Settlements rather than delivery on the property sector

incorporating all aspects of manufacturing, industrial uses, commercial, retail; cemeteries for burials, refuse dumping sites and other elements of planning in urban areas. Policy, legislation and regulatory frameworks, like all other urban policies as indicated by Bond (2003) does not address the urban land question which is a bone of contention for in particular Turok (2014), PLJ (2014) as well as Pithouse (2014) and Zinn (2014).

The failure to change planning laws is common to most post-colonial countries. Since most African countries become independent there has been a concern amongst officials, professionals and international development agencies that better planning laws are needed hence the planning laws inherited from the colonial masters remain in the statutes books largely unchanged (Berrisford 22 September 2010). These laws are used by government to justify large scale evictions and demolition campaigns (Berrisford, 2010:1 quoting Ockeuje 2007). A typical example of such law is the Transvaal Town Planning and Townships Ordinance of 1986 (Ord 15 of 1986) adopted without progressive amendments by the post-apartheid provinces that were created from the former Transvaal province and particularly Section 19 which prohibits informality in the city as unhygienic and unclean and therefore undesirable. The Ordinance was since replaced by SPLUMA regulations on 1 July 2015, that is, 21 years after the democracy dispensation.

Housing and urban policies and debates

It is important that the holding of land by traditional and indigenous communities should be placed on the public policy agenda in instances where these and slum areas are part of or incorporated into urban areas. The biggest challenge and dilemma is that in South Africa, housing policy (Bond, 2014) and urban policy (Todes, 2013; Bond, 2008; and Ruhiiga, 2014) are perceived, conceptualized and presented as (urban) land policies which they are necessarily not.

The development and management of land primarily and the urban and housing policies have enormous challenges as they need to harmoniously engage both the public and private sectors since urban growth has an insatiable demand for skills in land acquisition,

services and management (Pugh 1995: 381-382). The challenge is when peri-urban areas and rural areas are incorporated into the city or town thereby impacting on the traditional lives, shrines and heritage of traditional communities or with increased land values, the vulnerable and poor are displaced to peripheral or slum areas. Alternatively rural areas densify and develop into urban areas. A compromise has to be achieved for the betterment of all including service delivery and revenue generation for the city.

Ruhiiga (2014: 614) points out that South Africa's housing policy (DOH 1997) is a narrow view of urban development policy. Informal areas are not of necessity urban, but are part of it. But now metropoles are areas of urban excellence which the informal sector is not and Ruhiiga (op cit:616) concludes that the urban spatial policy and urbanisation are in theory addressed in the metropoles of South Africa for example, in the spatial development frameworks (SDFs) and the severe inequality and uneven development that occurred under apartheid is not changing. These SDFs do not mention curbing of land speculation, applying of taxes to unutilised land or land acquisition through state rights to expropriate using the principle of eminent domain (Bond 2012). Nor do SDFs address issues nationalisation or expropriation as debated and presented in certain quarters.

Academic influence in initial post 1994 policy formulation

Todes (2006) and Bond (2008) provide a perspective on the origins and development of various policies, their decline and resurgence and they are indicative of the neoliberal state of South Africa. New post-apartheid urban policy The Reconstruction and Development Programme of 1994 which was core to the Development Facilitation Act (DFA) of 1995 and later the Urban Development Framework (UDF) of 1997, were policies built "on academic critiques of the apartheid city, campaigns by civic activists for reintegrating the city using the one-city one-tax base principle, and alternative spatial visions produced by planners, activists and academics" Todes (2006: 50). Because of the neoliberal stance of these policies together with the GEAR as well as the LGWP policies there was no transformation of the apartheid spatial form. For Todes there was a lull in policy until the innovative Breaking New Ground (BNG) housing policy of 2004 which

though an improvement and to be incorporated into municipal integrated development plans (IDPs), it is unfortunate that the IDPs are not anchored on land.

When the Concourt declared parts of the much heralded Development Facilitation Act (DFA) of 1995 unconstitutional by the Concourt on 18 June 2010, it created a vacuum in policy and Concourt ordered government to formulate new policy within 24 months of the judgement and the SPLUMA was achieved after 36 months had passed. In parallel the government embarked on a process for a new policy, resulting in the National Development Plan (NDP) of 2013, in particular chapter 8 on Human Settlements. Both SPLUMA and NDP again failed to address the urban land question.

The urban spatial policy and politics are presented as solutions as though they are value neutral, yet they only work well in developed western-cum-northern cities where informality is minimal and land ownership based on full freehold title. This fails to address informality and traditional and indigenous communities fit in the city and the urgent need to address the urban land question for radical social transformation.

Policy as power and politics

Political elites also render the poor and homeless are ostracized and excluded in the urban areas as happened with Murambatsvina in Zimbabwe's cities and towns most of whom had been displaced from invaded farms. Despite the farm invasions, "those without jobs and houses are urged and even forced to return to their rural areas" (UN-Habitat 2008: 138). "Urban policies in Southern Africa are informed by a persistent view of Black Africans as sojourners in the city whose identity and citizenship remain rural" (op.cit). For Twineyo-Kamugusha (2012) public policy in Africa is a mechanism utilized to keep (revolutionary) governing parties in power which might be reason for lack of interest to formulate urban land policies in the developing world.

Despite the absence of or interest in urban land policy, for Turok (2014:169) the tensions over policy will not go away as long as unemployment, poverty and inequality does not improve. Unfortunately poverty in Africa is perceived to be largely a rural phenomenon,

but now appears to have migrated to the city" (Bekker & Fourchard, 2013: 1), not driven by industrialization but by urbanisation and feminization of poverty (UN-Habitat 2008: xv). For UN-Habitat (2008: 7), "Slums must be seen as the result of a failure of housing policies, laws, and delivery systems, as well as of national and urban policies". In urban areas rural people are stigmatized and criminalized as illegal and primitive, uncivilized and backwards applicable planning Ordinances and the land use management schemes and legal standards inherited from colonial and apartheid past are applied (Berrisford 2013).

Mamdani (2005) and Twineyo-Kamugusha (2012) view failure to formulate urban land policy as a ploy to keep the governing revolutionary parties in power. Constituency and ward boundaries are demarcated to favour rural voters as urban voters are viewed as supporters of opposition parties (Twineyo-Kamugusha 2012). For Mamdani (2005:6) the failure to democratise post-colonial states can be traced to colonialism where there was a separation of the non-natives (colonialists) from the natives (oppressed locals). The former were the citizens with civil or citizen rights and the latter subjects without direct rights but represented indirectly by a tribal leader. The citizens belonged to the colonial non-native race and the subjects to the local tribes and ethnic groups, the natives. The former (colonial whites) enjoyed race based civil rights as citizens and the latter was represented by a tribal chief or Native authority. The problem with the Native Authority is that the subjects are split into tribal or ethnic groups with the chief as the representative who negotiated on behalf of the subjects with the colonial master to the benefit of the new elites. Muinde (2013) did research in Kampala Uganda where new laws were passed in the 1990's with the purpose of reinstating the deposed Baganda tribal chiefdom who had his authority restored though to a limited extent, and it included the restoration of tribal land ownership, the Maila tenure type and only 3 percent of land in Kampala is freehold. Mamdani (2005) concludes that the post-colonial, post-apartheid governing elites some nationalists took it upon themselves to deracialise the state but never detribalised it because of the 'benefits of staying power'.

In South Africa there are nine (9) tribal homelands and their languages have been retained as official languages plus English and Afrikaans. There are various ethnic groups and clans in the regions of these tribal groups and the new elites have empowered the tribal chiefs over their tribes or ethnic subjects resulting in the failure to be detribalised mooted by Mamdani (2005). For Mamdani this is a perfect situation to deny first generation political citizenship rights by perpetuating the indirect rule set-up by colonialists and apartheid. Urbanised communities tend to organise and mobilise around citizenship because they do not negotiate through tribal lines and protocols.

Joireman (2001) uses extant theory of property rights to explain this situation in Africa. Firstly he confirms Mamdani's Native Authority. Secondly, the state intervenes and moves to privatise rights to land where they had previously been collective, still under the rubric (and justification) of customary law. The state has monopoly on power to intervene and redistribute land or other property rights in a way that circumvents individuals, interest groups and the market; in theory therefore it is possible for a society to avoid the extensive costs of changing a system of property rights by providing a legal framework that brings an immediate change instead of a gradual transition though doing so may also generate litigation costs as the loser's in the transition seek recompense (Joireman 2001: 3).

In South Africa urban land reform has been left to housing and urban policy policy-makers and the outcome has been untenable if not disastrous hence the concerns raised by the various authorities including CDE (2005), Dolny (2001), Pithouse (2014) PLJ (2014) and others. For Dolny land reform should be informed by post-1976 Soweto uprisings which indicated that the cohort of freedom fighters were coming from urban areas and would be influenced in that direction. The housing policy was the solution to land reform in urban areas but it became target driven. In 1994 there was a need for 1.5 million houses for which a target of one million houses to be built was set and by 2010 there was a shortfall of 2.3 million houses (Turok and Borel-Saladin 2014: 183). The housing policy was neither informed by studies of urban land policy hence this outcome. Most other policy directives have been target driven and have failed to take into cognisance growth as with energy crisis and need for maintenance, staffing and other related operational costs. Instead

what is now being considered are changes to the age of people in need of RDP housing to 40 years, a proposal that was strongly debated in RSA parliament in 2014. What informs the new position of government is not clear yet. But Pithouse (2014) points out, people did not ask for housing but land to put up shelter because they provide it anyway.

Influence of development professionals

With urban policy in South Africa the argument by city planning professionals has been that historically planning instruments were not political but value-neutral. The examples cited are the Transvaal Town-planning and Townships Ordinance 15 of 1986, the various Town Planning Schemes of the various towns, the Local Government Ordinance of 1939, the Land Survey Act of 1927 and the Deeds Registry Act of 1937 do not have even a racial undertone. The moot question is why then do we have the apartheid and segregated spatial form? The response has been that it is the result of the Group Areas Act which is not necessarily a planning tool and other racial laws. This is an indictment on the professionals under colonialism and apartheid South Africa in denial.

Under apartheid the totality of the land development professionals did contribute directly or indirectly to the apartheid spatial form. The Planning professionals were aware of the race groups they planned for including the fact that certain title deeds included race groups to the exclusion of others e.g. Saxonwold in Johannesburg.

The arguments presented by the planning profession in support of government planning initiatives including the DFA, SPLUMA and NDP have the potential outcome cited by Mamdani of deracialising the post-conflict, post-colonial and post-apartheid independent state without detribalising it's space. The current government initiatives do not in address the desperate land needs of the poor most of whom are in slums and urbanized or urbanizing indigenous communities. This might not be good for economic development, democratisation of the totality of the citizenry or civil society as well as public and democratic participation. Instead you get tribal or ethnic based participation which has been one of the causes of conflict in Africa. Not that tribal authorities have no role to play but that it might not be democratic, developmental or economic.

2.4 Presidential, ministerial and other agency pronouncements and the role of the judiciary

Pronouncements by politicians and administrators have been passed as policy with mixed outcomes. Good examples are the need for a cross-subsidisation policy which was replaced by the user-pay principle without these being formalised or incorporated into sectoral policies, and in a constitutional democracy like South Africa, judiciary makes policy by precedence. This calls for good evidence based public policy which would alleviate arbitrary and discretionary policy by individuals.

In South Africa the Judiciary (courts of law) and other independent institutions have been approached by disgruntled communities and stakeholders in instances where public policy is lacking or inadequate. These courts have passed judgements on matters that go beyond the question of urban land. The most prominent court decision pertaining to land amongst others is the Grootboom socio-economic rights case (2000). It is such judgements that have brought tension between the three spheres of government in South Africa with the executive accusing the Courts as co-governing with the opposition without a political mandate to which Justice O'Regon (2011) offered a response. The judiciary does not necessarily formulate policy nor co-govern but of necessity it has to address and rule on matters that come before it in a constitutional democracy (O'Regan, Helen Suzman Memorial Lecture, 22/11/2011). As to who should formulate policy, O'Regan (2011) correctly points out that policy is broader than but includes legislation and that the courts do not formulate policy but pass judgements within the confines of the constitutional provisions in particular the enshrined human rights. However through their judgements courts do 'formulate' policy by precedence.

2.5 Global assessment of indigenous communities that are urbanising

Land policy decisions in the new millennium have implications for the indigenous communities found throughout the world in rural areas, towns and cities. The UN passed a resolution to protect their culture and traditions of indigenous communities. Similarly most communities in RSA are attached to indigeneity with most having both an urban and rural living with the latter being used a safety net Boaden and Karam (2000). Indigenous people might live in impoverished material conditions but it applies as much as to indigenous communities in First World nations as it does to indigenous communities in developing countries (Smith 1999: 9). According to the UN-Habitat, “the urbanisation of indigenous peoples is the result of two processes: (i) cities growing to engulf indigenous settlements, making the ancestral lands part of the urban space; (ii) migration by members of indigenous peoples to towns and cities for various reasons.” (UN-Habitat, 2002:1).The difference between the two categories is the land and housing they occupy (UN-Habitat, 2002:1).

Romani and/or Gypsy Travellers of UK

In Europe the Roma(ni) or Gypsy Traveller has been a nomadic and intermittent legitimate minority ethnic community whose origin is not clearly known. The Traveller’s tales had wide coverage (Smith 1999: 9). In the UK the Roma/ Gypsy Travellers and another ethnic group, the traveller of Irish heritage have a daily experience is prejudice and overt discrimination and disadvantage (Department of Children, Schools and Buildings n.d: 10). (op.cit). The Gypsy Traveller and Roma are a nomadic ethnic group seeking seasonal employment established and enjoyed historically. The challenge is that the geometry of modernist planning and its desire for ordered space has a negative effect on the lives of these groups as unsettling and is resisted because the Gypsy Traveller could not compete with an equal posting in the planning system (Bancroft n.d: 88).

A Gypsy Act was passed in 1994 (Bancroft op.cit: 90) with planning introduced for Gypsy areas an exercise that criminalised, their lifestyle. The British law of enclosure is foreign to the Gypsy who do not live in brick and mortar housing resulting in contradictions. The nomadic community do not have permanent possession and ownership of land. For Bancroft (n.d: 88), the Gypsy people became vagrants and vagabonds. This type of exclusion is repeated throughout the world including other Gypsy communities of Europe.

Architectural and urban design are foreign activities to the Gypsy. For Karam these people have a right to land and the research studies on the ownership of land by indigenous communities is the (first) great beginning for a more methodological way of understanding and being able to deal with people's right to land where western method of right to land (the deeded) people of the western world are in conflict with the right of indigenous people (Karam comment to the book by Simons, Malmgren, and Small 2009).

American Indians and Canadian First Nation (North America)

In Canada the First Nation was assimilated and their land was reduced. The Indian Reorganisation Act of 1934 restored tribal ownership in common with the requirement that the tribal land be held in trust by the federal government with (no right of alienation) (Erikson et al, 71). The Act halted the further depletion of Indian land, and advocated compensation and return of sacred tribal land (ibid). Lands Commission was set up and an apology was tendered by the Canadian government for purposes of reconciliation and assimilation in 2008 (Erikson 2009). From its assimilative policies to the recognition of indigenous land rights, Canada has come a long way in terms of indigenous land claims process.

Native Americans did not embrace private property ownership of land because of high transaction costs and the sale of tribal land will be near impossible and the future of allotted and tribal land is not promising (Isakson et al. op. cit: 24). When land becomes lucrative for uses such as mineral extraction disputes erupt, and subsequently many Native Americans live in poverty because development of their land is so difficult to achieve (ibid). They have typical architectural designs, in particular the Longhouse under

a matriarch could accommodate a clan (Isakson et.al, op. cit). The traditional house is of timber and in some areas animal hides were used for roofing. Today USA and Canadian houses are built from timber in urban areas.

Australian Aborigines and New Zealand Maori

The indigenous people of Australia and Maori of New Zealand experienced land dispossession from the European colonisers. The Australian Aborigines litigated to have their indigenous customary ownership of land restored after years of dispossessions in the Mabo case of 1992 (Small 2008). The Aborigines want customary tenure to supersede Western law but in urban areas where there are planning controls, there is urban freehold although indigenous is also recognised as fundamental (op.cit).

In Australia the Aborigines were accommodated in terms of the Native Title Act of 1993 where upon customary ownership of land was promoted (Small 2008: 122). Extra-legal access to land runs parallel with statutory rights for pastoral leases (Small op.cit).

The Maori and Aborigines have their own traditional homes, they are more of the daub, wood and thatch type. The traditional architecture does not seem to be entering the city.

Kampala, Uganda

In Kampala the customary law was restored recently in 1993 (Muinde 2013). Customary law had been done away with after independence. In the city the Maila type land tenure and ownership is the predominant and is documented and unlike the oral types in other parts of the world. There is traditional lifestyle although modern houses are built and people rent single rooms. The city and custom co-exist. Traditional housing is thatched. In the city there is no reflection of traditional architecture or traditional city design.

Basarwa of Botswana (including the San of Namibia and the Khoisan of RSA)

The Basarwa are considered the first nation of southern Africa before the Bantu people. They were being forcibly removed by the government of Botswana to make way for the Central Kalahari Game Reserve (CKGR). Like the Gypsy they enjoy nomadic, foraging

and hunting lifestyle which is now restricted by changing geopolitical circumstances. The government of Botswana does not recognise them as a distinctive and significant population group but as Batswana which they are not (Marobele 2011). On the Basarwa land has been discovered abundant diamond reserves to be mined but the Basarwa are regarded as a landless people and they cannot benefit from the extractive resources; and they are also being removed from CKGR to make way for tourism from which the indigenous Basarwa community cannot benefit (Marobele 2011).

The Basarwa have always occupied their land and lived a traditional life. They might have lived in the caves but now they live in the open in traditional huts. They do not have a distinctive architecture or design.

EThekwini metropolitan municipality

In South Africa, communal and indigenous rights are juxtaposed with the real estate bundle of rights. Communal arrangements implemented and managed by tribal chiefs in Southern Africa often dominate outside urban areas (Simons & Viruly 2008: 39). In South Africa there is a number of ethnic and tribal groups as well as a multitude of dialects. The Apartheid policy of racial segregation which subsequently excluded the blacks was overturned with democratization in 1994. The post-apartheid government embarked new land tenure and ownership policy approaches to transfer wealth and land assets to its Black population, yet Roman-Dutch Law and indigenous Law have always been enforced side by side (Simons et al.: 44-5). These policy challenges, contradictions and incoherence are noted from a policy perspective in the transition from indigenous to formal land markets because land is often controlled by tribal authorities that wish to retain control over both political power and the land whilst local government authorities wish to bring land into the formal market to meet housing and other requirements (Simons et al.: 53). Recent legislative reforms suggest that tribal authorities and communities should have control over land usage- adopting largely the role of local government" (ibid). This is the dilemma of the LGWP of 1998 cited above where traditional and urban areas fall

under a metropolitan or local government and eThekwini metropolitan area is no exception.

EThekwini incorporates urban and rural areas. In the context of the LGWP the metropolitan municipality has separated the planning for the rural area from that of the urban area into IDP and Area Based Planning (ABP) respectively. It is resolved that developers sort out ownership of land with the Chief before development occurs (ABP 2003-2009 n.d.).

In South Africa, the KwaZulu Natal Planning and Development Commission (KZNPDC) was the first to incorporate socio-cultural practices in different communities whilst ensuring the rule of law (KZNPDC n.d:11). There is an acknowledgement however, of the uneasy interaction between socio-cultural factors and development policies in context where government officials put the blame on poor education and illiteracy (KZNPDC). The traditional Zulu hut and modernity co-exist side by side in secluded rural and urban areas. The traditional household is called *umuzi* and traditional round huts is built of grass huts only or is built of brick, mortar and thatch with modernity rapidly encroaching into the traditional areas. Government is introducing modernity in traditional areas by electrifying thatched traditional houses (rondavels) and building modern rectangular RDP houses. For Freud (2007) this is not an issue as he argues that the city is not foreign to Africa and he uses Mapungubwe and Madzimbabwe as well as the Tswana agro-towns as examples.

Within the urban areas of eThekwini are slums and informal trading. People who are not in designated areas are forcibly removed and evicted. Some of the activities considered illegal in urban areas are inherited from rural traditions where they are acceptable, and some temporary urban activities that are unacceptable in the medium to long term are finding permanency in peri-urban and rural areas. The local municipality has the task of overseeing the balance between the rural and urban and know where and when to enforce which and what rules as and when applicable.

Concluding observation

Zakaria (2012) has made contributions relevant to the issues covered in the assessment of the indigenous communities covered above as well as to Mamdani. Zakaria points out that culture might not be everything because the Chinese and Indians have used culture to grow their countries' economies. "The Hindu mind-set, once an impediment, is now seen to embody a kind of practical worldliness that undergirds entrepreneurial capitalism. The success of the Chinese and Hindu diaspora seemingly provides daily confirmation of such theories" (Zakaria 2012: 74). But with a dictatorship there will be political stagnation and civic organisations would be marginalised instead you need strong civil society (Zakaria: 2012).

Whilst culture could be a hindrance to growth and development as with the Caste System of India it is appropriate to ask and it still has to be determined to what extent is culture a barrier to development?

2.6 Other research and the formal – informal dichotomy and the land tenure continuum

Payne et al (2008) supported by CUBES (2008) researched the social and economic benefits of land titling poor people's properties in line with De Soto"s thesis on the 'mystery of capital' and titling of individual properties and take people out of poverty, because title could be used as collateral in economic activity. The research was taking place in 2008 at a time when homeowners were defaulting on bond repayments starting in the US caused by *laissez faire* and unfettered financial markets led by the Lehmann Brothers. The financial and economic crisis affected Europe and countries sort bailouts and austerity measures.

Despite the financial crisis the research was proceeded with and it looked at three (multiple sites) in Ekurhuleni being Tokyo Sexwale, Ramaphosa and Reiger Park all in

Ekurhuleni in the proximity of the industrial areas of Boksburg and Germiston towns two former white towns under apartheid and the three areas are on land formerly known as Stirtonville were Africans were forcibly removed and relocated to Vosloorus for which no restitution claims were made. The methodological factors were: i) similar socio-economic characteristics; ii) type of settlement; iv) age of settlement; and v) length of stay. What came out of the study was the importance of tenure for women and the informal networks for information, reference and security from threats of eviction. The issue of how local government land was made available to the public was also raised.

The second study was undertaken by Urban LandMark the same year as the first set of studies using land biographies as a point of departure. The study researched three sites being Diepkloof and Doornfontein in the City of Johannesburg area and Thokoza in adjoining Ekurhuleni Metro, both in Gauteng. The Urban LandMark set of studies looks at the workings of the informal sector and markets through the lens of land biographies. Again the study did not address how land is made available or redistributed to the poor. Instead the study viewed land as merely a land use management issue. Besides opening space for debate, the study postulated that the advantage of the land biographies approach was that it placed land at the centre of the analysis rather than people, institutions or government (Urban LandMark 2008: 2).

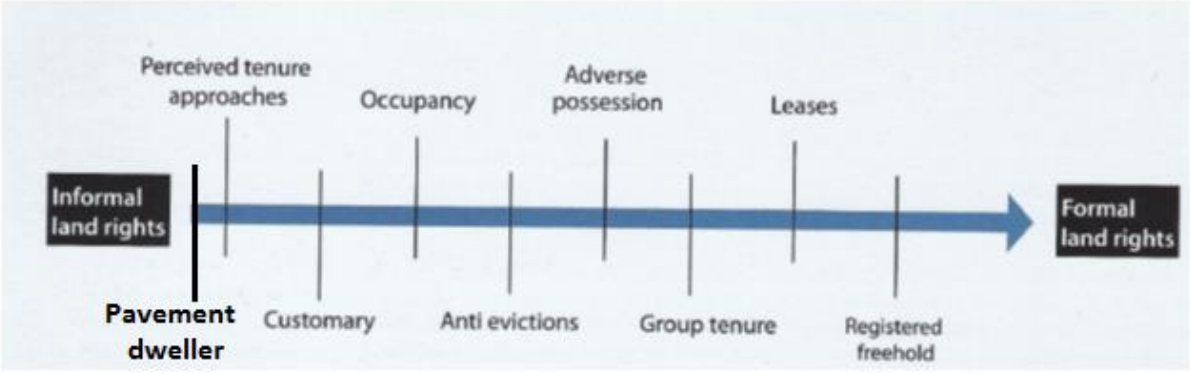
The challenge is that both studies mentioned above were undertaken in privileged metropolitan areas where location was not compromised or disadvantaged but the people researched were vulnerable and poor some in slum areas. The case study area of Phokeng in RBN is peripheral, rural and peri-uban but seemingly in the light of the RBN Masterplan is in the process of urbanizing in Rustenburg in the North-West Province of RSA.

The Urban LandMark study views land tenure and ownership as a binary of the formal – informal dichotomy whilst the view supported in the research conceptualizes land tenure and ownership as a continuum. For the purposes of this research the dichotomy approach is debunked in favour of the continuum. The continuum is adopted for the study especially

for the concept of access, use, trade and exchange of the land that is advanced and of concern rather than the activities that take place on the land although these are used for explanation purposes.

Payne (2000: 3) points out that there is a range and complexity of tenure systems that it is simplistic to think of tenure in black and white as legal and illegal and can add formal and informal since there is generally a continuum of tenure categories within most land and housing markets. For Payne there is no clear distinction between formal and informal forms of land ownership but it rather varies. Across a continuum of different tenure systems, and plots or dwellings within a settlement may change in status, for instance informal settlers are granted title or leases, thereby each continuum providing different sets of rights and degrees of security and responsibility (Payne op.cit). The possible forms of tenure is demonstrated in the continuum figures 2.1 and 2.2 below. Both are adapted because firstly the continuum Figure 2.1 does not have the pavement dweller as the starting point and Figure 2.2 is adapted accordingly to accommodate or include communal or traditional tenure. The advantage of the continuum is that it permits incremental movements between the list form of security and the level of the government. The pavement dweller is at the start of the continuum in Figure 2.1. The crux of the matter is that the continuum is not linear or static. It starts with a homeless pavement dweller and moves between informal land rights at one extreme to formal at the other. What is important is that security of tenure be guaranteed.

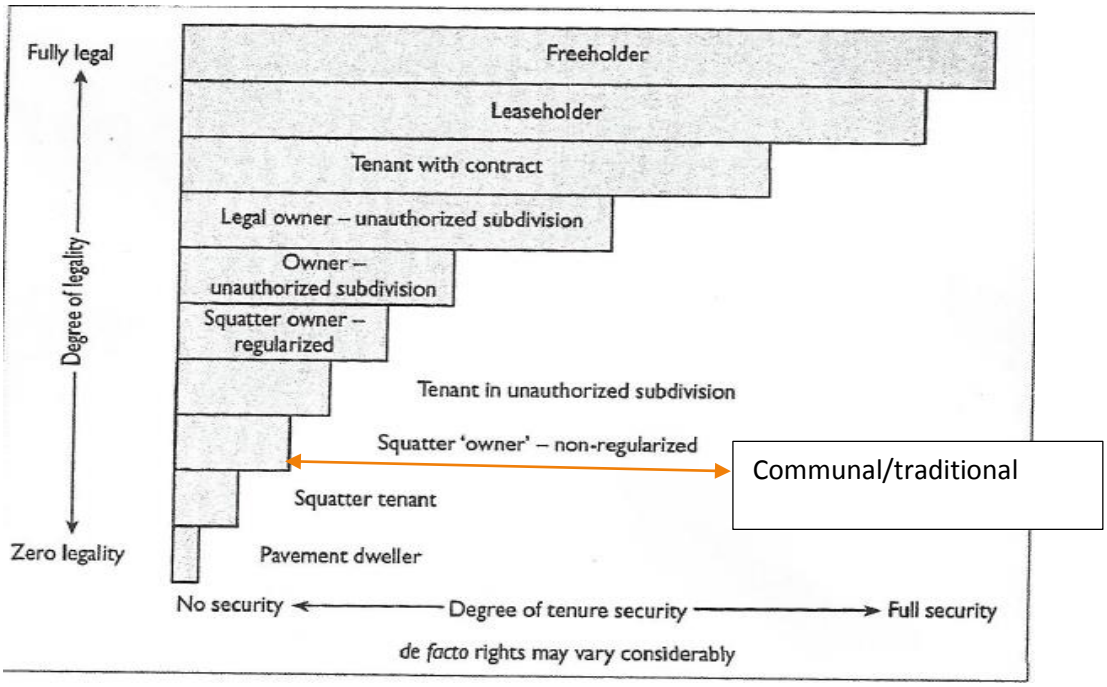
Figure 2.1



Source: UN-Habitat (2008: 8) **The continuum of tenure types**

The continuum of tenure types is adapted and supported by Payne's typical distribution of urban tenure categories by legal status (Payne 2000: 4). The extent of security and legality is determined by the boldness of each block both ways as reflected below:

Figure 2.2



Source: Payne (2000: 4)

Typical distribution of urban tenure categories by legal status adapted. (Customary tenure would be above squatter tenant).

Suffice to say that the challenge with the binary approach is that the poor are viewed as opposite sides of the same coin on issues primarily land. Further, with the Doornfontein example, if the provisions of the stringent Johannesburg Town Planning Scheme are ignored or contravened, the registered owner of the property has to be prosecuted for unauthorised uses or activities as it is against the Scheme and therefore illegal. The transitioning of processes and activities is acknowledged but that in the Scheme area it is regulated and procedure has to be followed without compromise otherwise ignoring such is tantamount to incompetence, corruption and fraud.

The Urban LandMark research reveals that there are parallel institutional structures set up based on traditional leadership. The Boaden and Karam research of informal settlements in Cape Town revealed same. But whether and how or how long traditional structures of *izinduna* (headman) can be sustained in an urban setting is not clear. The study was a qualitative survey which assists and guides the subject study.

Both sets of documents fail to provide further information on land redistribution in towns and cities that are urbanising and growing. Instead informality is the order of the day in terms of backyard shacks, outbuildings for the expanding family or rental, acceptance of women in single sex male hostels as well as informal business in Diepkloof and Thokoza with undefined tenure. In single sex male hostels people sleep in staked bunker beds and this is not good for normal family life. It is a survivalist lifestyle.

The important qualitative survey questions covered include: i) the importance of cultural meaning of land; ii) issues of “insiders’ and ‘outsiders’; iii) role of oral history and urban history; iv) the exclusion of the poor from land use management. The Urban LandMark research raises the question of what are formal land use values in a situation where there is an informally based formal and formally based informal (Urban LandMark op.cit.). Nationalisation and acceptable traditional rural baggage to transition to urban life, nature and form.

With title, land owners are exposed to debt collection and repossession of property by financial markets or banks. The free market is pregnant with speculation and risk taking that cannot be left without state intervention to protect the poor and vulnerable.

2.7 Theory that advances the research project

In the context of the deliberations above, democratic transition needs to be supported by well-articulated public policy on urban land. This would be a General-Rights based democratic participation of civil society stakeholders most of whom have no access to land. Stakeholders should be in a position to use, exchange and trade in property. The

voice of the stakeholders and beneficiaries of policy has to be heard so that they can have full citizenship.

The democratic transition has been delayed or suspended for the majority of South Africans in informality (backyard shacks, other shacks, informal settlements, informal business, small business and street trading amongst others). Neoliberal policies informed by the GEAR and LGWP policies have resulted in the delay and temporary suspension of the democratic dividend. Using Rustenburg's Royal Bafokeng area it will be demonstrated how the democratisation process has been delayed.

2.8 Conclusion

Many scholars have written about the failure of democratization in post-apartheid South Africa as a "suspended revolution" (Habib: 2013) or "the dream deferred" (Gevisser, 2007). Others have referred to the failure of the African state to be as a consequence inappropriate, incoherent and poorly articulated public policies (Bond: 2013) and policies for political career advancement and personal benefit (Twineyo-Kamugisha, 2012); and that the land policies are only for agrarian reform and not urban (Twineyo-Kamugisha; Dolny, etc).

In post-conflict, post-colonial post-apartheid developing countries that went through revolutionary struggles, the urban land issues are not central to public policy in the new independent states. Yet the evidence points towards an inevitability. In South Africa despite the fact acknowledged by the State President that urbanisation was already above 60 percent, the issue has not been on the public policy agenda. Gumede (2011: 167) summarises the policy agendas of successive post-apartheid governments by indicating that the Mandela government concentrated on reconciliation and reconstruction; Mbeki's policies were on economy and transformation and Zuma on rural development and poverty reduction. Urban and urbanising rural land reform has not been on the agenda of public policy since democratisation in 1994. Sub-Saharan Africa countries should accept that in a general rights-based society the citizenry should be

allowed to identify its problems and set the agenda for policy formulation to address urban land issues taking cognisance of the rapidly urbanizing globalised world. Indigenous communities have a role to play and can be utilised within a civil society which does not take away the citizen identity of participants. Transformative full and “substantive citizenship” (Earle 2011: 12) should be the ultimate goal.

