

# **Land Conflicts in Informal Settlements: Wallacedene in Cape Town, South Africa**

**Ivan Farayi MUZONDO, Zimbabwe, Michael BARRY, Canada,  
David DEWAR and Jennifer WHITTAL, South Africa**

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## **SUMMARY**

South Africa has been implementing a land reform and housing programme since the early 1990s. Allocation of houses has resulted in numerous conflicts that require classification, monitoring and resolution. This paper describes the Wallacedene case study in Cape Town. It is the first paper in a series relating to conflict management in upgrading informal settlements in Cape Town. It describes the history of Wallacedene and nature of the different conflicts that have been identified.

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## **1. INTRODUCTION**

In post-apartheid South Africa, more than 1 000 000 houses have been built as part of government sponsored housing and land reform programmes. In 1994, at the time of South Africa's first non-racial democratic elections, an estimated 1,06 million households comprising 7.7 million people lived in informal settlements. Coupled to this, an estimated 720 000 serviced sites required upgrading and 450 000 people lived in various, often inappropriate, forms of hostel accommodation (Rep. of South Africa 1994, South African Institute of Race Relations 1994, Barry and Mason 1997).

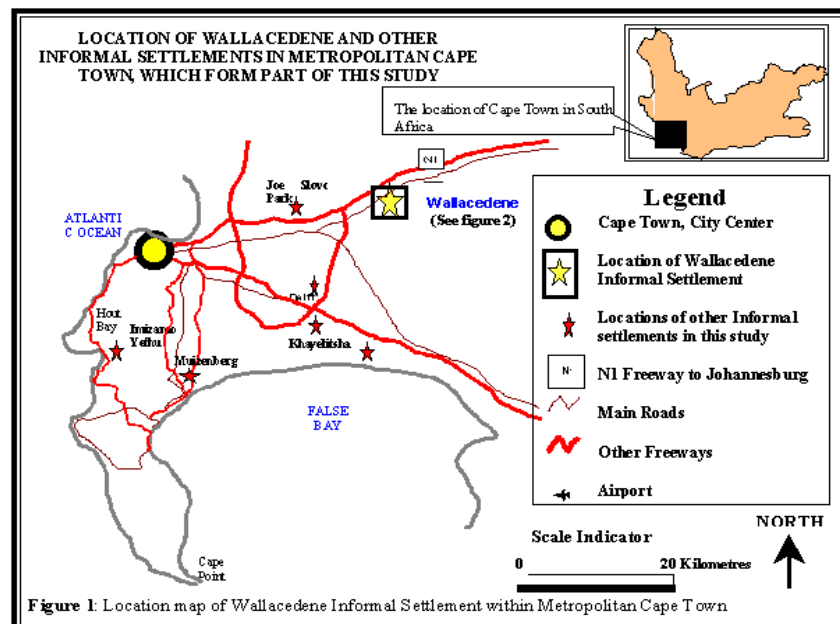
Understandably, allocating land and houses has resulted in numerous conflicts. The main areas of discord relate to:

- Who should be allocated a land parcel and who should not?
- Family rights versus those of the registered owner. There have been cases where spouses have become estranged and the registered owner has sold the house from underneath the family and kept the proceeds (Barry 1998).
- An informal sale of registered properties in a secondary market – after a land parcel or house has been granted to a land reform programme beneficiary it is then sold. However, the transaction is not registered in the Deeds Office. Consequently, these houses cannot be mortgaged. Financial institutions do not issue a loan against a house if the “owner” is not the person whose name appears on the deed (Barry 1999, Boaden and Karam 2000).
- Informal transactions in land parcels or houses prior to registration of title. In Khayelitsha, Cape Town, when the first batch of 21 000 houses was to be transferred, some 20% of the names on the list of people who had been assigned a house did not match those claiming the house. In November 1997, 4427 of the registrations that were in progress had been referred to a dispute resolution committee set up by the municipality (Barry 1999).

In the last point mentioned above, most of the disputes were resolved without resorting to legal action. What is of interest is what caused these disputes, how they were resolved, and the formal and informal institutions that were involved in the process.

As a result, a number of case studies of formal and informal settlements have been initiated. In this paper, we describe the Wallacedene case study in Cape Town. The particular focus is on land tenure and conflict management.

Wallacedene is a settlement some 40 kilometres from the centre of Cape Town (see figure 1), covering an area of 54 hectares with a population of approximately 21000 people. In 2001, fewer than 10% of the dwellings in Wallacedene were formal houses, the rest were informal shacks (Statistic South Africa 2001).



This is an introductory paper in a series to be published as part of a study in managing conflict in the process of delivering land and housing in South Africa. We briefly describe the history of the Wallacedene settlement and the broader context in which it evolved. We then outline a number of different conflicts that have occurred in the settlement and the role of different stakeholders in tackling the relevant issues.

## 2. HISTORY

Wallacedene evolved during the mid-1980's when the South African government promulgated the Abolition of Influx Control Act 68 of 1986, which rescinded the pass laws. This was one of a number of catalysts for accelerated black African urban migration to Cape Town in the mid-1980's (Barry 1999).

About twenty families who were living informally in the surrounding area squatted on the farm Uitkyk. They were joined by families from established informal settlements in Cape Town, such as Crossroads. The "Uitkyk" settlement was named Wallacedene a number of years later.

Between 1986 and 1990, the authorities sporadically evicted the squatters in Wallacedene and demolished their shacks. However, during the political turmoil of the 1980's the squatters resisted this in a number of ways, one of which was to rebuild their shacks on the site.

The political climate changed to the advantage of the squatters at the end of the 1980's. Multi-party political negotiations occurred in the early 1990's, chiefly between the National

Party government and various revolutionary organisations such as the African National Congress (ANC) and Pan-Africanist Congress (PAC). Land issues were central to these negotiations and have remained a sensitive issue ever since. The outcome was that there was rapid, volatile change from legal political power being in the hands of the National Party government to the ANC.

With the negotiations and transfer of power in delicate balance, any large-scale eviction of squatters was bound to have both racial and political implications, something that both central government and local municipalities were desperate to avoid. Consequently, due to the weak position of the authorities, coupled with the influx of people into Cape Town, there was a continual, rapid increase in the number and size of informal settlements in the City.

Political power and authority in informal settlements vested in powerful individuals or political groupings. These included ANC aligned groups such as the South African National Civics Organisation (SANCO). Opposed to them were groups aligned to powerful individuals, or warlords, some of whom had aligned themselves with the National Party Government in the 1980's (Barry 1999).

Wallacedene grew in harmony with other informal settlements and the changing political climate resulted in the squatters being granted occupation rights. By the end of 1990, approximately 120 squatter families were recognised as Wallacedene residents and another 110 families were in the nearby Bloekombos settlements (field notes 2003).

In the same year, the government approved the funding and servicing of the first phase of Wallacedene with 537 land parcels averaging 160m<sup>2</sup>. No resources were provided for constructing dwellings as residents were expected to seek loans or employ personal resources. The land remained the property of the Provincial Government of the Western Cape (PGWC) while use rights only were granted to the beneficiaries (field notes 2003). Nevertheless, the official sanctioning of the settlement resulted in phased development that provided relatively secure tenure. This in turn provided an incentive for an influx of additional families.

There have been three development phases in Wallacedene. Phase I was completed in 1991. Originally, this phase was earmarked to accommodate Wallacedene residents and some 110 households in nearby Bloekombos. However, the Bloekombos squatters refused to relocate, as they were suspicious of the authorities and desired to maintain socio-economic ties to Bloekombos (field notes 2003).

Typical of many informal settlements in Cape Town, Phase I could not accommodate all the Wallacedene residents because the settlement continued to grow while projects were being planned and implemented. Phase II, comprising 613 parcels, commenced in 1992, and Phase III comprising 449 parcels commenced in 1994. In total there were 2000 formal parcels. Further expansion was not possible, as Wallacedene had filled the available space. It was bounded by private farms and existing residential land (field notes 2003).

### 3. LAND CONFLICTS IN WALLACEDENE

Figure 2 depicts the major conflict areas in and around Wallacedene. Conflicts have occurred between residents and government institutions, between residents themselves and between different government authorities.

#### 3.1 Conflict Between Residents and the State

##### 3.1.1 The Grootboom Case

The Grootboom ('Big Tree' in Afrikaans named after Ms Irene Grootboom) Case is a benchmark Constitutional Court case that has had a major influence on government policy and practice relating to informal settlements in South Africa.

In 1998, 900 people (390 adults, 510 children) from Wallacedene and other nearby settlements (the 'Grootboom group') invaded private land on the farm New Rust (see figure 2). The owners of New Rust served notice on the Grootboom group to vacate New Rust by 15 May 1999. They failed to do so, because, among other reasons, other people had occupied their space in Wallacedene. The Sheriff evicted the Grootboom group by bulldozing the shacks. The Grootboom group attempted to erect plastic temporary structures on the Wallacedene sport field (see figure 2) but these proved inadequate.

In an urgent application representing the affected residents, Mrs Irene Grootboom launched an urgent application against Oostenberg Municipality & others in the Western Cape High Court for:

- adequate and sufficient basic temporary shelter and/or housing for their children pending obtaining permanent housing
- adequate and sufficient nutrition, shelter, health and care services and social services to all applicants' children

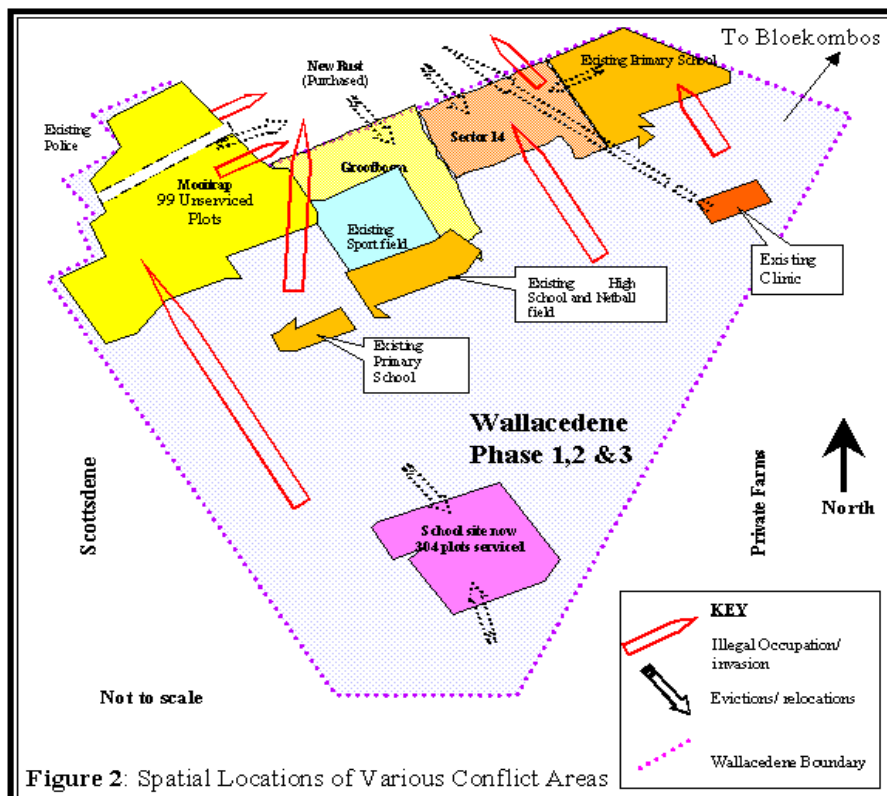
The High Court judgement of 17 December 2000 ordered the Municipality to provide tents, portable latrines and a regular supply of water as a bare minimum in a location that was convenient or close to jobs [Grootboom vs. Oostenberg Municipality & Others 2000 (3) BCLR 277 (C)]. The municipality appealed to the Constitutional Court against the decision.

The Constitutional Court ruled in favour of the Grootboom group. The major precedent which this case sets is that it is obligatory for government to fulfil the constitutional right of children to basic shelter and nutrition [section 28(1)(c) of The Constitution of South Africa Act 108 of 1996] if the parents are unable to do this, and the right of children to social support. The government was required to provide shelter sufficient to house each child and his/her parents if they were homeless.

### 3.1.2 The Wall of Separation

The Municipality acquired New Rust in 2002 to develop it as a low cost housing scheme to accommodate shack dwellers in Wallacedene. Representatives of neighbouring ‘affluent’ communities (largely coloured and black) proposed the municipality erect a 5m high and 340m long wall to separate them from the new development for several reasons:

- The low-cost and low-standard houses proposed would lower the value of their formal property (field notes 2003). The Cape Argus reported the market values for Belmont Park properties at R120000 and Kleinbegin R200000 (1 July 2002, p3). A sample of 5 properties (two in Belmont Park and 3 in Kleinbegin) has shown a slight drop in prices to R110000 in Belmont Park and R180000 in Kleinbegin in June 2003 (field notes 2003).



