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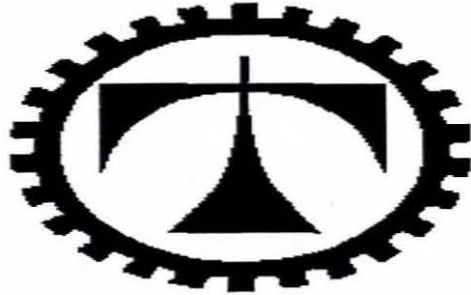
The impact of monetary compensation as a form of land restitution on the current life-styles of Paarl residents

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PENINSULA TECHNIKON

The impact of monetary compensation as a form of land restitution
on the current life-styles of Paarl residents

Being a Dissertation submitted in partial fulfilment of the requirements of the
Magister Technologiae Public Management to the Department of Public
Management and Law in the Faculty of Business at the Peninsula Technikon

By

Esmerelda O Reid

Supervisor: Dr Harry H Ballard

October 2002

The impact of monetary compensation as a form of land restitution on the
current life-styles of Paarl residents

Esmerelda O Reid

The impact of monetary compensation as a form of land restitution on the
current life-styles of Paarl residents.

DECLARATION

Hereby, I Esmerelda O Reid declare that this study is my own original work and that all the sources have been accurately reported and acknowledged, and that this document has not previously in its entirety or in part been submitted at any university in order to obtain an academic qualification.

Signature: _____

Date: _____

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GLOSSARY

ACLA: Advisory Commission on Land Allocation

ANC: African National Congress

ANOVA: Analysis of Variance

AROV: Local Office for Residential Property claims in Germany

BAROV: German Federal Office for claims which belonged to Communist Parties

CDB: Community Development Board

CLA: Commission on Land Allocation

DLA: Department of Land Affairs

LAROV: Regional Office for Business/ Company claims in Germany

LEED: Local Economic and Employment Development

LSM: Living Standard Measurement

LTAB: Land Tenure Advisory Board

OPQ: Office for Open Property Questions

PAC: Pan-Africanist Congress

SPSS: Statistical Package for Social Sciences

SSO- Standard Settlement Offer

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ABSTRACT

Restitution is a constitutionally mandated programme aimed at redressing the injustices of the apartheid era. Land rights are being addressed via a legal administrative process in order to make some form of reparation.

The mission of the Commission on the Restitution on Land Rights is to have persons or communities, in the Western Cape province, who were dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices, restored to such property or receive just and equitable redress.

The restitution process is the first programme in South Africa that aims to restore people to the land from where they were dispossessed. The processes and *procedures involved are very complex, which could result in slow delivery.*

The research attempts to determine the impact of monetary compensation as a form of land restitution on the current life-styles of Paarl residents. The research will focus on financially settled claims. The reason for selecting Paarl as a case study was because of the demographics and diversity of the region.

This study also includes the history of forced removals in South Africa as well as the local international restitution processes. The study has a descriptive approach. Primary data will be collected by means of questionnaires based on the living standard measurement. The questionnaires will focus on the life-styles of people prior to dispossession and their life-styles after receiving their restitution awards.

This study may provide a positive or a negative critique on the restitution process. The study attempted to determine whether restitution provides a better quality of life to the disadvantaged, displaced people of our country and provides an indicator for future similar endeavours.

Chapter 1

Introduction and Background to the study

1. Introduction

This study attempted to determine the impact of monetary compensation as a form of land restitution¹ on the current life-styles of the Paarl residents who lost their tenancy rights due to racially discriminatory laws or practices. The study will adopt a descriptive approach through the analysis of a case study focussing on the Paarl land claims processed. The study methods adopted are questionnaires and interviews with all the relevant role-players, stakeholders and claimants. Extensive examination of the land restitution process was undertaken. The study will focus on the Paarl restitution claims that were settled financially.

2. