The Responsibilities of Restitution Research:  
The Case of Ridgeview Quarry (Cato Manor).

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There is no social order without trust and no trust without truth or, at least,  
without truth-finding procedures.¹

To destroy the illusion is to ruin the whole play, for it's really the illusion and  
make-up which holds the audience's eye.²

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Introduction

This paper is about restitution in Cato Manor (KwaZulu Natal), the construction and  
production of a particular socio-legal history, and the power of the “past” in the present.

It may be tempting, but my purpose in this paper is not to write a history of restitution per se,  
or the institutional politics of a state department, or theorise the nature of land rights, or even  
an analysis of relations between the state and claimants, among other topics. While alluded to  
here, they are possible future themes for a larger study of restitution in South Africa. My  
focus is on the responsibilities of restitution research - the material effect of producing a  
research report, the purpose of which is to facilitate the political ideals of reconciliation,  
reconstruction and development by “redressing the past”. In structuring that democratic urge,  
restitution has allowed for the writing of post-apartheid histories of the South African  
landscape and society of South Africa.

While the theme of the politics of memory and identity have been touched on in recent  
literature on Cato Manor,³ I provide a further layer to what can been seen as the most over  
researched area in the urban history of Durban. Edwards work captures the lives and politics  
of the African underclasses, Maharaj focuses on the Indian Community and the role of  
Durban City Council in proclaiming group areas, and Freund has written on Indian working  
class society.⁴ Gendered histories of Cato Manor have focussed on the struggles of women or


gay Africans in forging identities that resist conventional economic or sexual politics. Yet, each of these identities was, and is, tied to the land, the materiality and memory of place.

The theme of the effects of Group Areas legislation on Cato Manor’s racial topography has already been introduced in Horrell, Meer, and the Surplus People Project. My aim is to expand on their historiographic contribution by narrating some micro-histories of the racial dispossession of land rights in a part of Cato Manor, in an area known today as Ridgeview Quarry. Informing those histories is my second purpose: to contextualise and reflect on the urban restitution research methodology I employed while holding the post of a Cato Manor Researcher in the office of the Regional Land Claims Commissioner: KwaZulu Natal during 1998 and 1999.

Contextualising Restitution in South Africa

Helena Dolny and Heinz Klug have correctly argued that “the introduction of land reform generally reflects a change in the balance of power.” This is true for South African land reform policy. In redressing the racially-based and inequitable distribution of land ownership in post-apartheid South Africa, the political objectives of the Department of Land Affairs are: land restitution, land redistribution and land tenure reform. While the latter focus on transforming agrarian land usage, the restitution of land rights promotes justice and equity within both the rural and urban contexts. The implementation of restitution has therefore begun a process of de-racialising the social geography of South Africa.

The history of “restitution” in South Africa, while still unfolding, can be periodised as follows: the struggle over land policy (1990 to 1994), the crisis in restitution (1995 to 1998), and implementing an administrative process (1999 to present). Each are briefly addressed below by way of providing a political and institutional context for my discussion of restitution research.

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6 The ownership of land in Cato Manor has been and still is held mainly by men. Bound by law, tradition or religion, men have determined the patterns of land use, and, to some extent, benefitted from the dispossession more than women.


8 The views expressed here are my own, and should not be attributed to the Commission on Restitution of Land Rights.

9 See their “Land Reform: Legal Support and Economic Regulation” in Glenn Moss and Ingrid Obrey (eds), South African Review: From ‘Red Friday’ to CODESA, (Johannesburg: Ravan, 1992). Land issues in South Africa have a longer history than cadastral plans, documents, and memories reveal, and clearly also extend back before the passing of the Natives Land Act in 1913.


The struggle over land policy

Restitution was introduced into political discourse and debate during the early 1990s, the years of negotiated settlement and democratic transition in South Africa. That political process culminating in a liberal democratic Constitution, in which land reform, and restitution specifically, rested uneasily between radical politics and the economic status quo. As Cherryl Walker has pointed out, “while the South African Constitution provides a strong rights base to the land reform programme, it also underpins a market-driven programme, based on the notion of a willing buyer/willing seller, which means that the rights come at a definite price.” The resultant legal starting point for the acceptance of land claims in South Africa, the Natives Land Act of 1913, is illustrative this tension.

The legislative history of restitution has its beginnings in the Racially Based Land Measures Act (Act 108 of 1991), later amended by the Abolition of Racially Based Land Measures Act (Act 11 of 1993). Both pieces of legislation identified state land acquired as a result of racial laws as well as enabled the state to make recommendations on how to restore land rights. The equality clause of section 8(3)(b) of Interim Constitution (Act 200 of 1993), read along with sections 121, 122 and 123, entrenched the principles of restitution in the democratic framework of a new South Africa. However, it was the passing of the Restitution of Land Rights Act (Act 22 of 1994) which instituted the rights based programme of restitution in South Africa. In terms of this Act, the Commission (to facilitate the claims process from lodgment to negotiations), the Department of Land Affairs (responsible for the negotiation of claim settlements and state fiscal policy) and the Land Claims Court (adjudicate and/or lend legal weight to claim settlements) were provided with a judicial process of claims settlement.

The crisis in restitution

In the claims lodgment phase, from the inception of the Commission on Restitution of Land Rights (hereafter, “the Commission”) in April 1995 to December 1998, the Commission was hamstrung by ongoing institutional difficulties between the Commission and the Department of Land Affairs, the structural inability to meshing the developmental goals of land reform policy with the Commission’s claim’s settlement systems, and a crisis of leadership within the Commission itself. The Review Task Team identified the crisis within restitution as: slow delivery; management was unable to plan strategically due to an inadequate database of

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15 Restitution was entrench in the property clause, section 25(6), of the Constitution of the Republic of South Africa (Act 108 of 1996).

claims and incomplete claimant submissions; “low levels of trust between implementers”; and as a result “high levels of frustration” within the Commission.  

On 5 November 1998 the recommendations of the Review Task Team were adopted by Minister Derek Hanekom; that is, the expansion of Commission functions integrated in the Department of Land Affairs, and a move away from the settlement of claims within a judicial process in favour of an administrative claims settlement process, allowing for the mass processing of claims (the “restitution silo model”). These recommendations however were initially over-shadowed by the dismissal of Joe Seremane as Chief Land Claims Commissioner. Nevertheless, despite the institutional crisis surrounding restitution, the five regional offices, and the office of Chief Land Claims Commissioner, had begun responding to the demands of settling the 63 455 claims received nationally by 31 December 1998.

**Implementing an administrative process**

As of early 1999, the Commission and the Department of Land Affairs began re-engineering the business of restitution to enable an administrative claims process. It was a frustrating time for Commission offices in which the pressure to deliver settled claims did not match the rate of institutional change or the adoption of revised claims process systems. And in the throes of this process, the newly appointed Minister of Agriculture and Land Affairs, Thoko Didiza began re-evaluating the merits of the restitution programme in terms of transforming rural society.

Notwithstanding the challenges of re-inventing the institution of restitution faced by an adept leadership, the moral terrain and political ideals of restitution have been, and are, practically undermined by a dogged bureaucracy, insufficient staffing capacity, budgetary constraints, and the unproductive transparency (meetings of meetings) of democratic governance. What was clearly revealed during this time of organisational inertia were the limitations, and non-existence, of essential policy frameworks (for example, historical valuations and tenancy were still under discussion in September 1999). The institutional instability of the Commission as a branch of the Department of Land Affairs had the effect of not providing restitution research with clear policy directives to enable the delivery of restitution to claimants. But even in that environment, 41 restitution cases were been finalised by the end of March 1999. This figure represented the restoration of 264 615 hectares of land and R50 631 681.00 in financial compensation for 82 021 persons.

**Restitution in KwaZulu Natal**

In the KwaZulu Natal regional office, out of the 14 235 claims received by 31 December 1998, 318 individual and community claims had been settled by 1 September 1999. A further 19 cases were before the Land Claims Court, and nearly a 100 more claims were in the

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17 Andries du Toit, Peter Makhari, Heather Garner and Alan Roberts, “Restitution Review: Findings and Options” (draft report), 27 October 1998, 3. This report was a result of the review of the Commission called for by the National Land Committee and Minister for Agriculture and Land Affairs in July 1998.


21 Perceptions based on my observations during that process.

22 Mgoqi, “Chief Land Claims Commissioner’s Overview”, 9. These figures include settlements from previous years.

23 This does not include the settlement of the Mbangweni claim on the eastern shores of Lake St Lucia.
process of being settled administratively. However, while it should be noted that to date no claims has been settled claims in Cato Manor, these figures do engender a more optimistic vision of restitution in South Africa.

As a result of the business re-engineering process within the Commission, the nature and functions of the KwaZulu Natal office claims process units have undergone some change; namely, from a reactive claimant engagement model to a progressive project management claims settlement model. Nevertheless, while the team base model developed in this region has been expanded to include a further two project units (a further rural team and a settlement support unit), the core conceptualisation of claimant categorisation remains: rural, urban (city and small town), and Cato Manor. Each of these teams, along with the administration, communications, and legal components, report directly to the Cherryl Walker, the Regional Land Claims Commissioner: KwaZulu Natal.

In September 1999 the Cato Manor team consisted of a project manager (Mayu Sosibo), three researchers (re-conceptualised as project leaders), a fieldworker, and an administrative arm providing project support. The scope of the Cato Manor team’s activities was broadly based on the settlement of some 5 000 claims; namely, the management of the Cato Manor Agreement and liaising with role-players within the Cato Manor Development Association, Durban Metropolitan Council, and State departments; the mediation of claims for restoration of land; assisting in the facilitation of the social process, the provision of sites celebrating the history and heritages of Cato Manor past and present residents, to encourage cultural tourism; the processing and negotiating the settlement of claims, or the referral of disputed claims to the Land Claims Court. Restitution research is the core activity within the Cato Manor claims process, effectively engaging each part of the whole as the engine room for the delivery of restitution within the Restitution Silo. Therefore, if there are any bottlenecks in the claims process, the pace of claim settlement will be impaired.

**Framing Restitution Research**

Restitution is about the past in the present and hence a political metaphor for change toward the determination of an “equitable” and “just” future. Restitution research is an attempt to re-represent the past, or, put differently, write up not only the histories of how the social order of land ownership changed but also to envisage a new democratic order of society in which the lodgement of land claims has productive and material effects for claimants, the successful settlement of a claim. Restitution research is the production of social texts for legal and political ends, which will ultimately be archived. Therefore, if restitution in South Africa is theoretically utopian, then the research methods developed for the urban areas are the nihilist impulses of millennial sects predicting the end of time.

In the following section, I describe the sources used, the format of research reports, and how restitution research is conducted. The methodological issues raised here will be given content later in the paper as I address the history of landownership and dispossession in Ridgeview Quarry.

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24 KwaZulu Natal Land Claims: Statistical Profile, 1 September 1999. For further information, see the synopsis of KwaZulu Natal claims in progress which can be found on the Department of Land Affair’s website, http://dla.gov.za/restitution/KZN.RES.htm.

25 A significant number of Cato Manor land claims are near to settlement, pending the outcome of the acceptance by the Minister of the Cato Manor mandate to negotiate the monetary value of landowner and tenancy claims. Examples of those claims are: A.M. Cebekhulu, L. Moodley, B.D. Negobo, B.R. Nkosi, and the N.Shah claims.
On methods, or Of string and nail

Methods do not stand alone as a category shaping the writing of history. They are infused with theoretical and political meanings; that is, methods are strategic and inform how the content of a history is given form. Current historical practice, informed by thinking in the “post” tense, has given weight to introductory descriptions on methods. The result is the positionality of an author is not lost in a maze of information, rather her or his method maps how the traces of the past become historical knowledge. Writing history in this way does add value to the narration of the past but, as Foucault noted in own elusive manner, the rules of doing history selected by an historian “are not intended as methodological imperatives; at most they are cautionary prescriptions.” Foucault’s comment does not only apply to historians.

Restitution research is an applied practice. It is interdisciplinary in nature; the methods described in this paper have an historical as well as legal interpretative bias. The results of which are the political responsibilities, to re-write the history of land dispossession in South Africa and provide justice to dispossessed persons, or their descendants today. Therefore, possibly a way of approaching and reflecting on an applied research perspective necessitates an illustration drawn from fiction to consider restitution research methods; namely, Ivan Vladislavic’s *The Folly* (1993).

As a literary text *The Folly* is an ironic description of the possibilities of imagining the restructuring of the social space of post-apartheid South Africa and a deconstructionist play on the limits of language. No matter the reading, Vladislavic representation of the vacant plot (land), the imagining of the planned structure (development), and a sense of community across boundaries (nation), is shattered by Nieuwenhuizen’s uprooting of the secret nail (the past). The novel is pessimistic and casts doubt on utopian visions of change, or at least on the possibilities of discourse augmenting change without some form of dialogic social structure and identity, especially when the past looses any sense of meaning in the present. Vladislavic’s vision is rather one of historical contingency and the specificity of identity (re)formation: the folly of being able to describe what is real or “the past”.

Or, rather, *The Folly* is about how narrative (read: history) is constructed: be that the past, the present, the past in the present, or the future. It is about ways of speaking, describing, analysing, that is, methods of cognitive mapping – essentially the practice of research. Descriptively and poignantly, Mr Malgas stumbles onto a realisation that underpins research methods: “As the geometry of the string proliferated, a disturbing potential arose: with every move Nieuwenhuizen made, some portion of a new house became possible.” Surely, if the strategy of Vladislavic’s prose is probed, the narrative logic follows and situates the narrating subject (the author) within a historical/textual context, thereby attempting to evade, unsuccessfully, an authorial presence in the text. If this is so, the conceptual maps employed by a researcher represents reality within the limits of language (word) and location (wor(l)d). And in that nexus information (events) becomes (historical) knowledge, with both social use and political intent - the discourse of restitution is one of many modes of instituting change in the new South Africa.


The “strings” of restitution research are bound to a specific “secret nail”: dispossessed land rights. Yet, even still, the “string” lies somewhat unravelled about that partially buried “secret nail”, despite the fact that historical sources and a legal framework exist to give it both content and shape.

**The content and the form of restitution research**

The legal criteria of the Restitution of Land Rights Act provided the framework onto which historical traces and other claim related information were added in making up a research report. The research report reflected a reading of official documentation (Durban City Council and Community Development Board historic property files), cadastral plans, information submitted by claimants, legal documentation, and at times housing development related data. In this way, each research report becomes an archive of the social texts of restitution, a historical trace documenting a specific moment in the history of South Africa and both accountable to the state and the public. They are texts describing the recovery of rights in land lost by claimants and the optimism of change at the personal, economic and political levels.

Each of these texts added layers to the research report, crafted for the purpose of either a mandate to negotiate the settlement of a claim (claims for financial compensation needing the approval of the Minister in terms of section 42D of the Restitution of Land Rights Act), negotiation report (out of court settlement) or a court referral report (disputed claims). The demands of the law, framed by Constitutional imperatives and the Restitution of Land Rights Act set out the political arena in which restitution research occurs. In particular, the criteria in section 2(1) of the Restitution of Land Rights Act drove the investigation of land claims; namely, (i) is the claimant a dispossessed person (including a deceased estate) or a direct descendant, (ii) did the dispossession occur after 1913, (iii) was the dispossession in terms of racial laws and/or practices, and (iv) was just and equitable compensation paid at the time of the dispossession.

These criteria were given form in the structure of the research report. Report formats therefore provide a synopsis of: the history of the claims process within the Commission (lodgement and gazetting); the restitution option chosen by the claimant (restoration of land, financial compensation, alternative state land, or housing allocations); direct descent from the dispossessed person (the claimant(s) details, the number of beneficiaries to the claim, and in the case of an deceased estate, the legal heirs); a description of the property claimed (historical and current details); a history of the dispossession of the land (historical valuations and legislation); a legal analysis of the claim; a list of interested parties to the claim; the claimant’s legal representation; development imperatives which need consideration; the attempts to settle the claim (mediations or negotiations); if a court referral report, the issues in dispute, and the Regional Land Claims Commissioner’s recommendations for the settlement of the claim. Each research report was therefore a social history and legal document of claim for land rights.

All research reports, once completed by a researcher, were, in theory, handed over to the settlement team’s manager for quality control. The report was then tabled at a monthly Negotiation and Prioritisation Committee (NAPCO) meeting for approval by the Regional Land Claims Commissioner.30 In practice, however, there was much interaction between the researcher, the legal officer and the Regional Land Claims Commissioner in the finalisation of a research report, especially court referral reports. This was true of my experience in the researching and writing up of Ridgeview Quarry land claims.

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30 NAPCO was a forum, developed in the KwaZulu Natal office, for management to address the claims process.
Restitution and Ridgeview Quarry (Cato Manor)

Cato Manor for many its dispossessed and relocated former residents has become a political memory in which the “historic violence of apartheid can always be treated as a metonymy” of their own life experience.\(^{31}\) That experience was amplified by the nearly 40 000 Indians and 120 000 Africans estimated to have lived in Cato Manor during the mid-1950s.\(^{32}\) The Regional Land Claims Commissioner: KwaZulu Natal received claims from both 15 Indian landowners and 1 304 African tenants who were dispossessed of their rights to Ridgeview Quarry land as a result of racial laws and/or practices during the 1950s, 1960s, 1970s and even in 1990.\(^{33}\) These dispossessions were enforced by either the Durban City Council or the Group Areas Development Board (later known as the Community Development Board). The Indian landowners were dispossessed of not only freehold ownership rights but also lost income earned from market gardening, trading, or shack renting. In comparison, the African tenants on this land, either shack lords or sub-tenants, held less secure land rights determined by, amongst other, influx control legislation.

The history of land dispossession in Ridgeview Quarry has many layers of narrative. First, the Indian landowners whose land was dispossessed by the Durban City Council as of 1952 to make way for the Cato Manor Emergency Camp. Second the Umkhumbane African residents who were forcibly removed out of Cato Manor, some of which received rental housing allocations in KwaMashu or Umlazi. Third, those landowners who were dispossessed by the Community Development Board in the 1960s as a result of Group Areas legislation. Among these changes the Ridgeview Quarry, which was given official local authority sanction to operate alongside the banks of Umbilo River in 1954, continued its mining of dwyka tillite stone for the Durban construction industry, ensuring the strategic and economic importance of the land in the city.\(^{34}\) Later, in the 1980s, the land parcels 131.6627 hectares in extent previously described as portions of land in SB3 of the farm Cato Manor 812, were consolidated into Subdivision 993 of Lot 76 of Cato Manor by the Durban City Council, and then leased to the quarrying company, Ready Mix Materials, in 1992. The quarry is now owned by the holding company LaFarge SA.

It is largely due to the expansion of the quarry that these land claims came to the fore at this time and were research en bloc by the Commission. In particular the land claims by the Kara family has highlighted the possible inclusion of mineral rights within the land rights lost at the time of dispossession for properties in the current Ridgeview Quarry area. There is retrospective argument based on detailed legal submissions from the claimants, emphasising the calculated and underhand manner in which the Durban City Council acquired the land and prohibited the Kara family from quarrying on subdivision 18 of SB3 of the farm Cato Manor.\(^{35}\) While there is no evidence indicating that the mineral rights were not separated from the title deeds to the claimed properties within Lot SB3 of Cato Manor 812,\(^{36}\) neither the Kara

\(^{32}\) Surplus People Project, *Forced Removals in South Africa*, 234.
\(^{33}\) According to W.T. Henstock’s Report on the Ownership History in Ridgeview Quarry, 4 February 1999, at least a further 38 land parcels were dispossessed.
\(^{34}\) Stone was quarried from this area as early as the 1860s, see Beverly Ellis, “‘The Impact of White Settlers on the Natural Environment of Natal, 1845-1870” in Bill Guest and John Sellers, eds. *Enterprise and Exploitation in a Victorian Colony: Aspects of the Economic and Social History of Colonial Natal*, (Pietermaritzburg: University of Natal Press, 1985), 80. The initial quarry area consisted of subdivisions 827 to 832 and a portion of subdivision 889 all of SB3 of the farm Cato Manor 812. In March 1971 the Durban City Council gave authorisation of to the mining company, Ridgeview Quarries, to extend the quarry on a portion of Subdivision 19 of SB3 of the farm Cato Manor No. 812.
family nor any other claimants engaged in quarrying activities prior to dispossession. I would argue that restitution of mineral rights, and hence the inclusion of a mineral value for these claims, is beyond the moral and economic responsibility of a theory of restitution grounded in actual rights lost at the time of dispossession.

In many ways, the layers of dispossession then come full circle with the lodgement of the claims in the area in terms of the Restitution of Land Rights Act. During the section 34 legal proceeding in December 1996, Ridgeview Quarry was excluded from the Cato Manor Development Association’s Reconstruction and Development Programme urban renewal programme as the land could not be utilised for housing purposes. Nevertheless, as a result of the legal pressure and dogged determinism of the Kara family in pursuing the restoration of mineral rights, Ridgeview Quarry land claims became a priority of the office of the Regional Land Claims Commissioner: KwaZulu Natal, in the hope of establishing a legal precedent for urban land claims.

In May 1998, the five land claims of Ebrahim Kara were referred to the Land Claims Court, specifically in terms of the disputed nature of the inclusion of mineral rights and the historical value of mineral rights in the settlement of the claim in the light of the continued quarrying of the land today. In response to a request by the Land Claims Court, the Commission began a special research project within the Cato Manor Team in December 1998, dedicated to claims for ownership rights in Ridgeview Quarry. The results of that research are quantified in the Tables 1 to 3 below, indicating the profiles of the claimants, particulars of the claims process, and claims before the Land Claims Court.

<table>
<thead>
<tr>
<th>Principal Claimant</th>
<th>Land Claimed</th>
<th>Relation to disposessed</th>
<th>Age</th>
<th>Religion</th>
<th>Residence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ahmed, Pharos</td>
<td>Sub 25, Rem 27, Sub 29 all of SB3 of Cato Manor.</td>
<td>Son</td>
<td>36</td>
<td>Muslim</td>
<td>Phoenix</td>
</tr>
<tr>
<td>Gounden, Bogavathiamma</td>
<td>Sub 22 of SB3 of Cato Manor.</td>
<td>Daughter</td>
<td>52</td>
<td>Hindu</td>
<td>Overport</td>
</tr>
</tbody>
</table>
| Kara, Ebrahim (Two separate claims) | (1) Sub 18, Rem of 23, Rem of 34, Sub S81 and S82 all of SB3 of Cato Manor.  
(2) Sub A of 38 of SB3 of Cato Manor. | Son                      | 66  | Muslim   | Durban    |
| Khan, Amanulla Mohamed        | Sub SK of SB3 of Cato Manor.              | Grandson                 | 47  | Muslim   | Mayville  |
| Khan, Amod                    | Sub KK of SB3 of Cato Manor.              | Self                     | 83  | Muslim   | Kenville  |
| Khan, Ayoob                   | Sub 36 of SB3 of Cato Manor.              | Son                      | 65  | Muslim   | Shallcross |
| Khan, Sherally                | Subs 32 and 37 both of SB3 of Cato Manor. | Grandson                 | 44  | Muslim   | Pietermaritzburg |
| Moodley, Mogamberry           | Sub 1 of SB3 of Cato Manor.               | Grandson                 | 58  | Unsure   | Chatsworth |
| Munisami, Rajoo (Two separate claims) | (1) Sub 813 of SB3 of Cato Manor. 
(2) Sub 19 of SB3 of Cato Manor. | Self                     | 85  | Hindu    | Reservior Hills |
| Paruk, Ismail G. H.           | Subs S84, S85, S86 all of SB3 of Cato Manor. | Son                      | 55  | Muslim   | Durban    |
| Pathan Community Trust (Secretary: Moosa Kara) | Rem of 2 of SB3 of Cato Manor. | _ | (est. 1916) | Muslim | (Cato Manor) |
| Pillai, Muthu                 | Subs 854, 855, 856, 857, 858, 859 all of SB3 of Cato Manor. | Son                      | 52  | Hindu    | Phoenix   |
| Rakim, Zubeda                 | Sub 25, Rem 27, Sub 29 all of SB3 of Cato Manor. | Daughter                 | 51  | Muslim   | Veralum   |
| Singh, Rathipal               | Sub S846 of SB3 of Cato Manor.            | Son                      | 53  | Unsure   | Johannesburg |

Table 1: Principal Claimant Profiles.

37 The section 34 application lodged by the Council lead to the signing of an uneasy compromise between restitution and development in the form of the Cato Manor Agreement.
38 A process initiated in 1995 by Cherryl Walker and Asma Hassan.
The claims process engaged for this Ridgeview Quarry Project was one that included four Commission-claimant meetings, locating historical and claimant documentation, the gazetting of the claims, the detailed analysis of the claims, and the writing up of court referral reports. The outcome of the process was that in July 1999 a further 14 land claims for Ridgeview Quarry were referred to the Land Claims Court for consideration alongside the Kara case (LCC44/98).

<table>
<thead>
<tr>
<th>Principle Claimant</th>
<th>File No.</th>
<th>Lodged</th>
<th>Gazetted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pillai, Muthu</td>
<td>KRN6/2/3/E/8/813/2716/1897</td>
<td>16 April 1996</td>
<td>9 April 1999</td>
</tr>
</tbody>
</table>

Table 2: Commission Claim Profile

The histories below represent claims researched while I was the Cato Manor Researcher assigned to Ridgeview Quarry landowner claims. I focus on certain dispossession histories of the Indian landowners to illustrate the means and mode of disposessions by the local and central state during the years 1950s to 1970s. These are drawn from among the 15 Ridgeview Quarry claims lodged with the Commission by December 1998, ever mindful of the absent...
histories of the African tenants who were later forcibly removed from Cato Manor to the township settlements of KwaMashu, Umlazi and other areas in or outside Durban in the early 1960s. However, it should be noted that I do not discuss the more contentious histories of the Kara family land claims for mineral rights and the claim for the restoration of the cemetery to the Pathan Community Trust. Rather I have kept my attention to the dispossession of freehold ownership rights of seven land claims.

Periodisation

The history of land ownership and dispossession in Ridgeview Quarry can be periodised in terms of the shift from the segregationist to apartheid land policies in the passing of the Group Areas Act in 1950. However, there were continuities between the racial practices of the Durban City Council prior to the proclamation of group areas in Cato Manor in 1958 and the use of racial legislation by the Group Areas Development Board (later the Community Development Board) to effect a racial geography in Durban. A narrative progression which therefore reflects the overlapping of neat chronologies in which Indians acquired land in Cato Manor, and then were dispossessed of those land rights by the Durban City Council and the Group Areas Development Board. An experience of the power of apartheid in which the material loss ownership of the land was textually effected in re-inscribing the state into the deeds of transfer and properties diagrams of Ridgeview Quarry. Yet, for the sake of clarity I use the chronological distinction in which ownership was acquired before 1950, and the Durban City Council dispossessions (1950s and 1960s) were followed by the Group Areas Development Board (1960s and 1970s) useful in framing these case studies.

Land ownership and use

In the mid-1840s George Cato acquired ownership of Cato Manor Farm. After his death the farm was subdivided and sold to various parties. The land parcel Lot SB3 of Cato Manor 812 became a legal entity in 1915 when it was transferred from the insolvent estate of Ralph Heathcote Tatham to George MacKeurtan. Besides the number of whites who took ownership of land in this area, many individual plots of land had come into Indian ownership from the late nineteenth century.

Many of the Indian landowners that purchased properties in the area used the land for private residence, market gardening, trading, or shack renting. In terms of transfers of deceased estates, ownership was passed on to the heir(s), however, in some cases ownership remained in a deceased estate till the date of dispossession. Table 4 provides an overview of the ownership and land use of the Ridgeview Quarry claims.

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39 A task reserved for Maduri Daya, who is currently researching claims for tenancy rights in Umkhumbane.
40 Each are papers in themselves, and since both are now before the Land Claims Court their stories are yet unfinished.
42 See Deed of Transfer T1747/1915 and Deeds Office: Outlines of Grants: Cato Manor 812, DI30/GV19F20A.
Table 4: Ownership History and Land Use

<table>
<thead>
<tr>
<th>Acquired</th>
<th>Land</th>
<th>Owner/s</th>
<th>Land Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>1923</td>
<td>Rem 2 of SB3 of Cato Manor</td>
<td>Pethai Khan, Goolab Khan, Sayed Omer Shah</td>
<td>Cemetery</td>
</tr>
<tr>
<td>1925</td>
<td>Sub 1 of SB3 of Cato Manor</td>
<td>Vedachellam, then deceased estate</td>
<td>Market gardening and residence</td>
</tr>
<tr>
<td>1927</td>
<td>Rem of 23 and Rem of 34 both of Cato Manor</td>
<td>Essop Kara, then deceased estate</td>
<td>Vacant and shack rental</td>
</tr>
<tr>
<td>1927</td>
<td>Sub 32 of SB3 of Cato Manor</td>
<td>Goolab Khan</td>
<td>Market gardening</td>
</tr>
<tr>
<td>1928</td>
<td>Sub 18 of SB3 of Cato Manor</td>
<td>Essop Kara, then deceased estate</td>
<td>Shack rental (intended to quarry)</td>
</tr>
<tr>
<td>1931</td>
<td>Sub 37 of SB3 of Cato Manor</td>
<td>Goolab Khan</td>
<td>Market gardening</td>
</tr>
<tr>
<td>1936</td>
<td>Sub 19 of SB3 of Cato Manor</td>
<td>Brothers: Govinden, Kuppan, Munian and Rajoo Munisami</td>
<td>Market gardening and residence</td>
</tr>
<tr>
<td>1937</td>
<td>Sub 36 of SB3 of Cato Manor</td>
<td>Abdul Gaffur</td>
<td>Market gardening</td>
</tr>
<tr>
<td>1940</td>
<td>Sub 25, Rem of 27, Sub 29 all of SB3 of Cato Manor</td>
<td>Brothers: Ghalam Mohammed, Abdul Rakman, Bosthan, Abdulla, Abdool Rakim, Abdool Gaffoor and Fazliak Madh</td>
<td>Market gardening and shack rental</td>
</tr>
<tr>
<td>1941</td>
<td>Sub 22 of SB3 of Cato Manor</td>
<td>Munsamy, then deceased estate</td>
<td>Vacant</td>
</tr>
<tr>
<td>1941</td>
<td>Sub SK of SB3 of Cato Manor</td>
<td>Sadulla Khan, then deceased estate</td>
<td>Shack rental</td>
</tr>
<tr>
<td>1945</td>
<td>Sub KK of SB3 of Cato Manor</td>
<td>Mariam and Amod Khan</td>
<td>Residence and trading</td>
</tr>
<tr>
<td>1948</td>
<td>Sub A of 38 of SB3 of Cato Manor</td>
<td>Marjan</td>
<td>Trading</td>
</tr>
<tr>
<td>1949</td>
<td>Subs 581 and 582 both of Cato Manor</td>
<td>Essop Kara, deceased estate</td>
<td>Shack rental</td>
</tr>
<tr>
<td>1949</td>
<td>Subs 584, 585, 586 all of SB3 of Cato Manor</td>
<td>Goolam Paruk and Babu John Singh</td>
<td>Shack rental</td>
</tr>
<tr>
<td>1953</td>
<td>Sub 813 of SB3 of Cato Manor</td>
<td>Rajoo Munisami</td>
<td>Vacant</td>
</tr>
<tr>
<td>1961</td>
<td>Sub 846 of SB3 of Cato Manor</td>
<td>Parbiteer, deceased estate</td>
<td>Vacant</td>
</tr>
</tbody>
</table>

In the 1940s Indian “penetration” into the commercial spaces of Durban came under increasing pressure. The passing of the 1943 Pegging Act and the 1946 Asiatic Land Tenure Act were the results of white agitation with a growing Indian economic base, and had the further effect of restricting the ownership of land for Indians in Durban. These political changes were exacerbated in Cato Manor in 1949. The 1949 “race riots” introduced a discontinuity in Indian owners’ control of the use of their land, an induced acquiescence of sorts of their land rights. As a result of that social turmoil, which should be seen in terms of class struggle and access to economic opportunities, most Indian owners vacated properties. For example, the home built by Vedachellam was destroyed during the rioting. It was in that new social space that a thriving African shackland community emerged.

This “New Africa” was soon to catch the eye of the local state, which saw the unregulated growth of an urban African presence as a political and public health threat to white Durban. The Durban City Council then took steps to acquire the land. In 1951 the Durban City Council received the approval of the Administrator for Natal and the Minister of Health for the establishment of the Temporary Native Housing Scheme at Cato Manor. As City Valuator and Estates Manager noted:

The purpose of this scheme is to provide sites for the temporary accommodation of Native shack dwellers under a measure of control which, it is anticipated, will

43 Deed of Transfer T7133/1948. She was the wife of Essop Kara.
44 See Meer, The Ghetto People.
45 A political moment still etched in memory of many former Indian residents in Cato Manor. Interestingly, a Ridgeview Quarry claimant noted to me in conversation, in the context of the Land Claims Court’s decision to include tenancy claims for restoration of land rights in the Kara case, that the historic tensions between Indian landowners and African tenants may well surface again if the landowner’s rights were not fully recognised or negatively affected in that court process.
46 Claimant interview with Mogamberry Moodley, 12 December 1998.
have the effect of eliminating the unsatisfactory conditions which presently prevail, with particular reference to the public health aspect. The scheme envisaged entails the provision by the City Council of roads, water services, sewage facilities, communal ablution blocks, latrines, etc.47

The planning and establishment of the Cato Manor Emergency camp was not unrelated to the wider discourse of the Durban City Council’s engagement with the central state’s objectives of zones of group areas within the apartheid city. The recommendations of the Technical Sub-Committee in 1951 clearly affirmed segregationist thinking and placed Cato Manor within a zone of white residential and economic privilege.48

The Durban City Council and the beginnings of racial dispossessions

In the 1950s the Durban City Council began alienating properties from Indian landowners to create the Cato Manor Emergency Camp. The first phase of Durban City Council dispossessions occurred on the eastern side of Ridgeview Road. The Durban City Council either negotiated the sale or expropriated Indian owned properties in terms of amendments to the Housing Act or provincial ordinances. As a result a number of the hire-purchase agreements held by Indian purchasers were cancelled when the white-owned property speculation company, Lebice Properties (Pty) Ltd sold its properties to the Durban City Council. Yet it should be noted that some Durban City Council dispossessions only occurred in the 1960s, after protracted negotiations with Indian landowners who resisting the Durban City Council’s approaches to acquire their land. In what follows, I address the bureaucratic mode of the Durban City Council acquisitions and the effects of the dispossessions themselves.

In most cases, according to official records, the Durban City Council informed individual owners by registered letter in January 1952 of its intention to acquire the properties for the purpose of establishing the Cato Manor Emergency Camp. Clearly evident in that process was the web of documentation and bureaucratic discourse surrounding the establishment of the Cato Manor Emergency Camp. Armed with this bureaucratic power, the duplicity of the Durban City Council can be seen in the following case studies, which illustrate the reactions of the Indians occupying or using the land: the shock at cancelled sale agreements, the resignation of Goolab Khan, the experience of expropriation, and the dogged resistance of market gardeners and traders.

Case Study 1: The cancellation of land rights

The racially based nature of the Durban City Council’s dealings in this instance is clearly illustrated in the case of Krishnamsamy Pillai. In January 1947 Krishtnasamy Pillai, through the agents Isaac, Geshen and Company, entered into an agreement of sale with Lebice Properties (Propriety) Limited (hereafter, Lebice Properties).49 He acquired access to the six adjoining properties in Ridgeview Estate at a Public Auction Land Sale for a sum of £960; namely, Subdivisions 854, 855, 856, 857, 858, and 859 all of SB3 of the farm Cato Manor 812. In terms of the Memorandum of Agreement, Mr Pillai would receive full transfer of the

47 Extract from City Valuator and Estates Manager to Mr G. khan, 23 January 1953, 2. DMC, RED, J599/2/11/73.
48 See Maharaj, “The ‘spatial impress’ of the local and central states”.
property once all payments plus interest had been paid. Until that time, the property was subject to the suspensive condition that ownership remained vested in Lebice Properties.  

Yet, as a result of the Durban City Council’s negotiations with Lebice Properties the agreement of sale with Krishnasamy Pillai was cancelled on the 1st December 1952. He therefore lost his rights to acquire ownership. And, as can be seen in the City Valuator and Estates Manager’s reply to M.E. Soupen, the Durban City Council held Indian purchasers, despite their anger, at arms length during the process of dispossession by insisting that dealings were only conducted with the registered owner, Lebice Properties.

On the 8 December 1952 the Panel of Valuers appointed by the Durban City Council assessed the compensation value of the six properties as £1 030. This became the agreed upon amount by which Lebice Properties sold the properties to the Durban City Council on 19 December 1952. These properties were included in the sale of other Lebice Properties land that fell within Zones II and III of the proposed Cato Manor Emergency Camp housing scheme. The six properties, along with others, were then transferred to the Durban City Council on 26 June 1953.

The historical documentation does not indicate whether the company refunded monies to Krishnasamy Pillai. However, the claimant, Muthu Pillai, the son of the dispossessed person, has indicated that the compensation paid at the time of dispossession was inadequate. Krishnasamy Pillai had been paying monies monthly toward the property since 1947. By September 1950 an amount of £139.14.0 was owing, while £1108.3.7 had been paid towards the properties, inclusive of repayments and interest. Nonetheless, the effect of the cancellation of the sale and the transfer of the property to the Durban City Council was such that Krishnasamy Pillai was forced to rent premises elsewhere in Durban.

Comment on Case Study 1

The merits of the this case stand on both the lost of unrealised ownership rights and a probable inequitable compensation paid for the properties. The strength of the claim lies in the substantive change in tenure forced upon Krishnasamy Pillai as a result of the cancellation of the sale agreement, and at a time when the Durban City Council’s was enforcing a racial geography onto Cato Manor’s landscape.

51 Durban City Council Hire-Purchase and Zoning Schedules, December 1952. Durban Metropolitan Council (DMC), Real Estates Department (RED), File No. J599/2/11/36.
54 Durban City Council, Deed of Freehold Title (including sales receipts) 23 April 1953. DMC, RED, File No. J599/2/11/36.
55 Extract from the Minutes of the Durban City Council, 19 December 1952. It should be noted Zones II and III, fell within the boundary of the present-day Ridgeview Quarry, only included the shackland areas of Benoni, Dabulamanzi, Khumalo, KwaKanyile, KwaMnguni, Mount Carmel and New Look, as well as Mkalandodo.
56 Deed of Transfer T4850/1953.
59 Claim form.
Case Study 2: The resignation of Goolab Khan

Goolab Khan, who only spoke broken English, was in nearly 90 years of age in 1953. He had arrived in Natal in the 1890s as a Pathan soldier recruited by Gandhi to assist in the South African War.60 He was one of the three founding members of the Pathan Community Trust in 1916, a community organisation whose purpose “was the acquisition of land for the establishment of a cemetery in Cato Manor, where descendants of Pathan soldiers mainly reside, such cemetery to provide for burial of, mainly, Pathans belonging to the Islamic faith and, generally, Muslims.”61

In March 1953, in response to the Durban City Council’s letter of intent of the previous year, Mr Goolab Khan approached the Council with a translator requesting the speedy purchase of his properties, namely, Subdivisions 32 and 37 both of SB3 of the farm Cato Manor 812. The urgency of the matter was Goolab Khan desire to return to India.62 In response the Durban City Council made an urgent appeal to Major Edgar Baden Issacs of the Panel of Valuers to assess the properties. They determined the amount of compensation due for each of the properties as £1 500 and £400 respectively.63 On 16 June 1953 the Council made an offer to Goolab Khan for the properties based on the assessments. The bureaucratic power of the Durban City Council’s offer was evident in that correspondence: the offer was open for acceptance for a month, thereafter proceedings would be instituted for the compulsory acquisition of the properties by means of the Housing Act (Act 35 of 1920) or the Housing (Emergency Powers) Act (Act 45 of 1945).64

On 19 June 1953 Goolab Khan again approached the Durban City Council and complained that the offer was unsatisfactory. He noted that a property, Subdivision 14 of MB4 of the farm Cato Manor 812, purchased by the Durban City Council had received £400 per square acre. However, Mr Khan then accepted the Durban City Council’s explanation that the other property was better situated. While still holding that the offer was too low and, after refusing the expense of legal representation, Goolab Khan agreed to the Durban City Council’s offer of £1 900 for both properties on 22 June 1953.65

The Durban City Council adopted the motion to purchase the properties on 6 July 1953.66 The property was transferred to the Durban City Council on 29 July 1954 as reflected in the Deed of Transfer, T5778/1953. The final amount paid by the Durban City Council to Goolab Khan was £1 853.17.10, an amount calculated on the compensation of £1 900 adjusted downward to accommodate rate arrears and penalties of £46.2.2.67

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60 See City Valuator and Estates Manager to Principle Immigration Officer, 20 July 1953. Durban Metropolitan Council (DMC), Real Estates Department (RED), File No. J599/2/11/73. This was substantiated during conversations with claimants.
61 Affidavit of Amod Khan, Chairman of the Pathan Community Trust, 10 June 1996, paragraph 4. DMC, RED, File No. J58/1/1190.
62 Handwritten memorandum to Mr Williams, 30 July 1952. DMC, RED, File No. J599/2/11/73.
65 City Valuator and Estates Manager to Goolab Khan, 16 June 1953. DMC, RED, File No. J599/2/11/73.
68 Payment Voucher, City Valuator and Estates Manager to Goolab Khan, 4 August 1953. DMC, RED, File No. J599/2/11/73.
Commentary on Case Study 2

Goolab Khan’s resignation to the Durban City Council acquisition of the two properties should be interpreted in light of his old age, a desire to leave Natal and return to India, and possibly meager financial savings. While a racial practice can be construed from the context of the dispossession, Goolab Khan’s personal motives and actions clearly weaken a case for restitution. A possibility does exist for a financial settlement based on the amount of historic under-compensation of claim; that is, if a strong argument can be made within a legal context for the beginnings of the skewing of the Cato Manor property market in the early 1950s as a result of the passing of the Group Areas Act.69

Case Study 3: The inertia of expropriation

In January 1952 the seven co-owners were informed by the Durban City Council of its intention to purchase the property, subdivision 29 of SB3 of the farm Cato Manor 812.70 In following up on that letter, the Durban City Council made a tentative offer on 18 June 1953 to purchase the property for £1 605.71 In February 1955 this offer was increased to £2 180, after the valuation of property was amended.72 It was noted at the time that a failure to accept this offer would result in compulsory acquisition, and considerably less in compensation for the property. Consequently, the co-owners were informed in October 1955 of the Durban City Council’s intention to expropriate the property.73

The co-owners accepted the Durban City Council’s offer on 5 April 1956.74 However, the co-owners delayed in lodging their Title Deed with the Durban City Council. The Durban City Council then took the step of notifying the Provisional Secretary of Natal with a view that as co-owners were “unco-operative”, the Minister of Health’s consent be sought to institute expropriation proceedings.75 As a result, a Notice of Expropriation was served on the co-owners on 21 December 1956 in terms of the Housing (Emergency Powers) Act (Act 45 of 1945) and Ordinance 19 of 1945. The offer to purchase was also withdrawn.

Then in July 1957 the matter was referred to the Natal Arbitration Board. The hearing was adjourned to allow for a settlement, and the Durban City Council approved the settlement amount of £2 180. The property was sold on 5 August 1957.76 However, due to the fact that the Title Deeds were lost, added to the fact the Durban City Council’s difficulties in gaining the signatures of the certain co-owners, the transfer of the property could not be effected. This was further complicated by the fact that the Durban City Council’s newly appointed legal

69 This is still not fully substantiated in the available cost based and historical valuation findings which sees the 1958 proclamation in Cato Manor sounding the death knell for property prices.
70 City Valuator and Estates Manager to Ghulam Mohamed and others, 23 January 1952. DMC, RED, File No. J599/2/11/30/1.
71 City Valuator and Estates Manager to Ghulam Mohamed and others, 18 June 1953. DMC, RED, File No. J599/2/11/30/1.
72 City Valuator and Estates Manager to Ghulam Mohamed and others, 8 February 1955. DMC, RED, File No. J599/2/11/30/1.
73 City Valuator and Estates Manager to Ghulam Mohamed and others, 5 October 1955. DMC, RED, File No. J599/2/11/30/1.
74 Co-owners to City Valuator and Estates Manager, 5 April 1956. DMC, RED, File No. J599/2/11/30/1.
75 Town Clerk to Provincial Secretary, 29 August 1956, DMC, RED, File No. J599/2/11/30/1.
officer noted that the purchase of the property was out of order.\textsuperscript{77} While a further arbitration hearing was held in late October 1959 to re-determine the amount compensation, the Durban City Council resorted to its previous offer in the light of the original Notice of Expropriation.\textsuperscript{78}

In the meantime Cato Manor had been declared a white group area in terms of Proclamation 153 of 6 June 1958.\textsuperscript{79} In terms of the provisions of the Group Areas Development Act (Act 69 of 1955), the Durban City Council requested certificate deleting the property from the list of affected properties in May 1960. And on receipt of that document, on 6 July 1960, the Durban City Council expropriated the property for housing purposes in terms of Section 11(1) of the Housing Act (Act 35 of 1920), as amended.\textsuperscript{80}

The amount of compensation paid to each of the co-owners was £310.13.7. This amount was calculated on the total of £2 180, less a £15 fee for the cost of the Durban City Council’s procurement of the previous Title Deed.\textsuperscript{81}

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**Commentary on Case Study 3** & \\
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The case for restitution strengthened as the Durban City Council’s bureaucratic process grew over time, expanding the initial racial practice into a skewed property market of the Group Areas context. The co-owners inability to produce a Title Deed does not exonerate the Durban City Council’s expropriation of the property for racial purposes. And due to the fact that the expropriation took place in 1960, an amount of under-compensation is probable. It does seem irony that it was the inertia of the Durban City Council’s own administrative and legal procedures that made this particular dispossession complex, even without any real resistance from the co-owners. & \\
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**Case Study 4: Resisting the Durban City Council**

The events that surround this property reveal the complexity of the areas past, cautioning one against placing too neat an interpretation on the role of the historical characters in the drama of dispossessions. The history of the remainder of 27 of SB3 of the farm Cato Manor 812, a further property jointly owned by the seven brothers mentioned above in case study 3,\textsuperscript{82} is multi-layered both in terms of land use and its dispossession. It also shows how the contradictions within and between state departments provided these Indian landowners with a means to resist the Durban City Council’s dispossession until the late 1960s.

During the 1950s and early 1960s the land was used for market gardening, producing a crop a small banana plantation and about 300 litchi trees with annual revenue of R700 to R800. A number of African families also occupied the property. The property was located in the bend of Ridgeview Road and fell within the KwaKanyile shack area of the Cato Manor Emergency Camp. This area was cleared of shacks by 1964 despite the fact that the Durban City Council had not acquired ownership of the land by that stage.

\textsuperscript{77} Memorandum of Legal Officer, 25 June 1959. DMC, RED, File No. J599/2/11/30/1.
\textsuperscript{78} Town Clerk to City Valuator and Estates Manager, 26 January 1960. DMC, RED, File No. J599/2/11/30/1.
\textsuperscript{79} Government Gazette Notice 6068 of 1958.
\textsuperscript{80} See Deed of Transfer T5451/1960.
\textsuperscript{81} City Valuator and Estates Manager to Ghulam Mohamed and others, 14 July 1960. DMC, RED, File No. J599/2/11/30/1.
\textsuperscript{82} They also co-owned subdivision 25 of SB3 of the farm Cato Manor 812.
In 1952 the co-owners were informed of the Durban City Council’s interest in the property. However, the negotiations for the sale of the property in the early to mid 1950s were essentially derailed by disputes over the amount of compensation of the litchi trees, despite the fact that the Durban City Council had proposed using the threat of the expropriation to acquire the property. The co-owners also used delaying tactics by initially insisting that this property be sold along with subdivision 29 of SB3 of the farm Cato Manor. Yet, in 1956 a portion of the property, Subdivision (Road) of 27 of SB3 of the farm Cato Manor No. 812, had been expropriated for road development. Later, in 1962, there was confusion within the Durban City Council as to whether the property was still needed for the Cato Manor Emergency Camp, especially as the legal terrain had begun to shift with the removal of shack-dwellers out of the area. The Town Clerk was not sure that an expropriation in terms of the early 1950s consent from the Minister of Health would have weight in the 1960s. Rather, the view was put forward that, as falling in white group area, the property should be acquired to facilitate white ownership in terms of Local government Ordinance 21 of 1942. His reasoning adopted by the Finance Committee in September 1962.