Failure of government intervention in urban land matters in a rapidly urbanising society results in slum formation and informality (of human settlements and businesses) in these urban and urbanizing areas. Unfortunately indigenous lifestyles are criminalised and stigmatised as foreign to the urban. In the process culture should not be seen to be static but rather evolving.

CHAPTER 3: RESEARCH METHODOLOGY

3.1 Introduction

The approach to the study of urban land is based on certain philosophical thrusts and truisms. Land related issues of post-conflict, post-colonial and post-apartheid situation(s) of revolutionary party governments, the objectives of the study and the anticipated outcomes inform the methodology to the research. The approach and research structure are covered in this chapter. The semi-structured questionnaire and qualitative approach was pursued to elicit the perceptions of informants of the land, their public policy priorities, tenure security challenges, their public policy environmental choices between urban and rural, how they access, use and trade land as well as their future preferences. The data collection method and analysis is also presented. Phokeng in Royal Bafokeng Nation (RBN), a traditional authority, is the selected case study area.

Empirical inquiry investigates a contemporary phenomenon in depth and within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident (Yin 2009: 18). The research is exploratory for which generalizability of the enquiry, phenomenon and context should be the outcome. For this reason the survey approach is pursued for which an urbanizing, indigenous and traditional (Phokeng) group is on the periphery of the Rustenburg town and has been identified as a secondary town of Rustenburg and capital town of the Bafokeng platinum mining belt. For the research to be generalizable, the sample of few to many, but preferably many cases are selected (Yin 2009; Plowright 2012). Since the intention is to apply the findings of the research outside the research group, Yin (2009: 40-41) indicates that case study would apply without internal validity but with construct and external validity and reliability. Plowright (2012: 31) supports this view however he states that since case study is closer to the target of generalization, it is more trustworthy. But because of the small number of cases and uniqueness, the case study is not utilised but survey method (Plowright op.cit).

Criteria for studying Royal Bafokeng Nation (RBN) were various and varied. The main reason being that the people of Phokeng who have an indigenous, tribal and cultural background are finding their area on the peri-urban area of Rustenburg urbanizing, but they simultaneously find themselves excluded from the city in the developing world because of uncompromising policies and laws inherited from the oppressive colonist and apartheid regimes (Berrisford 2010). The question is how do they interact with the authorities in such matters where Roman-Dutch land laws that are foreign to these poor indigenous and tribal communities. How they participated in city formation, design and urban municipal management in an environment that was antagonistic to the indigenous and poor newcomers to the city or urban areas or urbanising rural area.

Various documents on land, tenure, use, exchange and trade were consulted.

3.2 Research approach to the case study

The approach to the study is qualitative within a critical realist paradigm. It is based on informant's narrative information, semi-structured questionnaire and direct observation. The critical realist paradigm to the process allows for perceptions of role-players to be ascertained, as well as material facts of each case to be compiled (Nxumalo and Whittal 2013). As a case study it is expected to connect to informant's meanings, perceptions and experiences, and to draw on features of actual life events, views and impressions (Denzin and Lincoln 1998). Bollens (1996) wrote that qualitative method is useful for complex situations when peoples' experiences are important to understand. Qualitative research, despite valid criticisms, offers sets of tools and modes of critical thinking in doing good quality qualitative research (Mason 2006: 2). Phokeng village in Rustenburg as a case study area is relatively adequate for the collection and analysis data in the context that qualitative research should be strategically, systematically and rigorously conducted, but remain flexible, contextual and accountable; it should be generalizable and subjected to moral practice; but most importantly it should produce explanations and arguments (Mason 2006: 7-8), should also help in the discovery of information, interpretation of facts and data and the drawing of conclusions (Leedy and Ormrod 2005:

1-2). Phokeng as a local single village area could be reasonably researched within financial and time constraints.

The exploratory qualitative survey research approach is the most desirable where statistical or numerical analysis would be inadequate. The perception survey assists in critical understanding of informants, their livelihood phenomena, historical narratives and discourses and subtle nuances of oral, undocumented and unrecorded life histories that cannot be quantified. It provides a platform explanation and argumentation of informant's perceptions.

3.3 Data collection

From perspectives drawn from the literature review on land and related matters, it became obvious that there are two schools of thought on land and informality. The one school views the formal – informal dichotomy as a binary and the second as a continuum to land tenure security. This research pursues and advances the latter argument of a continuum starting from street or pavement life to full title (UN-Habitat 2008: 8). For the case study area, Phokeng in RBN, communal tenure is practiced on land that is privately owned. The study endeavours to establish what the tenure type the peri-urban community prefers in its looming urbanizing circumstances.

Primary data was obtained from face to face interviews with informants. These were randomly selected throughout the two wards (5 and 6) in Phokeng. Secondary data came from literature review, electronic and print media, the use of the internet, maps, photographs and discussions with Town/Development Planning officials from RLM and RBN. There was also participant observation prior to the start of the interviews by way of a walk-about and reading of signs and observation of artefacts and graves.

It is desirable that data collection be reliable and have validity both internally and externally. The idea was to gain exploratory knowledge on how poor, indigenous and tribal communities in informality experience urbanisation, how peri-urban, rural and village communities in areas where extractive resources and minerals are found get urbanized.

It is the held contention that post-colonial and post-apartheid states do not support urbanisation of rural poor in villages and farms but are kept in rural areas via a multitude of rural strategies and policies aimed at agrarian reform and transformation. Platinum mining has changed and transformed the face of Rustenburg town and its villages. The tribal community has been impacted by environmental pressures emanating from mining and the growth of the in-migrant male mineworker population which has resulted in the proportion of the male population being 55: 45, (that is, 301176 males to 247779 females) in 199044 households (StatsSA Census 2011) for Rustenburg including RBN.

Data collection was preceded by visits to Phokeng in RBN for familiarization by the researcher. From the visit a number of issues become clearer. The questionnaire tool was improved on land policy, tradition, security, inheritance and participation in policy processes. Field based research was then pursued. All key informants come from Phokeng village in RBN. An exercise was undertaken to interview about five (5) informants from Tlhabane township the only one that comes from the apartheid era as a labour reservoir area for Rustenburg and fell under the Bophuthatswana homeland government on the eve of democratization in 1994 to get a feel of tenure type and use type but the information has been precluded and is not utilised in this research.
Because of time constraints the semi-structured interviews will be conducted by the researcher self and the open ended part of the questions will be limited.

3.4 Research sampling

Semi-structured, open-ended interviews of members of Phokeng communities was conducted on homeowners, tenants (backyard rooms and shack dwellers and informal business and street traders). Thirty (30) respondents were randomly selected as suggested in Land Tenure and Property Rights (LTPR) of a range of 25-40 interviewees (LTPR Impact Assessment Tool 200: 26-27). When Boaden and Karam (2000) experienced time and financial constraints they limited the number of interviews to their study in the city of Cape Town they took it as a pilot. In the same vein, and in the instance of this study and prevailing circumstances, it also qualifies to be a pilot for further detailed research although no further such research is anticipated for this study. For the Urban

LandMark (March 2008) study titled “Analysis of qualitative survey on accessing, holding and trading land: Synthesis Report” only 9 people were interviewed for the Adams Mission area undergoing similar urbanisation challenges facing a village similar to the subject site. The authorities were precluded from interviews but were only approached for their input only as sources for readily available data and documents. In terms of the PAR this approach to preclude authorities is acceptable (The Benchmark Foundation, Policy Gap 6 2012).

The drafted questionnaire was informed by prior studies elsewhere and mainly Payne et.al and Cubes Report, Urban LandMark report report and Muinde thesis. The LTPR Impact Assessment was used for the selection of research indicators.
The research instrument included the questions on policy desires, expectations and areas of policy intervention; land, gender; income; security; rural versus urban life; preferred land tenure and security of tenure, and tradition and nationalization.

3.5 Data analysis

Understanding, examining, tabulating, recombining analysis of data collected, completed questionnaires, policy and direct observation is undertaken. Figures, maps and pictures were also used in analysis. The collected data assists in explanations and arguments. Through triangulation interrelated activities and analysis of multiple undertakings could occur in the process.

In the final analysis the survey should either confirm or refute the need for the affected stakeholders and beneficiaries of public policy to set the agenda for public policy (and therefore that the urban land policy is not been put on the agenda of public policy because it is not an issue). However since this is a limited and exploratory study such a limitation is cited but should be deemed reasonable and tolerable. The transcriptions will be analysed thematically and for any emerging concepts. The results will be analysed and discussed with regards to policy needs and adequacy to inform both process and practice. Conclusions and policy recommendations will be made based on the results and analysis.

3.6 Limitations of research study

Time is a major limiting factor because of academic timelines set. Further, the interviewees might not be keen to answer questions or maybe suspicious. The timing for interviews was a challenge because it had to be undertaken during the December 2014 Christmas vacation period when public offices were closing and informants were starting with their vacation.

Urbanisation in the developing world is by its very nature complex and its research on the tenure post-colonial countries has become a complex area of study. Evictions is a threat and it affects the participation of informants. And the acceptability of information might be questioned by the authorities but remain valuable, nevertheless.

The secondary survey is to get a feel of the stakeholders' perspectives on whether their socio-economic issues find their way to the public policy agenda, whether stakeholders interact with the policy-makers at a substantive level or they feel excluded.

The academic acumen or intellectual and technical capacities of policy-makers is flagged and not debated in detail in this research. The assumption being that they the policy-makers are qualified by virtue of being voted into political policy-making positions in the absence of alternative qualifications. The electoral process is political party and ideology based and political parties 'sell' their manifestos to the voters who may mandate them through the vote to convert manifestos into public policy. The challenge is whether those mandated have the capability to develop emancipatory and liberatory public policies.

Based on oral tradition it is a challenge whether indigenous knowledge systems (IKS) are still relevant in the city and or what should happen to the baggage of indigeneity as communities urbanise is also flagged. This study is about public policy at the state level and it is therefore a given that the national state is mandated to place issues on the public policy agenda.

The study assumed that administration, officials, politicians and bureaucrats have had a fair share of their contribution to policy yet the beneficiary communities are ignored in public policy matters hence they are the focus. The view might be held that without the direct input of the officials, bureaucrats, politicians and the traditional leadership's input, the outcome of the research might not be credible, instead the corollary might be true, that communities are co-opted or placated with little democratic participation taking place. The participatory action research (PAR) approach which concentrates on beneficiaries as targets of research debunks this notion (The Benchmark Foundation, Policy Gap 6 2012).

Language had little impact with the researcher having grown up in Soweto (the cosmopolitan melting pot of all 9 tribal languages in South Africa). As Smith (1999) noted, researching indigenous communities, though they might be urbanizing, is a challenge in terms of history, language and culture because there are certain nuances in language and words that might escape the researcher's understanding. This was not a challenge and only three key words often repeated were (e.g *dikutle* (wards/clans/committee meeting), *lekgotla* (committee meeting) and *dikgoro* (meeting of several clans or a village or constituency) and they were used in similar contexts. The other word popular mentioned was *diphiri* (wolves) meaning men who dig open and close graves when there is a death and their work is administrative or operational and not decision-making. The researcher established rapport with two locals who assisted with explanations. It should be stated that this challenge was experienced with the elderly homeowners and mostly female. The tenants/ renters and traders were mostly none locals and foreign nationals who were comfortable to provide information in the English language. The consequence was that because of the level of education of the interviewees they failed to express themselves in English adequately and depth was lost.

The biggest challenge was that the none Bafokeng were in majority because they are tenants and operate business on Bafokeng land.

Phokeng (which is a small area close to the FIFA World Cup 2010 Royal Bafokeng Palace Stadium) is only one village of 29 under RBN. This fact together with the sample size makes the research ungeneralizable. Only one village Phokeng is the subject of the study and is not representative of the whole of RBN but just the headquarters of RBN.

3.7 Choice and relevance of selected site

Phokeng in RBN is the ideal choice for several reasons. It is an area on the immediate periphery of, and is considered peri-urban to urban Rustenburg on an established corridor between Rustenburg town and Sun City casino hotels as well as the Pilanesburg Game Reserve and wildlife area which are both centres of tourist attraction in the North-West province. It also found close to the Mozambique – Windhoek transnational corridor, the N4 national road. The FIFA 2010 World Cup and world class Royal Bafokeng soccer stadium is at the centre of this village.

As established in the literature review, the densification of populations close to areas where extractive mineral resources are found has a potential of developing into urban areas and RBN is no exception with the growth of the platinum mining. The discovery of extractive mineral resources as with diamonds in Kimberley and gold in Johannesburg industrialized these locations resulting in the global cities these areas ultimately became. From this experience, and taking cognizance of the depletion of these God-given extractive mineral resources, as well as from the historical economic experience, the mining of platinum resources in the RBN has the potential of industrializing its locality and in theory developing into a city beyond the influence of Rustenburg. Most cities of the western world developed as industrial cities. But the developing countries' economic growth and industrialization is not the primary driver of urbanisation hence the need for government to provide innovative urban land policies. This results in urbanisation of poverty (UN-Habitat 2008:4). The informants had to site policies that affected them and the development of their area.

Further, as with most nation-states, the establishment of new capital towns for the governance of the country is normal and it consequently results in the urbanisation of the people that assemble and provide labour in the new capital city. Phokeng is such 'capital city' established for the governance of the Royal Bafokeng Nation in the Masterplan for RBN (although the notion of a nation might be questionable in the context of sovereign states like South Africa within which RBN is located). Consultants were appointed to take the process further by developing architectural designs for RBN that regards itself to be traditional, cultural and indigenous. But it is the fact that RBN is the only known African village to have bought land and has freehold title for it dating back to the late nineteenth century that demonstrate the agency of title to back any community claim to it. From this secondary information from literature, it was established to what extent the ordinary people were aware of the Masterplan.

Phokeng (in RBN) is a village under pressure for expansion from the Rustenburg urban centre which involves rapid social and economic change. It (Phokeng) is a peri-urban area. "Peri-urban areas are the affected and those where policy focus is most urgently needed" (UN-Habitat 2008:16).

As an informal rural village in terms of the provisions of Section 46 of the Rustenburg Land Use Management Schemes of 2005 which was approved in terms of the Transvaal Town-planning and Townships Ordinance 15 of 1986. The apartheid legal framework for land use management has remained. Lastly, RBN signed a memorandum of understanding with the Rustenburg Municipality recognizing the RBN as local structure capable of delivering services to its village people.

It is in light of the above given scenario that Phokeng is an ideal case study area.

3.8 Time perspective

Time constraints and the timing of the field surveys were a major drawback for the research. Part of the surveys were conducted during the December 2014 and January

2015, a Christmas vacation when most people are holidaying. Consequently, officials who could provide documentation were not available as they were either on holiday or had to account to one or other mandatory structure.

Because of the need to ensure construct and external validity and reliability, the semi-structured questionnaire became too long for the informants and costly in terms of time. In the end questions towards the end and the open-ended questions at the end were not responded to satisfactorily as they were viewed as repetitive yet they were meant for validity and reliability purposes.

3.9 Ethical considerations

The design of the questionnaire and the questions have remained sensitive to the challenges of research in the context of service delivery protests and xenophobic attacks in South Africa. Consequently people have preferred to remain anonymous for such reasons as they fear being stigmatized and alienated. The inherent nature of informality, unrecorded and undocumented people make informants to be unwilling to meet with any researcher for fear of being identified, hence anonymity has to be guaranteed. The researcher has/had 'participant observation' information as well as documents and recorded information already in the public domain.

Although the land issues are very sensitive and complex, the questions remained value-neutral and addressed issues in the public domain and the domain of policymakers and legislators (both democratically elected and/or hereditary). For this reason, it was necessary to treat the informants with confidentiality because: "One way of promoting confidentiality is to obtain information anonymously from individuals" (Huysamen 2008: 184). Ultimately the identity of informants have been kept very confidential and they were given the option to keep and maintain confidentiality although some volunteered their identity. Cell phone numbers were requested for follow-up questions and location for reminding oneself of areas visited and their vicinity.

The researcher who was motivated by practical experience in the public service was always fascinated by members of the public who did not know government policies and expected service from government. They were always reminded that these policies are in the public domain and in fact that they should have been part of the formulation of the policy or even set the agenda for the policy. The research sought to establish to what extent ordinary people influenced policy in the case with regard to security of tenure in an urbanising rural area.

3.10 Conclusion

In apartheid South Africa access to land was based on the racial profiles of individuals. In accordance with the provisions of the Land Act of 1913, the white race owned 87 percent of the totality of the land in South Africa and majority black Africans were reserved a mere13 percent. In the urban areas the race based Group Areas Act of 1950 made Africans temporary sojourners in cities and towns as the black Africans were expected to remain in the reserves later to be developed as homelands which included the RBN area in the now defunct Bophuthatswana homeland. Phokeng should shed light on what happens to communities that have a rural background as they urbanize whether voluntarily or by coercion in particular their communally held traditional land and security of tenure.

Data collection through face to face interviews was undertaken on 9, 10 and 17 December 2014; then on 22 January 2015. The Town planning offices of Rustenburg were visited on 17 December 2014 and 15 January 2015 for - i) documents and information readily available; ii) Explanation of the provisions of Section 48 of the Rustenburg Land Use Management Schemes which precludes the Administration of land use development mandate in Phokeng; iii) Clarification on what legal instruments is in place to address issues raised in the Concourt DFA case between City of Joburg and Gauteng Province since at the time of the interviews SPLUMA was not yet operational.

CHAPTER 4: CASE STUDY AREA

4.1 Historical background

The Royal Bafokeng Nation (RBN) has historically been known as the Bafokeng. They have lived in the area for a long time until in the late nineteenth century when *Kgosi* or chief Mokgatle decided that his community must begin to buy the title deeds for his tribal area to avoid dispossession by Afrikaners (Cook 2013) and it permitted him to have under surface minerals on Bafokeng land. The Kgosi sent out regiments of Bafokeng men to work in the mines in the diamond mines in Kimberley and a portion of their wages was placed in a land acquisition fund (Cook op.cit. quoting Bergh 2005). (During the apartheid era under the Bopthuthatswana homeland government royalties for the mines were taken by the then homeland at a time when the Bafokeng Chief was forced into exile and under the new dispensation the chiefdom has been returned to rightful heirs and royalties are now going to the chief and his limited subjects after a protracted court battle starting in 1987 and settled in 1998 (Cook 2013). However the current reigning *Kgosi* who intended registering all the title deeds in the name of one owner is being challenged by the families of the young men who went to Kimberley then as they feel they are entitled to royalties or some other form of reparation or compensation. It should be pointed out that aggrieved families could have submitted a request for restitution of land rights for dispossession starting from 1913 when the legislation to dispossess black Africans of their land was passed by the white RSA parliament. The matter has not been finalized by the courts at the time of writing.

4.2 Geographic location

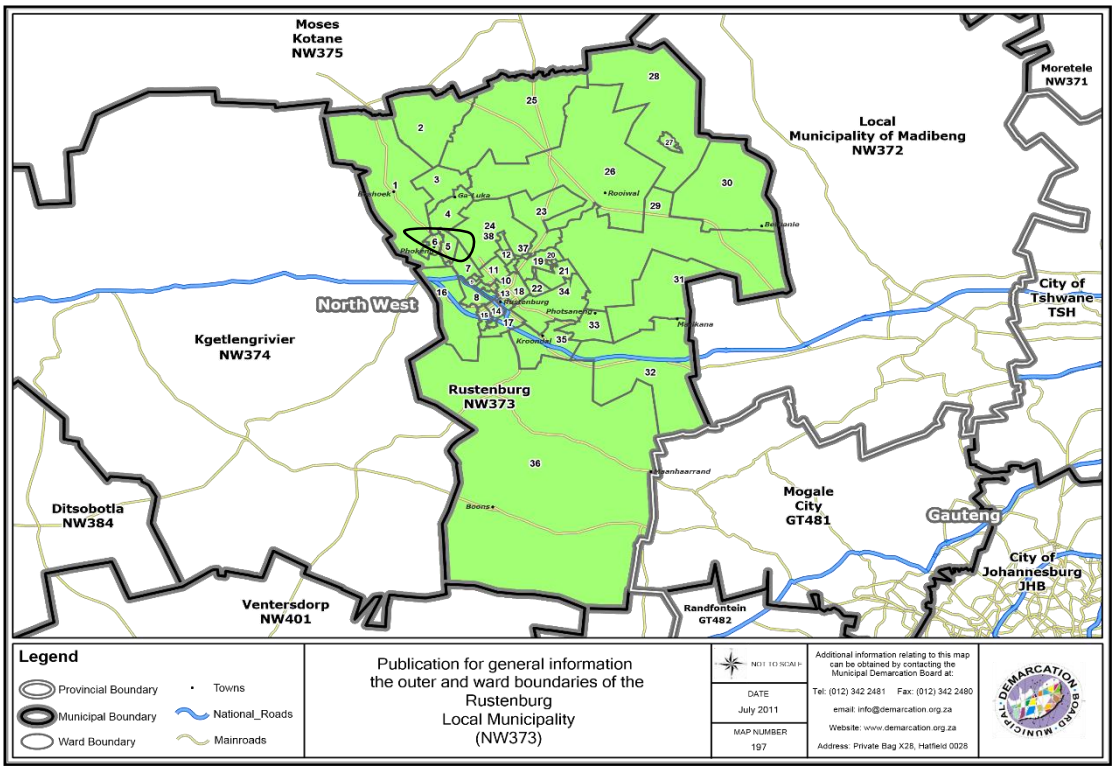
The Royal Bafokeng Nation (RBN) (lies on the geographic coordinates -25.598 S, 27.169 E) is in the North West Province of South Africa. It forms part of the Rustenburg Local Municipality (category B municipality) in the Bojanala District Municipality (category C) municipality in terms of the provisions of the Constitution of 1996 and the Municipal Demarcation Act, (27 of 1998). The legislation is founded in terms of the principles

outlined in the LGWP and the Constitution Act. It should be pointed out that an insignificant part of the RBN land falls outside the Rustenburg municipal boundaries, (in the Moses Kotane District close to Sun City) a situation scorned by Nxumalo and Whittal (2013) for tribal rural areas whereby rural communities that cohered socially were separated by the Municipal Demarcation Board (MDB) that has the mandate to demarcate wall-to-wall municipal areas in South Africa. This includes all rural, agricultural, communal and traditional areas as set out in the LGWP, and which are all included in the LUMS. The innovative intention of the wall-to-wall LGWP has, paradoxically, created a cost for local government and the need to preserve the rural areas for food security. Ironically local government survives on rates and taxes and very little on rural villages or agricultural farming. The delimitation of the outer municipal boundaries in line with LGWP influences population figures and budget draw-downs from national fiscus (Nxumalo et. al 2013: 331)

RBN forms part of the platinum belt in South Africa and has linkages geographically with the Gauteng City Region (GCR) which it adjoins. The latter is the economic hub of South Africa, contributing approximately 40 percent of the country's GDP. This platinum belt makes South Africa the number one producer of platinum in the world.

RBN area covers 29 villages (Cook 2013) one of which is Phokeng which is the subject of this case study. It covers 1400 km2 of land in Rustenburg municipality carrying 150000 Bafokeng (Cook op.cit) 'nationals' in a municipality with just over 500000 people (StatsSA, Census 2011). The Phokeng area is covered by local government wards 5 and 6 in terms of the MDB wards for the 2011 local government elections. (Refer Map 1below).

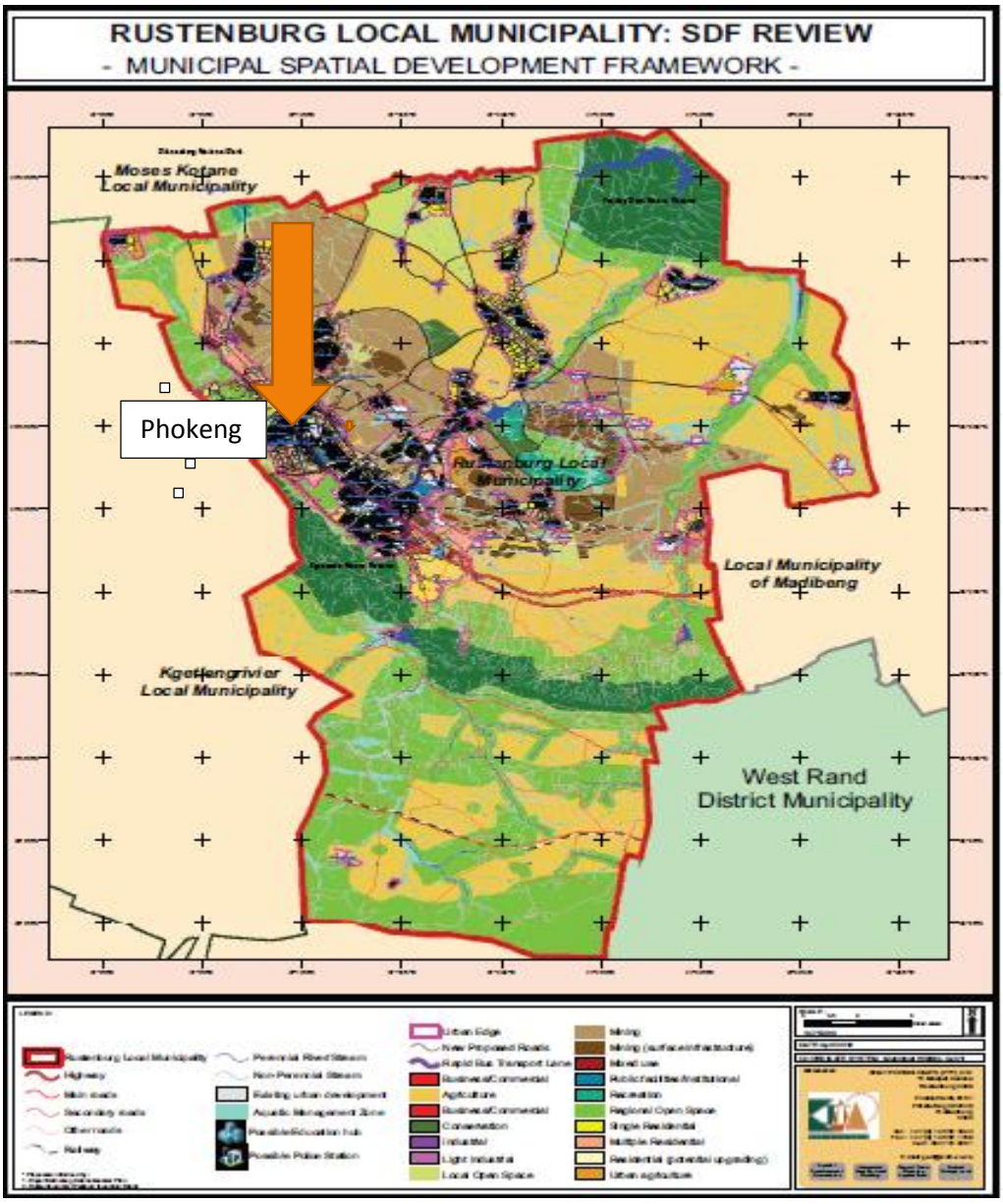
Map 1. RBN Phokeng Wards 5 and 6 (circled) in Rustenburg municipality.



Source: www.mdb.org.za

The map shows the relationship with Gauteng and the metropolitan areas of Tshwane and Johannesburg. Below is a map of the RLM SDFBN Masterplan showing the Phokeng area.

Map 2 RUSTENBURG SPATIAL DEVELOPMENT FRAMEWORK



Source:RLM SDF Review 2013 **Arrow showing Phokeng in RLM**

Phokeng and the whole of Royal Bafokeng Nation is covered in the Spatial Development Framework of Rustenburg Local Municipality. However the RBN has prepared the Masterplan for the land it owns presumably on behalf of the Bafokeng community. The Masterplan excludes the RLM area but there are pieces of land owned by Rustenburg LM in between the Bafokeng land which is cause for concern when it comes to dealing with informal settlements because it is not clear sometimes on whose land people might have

squatted. The argument being that the Bafokeng land is better managed by the *dikgosana.* The map below shows the RBN Masterplan

.

Map 3 Royal Bafokeng Masterplan



Source RBN Masterplan The masterplan excluding land owned by Rustenburg Local Municipality

4.3 The economy of RBN

The economy of RBN is heavily depended on platinum extraction. The presence of platinum has made Rustenburg one of the fastest growing towns or urban areas in South Africa. Consequently there has been an in-migration of job seekers from other provinces and foreign nationals. Labour in the mines is heavily unionized and Rustenburg has been the base of the strongest union in South Africa the National Union of Mineworkers (NUM). The challenge is that the labour migrants for the mines are not provided with adequate housing because of challenges with land, housing policy and urbanisation approach of

government. Mines are viewed as focusing on building houses and clinics even though inadequate without attending to social problems (The Benchmark Foundation, Policy Gap 6 2012).

The wealth of RBN includes mining activities and shareholding, mining royalties and investments in corporate companies. Mining is however a depleting resource that has degradation effects with negative environmental consequences. The challenge for RBN is the lack of local skills employable in the mining sector and unemployment is 50 percent (Kriel 2007: 14) and most people are in the informal employment sector.

4.4 Human Settlements

In RBN are 29 villages in 5 regions with 72 *dikutle* (clans/wards) (Horner 2012). They are currently densifying because of the job opportunities provided by the discovery of platinum. The villages belong to the chief to accommodate his Bafokeng people. In terms of the legislative provisions the Rustenburg municipality has the authority to formulate the Integrated Development Plan (IDP) for the whole area including the tribal area. The chief is consulted for his area over and above the other legislated consultative process like the ward councilor and the ward committees. Oomen (2005) refers to the situation as the two bulls in a kraal.

The *Kgosi* or chief of the Bafokeng instead of participating the preparation of the Rustenburg IDPs, he has over and above that, prepared a Royal Bafokeng Nation Masterplan (Plan 2035) for his villages. He also could afford to donate tribal land to the Rustenburg municipality for the provision of housing for the people of Seralong who lived in the informal settlement. (Tshikotshi 2008). The interviews had to establish to what extent the community had participated.

The chief through his subordinates, the *kgosanas* allocates land to his people exercising the powers granted to him in terms of the Communal Land Rights Act, 11 of 2004. (Prior to that after the democratic dispensation of 1994 Chiefs who were homeland leaders lost

their powers after the disbandment of the homelands since the homelands were associated with racist apartheid whose homeland tribal leaders were mistrusted as they were regarded as puppets of the oppressive apartheid regime).

Because of the platinum boom the non-skilled and unemployable members of the tribal community are providing backyard rooms and shacks for the non-Bafokeng mineworkers and jobseekers. This is a situation detested by the Kgosi. As a village the tribal area the developments are regarded as informal because rural areas were never subjected to the provisions of the Town Planning Scheme which is still in place although it is now called the Land Use Management Scheme (LUMS). Although the Masterplan and other documents and the *Kgosi* regards his subjects to be 150000, the mineworkers and other non-Bafokeng make the population bigger to 300000 people (RBN Masterplan 2006-2035: 3). Secondly, because of the nature of minework, there are more males than females in the Rustenburg area.

Research has been undertaken in various areas of RBN because of the wealth and nature of RBN. Recent studies includes the donation of land for housing in Seraleng (Thikotshi 2009), the experience of the people of Kanana (Kriel). Importantly is the fact that there is a pending case on land ownership since the Kgosi wants to consolidate all the Bafokeng title deeds (61 in total) which is precluded in this research.

4.5 Institutional / organizational arrangements

In terms of the Local Government: Municipal Structures Act and the three recognizable spheres of government, RBN falls in the legal and political jurisdiction of Rustenburg local authority area (Horner 2012) and is legally planned by it. There is a Council with a Mayor and his ‘cabinet’ the Mayoral Committee. The Municipal Manager is head of the Administration and he has Heads of Departments one of which is responsible for Planning and there is a Member of the Mayoral Committee (MMC) who carries political responsibility and accountability. The legal responsibility of the traditional tribal authority in and local government affairs is not legally clear although there are several MOUs for

service delivery signed with RLM in 2014 (www.bafokengholdings.com). The RBN runs a parallel Administration for its area within the municipal boundaries of Rustenburg. It has an independent Royal Bafokeng Administration (RBA) that operates from Phokeng (Cook 2013) like a small municipality (Horner 2012). According to Oomen (2005), the traditional leader governs under circumstance which are not provided for in statute or policy.

On tribal authority matters the *Kgosi* has a Tribal Council (which is the source of the pending litigation) that helps him run the affairs of the 29 villages assisted by the 72 *kgosanas*. The kgosanas in turn govern within the kutle (wards). Both Kgosi and kgosana are inherited positions and male dominated, consequently perpetuating patriarchy and paternalism. National legislation on traditional law and courts has not been enacted however provincial legislation requires that there be "elected and appointed councilors who sit with the headmen in the Bafokeng Supreme Council, or traditional legislature" (Horner 2012: 3). The Kgothakgothe is the principal vehicle of governance above the Supreme Council. The traditional structure looks at matters traditional and includes allocation of land, the burial of tribal members and assimilation of non-members, allocation of bursaries and provision of infrastructure (Horner 2012). The Royal Bafokeng Administration manages day to day functions of the RBN like a municipal government and its offices are at Sefokeng derived from Mofokeng (singular) of Bafokeng (plural) in Phokeng.

The RBN also enjoys a corporate form of governance in the form of Royal Bafokeng Holdings (RBH), which is a community based investment company. The RBH offices are located in Johannesburg, Gauteng and dividends are authorized by the traditional legislature (the community), not the RBH (Horner 2012: 8067: 3).

In the administration of the local government affairs, in particular planning, the authority to plan is vested in the local authority, a situation that was endorsed by the Concourt in the DFA case of CoJ against the Province (2010). Rustenburg is mandated to prepare IDPs, spatial frameworks, and LUMS. Through MOUs signed with RLM, RBN provides

services on its land. This includes formulation of the Masterplan and the implementation of the LUMS and IDP.

The LUMS which were approved in terms of the urban oriented and individualized Transvaal Town Planning and Townships Ordinance 15 of 1986, RBN is excluded from the operations of the Rustenburg Administration in terms of Section 48 of the LUMS. Section 39 of the LUMS describes the RBN area as informal rural settlements and semi-formal rural settlement (Pers discussion with RLM official). The official indicated that the Ordinance of 1986 only recognizes full ownership as a document for land uses to be administered and RBN does not comply which forms the gist of the research that incorporation of communal, indigenous and traditional tribal areas inadvertently illegalize and stigmatise what was considered legitimate and to some extent legal under tribal circumstances and law. This view that the Ordinance applies where property rights are clearly defined which precludes informal, illegal and tribal and communal property rights and tenure is what is lamented by Berrisford (2010) that the post-colonial governments have pursued development utilizing land laws inherited from the colonisers, a situation that is untenable going forward because of the way it criminalises what has been up to now a normal life. Paradoxically RBN land is privately owned but communally occupied and was never envisaged to be urban. Inadvertently, LUMS are in theory urbanizing all land in Rustenburg and in the country and it is creating challenges for the country and aggravating the urban land question.

Section 48 of the LUMS which precludes Rustenburg Administration from considering applications from RBN sets out the following procedure to be followed by RBN when processing land use applications:

i) Sect 48.1 - Owner of land submits application to headman for erection of building or use of land (the irony is that all land is owned in title by RBN and not individual owners).
ii) 48.2 application is referred to ward committee for decision which is in writing.
iii) 48.3 Resolution is referred to the Supreme Council for principle approval.
iv) 48.4 the application is then submitted to RBA Planning Section.

v) 48.5 Resolution is taken to Council of headmen

vi) 48.6 the application is taken to Kgosi for approval and conditions forwarded to Council for inclusion in the register.

The LUMS clearly sets out the process but it seems nobody takes heed.

4.6 Landholding in Phokeng in Royal Bafokeng Nation (RBN)

The RBN land is not only held in trust for the benefit of the community but the RBN has title to the land it occupies. The title deeds were acquired by the predecessor Kgosi Mokgale in the late nineteenth century and it permits the owners to enjoy the fruits of the land below and above the surface of the ground, thereby entitling Bafokeng to the mineral resources (platinum) below the ground. They currently enjoy royalties as well as shares in mining on the RBN land. The RBN successfully negotiated the exemption from nationalization of mining rights after having convinced government that they are looking after the welfare of the Bafokeng community. This was based on the principle that "the mineral rights are part of national patrimony which are to be developed for the benefit of all South Africans", provided "such royalties are used for promotion of rural economic development" (Kriel 2007: 3-4) another contradiction since the royalties have built a world class stadium and hotels which have nothing to do with the rural but urban.

The challenge with landholding is that the registration of all title deeds in the name of Royal Bafokeng Nation is challenged in the Mafikeng High Court and the matter has not been finalized (North-West High Court, Mafikeng, Case No.: 999/08). The title deeds have not been registered in the name of a single persona but mining royalties are being paid out to RBN. The legal dispute over registered land tenure does not distract from the undertaking of the study, safe to note that it is a constraint for the research.

4.7 Conclusion

Phokeng is one of numerous villages in RBN and has a number of its own *kutles* (clans/wards). The Kgosi lives in Phokeng which is an identified tribal capital of RBN and

is a reasonable distance from the mining activities. It is home to the FIFA 2010 World Cup stadium and the ‘world class’ Marange Hotel. Phokeng is the seat of the RBA.

The RBN Masterplan identified Phokeng as a regional hub by 2035 and it is expected that an indigenous architectural design be ready for the anticipated urban eventuality. It should suffice to mention the vision for Rustenburg within which Phokeng is found: “A world class city where all communities enjoy a high quality of life”. To what extent the world class sought status is inclusive is still to be seen and is not subject of this research. The readiness of the community to embrace this eventuality is moot for the research.

CHAPTER 5 DATA COLLECTION AND ANALYSIS

5.1 Introduction

By the nature land ownership in RBN and the LUMS policy of Rustenburg municipality, RBN is an informal area or rural settlement. The questionnaire and data collection was prepared in that light. The 30 informants were randomly selected from a target in the three categories. There was however 1 less tenant/renter and 1 more trader but it is immaterial for the outcome. Of the homeowners one was a student left by the siblings to look after the family house and most were elderly women and men. The one man operated an office from home. Of the tenants 8 were not locals and only 1 was from another RBN village. Of the traders all were not locals and 1 local employed none locals and he was interviewed on behalf of the workers on a street stall. The tenants and traders weakened the research because they did not consider themselves as insiders because of the nature of exclusionary rights for none Bafokeng. The other challenge was that certain questions excluded homeowners and other questions excluded traders and renters/tenants. What follows is the table for the interviewees and an analysis of their responses to achieve the objectives set out for the research. These are themed.

The 30 informants labelled P1 –P30 have been grouped into three categories:

i) the homeowners [10 - split as follows: 50+ years (2 males and 5 females); 36-50 years (1 female); and 21-35 years (1 male 1 female)]; and

ii) the tenants (in backyard rooms, (back)yard shacks and rooms (which are part of the main house) [9 (5males and 4 females) split as follows: 21 – 35 years (4 males and 4 females), and 50+ years (1 male)]; and

iii) spaza shops, the informal business traders including home office and street traders [11 – (6 females and 5 males) split as follows: 21-35 years (4 females and 2 males), 36 -50 years (2 females and 3 males)]. See Table 5.1 below.

Table: 5.1

		Homeowners		Renters/ Tenants		Small business / shops / spazas / street traders	
Gender	Male	3		5		5	
	Female	7		4		6	
	Total	10		9		11	
		Male	Female	Male	Female	Male	Female
Age group	0 - 20	0	0	0	0	0	0
	21 - 35	1	1	4	4	2	4
	36 - 50	0	1	0	0	3	2
	50+	2	5	1	0	0	0

The next exercise is to assess and evaluate the responses to the questions and put them into themes and then discuss them individually for the three categories. In the final analysis the categories will be integrated with the themes. Prior to discussing the categories and themes a synopsis of the background questions in terms of gender is appropriate.

5.2 Gender

In terms of gender, 43 percent of respondents were males and 57 percent women whose ages range from 21 to 74. On matters appertaining land and property, it has become appropriate to prioritize women since they bear the brunt of discrimination and dispossession and UN-Habitat supports this approach. For this reason it makes sense to interview more women than men in terms of mainstreaming. It also compliments MDG 7 target 11 whose objective is to improve the lives of 10 percent of slum dwellers who have the face of feminized poverty.

5.3 Themes

The complexity of qualitative research in general and the study in particular allows for an analysis that illuminates the multiple contexts, texts and levels of the respondents. Themes have been identified for such analysis and they are discussed within the three categories. A discussion of the themes will precede a contextualized analysis that is informed by the objectives set out for this research.

Theme 1: Locational context of Phokeng

The first theme establishes the context of the informants.

i) For homeowners

To homeowners, Phokeng is their home or homestead (*motse*) (umuzi in Zulu), it is a rural village, a semi-rural village, a tribal home. It is the home which was bequeathed to them by their fore-bearers, their ancestors, it is a place of their birth except for 1 respondent P19 who is a Mofokeng by marriage. The stand was acquired for her by mother-in-law in 1974 since she spent time in Johannesburg as domestic worker staying at mother-in-laws house in Meadowlands Soweto. People are not motivated by platinum mining or proximity to Rustenburg but by the fact that it is home. In the face and case of population growth, the *kgosana* (small/ subordinate chief) who is representative for the king would subdivide the land for the new family or adult in consultation with the *kutle*. Initially there was no fee payable but of late there is a fee payable to get land in Phokeng. It was approximately R22.00 in 1974 (for P19) and at the time of the interviews approximately R400.00. Some indicated that they did not pay for the land.

ii) For tenants (backyard dwellers, shack dwellers, backroom and room occupiers

Most tenants are young and non-Bafokeng. Only 3 or 33% of respondents were Bafokeng. Respondent P10 stays with husband at husband's relative's place because she got a job at the FIFA 2010 world cup Royal Bafokeng Palace stadium. Respondent P25 is from Masosobane another Bafokeng village and is renting out of desperation but remains a Mofokeng.

The non-Bafokeng are renting in the area because of potential of finding a job with the discovery and mining of platinum. Respondent P21 comes from another village in Vryburg, has an Engineering job in Rustenburg town but choose to rent a room because the village resonates with the experience from his village.

iii) For informal and small business trade, street trading and spaza shops

People are in this sector for survival purposes. Most are of foreign origin and 2 from provinces in South Africa, being Free State P05. Homeowner P17 also operates an office from home providing printing and internet services because of need and also has a number of backyard rooms for rental.

Theme 2: Land access, use, trade and exchange

i) Homeowners

Land is communally owned by the Bafokeng although ironically the Kgosi has a title deed. Non-Bafokeng do not qualify for land and cannot even be buried in Bafokeng. The land is inherited from deceased members of the family or subdivided by kgosana for those in need. They enjoy ownership of land by birth and are de facto homeowners. Only P19 is Mofokeng by marriage. Land is getting scarce and homeowners P09, P26 had their stands subdivided by the kutle after the family had agreed on the matter. For example P14 lives on a portion of the newly subdivided family site and P24 shares the family site with her brother without physical subdivision by Sefokeng (RBA) because it pleases them. The physical subdivision of sites for the extended family is a recent phenomenon that demonstrates a move towards individuation and nuclear family. Lately the stand card is the document they use to show that they own the land. Other informants indicated that they used water services receipts as proof that they owned their properties.

All respondents commented that the use of their properties was not restricted but they were aware that it was for residential purposes. Their land for grazing and agriculture were separated by the residential with livestock in the south and crop farming in the north were mining is currently taking place. Before mining was discovered family members would camp at the farming land tending their gardens, crops and land.

Land cannot be exchanged or traded because it belongs to the king. In terms of land tenure security, respondents were contend with the status quo. But because of the researcher's persistence on the best form of tenure, informants P09, P17, P19 and P24 reluctantly opted for full title as the best form of ownership the others preferred the status of traditional tribal tenure or did not know like P26 because she did not know the difference. P03 was however vocal and open on full title to avoid the experience they had with mining royalties. Informant P03 indicated that although full title provided access to land, he knows people who were forcibly removed under apartheid though they had title deeds, but he wanted his title deed from the Kgosi.

Homeowners wanted government to provide land for informal business and RDP housing because families were growing. P09 and P14 indicated that people invaded land about 6 km away in Lefarakgatla and the RBA and Tribal Council send police to evict them. And when the question of whether land should be nationalized was asked many people opted for the "don't know" response. And when the issue of whether government should own land was raised P03 was the only one who was clear that government should own land so that it can distribute it to South Africans and not foreigners.

ii) Tenants

Tenants accessed land easily. With tenants there is alleviation of poverty for homeowners. Tenants indicated that it was easy to find a place to rent and use the place for the agreed purpose. Renters were very vocal about government providing land for the homeless and small business people. They preferred a place of their own with full title but since most are foreigners they were cautious about it. They cannot trade or exchange the rented land which is different from the Maila type of rental in Kampala, Uganda because tenants had ownership tenure (Muinde 2013).

iii) Informal and small business trade, street trading and spaza shops

Street traders were placed opposite the shell garage because they were too close to the FIFA 2010 stadium. However P08 got his letter from RBA very late and he does not know

the reason though he felt the discrimination might be because he was not a local. There is a preponderance of hairdressing salons on people's properties and these are carried out by foreigners and spaza shops were also operated by foreigners. Homeowners also invited individuals to operate small business in shacks to make ends meet. The homeowners were however uneasy when there was indication that the researcher wanted to interview the small traders in the yard. There was indications that the authorities were visiting traders telling them to register for VAT and with SARS for tax purposes. The RBA is now starting to flex its muscles which also happened in Tlhabane (personal interviews with street traders/ vendors in Tlhabane).

Theme 3: Infrastructure services provision and social services

i) Homeowners

RBN roads are tarred, homes have water reticulation and electricity but not waterborne sewer, instead they use the long drop. People pay Eskom for electricity but there is a boycott and withholding of water services payments because they want mining royalties to be addressed P03. Female respondents (though reluctant to discuss the issue of royalties) did indicate that they were not paying for water service and female Respondent P19 did indicate that the community was not paying for water services because they wanted the issue of royalties resolved and that royalties were expected to pay for water services. The people of an area called Kgale complained about the lack of infrastructure in particular tarred roads.

ii) Tenants

Tenants indicated that they had no option but to pay the rental expensive as it was.

iii) For informal and small business trade, street trading and spaza shops

Street traders did not pay to trade. But those who used people's properties to trade (spaza shops or hairdressing saloons) paid rent.

Theme 4: Literacy, education, professional skills and policy matters

The twenty-first century society cannot be backward even in platinum mining.

i) Homeowners

There was a challenge with the questionnaire because for education most people were caught between primary and matric categories. Respondents who had gone past primary education but had no matric would indicate that and even especially if they had a Junior Certificate (JC). Most homeowners are elderly and on pension to be burden with qualifications. The absence of a university in Rustenburg was raised as a course for concern by P26. The lack of skills is also making the people unemployable in the booming mining industry.

The lack of knowledge and literary skills was cited as the reason for the failure of people to raise issues that affect their daily lives (Nxumalo and Whittal op.cit).

ii) Tenants

Most tenants are young and still look forward to being employed. One pointed out that she had come from Zeerust to look for a job in mining but had hit on hard times. The TEBA labour recruitment centre that recruited labour from the rural areas of the Eastern Cape has its offices in Phokeng. Other tenants are already in jobs or are in the informal trading sector. P25 showed his hands that could not do much work anymore and indicated that he was in dire straits. Tenants wanted land for housing and RDP houses but most were not South African. Employment was also a primary policy issue.

iii) For informal and small business trade, street trading and spaza shops

Informal traders were also without skills and adequate education. They however were in support of government providing land for informal trade. Land and employment was a key policy issue raised. It was also mentioned was that they were informed to register with SARS for tax purposes.

Theme 5: Extractive platinum mining and royalties

i) Homeowners

Except for royalties raised mostly by the male respondents who displayed a feeling of entitlement, the loss of agricultural land was a burning issue because people were not

compensated for the loss of their agricultural land on which platinum mining is now taking place. Informant P03 questioned who the shareholders in RBH were and who RBN was. P03 went further to question the royalty of the Bafokeng and if they can be compared to the British Royal Family.

Although women did not want to discuss the issue of royalties they did mention that the land on which mining is taking place was used for agriculture. The women were content with the RSA old age pension grant. It was not clear that royalties could be empowering to the women which might be a result of patriarchy and male domination. Royalties exposed subtly, gender issues between males and females. Royalties were used to withhold payment for water services.

ii) Tenants

Mining and royalties was only raised by one male tenant P25 who is over 50 years of age. He came from another Bafokeng village called Masosobane. He was boarded at work because his hands have lost mobility and are therefore not functional. As an unemployed persons he cannot understand why the Kgosi is not distributing the royalties. Like informant P03 he questioned the shareholders of RBN who they are.

iv) For informal and small business trade, street trading and spaza shops

No one mentioned mining and royalties.