- The planned access route from Wallacedene to the train station through the ‘affluent’ areas would result in reduced security for existing suburbs.
- The low cost neighbours would bring shebeens (informal bars) closer and lower the standard of living through noise, crime and lack of environmental health.

Local representatives of Wallacedene and the ruling party councillors (African National Congress) disputed these arguments. They referred to the proposal to erect a high wall as an ‘apartheid wall’ (Cape Argus, 1 July 2002, p3, field notes 2003). The parties finally agreed not to erect the wall but provide public service space such as schools, sport fields on the land bounding the middle class areas with proposed the expansion of Wallacedene.

### 3.1.3 Informal Transactions in Land rights

The authorities have created adjudication records in Wallacedene. These provide the holder with a hope of obtaining a formally registered land parcel under various government land and housing subsidy schemes.

However, the official records do not conform to occupation on the ground. De facto, informal transfers, partial transfers, abandonment, and sub-leases of land parcels are common. Attempts to update the records have failed to cope with these informal transactions. Up to 2002, South African National Civics Organisations (SANCO), a major community based role player, had endorsed informal transactions. Some former and current SANCO officials acknowledge this as the only law that applied to them then, and which they know (field notes 2003).

The causes of some of these informal transfers include relocation due to work transfer and retirement. Security of tenure also depends on allegiance and affiliation to powerful individuals or political organisations. Local leaders have the power to expel people from the settlement. Efforts to nullify these informal sales and transfers have been resisted by residents and local leadership.

## **3.2 Conflicts between residents**

### 3.2.1 Boundaries and Land Occupation

In the formal areas of Wallacedene, backyard shacks are common. Through what appears to be negotiation, parcel 'owners' permit shacks on neighbouring parcels to encroach over their boundaries. The problem with this arrangement occurs when the 'owner' builds a permanent structure and then effectively has to evict the 'lodgers'.

### 3.2.2 Land Use Disputes

There are a number of illegal, unlicensed, liquor outlets (shebeens) in Wallacedene. The authorities feel the liquor outlets are nuclei of violent crimes.

## **3.3 Conflicts between Authorities**

### 3.3.1 Costs of Upgrading Wallacedene

South Africa has endured major changes in institutional structures and the areas of jurisdiction of various institutions. For example, in 1994 all four existing provinces, the seven self-governing homelands and the four independent homelands were rearranged into nine new provinces. Wallacedene falls in the Western Cape province. Then in 1994, municipalities were restructured. The seventeen municipalities in the greater Cape Town metropolitan area were consolidated and reorganised into six municipalities.. Wallacedene fell in the Oostenburg Municipality. However, this arrangement was found to be impractical and the six

municipalities were consolidated into the City of Cape Town, a single administrative structure, in 2002.

Originally, the Provincial Government of the Western Cape (PGWC) administered Wallacedene, but it has since become the responsibility of the City of Cape Town. Understandably there have been disputes over which institution should pay for upgrading and projects that have been transferred from one institution to the other as a result of the institutional reorganisation.

### 3.3.2 Settlement Administration

There are disputes between the formal authorities and the South African National Civics Association (SANCO). SANCO emerged in the 1980's as part of the revolutionary movement as an alternative governance structure. Its mandate in post-apartheid South Africa has not been clear.

SANCO has established local level rules independent of the formal authorities. A major source of conflict relates to informal sales. Council considers all residents in Wallacedene as tenants on provincial (PAWC) land. They can reasonably expect ownership in the long term. They have no right to alienate these rights to a third party. SANCO considers anyone who has been allocated formally, through council or informally through 'illegal' sale as rightful owners who can dispose of their land rights to an interested party.

SANCO and its structures have effectively been setting the rules and ensuring residents abide by them. Residents generally consider these SANCO structures legitimate with occasional accusations of favouritism and personal benefit levelled at individuals. For example political aspirants have allowed new entrants into Wallacedene in order to improve their chances to succeed (field notes 2003). But SANCO's use of traditional norms has been a popular policy that earned SANCO considerable support and power within Wallacedene.