In January 1963, in accordance with standard procedures for affected properties within Cato Manor, the Group Areas Development Board informed the co-owners that the ‘basic value’ of the property in terms of Section 19(2) of the Group Areas Development Act (1955) was R5 280. Mooney, Ford and Partners, the attorneys for the co-owners, objected to the basic value and submitted that the property be valued at R9 000. In the meantime, the Group Areas Development Board, itself, objected to the Committee of Valuers’ assessment, indicating that as there were no ratable building structures on the property, the land value should be R4 500. It was further noted that the actual extent of the property was significantly less than the extent, including the road’s area, used for the initial basic value assessment. The basic value of the property was then re-determined in August 1963 as R4 750.

As an aside to the above administrative paper shuffling, the Group Areas Development Board’s acquisition of the shares of the insolvent estates of Abdool Rakim and Abdool Gafoor adds another dimension to the history of this property. In 1960 Syfret’s Trust and Executor Company Natal Limited advised the Group Areas Development Board of the insolvent estates of A. Rakim and A. Gafoor intention to sell their shares in the property. In March 1962 the Trustee informed the Group Areas Development Board that the properties, along with others,

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83 Memorandum from City Valuator and Estates Manager, 7 May 1954 and Memorandum from City Valuator and Estates Manager, 12 July 1962. DMC, RED, File No. J599/2/11/30. The co-owners asking price for the property was £8 000, including the litchi trees, as opposed to the valuation of the property at £2 570, and £600 for the fruit trees.
85 Correspondence between the Assistant City Valuator and Estates Manager and Town Clerk, 8 June 1962 and 29 June 1962. DMC, RED, File No. J599/2/11/30. See also Draft Report of the City Valuator and Estates Manager for the Finance Committee, [c.1962]. DMC, RED, File No. J599/2/11/30. The report also noted the view of S. Bourquin, the Director of the Bantu Administration Department, that as the shack area was being cleared, “no good purpose would be saved in acquiring” the property. Some doubt was also cast over the future plans of the Group Areas Development Board for the area.
88 Co-owners’ objection to the basic value, 18 January 1963. CDB File No. L4005/3459/4.
89 Group Areas Development Board objection to basic value, 3 January 1963. CDB File No. L4005/3459/4.
would be sold by private auction to recover the amount secured by mortgage bonds. The two co-owners’ one-seventh shares in the property were offered for sale at a public auction on 2 February 1963. The highest offer received was R20 for the shares by Mr S.N. Colam. However, in March 1963 the Group Areas Development Board decided to exercise its preemptive right and purchased the two-sevenths shares in the properties. Group Areas Development Board took transfer of the two-sevenths share in the property on 29 October 1964.

While the above negotiations had taken place, the Council had resumed its attempts to acquire the property in April 1963 and offered R4,830 for the remaining five-sevenths shares. In May 1963 the Indian co-owners made a counter-offer of R5,500; that is, R1,100 for each share. In August 1963, Lionel Birt, the agent for the co-owners, approached the Group Areas Development Board to review the basic value of the property as R7,500 by appealing to the Revision Court. Mr Birt followed this up by offering to withdraw the appeal on certain conditions; namely, to delete from the List of Affected Property the remaining shares, along with a payment to the Board of an appreciation contribution, and the use of the land till 15 January 1965 to reap their crops of litchis. In September 1963, while noting the Durban City Council’s interest in the property, the Group Areas Development Board decided to accept R3,500 as the market value of the co-owners’ shares and agreed to remove the property from the list.

In November 1964 the Durban City Council accepted the Indian co-owners price of R5,500 for the five-sevenths shares. At this time the Durban City Council informed the Group Areas Development Board of its intention to acquire the property, along with including two-sevenths shares owed by the Group Areas Development Board. The Group Areas Development Board agreed to sell their shares for R1,600 in March 1965. The Durban City Council was then able to conclude the protracted negotiations of the sale with the Indian co-owners begun in 1952. The Durban City Council adopted the sale on 3 May 1965 and the property was transferred to the Durban City Council in October 1967. The final amount paid by the Council to the Indian co-owner was R5,494.83 for their five-sevenths shares in the property, calculated on the compensation amount of R5,500 adjusted downwards to include costs amounting to R5.17.

Even though the Durban City Council finally acquired the property, it did so without the explicit racial mechanisms to effect the dispossession. As a result the co-owners were able to draw income from their crops well into the 1960s. It could be argued that the co-owners’ 15 year war of attrition with the Durban City Council was a form of resisting the impending loss of land rights.

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94 Deed of Transfer T13668/1964.
98 One of those share was now vested in the deceased estate of Fazliak Madh, who had died earlier in 1964.
102 Deed of Transfer, T15825/1967.
Commentary on Case Study 4:

The co-owners’ restitution case became stronger over time, especially as the compensation was affected by a fixed ‘basic value’ within the group areas context. The sale of the shares of the insolvent estates is a clear reflection of the skewing of the market yet the amount received by the remaining co-owners may have been more generous. However, the protracted nature of the negotiations to sell the property was finally resolved in terms of a private treaty with the Durban City Council. The initial purpose of the Durban City Council’s acquisition – the establishment of the Cato Manor Emergency Camp – did not hold weight. A strong case will have to be made for the racial nature of the dispossession within the context of group areas legislation and the skewed property market.

“The market is dead”: Dispossessions under the Group Areas Act

A second phase of dispossessions was effected after the 1958 Group Areas proclamation of Cato Manor. During this time the Group Areas Development Board began acquiring Indian owned land to the west of Ridgeview Road in the Ridgeview Quarry area. In these cases of dispossession, the landowners were under-compensated, a reflection of the skewed property market in operation in Cato Manor at the time as a result of Group Areas legislation. In 1964 it was reported to the Group Areas Board that,

The market is dead. Market value placed on properties in the area are purely arbitrary, and are so low that it is futile to attempt to negotiate with owners for the acquisition of their property on that basis. There have been a few tentative enquiries from prospective buyers, but not a single offer has been received.

The death of the Cato manor property was a direct result of the proclamation on 6 June 1958 of the area of Cato Manor as a white group area. The land was deemed as an ‘affected property’ in terms of Section 17(1) of the Group Areas Development Act (Act 69 of 1955). This meant that the owner could only sell the property to a ‘qualified’ buyer (i.e. a buyer classified as white) and could only make improvements or alterations with the consent of the Group Areas Development Board. These insidious mechanisms of state power as well as the other modes of the bureaucracy of the Group Areas Development Board, later, from 1966, the Community Development Board, are focussed on in the case studies below. In a way similar to the above section, the disposessions below illustrate an attitude of least resistance, the contestation of the loss of land rights, and the nature of a dispossession of deceased estates.

Case Study 5: The quiet loss of land rights

The dispossession of Adbul Gaffur’s property portrays, even in comparison to Goolab Khan above, a resignation birth within a context of racial legislation. In February 1961 the Group

104 See R.M. Fitchet, D. Bristow, Y. Moola and C. Bradshaw, Report to the Commission on Restitution of Land Rights on Historical Valuations Research, Cato Manor, Durban, 14 November 1997. Their valuation methodology is a the heart of the formula proposed by the Department of Land Affairs to determine the monetary value of claims.

105 Report on a visit to the Durban Regional Office by Dr C.J. Jooste, 4-6, May 1964, Group Areas Board: Durban: Cato Manor, Vol. 1, Community Development Board records. (These records are housed in the office of the Regional Land Claims Commissioner: KwaZulu Natal).

Areas Development Board informed the Abdul Gaffur that the ‘basic value’ of subdivision 36 of SB3 of the farm Cato Manor 812 was R4 000.\textsuperscript{107} No objection to the basic value was made.

In September 1965 M.N. Pather, acting as the real estate agent for Abdul Gaffur, negotiated the sale of the property to the Durban City Council for R3 000.\textsuperscript{108} Later that month, the Group Areas Development Board requested a valuation of the property by the Inspector of Works, J. Terblanche, who valued the property at R2 500.\textsuperscript{109} The Group Areas Development Board then exercised its pre-emptive right in November 1965 and offered to purchase the property for the assessed amount.\textsuperscript{110} The property was transferred to the Board on 2 March 1966.\textsuperscript{111}

The final amount paid by the Board to Abdul Gaffur was R3 774.08. Initially R3 715.59 was paid, calculated on the compensation amount of R3 000 adjusted upwards to include a depreciation contribution of R800. A further adjustment downward accommodated a retainer’s fee of R40 and rate payments of R44.41. Later a refund on the retainer’s fee and rates of R58.49 was paid to Abdul Gaffur.\textsuperscript{112}

\textbf{Commentary on Case Study 5:}

\begin{quote}
This straightforward restitution case can count on a distinct link between racial legislation and the loss of land rights, as well as the probable inclusion of an amount of under-compensation towards the settlement of the claim.
\end{quote}

\textbf{Case Study 6: Trading rights for compensation?}

While the real estate agent, M.N. Pather was seemingly ineffective in Abdul Gaffur’s case, he attempted to contest the amount of compensation offered by the Group Areas Development Board to Marjan, the widow of Essop Kara, for her trading store on the property subdivision A of 38 of SB3 of the farm Cato Manor. However, even in this case he was not successful, largely due to a depreciated property market in Cato Manor as a result of the effects of racial legislation.

\textit{In July 1962 the Group Areas Development Board informed the owner that the ‘basic value’ of the property was R4 920.\textsuperscript{113} Marjan objected to the basic value and stated that R 8 750 was a fair value for the property, including the value of the trading store.}\textsuperscript{114}

There was no further correspondence between Marjan and the state until October 1966, when Mr M.N. Pather, acting as the real estate agent for Marjan, approached the Board after placing the property on the “open market” for R10 000.\textsuperscript{115} At the Board’s request, the property was valued at R3 240 by B. Mills.\textsuperscript{116} Later that same month, the Community Development Board

\textsuperscript{108} M.N. Pather to Group Areas Development Board, 12 September 1965. CDB, File No. L4005/3454/3.
\textsuperscript{110} See Group Areas Development Board decision, 12 November 1965 and Group Areas Development Board to M.N. Pather, 16 November 1965. CDB File No. L4005/3454/3.
\textsuperscript{111} Deed of Transfer T2240/1966.
\textsuperscript{112} Community Development Board expenditure vouchers, 4 March 1966 and 21 March 1966. CDB File No. L4005/3454/3.
\textsuperscript{114} Marjan to Group Areas Development Board, [1962]. CDB File No. L4005/3466/7.
\textsuperscript{115} M.N Pathar to Community Development Board, 14 October 1966. CDB File No. L4005/3466/7.
\textsuperscript{116} B. Mills valuation report, 8 December 1966. CDB File No. L4005/3466/7.
responded, indicating a possible purchase price of R3 200. In the face of a closed market and the power of the state’s bureaucracy, Marjan accepted this offer on 10 January 1967. The Community Development Board then purchased the property in terms of the Community Development Act of 1966. The property was transferred to the Board on 19 June 1967.

The final amount paid by the Community Development Board to Marjan was R4 582.34. Initially R4 525 was paid. This was calculated on the compensation amount of R3 200 adjusted upwards to include a depreciation contribution of R1 376. A further adjustment downward accommodated a retainer’s fee of R40 and rental payments of R11. Later a refund of R57.34 on the retainer’s fee and rental payments less rate payments was paid to Marjan.

Commentary on Case Study 6:

There is clear case for restitution here despite the fact that M.N. Pather, on behalf of the dispossessed person, approached the Community Development Board. By the late 1960s, the Cato Manor market had not lived up to the hope of white interest besides the state. The market was effectively static as a result of effect of the Group Areas proclamation of the area. In that context the compensation paid for the property at the time of dispossession, including trading rights, was neither just nor equitable.

Case Study 7: Dispossessing deceased estates

The effects of racial legislation followed Indian landowners into their graves. A deceased estate was not safe from the restriction the Group Areas legislation placed upon the transfer of an estate. The state was therefore able to acquire properties vested in deceased estates due to provisions stating that the beneficiaries or heirs could not receive ownership of a property in an affected group area. This process can be seen in the how the Community Development Board dispossessed the joint estates of the late Vedachellum and the late Lutchmi of subdivision 1 of SB3 of the farm Cato Manor.

Like all the other case affected by the 1958 Cato Manor proclamation, the owner was informed by the Group Areas Development Board of the ‘basic value’ of the property, in this instance, the ‘basic value’ was R6000 and the executor of the estate of the late Vedachellum made no objection to the basic value.

In March 1963 G. S. Naidu, the attorney acting for the executor of the estate of the late Vedachellum, in terms of winding up the estate, offered to sell the property to the Group Areas Development Board for R6 000. At this time the Durban City Council also showed interest in acquiring the land. After the death of Vedachellum’s widow, Lutchmi Moodley,

118 Community Development Board recommendation to purchase property, 7 February 1967 and Community Development Board to Marjan, 4 March 1967. CDB File No. L4005/3466/7.
119 Deed of Transfer, T9112/1967.
in 1964, the attorney for the joint estates of the late Vedachellam and the late Lutchmi reiterated the offer to sell to the Board for R6 000.\textsuperscript{124}

The Board made a counter-offer of R5 040, stating that was the ‘market value’ of the property at the time.\textsuperscript{125} In August 1965 the executor of the joint estates accepted the offer.\textsuperscript{126} On 15 October 1965 the Board acquired the property in terms of Section 12(2)(b) of Group Areas Development Act of 1955 and took transferred in January 1966.\textsuperscript{127} The Community Development Board then paid an amount of R5 773.37 in compensation to the executor of the estates of the late Vedachellam and the late Lutchmi.\textsuperscript{128}

\begin{center}
\textbf{Commentary on Case Study 7:}
\end{center}

\textit{The joint estates were dispossessed of rights in land, as well as under-compensated. The difficulty will lie in determining who are the beneficiaries the claim, especially as in this case the direct descendants, consisting of 10 large families, stretch down to the fourth generation. Once that is resolved, the division of the settlement amount among the beneficiaries will possibly be contested outside of the restitution arena – a lesson in the effect today of restitution on family dynamics once “justice” has redressed the past.}

\begin{center}
\textbf{Conclusion: The Responsibilities of Restitution Research}
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In short there are three main responsibilities of restitution research: to historico-legal methods; to redress the past and offer a means toward social justice and financial equity for those, or their descendants, dispossessed of land rights; and, in doing so, instituting a progressive political commitment to both the (re)writing of “the past” and the realisation of democratic ideals in South Africa. These responsibilities therefore shape the power of restitution today, the ability to re-shape personal and social histories and the landscape from which those histories were initially etched. There is a sense of personal satisfaction in seeing utopian ideals become reality; and I eagerly await the settlement of the cases described in this paper.

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\textsuperscript{124} G.S. Naidu to Group Areas Development Board, 21 January 1965. CDB File No. L4005/3415/2.
\textsuperscript{125} Group Areas Development Board to G.S. Naidu, 7 May 1965 and B. Mills valuation attached to the Group Areas Development Board recommendation to purchase the property, 8 October 1965. CDB File No. L4005/3415/2.
\textsuperscript{126} G.S. Naidu to Group Areas Development Board, 10 August 1965. CDB File No. L4005/3415/2.
\textsuperscript{127} Group Areas Development Board Agreement of Sale, 15 October 1965, CDB File No. L4005/3415/2, and Deed of Transfer, T882/1966.
\textsuperscript{128} Community Development Board expenditure vouchers, 31 January 1966 and 20 April 1966. CDB File No. L4005/3415/2.