Theme 6: Citizenship and identity

i) Homeowners

The homeowners of Phokeng are aware that they are on communal land and the Kgosi is responsible and his authority was imminent in informant's responses. They are also aware of the fact that there is a democratic dispensation. They could not articulate the difference between the democratic government especially the role of the councilor and the *kutle* traditional authority and how they affect their democratic rights. There was a sense of alienation which was not clearly defined. P25 indicated that they do approach the councilor for RDP housing if they see destitute old ladies and children because it

becomes her legacy. But the councillor and RLM authority was distant because allegiance was reserved for the hereditary Kgosi.

The issue of citizenship did not augur well with respondent P03 because there was no compensation for agricultural land lost to mining and no distribution of royalties. He referred to himself as a Bafokeng and not a Royal Bafokeng Nation.

ii) Tenants

The issue of citizenship did not flash in the minds of tenants as they feel like they do not deserve it as tenants generally do.

iv) For informal and small business trade, street trading and spaza shops

This group also felt marginalised and ignored. Phokeng being a motse or traditional village, informal trade was foreign to it and the traders were not quite sure if trade was allowed in a village although there are prospects.

Theme 7: Phokeng culture and traditions

Indigenous communities are about culture, heritage, tradition and history although this is not immutable. Culture is dynamic or should be dynamic in a globalized world. It was important to determine whether there was indigenous architectural or design culture for a Phokeng Bafokeng city because traditionalists get obsessed with culture and heritage. It is for this reason that the FNB stadium built in the form of an African calabash has been juxtaposed with the modern Royal Bafokeng stadium which is modern and does not reflect any tradition. Informants did indicate that Phokeng has been modern since the end of the 19th century. They accept and acknowledge that there is nothing traditional about their settlement.

i) Homeowners

The issue here was whether there was a Bafokeng traditional culture that separated the Bafokeng from other tribes like Ndebele and Sotho so that their tenure type could be better understood. The only responses on the issue of culture and tradition was that they

were under a Kgosi. There was no reflection of what Bafokeng culture was even after much probing. The researcher insisted on responses for burial rites, ceremonies and most importantly the Tswana or Bafokeng traditional hut. The responses provided were that only traditional healers and herbalists were buried in their yards and new born babies. However the practice was dying since everybody was now being buried in a graveyard. Three grave sites are noticeable in one street of Phokeng. Non-Bafokeng were not buried on Bafokeng land except for respondent P23 who pointed out that after delivering a cattle to the Kgosi a none Mofokeng or foreigner can be buried on Bafokeng land otherwise they have to be buried in Rustenburg town.

On the issue of Bafokeng architecture, the researcher was informed that Bafokeng started building modern houses in the mid to late 1800's. Informant P03 indicated that his house is the oldest modern house in the village built in late 1880's. This fact is confirmed by researchers like Freud (2008) who wrote about the African city and the Tswana agro-towns. Phokeng is one of the agro-towns and is a clear reflection on the potential of Bafokeng building a city not encumbered by tradition. But there should be caution taken because the RBA has gone out on tender for research on Bafokeng culture and tradition and consultants have been appointed to prepare an architectural design reflecting Bafokeng culture to take the Masterplan forward. Bafokeng have no architectural heritage according to the respondents

ii) Tenants

Tenants did not contribute much on the issue of culture and tradition except acknowledging that the village was under a Chief.

iii) For informal and small business trade, street trading and spaza shops

There was no contribution on culture and tradition except to acknowledge that the village was under a Chief.

In conclusion, it was observed that the grave of the son of Mzilikazi the leader of the Ndebele group that ended up in Bulawayo Zimbabwe is advertised on sign-post as a

tourist attraction. It was not clear how a foreign leader could have been buried on Bafokeng land when foreigners are not generally buried on Bafokeng land, yet the Bafokeng are proud to display the grave which goes to confirm that culture is not static.

Theme 8: Institutional protocols, membership of organisations and safety

The theme revolves around the relationship communities have with elected politicians have and the leadership of the traditional leader. People felt generally safe in the village and there seemed be no urgency to create organizations because the place was relatively safe. Only one of the informants mentioned that the owner/ renter of a spaza shop in her yard was attacked and shot at in winter of 2014. Otherwise Phokeng is a very safe village when compared to the urban area which includes Tlhabane and Rustenburg town. Generally nobody said that he or she was a member of an organization except one woman who is a member of one of the *kutle*.

i) Homeowners

Only P19 is a member of an organization, the kutle and other people did not indicate any membership. The *kutle* is for the clan, a small group of people mostly by surname like Diale and Senne. The Kgosi and his kutle were popular amongst the informants.

ii) Tenants

None participated not even in Tenants association.

iii) For informal and small business trade, street trading and spaza shops

None was a member of a relevant organization. Respondent P04 is a member of the Royal Bafokeng Enterprise Development but it is not considered a tool for democratization.

Theme 9: Development policies, Land use rights (Town planning) and building compliance (National Building Regulations or NBR)

This is the third most important theme after land access and indigenous culture and tradition. Technical planning and building standards was not a theme in the positive but something not to be mentioned. Generally informants were content to build their houses without approved of building plans or town planning approvals. In fact it is the reason most cited why they have stayed in the village. 28 respondents did not support the approval of building plans and building inspectorate and only two said they did not know. Only respondents P04 said yes to planning approvals and 15 (50%) said no to planning approvals and 11 said they did not know. Building inspectorate was associated with corruption. In general the local people are content without the bureaucracy from RLM. The officials are not trusted and they would like to stay as they are. RLM is viewed as an impediment to progress.

i) Homeowners

The respondents boasted of having beautiful houses without having to go through the bureaucratic process of approvals and building inspections. The informants indicated that villages were never planned and the status quo should remain. There were no discerning voices from home owners but the researcher I did indicate that houses are cracked in undermined areas and some especially tenant's rooms are badly built. The acknowledgement of this fact was with much reservations. The general consensus is that the bureaucratic processes of urban Rustenburg must not be introduced in a village like Phokeng. Further, the respondents were clear in their minds that once officials provide bureaucratic services, then they are expected to pay property rates and taxes. How they have escaped paying rates and taxes when RSA opted for a wall-to-wall municipalities is an enigma. The point is that the community is well aware that if they remain a village they will not pay rates and taxes.

ii) Tenants

Tenants also agreed that town planning and building inspectorate process of local government should not be introduced in Phokeng since it is a village. This came mostly from those tenants who had erected their own shacks.

iii) For informal and small business trade, street trading and spaza shops

Also the informal traders saw the town planning and building survey processes as tedious when all they need is to put food on the table and survive.

Theme 10: The future

Issues on the future are based on the desire of the Kgosi to implement the Masterplan and build a secondary city by 2035 to which the respondents seemed ignorant of its existence or its implications. Phokeng having evolved into a peri-urban in close proximity of Rustenburg or Sun City casino hotels, is getting ripe for full urbanisation and developing into a city. However this is happening in an urban land policy vacuum and the people have already demonstrated to this fact by occupying vacant Refarakgatla about 6 km away and closer to Tlhabane town. Already RaFreddy (an illegal township in terms of the provision of the Ordinance 15 of 1986) exists in the area. There is no turning back on urbanisation now for Phokeng.

But how did they see the land issue being resolved. On the issue of nationalization 5 respondents said yes, 4 said know and 21 did not know. On the other hand 11 respondents said yes to state ownership of land, 10 said no and 9 were undecided. However when the question whether state you provide land 26 respondents said yes, 2 said no and 2 had a qualified yes that is only for small business and RDP housing and not informal settlements.

In terms of future preferences respondents preferred the current situation or rural setting split as follows (16 current or status quo; 7 rural; and 7 urban).

i) Homeowners

Homeowners do not see anything changing in the future. The idea of a settlement like Tlhabane was not contemplated by the homeowners and having hosted the FIFA 2010 soccer world was a surprise for the semi-village community. The majority of owners want status quo to remain except 21 year old student P26 who is left in grandmother's house with other family members whose siblings are all in the urban areas.

ii) Tenants

Tenants did not have much input to make because they do not have their own property. Renting was like disempowering to the people.

iii) For informal and small business trade, street trading and spaza shops

The costs of the bureaucratic procedures made this group to be against technical development and building processes.

5. 3 Consolidation and comparisons of the categories of people across all themes

All three categories of respondents live in one village Phokeng. It is a mixed bag of text and contexts. There are three, besides citizenship, emerging themes that are important in this research. It is the land access issue, the Bafokeng indigenous traditions and the technical aspects of town planning and the NBR.

All respondents had a view on access to land but there was more sentimental meaning for the over 50 years of age and Bafokeng born people whom it was a heritage. For foreigners and traders it was the business opportunity that the area provided because of mining and survival. Yet as the population grows, the land has remained finite, a situation lamented by the Kgosi when he stated that he always cautioned against the uncontrolled use of land and have publicly highlighted the possibility of land running out at some point (Kriel 2007: 12).

On tradition and culture it was apparent that this was not constant. With the type of urbanisation taking place in peri-urban Phokeng there was a movement towards multiculturalism as against assimilation of non-Bafokeng people. Bafokeng want to keep

their culture without assimilating outsiders as viewed in the refusal to bury on-Bafokeng on Bafokeng land, a situation that might not stand if the whole of RBN is assessed.

All three categories of people do not support the encroachment of Rustenburg land development policies, principles and NBR although the Bafokeng embraced modernity in the late 1800. Tswana ago-towns are emblematic of the power of the chiefs gathering together a variety of people, with the structure of the towns resembling a series of villages based on descent and affiliation to a chief or elder with a distinct space for kgotla or meeting place (Freud 2008: 4). The respondents mostly want Phokeng to be kept a semi-rural or rural village as it would not attract urban elements, rates, taxes and service delivery charges, and crime and grime. And all respondents lived a survivalist life of indigents, poverty and dependent on social grants.

There was agreement that government should provide land for informal and RDP housing and informal business 28 of 30 responses. However it was not clear what form it should take because 20 or 66 percent did not know whether nationalization was a form of ownership, and 6 responses did not support nationalization whilst only about 13 percent or 4 people believed that nationalization was a form of tenure. When asked if the state should own land, about 11 or 34 percent of the respondents agreed. The others were undecided or did not agree.

Citizenship remained a challenge because in theory access to land remained elusive in that the RBN legal entity had title to the land on behalf of the community. The UN- Habitat acknowledges that there are instances where people enjoyed title de facto and instances where title did not guarantee access on the tenure continuum. Further democratic dividend is not equitably spread across the respondents and there existed a divided allegiance to an elected statutory ward councillor who reported to Council at Rustenburg and the unelected hereditary Kgosi who in theory represented patriarchy and paternalism.

The respondents generally trusted the Kgosi to provide protection to their homes although they did not have title deeds to their properties.

5.4 Synthesis and alignment with the research objectives

The main objective of the research was to determine how informality arises and how do people in informality access, hold, own and use land in urban settings, and this includes where the informal settlers and businesses originate from and what their hopes and aspirations are as the main objective? The research demonstrates that informality arises when formal processes of land ownership are introduced into settlement that did not bother about formalities in the first instance. This was so when colonial and imperial registered land tenure systems are introduced and kept without taking cognizance of the prevailing indigenous circumstances. Berrisford (2010) is critical of the persistence of colonial and imperial town planning laws and building regulations which need to be replaced because it criminalizes and stigmatizes the indigenous lifestyle of the people of Phokeng. In this regard the De Soto thesis of the mystery of capital does not help the communal Phokeng community. The RBN materplan if not guarded has the potential of disempowering the community as Phokeng becomes a secondary city to Rustenburg. The inhabitants of Phokeng can only be empowered if they problematize the issue and set their own agenda for development.

In response to the sub-objectives stemming from the main objective, firstly on how do informal settlers and businesses interface with formality, in terms of accessing urban land, holding and use for settlement and business purposes as well as infrastructure services, and organizational or political representation, it was pertinent to note that peri-urban Phokeng is urbanizing without the legal requirements of the Ordinance being complied with. Consequently Rustenburg excluded it from its planning in the LUMS however it is expected that traditional Phokeng set up these structures for the purpose. The RBA is in the process of doing so but the communities are not aware of the impact of the Masterplan and the structures required to permit access to urban land as they are still steeped in tradition for expedient reasons and purpose and the exclusion of fellow South Africans in a post-apartheid and democratic dispensation. Organizational and political representation

is a big challenge in that democratization cannot be fully achieved in an instance where the deracialisation programme has not been matched with a detribalization programme and project which is a concern for Mamdani (1996).

Secondly, what is the nature of the settlers' alternative systems that apply in protecting, enforcing/ policing informal settlements and businesses? Also what are their threats, the research has illuminated the fact that informal settlements and businesses are a consequence of new found extractive wealth, the population growth, the RBN masterplan that identifies Phokeng as the capital of the Bafokeng and a secondary town to Rustenburg which criminalizes the village lifestyle of the current population. They are concerned that they will pay rates and taxes and services charges yet they had used the village as a place to avoid these threats hence the respondents are in agreement that the status quo should remain. It is the only way they feel protected. For the non-Bafokeng the only challenge is their exclusion e.g in terms of burial but they do not feel the exclusion as they are in practice welcome as tenants and informal business traders.

Thirdly what are the inadequacies of past and current policy and whether the stakeholders participated (had a voice) in their formulation and if yes to what extent? The level of literacy of the members of the village community limited the understanding of the community on policy matters. Whilst they are content with the status quo not much came out from past history and current policy. And colonialism and apartheid and the homeland government of Mangope's Bophuthatswana nothing seem to have happened. The fact that in the days of the homeland government the Kgosi was in exile and they did not directly benefit from royalties was not apparent. There was no knowledge of current policies and the only issues that came up were increased grant funds, a university, change in SARS policies for small business and that government should provide land for RDP housing and informal business. The application of town planning principles and building regulations in a village setting was not acceptable. But already in the spatial development framework and IDPs, the tool to promote development and limit growth is the 'urban edge'. In the urban edge densification can occur and in the process the need for farming land gets ignored and sidelined. With all this planning the respondents did not

understand all the plans in the pipeline as they see the 2010 FIFA stadium which is a product of these plans for example. It is in such moments when respondents have selective memory. They were oblivious consciously or not to the fact that there is an inflow of people from other provinces and foreign nationals because of platinum mining did not become obvious that the village was changing forever.

Lastly, how can needs of informal settlers be met through new urban land policies. What can be adopted from the informal, traditional and indigenous as an alternative to formal title documents/tenure into formal/legal tenure? In terms of new urban land policies it is crucial that the current community be protected from down raiding by the rich as happened in many RDP housing projects where people are forced to sell their properties. In this regard De Soto's conversion of land and property into capital through titling should not take priority over the de facto secure tenure enjoyed by the resident village community. With SA urbanisation at 64 percent it is prerequisite that government formulates policy that does not perpetuate apartheid spatial form beyond the demise of colonialism and apartheid. We need to adopt certain experiences of the resident village community especially the role of the *kgosana* in overseeing peace, harmony and communality in the urbanizing village. This experience was noted by Boaden and Karam (2000) in Cape Town and Urban Land Mark (2008) in Thokoza hostel that indigenous communities replicate traditional organizational systems of the rural areas like "*izinduna*" (headman) and chiefs. In Kenya and Tanzania communal land tenure (CLTs) have been introduced based on the traditional ownership of land. The traditional system has worked and only gets distorted because of the commodification of land that is premised of the individualization of land ownership.

In the final analysis land can be used to promote citizenship and to deepen democracy.

Images and photographs

The following images shows stadia in South Africa.

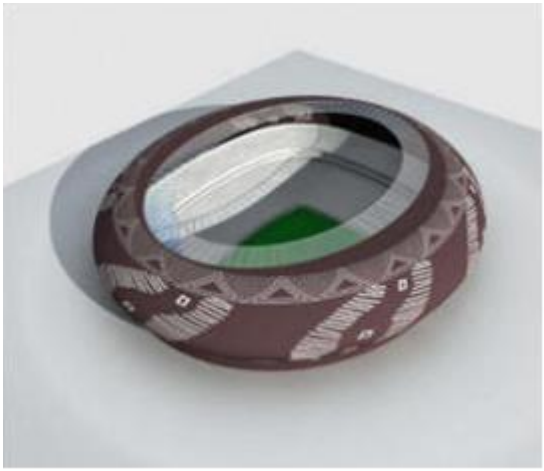
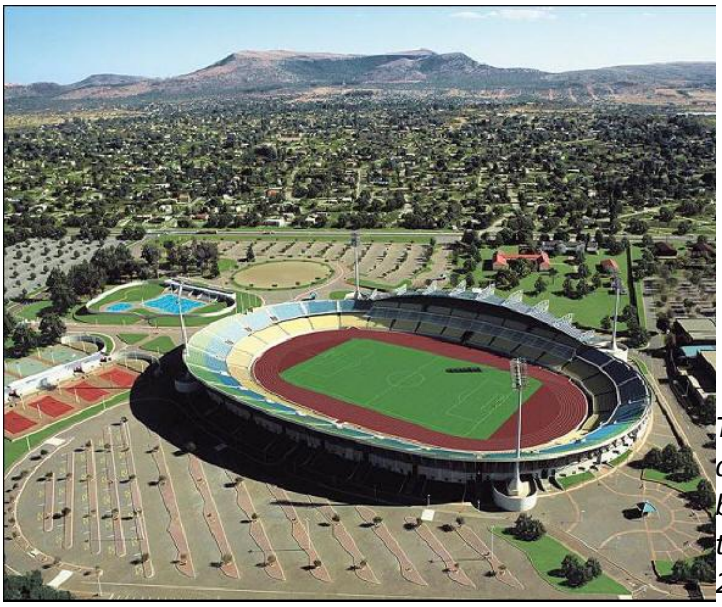


Image 1: African traditional calabash



Image 2: Johannesburg stadium replicating the African traditional calabash



The stadium was built by the wealthy community of Bafokeng, made wealthy by its platinum. It was one of the stadia that hosted matches during the FIFA 2010 World Cup.

Image 3: Royale Bafokeng stadium, Rustenburg (does not reflect Bafokeng tradition if any)

Source of images: Classic Encounters. (2014). *Soccer stadiums*. Retrieved 02 1, 2015, from Classic Encouters: http://www.classicencounters.com/soccerstadiums.htm

The following images are photographs taken as part of the study.



Image 4: Rooms to rent



Image 5: Rooms to rent





Image 6: Rooms to let in Phokeng: front view (left) and back view (right)

Photographic images continued.



Image 7: Spaza shop



Image 8: Street trading, Phokeng



Image 9:Homestead settlement and RDP house, Makhado, Limpopo (new government approach to human settlements).

Photographed images continued.



Image 10: Trading on residential land



Image 11: Trading on residential land

CHAPTER 6: CONCLUSIONS AND RECOMMENDATIONS

6.1. Introduction

This final chapter endeavours to draw pertinent conclusions based on the field surveys, literature reviews and secondary data that was available. It takes cognisance of the failure of un-erudite communities to raise public policy issues at a strategic level, which proves to be a public policy challenge in itself.

The case study utilising the participatory action research (PAR) is a revelation for policy and policymaking and the ownership of land and security of tenure for vulnerable and marginalised communities, be they poverty stricken, indigenous, traditional or cultural. The assumption that urban informality and the inadvertent informalisation of urbanising rural villages is experienced equally amongst the respondents did not hold because only about a 13 of the 30 of the informants were indigenous to Phokeng, thereby excluding other informants mainly tenants and informal traders. In fact non-Bafokeng were more than Bafokeng in the research. For this reason the outcome on cultural matters of the Bafokeng is not conclusive nor generalizable.

The respondents were able to articulate their daily experiences but were unable to make a clear direct link of their lived experiences with public policy. Actions and activities were mentioned that indicated a policy directions at a superficial level, for example social grants and SARS requirements for business activities. The same applied to knowledge about the Council IDPs and the Kgosi's Masterplan. The general feeling was that the Kgosi was doing a good job and was providing visionary leadership in developing the area. The one thorny issue that was raised was one of royalties and compensation for farming land lost to mining and reparation in the form of payment like grants over and above the current government grants was raised by the 10 homeowners. This included two tenants (one elderly renter and one student) and one trader who employed two non-Bafokeng. The rest of the tenants and the traders (17) who were non-Bafokeng did not lay claim to rights

and privileges in Phokeng as they felt excluded though they felt they should be accommodate with land provisions for trading and shelter purposes.

In general the research revealed that the question of participation in the drafting of (public) policy should not be a privilege for elite representatives with clout in society in a globalized, urbanizing and technologically advanced society, but should be driven by the beneficiary communities who identify the problem and then set the agenda in a reiterative cycle. Stakeholder participation should not be a formality in the face of service delivery pressures, but mandatory prior to approval and enactment of policy into law. The developments in RBN of tarred roads, electricity supply for energy and portable water was a welcome and much appreciated service delivery experience in a rural, poor, vulnerable, marginalized and steeped in culture and tradition. In a constitutional democracy like South Africa, policymakers should take a proactive and strategic position to ensure that the General Rights tradition of human rights and humanitarianism should become priority above the rule of law. All this takes place in a traditional area in a constitutional context of three spheres of government of national, provincial and local which leaves the traditional in limbo because it is not adequately covered in policy. The non-citizens, the non-Bafokeng are excluded in the traditional context.

The problem statement to the research set out in its objectives the need to advance the problem identification and agenda setting by beneficiaries or those directly impacted on by the policy. Particularly in urbanizing settings, where poor, indigenous, and traditional and cultural communities have to be included in the city. Only through purposive policy intervention can government bridge the urban divide which, as in South Africa, is quantified, for example through Gini-coefficient currently as high 0.7 which makes South Africa the most unequal society in the world (UN-Habitat 2008). None of the informants were made aware of plans and policies especially the traders who were moved far from the FIFA 2010 stadium to comply with international soccer standards.

6.2. Problem identification and agenda setting in the public policy process

The research outcomes suggest the need for the participation of beneficiaries of public policy within a constitutional democracy. In this regard, it was not clear from the respondents what they thought of the implications of the RBN Masterplan was to their *de facto* land ownership rights and it remains a speculation how they increase their participation and safeguard their historical entitlement and any other rights. Depending on availability of funds, RBN as a legal entity, can technically raise debt on the open market using the title because Master plan has far reaching implications for villagers by 2035 when it is built as the secondary city to Rustenburg.

Communities should not be complacent in identifying problems and setting the agenda for government on matters that affect them directly. However for Phokeng, the research revealed that contending interests might be an issue. For example the interests of the indigenous traditional community were quite different from those of the traders and tenants who were considered to be outsiders but accommodated. In fact the insiders benefit from rental collection from the outsiders.

Through a case study, certain elements have been established, the most important being the need for government to address pertinent issues pertaining to access to land in rapidly urbanizing societies. It was indicated that because there is no more land in Phokeng, the community invaded a neighbouring piece of land and were forcibly evicted which is an indication that the area is densifying. It is noted that some limited knowledge by villagers about procedures required and many community members are illiterate which makes it challenging to compile their grievances formally (Nxumalo and Whittal 2013: 329). Nxumalo and Whittal (2013) noticed this fact in the case of municipal boundary disputes in KwaZulu Natal which was of little concern for the MDB whose mandate it saw as establishing local municipalities that can raise adequate revenue to service the communities rather than create communities that cohere when delimiting municipal boundaries. A good example being the tribal oriented Xitsonga Malamulele community which wanted its own municipality, independent of the Venda tribal dominated Thulamela

municipality (SA News, 2015). This dilemma confuses the objectives of cross-subsidization versus the objective of free basic services versus the user-pay principle for services provided. Without much pursuance, it can be concluded that the level of literacy of the respondents was low to suggest low access to education which was a deterrent to informative responses which is beyond the scope of this research.

The objective of the Masterplan's is to have Phokeng urbanise by 2035. Although the respondents displayed ignorance of the existence of such plan, it is in the public domain and was well displayed at the RBA offices however the researcher was informed that it can only be viewed by permission with the relevant officials. The conclusion that can be drawn subject to further research to substantiate it, is that the concern of the homeowner and Bafokeng respondents that they were not compensated for their agricultural and farming land now being mined, the Phokeng community is again caught between the failure of rural land policy in the face of mining and urban land policy gap, vis-à-vis the need for food security. This is an area of further research desired to avoid the double jeopardy to the indigenous community.

6.3. Democratization, democratic dividend and General rights theory

Democratisation, the democratic dividend and general rights based on the Constitution Act 1996 protects people's right to property under section 25 which is regrettably not elevated with guaranteed secure tenure in Phokeng. De facto rights might be lost because they are not guaranteed in title and are currently based on storytelling and oral tradition that can be lost to memory and other elements that affect the human mind and behaviour. For all intense and purposes, Section 25 land rights should not be secondary to housing policy in particular and urban policy under the guise of human settlements. Human settlements is covered under chapter 8 of the NDP and also under target 8 of the presidential monitoring and evaluation which are a welcome value add of the NDP, they fail to identify land as the fundamental and prerequisite to human settlements. Chapter 8 of the NDP is a replication of Outcome 8 of the Department of Human Settlements performance which is used by the Department of Monitoring and Evaluation in the

Presidency and its purpose is aimed at “sustainable human settlements and improved quality of household life” and access to basic water and basic sanitation (Parliamentary Monitoring Group meeting 20 Oct 2011). Human Settlements in this regard has little to do with comprehensive and integrated planning and policy but solely the provision of basic services. Roy (2007) is critical of the situation where planners are happy to deal only with urban policy and not dirty themselves with the challenges of land ownership. Roy (2007: 155) quotes Krueckeburg (1995) who aptly argued that while land use is a central concept in planning, the issue of property deserves equal attention because, by focusing on the utilitarian question of where things belong, planners forget to ask to whom things belong. And also why they belong or do not belong.

In the absence of urban land policy in RSA, courts have guaranteed property rights through precedence in urban areas. Land reform through restitution and redistribution has had a rural agrarian bias. Consequently the malaise of service delivery protests in urban South Africa manifests. This is already happening in Phokeng (the RBN platinum belt) and the Marikana debacle is a case in point. The RBN land title case is before the courts and normally socio-economic rights get addressed and includes the requirements of public participation enshrined in constitutional provisions.

6.4. Laws and attendant legislation and threats

Because of ignorance it was not clear from the respondents secondary information could not reveal whether the RBN Master-plan was approved as part of the IDPs of RLM or not or in terms of what legal instrument it existed. Of course no planning past and in the future was raised as a threat except for the street traders who informed that they were forcibly removed from close to the FIFA 2010 stadium in 2010 to comply with FIFA world soccer body standards. Therefore not only is Phokeng a Bafokeng indigenous and local issue, it is a regional and national issue because of platinum extraction and because the stadium hosts national and sometimes international soccer games, of international significance as well. Hence Phokeng should be further researched in a broader and global context.

From the field survey, it became obvious that if not for the unwritten oral Bafokeng policy or law which precludes non-Bafokeng from land ownership by default in Phokeng, the issue of land ownership by migrants remains unexplained. Immigrants in the southern African region "are simply perceived as temporary residents and therefore not considered a policy issue" (UN-Habitat 2008: 16). Even in urban areas land ownership is an issue. The literature and tenants responses is a clear indication that migrant workers are also competing for land and in areas identified for urban or city development like Phokeng which is identified for RBN capital.

The current title deed does not extend Section 25 rights to traditional Bafokeng. This debunks De Soto's mystery of capital thesis. The lack of freehold title defeats the need or desire to raise capital or mortgage loans on the free market because the land cannot be used as collateral. This fact was appreciated by homeowners who would never be under the threat of mortgage lenders at any stage and the informants indicated that they have observed relatives' and other peoples' properties repossessed for failure to maintain the loan.

The lack of tenure is not an issue (for homeowners though an issue for traders and tenants) as perceived by the residents should be of concern to the post-Apartheid government as it seeks to advance the De Soto philosophy of individualized home ownership as practiced with RDP housing, and regularised housing areas because although government downplay home ownership because "housing projects in South Africa overwhelmingly promote this form of ownership" (Boaden et al, 2000: 2). Roux supports this view of neo-liberal economic policies institutionalized through GEAR and LGWP policies. Consequently they dumped the free basic services and cross subsidization approaches in favour of the neo-liberal user-pay principle.

The respondents who are homeowners and mainly male responded that they were suffering even though Bafokeng was rich in minerals. This is confirmed by secondary data in that for RBN, the Bafokeng (also known as 'the people of the dew'), title has made it a "rich nation of poor people" (Kriel 2007) because they have access to the entire bundle

of rights for the use, trade, transfer and exchange of rights above and below the surface of the earth, making them to access mineral rights which should have been nationalized by the state. But the perceived *de facto* communal ownership of the land is an irony and a paradox. Wealth is generated in the name of the RBN collective but enjoyed individually by certain elites and those to whom patronage is extended. Social grants went a long way to alleviate poverty. RBN also approached government for tax exemptions in the name of providing social services to the poor of RBN and rural economic development which the respondents did not relate to.

It needs to be researched how Africans can enter the property market. The people of Phokeng are using their properties for rental already policy intervention to add to the quantum of land owned by black Africans in the urban areas. Currently it has been a source of corruption, fraud and patronage in South Africa and the developing world. In RSA the local government MFMA and attendant Asset Transfer Regulations do not promote the identification of individuals to be granted land without inviting tenders which in any event precludes the poor. Not even land swaps of council land can be done with private land owners, even for the benefit of the poor. (See Appendix 2 for example of invitation to tender for land in the City of Joburg).

Through RDP housing provision can land and housing be provided to the people of Phokeng and this has not happened, although it has happened elsewhere in the RBN land. In terms of housing policy, government can provide RDP low cost housing in rural and village areas (Boaden and Karam 2000). In Phokeng there was concern that government was not providing RDP housing. Respondent P14 indicated that they do approach the ward councilor for RDP housing for destitute old women in particular, because it's good for the councilor's legacy.

Secondly, in light of the DFA ConCourt decision, it is not clear what structures would make planning decision between RLM and RBN. The Kgosi in his statement on the signing of the MOU with RLM on September 14, 2014 indicated that there was ignorance of these matters although legislation provides for it.

6.5. Urbanisation of villages and peri-urban areas

As noted, African cities of less than 500 000 people are growing fast, and according to AnnaTibaijuka, the former Executive Director of UN-Habitat (UN-Habitat 2008), they (small cities) will need close attention by policy-makers. Rustenburg municipality has broken the small city threshold because of platinum extractive resources with a population of 549 000 (StatsSA Census. 2011). The RBN platinum has made Rustenburg the fastest growing city in South Africa. Phokeng and RBN are part of these developments with or without government intervention in urban land and urbanisation. The informants indicated that there was land invasion already and this should be an indication for setting the agenda policy formulation for Phokeng.

6.6 Implications of the research

The respondent homeowners were displeased that Phokeng is urbanising because it will attract rates payment. However secondary data reveals that all properties in South Africa are rateable in terms of MPRA. This shows a selective implementation of policy without sanction or recourse.

For RBN and Phokeng the research has been complex in terms of urbanisation, urban land tenure, mining and traditional leadership rule vis-à-vis democratization and citizenship. To what extent can a city evolve in an instance where city or urban governance is shared between a democratically elected Rustenburg Council and the hereditary Bafokeng traditional leadership or are they mutually inclusive and co-exist in a constitutional democracy, the respondents could not clarify.

The North-West Province of RSA is predominantly Tswana dominated. The Tswana including those of Botswana have been recorded to have lived in agro-towns and the urban might not be foreign to them. As respondent P03 pointed out, Phokeng modernized as early as mid-1800s. But how they have managed to keep the non-Bafokeng from their

cemetery is a mystery if they modernized that long ago. Whether this stands the democratization test is still to be determined and as Mamdani (1996) points out, it is the outcome of post-colonial states deracialising without detribalizing. It would seem RBN is pursuing a multiculturalism route rather than assimilation without detribalising.

Africa can assist with a new model for city formation given the fact that its people have a rural background steeped in tradition, bearing in mind that the city is a global concept. The binary approach to the city has been debunked in favour of the continuum which, itself, has remained a challenge for customary tenure and should be pursued in research.

Through the literature review it was clear that all indigenous communities depend on oral history for knowledge resources. In the face of documentary proof oral tradition fails, that is, documented title as juxtaposed with unwritten communal tenure which gets lost in storytelling. However the informants were confident that with the traditional structures, they would not lose their properties and lamented those in urban areas who could lose their land if they defaulted on mortgage bonds repayments. Property and land, not documented title, might be lost and may not be used as collateral as De Soto points out. Consequently land is not commoditized nor is it individualized. Valuing land requires literacy skills which indigenous communities might lack and informants did not demonstrate such knowledge. Such knowledge is desirable even for the property sector

With the growth of slums, MDG Goal 7 target 11 expires in 2020 and will be replaced by sustainable development goals (SDGs). The peri-urban villages like Phokeng should be part of the desired urbanisation policy outcome to avoid it becoming a slum even before it starts to fully urbanize.

The city has urban advantages brought about by agglomeration and economies of scale which would be expedient for Phokeng. But these urbanizing communities should negotiate their own agendas from below.