Based on a sample of 50 randomly selected households, 30% of the *de facto* owners do are not reflected in the council records. Council acknowledge this disparity and has contracted DAG to establish *de facto* owners and update their record (field notes 2003).

Council has since acknowledged the relevance of SANCO and engaged them through the Wallacedene Development Forum. The Wallacedene Development Forum integrates all civil economic and political organisations such as church, sports and business and negotiates development issues on behalf of residents. The formation of Wallacedene Development Forum was aimed at ensuring the community representation was as inclusive as possible of all recognised groupings within Wallacedene having 30 committee members. Council found 30 committee members plus council officials and professionals operationally difficult to negotiate with and recommended they elect among them 5 executive committee members. This executive committee, the local councillor, professionals and council officials meet to discuss and agree on all development issues of Wallacedene.



#### 4. CONCLUDING REMARKS

Wallacedene is one of many case studies that form part of a broader set in a study of conflict management and dispute resolution in Cape Town. The case demonstrates a number of characteristics that are similar to all the other case studies. An unusual characteristic is what appears to be the power held by SANCO. Moreover, compared to similar cases in Cape Town, it appears to have taken a long time for the authorities and SANCO to set up a development forum to address common issues in the settlement. A question that is of long-term interest is whether informal land tenure administration practices, such as those used by SANCO, can be incorporated in a more formal governance structure.

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## BIOGRAPHICAL NOTES

**Ivan Farayi Muzondo** is a Lecturer and former Chairman in the Department of Geoinformatics and Surveying at the University of Zimbabwe where he worked since 1998. He is currently studying towards a PhD in Geomatics at the University of Cape Town and holds an MSc (GIS) and a BSc. (Survey) honours degrees.

**Mike Barry** is an Associate Professor in the Geomatics Engineering Department at the University of Calgary, where he has been since the end of 2002. Prior to this, he was an Associate Professor in the Department of Geomatics at the University of Cape Town. He has PhD, MBA and BSc(Survey) degrees. His research interests are in land tenure, analysing and managing change in implementing elements of cadastral systems, and spatial data analysis.

**David Dewar** is a Professor in the School of Architecture, Planning and Geomatics at the University of Cape Town.

**Jennifer Whittal** is a Senior Lecturer in the Geomatics Division of the School of Architecture, Planning and Geomatics at the University of Cape Town. She has MSc (Eng) and BSc(Survey) degrees and is currently registered for PhD at the University of Calgary. Her research interests are in land tenure and analysing and managing change in implementing elements of cadastral systems.

## CONTACTS

Ivan Farayi Muzondo  
School of Architecture, Planning and Geomatics  
University of Cape Town  
Private Bag Rondebosch 7701  
SOUTH AFRICA  
Tel. + 27 82 513 0237  
Fax + 27 21 650 3572  
Email: [ivan\\_m12@hotmail.com](mailto:ivan_m12@hotmail.com)  
Web site: [www.geomatics.uct.ac.za/fpostgrads.htm](http://www.geomatics.uct.ac.za/fpostgrads.htm)

Michael Barry  
Associate Head  
Department of Geomatics Engineering  
University of Calgary  
2500 University Dr. NW  
Calgary, Alberta T2N 1N4  
CANADA  
Tel. +1 403 220-5834  
Fax +1 403 284-1980  
Email [barry@geomatics.ucalgary.ca](mailto:barry@geomatics.ucalgary.ca)  
Web site: [www.geomatics.ucalgary.ca/~barry](http://www.geomatics.ucalgary.ca/~barry)

Ms Jenny Whittal  
School of Architecture, Planning and Geomatics  
University of Cape Town  
Private Bag 7701  
SOUTH AFRICA  
Tel. + 27 21 650 3575 or 671 7710  
Fax + 27 21 650 3572  
Email: [jwhittal@ebe.uct.ac.za](mailto:jwhittal@ebe.uct.ac.za)  
Web site: <http://www.geomatics.uct.ac.za/fstaff.htm>

David Dewar  
School of Architecture, Planning and Geomatics  
University of Cape Town  
Private Bag 7701  
SOUTH AFRICA  
Tel. + 27 21 650 3575 or 671 7710  
Fax + 27 21 650 3572  
Email: [deward@ebe.uct.ac.za](mailto:deward@ebe.uct.ac.za)  
Web site: <http://www.geomatics.uct.ac.za/fstaff.htm>