6.7 Scientific "forensic" data based research

Public policy belongs to the field of social sciences. Watts (2011: xi) is concerned that politicians do not consider social problems to be *scientific* problems. Watts' (2011) refers to politicians trying to decide how to deal with urban poverty already feel that they have a pretty good idea why people are poor. To the politicians urban poverty is not 'rocket science' and the "policy makers empowered to enact sweeping plans that will affect thousands or millions of people are n less tempted to trust their intuition about the causes of poverty than ordinary citizens reading the newspaper" (Watts 2011: 19). Rocket science seems hard, whereas problems having to do with people – which arguably are much harder – seem like they ought to be just a matter of common sense, when the "paradox of common sense, therefore, is that even as it helps us to make sense of the world, it can actually undermine our ability to understand it" (Watts 2011: xiii-xiv). For this reason public policy makers, urban planners and managers need to think hard about urban land policy to benefit from the urban advantage. Public policy on the urban land question should be scientific and evidence based and informed by data research, the equivalent of the forensic science of social research. It becomes clear that the urban land policy might be neglected because in reality there was no science of planning – "just the opinions of individual planners who relied on their intuition to speculate about how their plans would play out in the real world (Watts 2011: 20).

The evidence is that there is no clear data for Phokeng community. In the developing world and Africa in particular urban data and data in general for that matter is lacking. And RSA cannot continue to ignore the fact that it is 64 percent urbanized and should inform any urban land policy to be pursued. Malamulele and Thohoyandou are a clear an indication that although these areas were not recognized as urban but homeland under apartheid, they are indeed urban for which an urban land policy is dire.

6.8 The politics of policymaking and the public policy challenges:

Conclusion remarks

Public policy is about power and politics. Policymaking is a political exercise which calls for political will as politicians make policy choices. But Africa with a history of oral tradition and like other traditional and indigenous communities, policy might be oral or unwritten. In Phokeng the view is that the traditional leadership was the policymaker if not policy itself. As a result it was not clear in the context of the Masterplan what the land policy was as the village was urbanizing. As Chikane (2013) pointed out that there are policies that are never said or articulated for example the (A)ids to (Z)imbabwe of the President Mbeki era. For Mamdani (1996) the consequence is that policy is used to keep the revolutionary party that brought independence in power and institution like the MDB in RSA might be drawn into drawing municipal boundaries which purport to do just that when they are supposed to refrain from being biased by gerrymandering constituency or voter boundaries. For Mamdani (1996) and Twineyo-Kamugisha (2012) policy should not be a tool for manipulation, instead it should be empowering for the purpose of achieving the democratic dividend and citizenship. Although politics does play itself out in policy, for the benefit of citizens it should be equitable and general rights based. According to Turok (1990) whilst voting is an essential ingredient, the African masses are not organized to a degree where they could benefit from opening of political space. For Turok (1990: 110 - 111) the political communities of African traditional societies were disrupted by colonialism and urbanisation, and because the crisis in Africa is of such a scale, it is appropriate to propose a set of policies likely to unite a spectrum of society broad enough to bring major changes of development and democracy on the agenda.

In a Constitutional democracy opposition politicians and the judiciary should provide the checks and balances for appropriate policy provision. Both Roux (2008) and De Soto (1999) are concerned that policymaking and legislation has been left to the whims of the legal fraternity and technocrats in the face of the need to address society's malaise and deprivation.

As much as policy should not be a legal mechanism that is not concerned with social reality and rights, it can also not be merely academic and relegated to intellectual debate without changing society for the better and reduce inequality as reflected by the Gini-coefficient and improve human development index (HDI). De Soto (1999) blames the legal fraternity and technocrats for making land as capital not being accessible to the poor because of exorbitant costs and in the process they maintain the status quo. Roux (2008) was also not impressed that the RSA Constitution was dominated by legal input at the expense of social rights. The people of Phokeng want to maintain the status quo when their physical and spatial environment is changing. It has however been demonstrated with the very Bafokeng (especially women respondents) that the one who holds a documented title is better prepared than the one who depends on undocumented oral tradition or storytelling to prove ownership of land.

The starting point towards full democratization is full political rights and substantive citizenship. Literacy and knowledge empower the citizenry to practice this citizenship. Education helps to know why things happen and in relation to land it is how one creates and hold it as capital and knowing its value, how to invest in land, how land has agency of savings, what interest rates are and what risk taking in relation to land is, what is inheritance, how to enter the free market as opposed to traditional and barter markets, the fundamentals of the access, use, trade and exchange of land.

In the interim bureaucrats should acquire skills that assist the not so literate members of society. Bureaucrats should have skills in conveyancing, surveying, town planning, GIS which are currently lacking in the developing world. The critical discipline on land use matters of Town and Regional Planning was identified by the RSA government as a scarce skill in the Accelerated and Shared Growth Initiative for South Africa (Asgisa) and the Joint Initiative on Priority Skills Acquisition (JIPSA). As Prof Phil Harrison, an academic and former Head of Planning Department for the City of Joburg put it, there is a need for municipal planners who have strategic planning and thinking skills and technical land-use skills and the tertiary institution are producing them but that many of them (planners) are young, and arguably for Harrison, the kind of wisdom needed to lift

283 municipalities to another level tends to come with age and experience (Delivery 2010: 52). The Chinese introduced ‘barefoot planners’ for the urban periphery because of similar experiences of pressure to urbanize. Advocacy groups should also assist.

In the final analysis, as agglomeration encroaches and people become concentrated, villages evolve into the urban, then into town, then city and city region. In Africa this evolving city the Afropolis others world class African city however none called African design or architecture. The people of Bafokeng say the modernized in the late nineteenth century and have no traditional architecture to talk about.

6.9 Summary and recommendations

Poor communities in urban slums as well as urbanizing and indigenous, traditional and cultural communities in peri-urban and rural communities face challenges of exclusion from the urban areas and the city. Landholding in these communities is undocumented, oral and unrecorded and are downward raided as the city grows into their indigenous areas resulting in a clash of land tenure types. The formal individualization tenure clashes with indigenous and communal tenure as Krueckeberg et.al (2000: 25) noted with the matriarchal Indian community of Shillong village as the city grew to engulf it. Individualization also breaks social cohesion and extended family units which can put strain on settled communities. The informant’s responses and experience in Phokeng is that families are subdividing plots to accommodate other members of the family rather than live as extended families. Gradually to social benefits of extended family are gradually being replaced by the individualization of property and land albeit without freehold title. Still this takes place in an exclusionary manner because the land is reserved for tribal members only. Further research is desired to determine if indigenous cities ever existed and sustainable

The substantive citizenship and identity of traditional Phokeng in RBN faces major challenges as the Masterplan gets implemented to build a Royal Bafokeng City.

The following is the summary of the recommendations.

i) That individuals and civil society organisations should be allowed to identify their issues and set the agenda for policy making and participate democratically through the policy formulation process. People should be made aware of benefits and constraints of any and all land tenure systems and possible options.

ii) Government should consider consulting the public on the possible reviewing of the provisions of the Local Government: Municipal Finance Management Act (MFMA) and the Asset Transfer Regulations (ATR) so that municipalities to empower formerly disadvantaged individuals and groups to achieve the goals of land redistribution. Municipalities own land but they are not empowered to dispose of the land to the people who need it and for the building of the property portfolio of the previously disadvantaged African population groups. This will enable the implementation of the property charter that envisages the transformation of the Property sector in SA.

iii) Since urbanisation is irreversible, developing nations like SA must focus on it.

iv) Except for the historical Tswana agro-towns, there was no trace of a traditional Tswana architecture even with the FIFA 2010 Stadium The policy proposal therefore is that as villages urbanize, the best democratically negotiated city design should find support. Further research is desired to determine the extent to which indigenous urban areas can be built or if there are any in the world that can be replicated.

v) Education of individuals and communities on planning matters, development and city design, urban management and modernity, property ownership, investment and savings and other skills to grow the economy should be taught to communities because the city is harsh. Like former SA President Mandela referred to the benefits of education, oral history is too limited in scope and memory. Unrecorded institutional memory is of no value in certain instances.

vi) There is a need for rethink in line with the desirability of an urban land policy as urban areas grow/ expand.

vii) Keep different forms of tenure within the continuum. They have worked for traditional communities and the people of Phokeng are only challenging communal tenure in favour of individual full title tenure because of experience of not seeing the value of being part of Royal Bafokeng. But communal tenure is legitimate and can be protected except that planners do not recognize it.

viii) New inclusive and non-discriminatory laws are needed to accommodate indigenous lifestyles. An incremental approach to tenure improvements should be considered and the rural areas should remain the safety net for the poor.

ix) Accurate data based planning is still desirable for balanced urban growth, sustainable development and citizenship.

x) The issue of beneficiation, value addition, industrialization and manufacturing and diversification in the platinum industry should be considered for the purposes of job creation. This undergirds traditional values in a constitutional democracy

In the final analysis, public policy has a place in advanced democratic societies. Properly articulated public policy provides certainty to the social, economic, political and land investors. It removes the element of arbitrariness from bureaucrats and political elites. The urban areas of developing countries need it more in order to protect the poor, vulnerable and those communities threatened with evictions from their ancestral lands whilst creating a conducive environment for inclusive economic growth and investment.

6.10 Areas for further research

Policy is not static phenomenon and the research only touch the surface of the problem. The UN has provided guidelines for the protection of the tenure rights of indigenous communities and vulnerable people in informality. In the light of the LGWP further research is required to inform policy on the impact of the policy has on informality and rural development.

Secondly research is required to determine to what extent exclusive development and land ownership that excludes other South Africans in our democratic dispensation. There is need to research the future of traditional and tribal communities as they urbanise, taking cognisance of their dwindling figures globally.

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ANNEXURES

ANNEXURE 1. Research Survey Instrument

Questionnaire: Urban land tenure and public policy challenges: access, use and trade.

Introducing the survey

I am from the University of the Witwatersrand. I am conducting a **Research Survey.**

I have randomly chosen some people in the informal sector, informal settlements and businesses to be in this part of the study and you were selected.

The purpose of the study is to obtain qualitative information from key stakeholders directly involved in informality in their daily lives in Phokeng village in the Royal Bafokeng area in the Rustenburg local municipality in the North West Province, South Africa.

I have some questions that I wish to ask you about your experience in informality.

A) Background

1. Gender	M	F

2. Age: Number of years	0 – 20	
	21 – 35	
	36 – 50	
	50+	

3. Educational qualification	None	
	Primary	
	Matric	
	Tertiary	

4. When did you come to this settlement/ informal business sector: Date	Before 1994	
	1994 – 2000	
	2001 – 2010	
	2011 to date	

5. Where did you come from?	Tribal/Rural	
	Urban	
	Informal	
	Other: Explain	

6. Describe type of land ownership practiced where you come from?	Traditional / Communal	
	Full Title	
	Lease	

	Informal	
	Other: Explain	

7. Do you make or have enough money to live well with your family?	Y	N

8. What are your monthly earnings / income?	R0 – 1 000	
	R1 101 – 1 600	
	R1 601 – 3 500	
	R3 501 +	

B) Institutional and Organisational

1. Do you belong to any organisation(s) relevant to your activity?	Y	N

2. If yes in (1) above list the organisation or organisations: .....

……

……

3. Please list the policies, by-laws and/or legislation that affect your activities: .....

……

……

C) Security and access

1. Do you feel safe in your environment?	Y	N

Explain: …….....

……

……

2. Was it easy to access your land or spot?	Y	N

How: …….....

……

D) Tenure, land ownership and property rights

1. What type of tenure do you enjoy on the place/spot you occupy?	Traditional / Communal	
	Full Title	
	Lease	
	Informal	
	Other: Explain	

2. Explain the land tenure in (1) above: ……..…….....

……

3. Do you want government to consider other forms of land? Example: ……...

……

4. Should land for informal activity (housing business) be provided by the government?	Y	N

Explain: ……..

……..

……..

5. What type of land tenure do you think will encourage you to improve your environment, the development and growth of this area?

……

……

6. From your knowledge and experience which land tenure type is your most preferred option?	Traditional / Communal	
	Full Title	
	Lease	
	Informal	

	Other: Explain	

7. Give your own understanding of traditional and / or indigenous land tenure or ownership: ……...

   ……

   ……

8. Would you say NATIONALISATION is a type of land tenure?	Y	N	Don't know

9. Do you think only the government should own all land?	Y	N	Undecided

E) Policies, Rules and Governance

1. Do you have any evidence or document to permit you to occupy the space / place you occupy?	Y	N

2. If Y in (1) above, how did you get the document?	Individual	
	Official	
	Councillor	
	Organisation	

	Other	

Explain: ……..

……..

……..

3. Does the document you possess limit your activities?	Y	N	Other

Explain: ……..

……..

……..

4. Do you pay for services and the space you occupy?	Y	N	Other

Explain: ……..

……..

……..

5. Do you think there are adequate rules or policies to control your type of activity?

……

……

F) General

1. What policies do you want government to formulate to address your circumstances?

   .....

   .....

   .....

2. Any other comment:

   .....

   .....

   .....

APPENDIX 2: Land disposal

Land disposal tender advert in compliance with the provisions of the MFMA.



ALIENATION OF COUNCIL-OWNED PROPERTIES

The City of Joburg Property Company (Pty) Ltd (Reg No 2000/017147/07), as an agent of the City of Johannesburg Metropolitan Municipality, hereby invites tenders for the alienation of the following properties owned by the City of Johannesburg Metropolitan Municipality:

No	Property Description	Size	Current Zoning	Reserve Price
1	Erf 173 Cleveland	3154m²	Business	R950 000.00
2	Erf 8664 Jabavu	2063 m²	Business	R214 000.00
3	Erf 5880 Naledi	940 m²	Business	R127 000.00
4	Erf 299 Orlando West	367 m²	Business	R41 000.00
5	Erf 300 Orlando West	370 m²	Business	R41 000.00
6	Erf 9975 Orlando West	6888m²	Business	R391 000.00
7	Erf 1375 Naledi	668 m²	Business	R133 600.00
8	Erf 28763 Meadowlands	329 m²	Residential	R41 000.00
9	Erf 28764 Meadowlands	379 m²	Residential	R41 000.00
10	Erf 28765 Meadowlands	247 m²	Residential	R31 000.00
11	Erf 6946 Zola Ext.1	2001 m	Community Facility(crèche)	R130 000.00
12	Erf 6947 Zola Ext.1	1367 m	Community Facility(church)	R105 000.00
13	Erf 1347 Mapetla	2500 m	Community Facility(church)	R130 000.00

Tender documents are available at the Offices of the City of Joburg Property Company (Pty) Ltd, 9th Floor, 33 Jorissen Street, Braamfontein, Johannesburg. **A non refundable fee of R350.00 per document for Business sites and R100.00 per document for Residential sites and Community facilities.**

A non compulsory briefing session will be held **on Friday, 14 May 2010** at 10:00 at the abovementioned offices of the City of Joburg Property Company (Pty) Ltd.

Sealed tenders clearly indicating the **"Property Description"** must be placed in the tender box at the Client Services Centre at the City of Joburg Property Company (Pty) Ltd during office hours not later than **12:00 on the Friday, 28 May 2010.**

Please note the following:

a) No late tenders will be considered;
b) The City of Joburg Property Company (Pty) Ltd reserves the right not to accept any tenders;
c) The City of Joburg Property Company (Pty) Ltd reserves the right to withdraw any proposed process at its own discretion; and
d) The results will be announced at a later date.

Qualifying Criteria.

- Valid Tax Clearance Certificate/Exception: SARS Tax Clearance (Tax Clearance should be valid for 120 days after the closing date);
- Certified proof of registration (Entity);
- Copy of resolution to authorise signatory of tender document (Entity);
- Certified ID copy of the authorised person to sign tender documents; and
- Church constitution.

Notice is hereby given in terms of the Section 79 (18) of the Local Government Ordinance, 1939, (Ordinance 17 of 1939), as amended, that it is the intention of the City of Johannesburg to alienate the abovementioned properties. Further information on the above proposal may be obtained during office hours from the Information Desk of the aforementioned offices. Any person who has any objection or claim to the proposed alienation of the said properties should lodge such objection or claim, in writing with the Managing Director, City of Joburg Property Company (Pty) Ltd, not later than 14 days from the date of this publication.

Joburg

Helen Botes
Managing Director
City of Joburg
Property Company (Pty) Ltd
PO Box 31565
Braamfontein 2017

Contact details:
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Tel: 011 339-2700
Fax: 011 339-2727
www.jbproperty.co.za

Source: The Star newspaper 30 April 2010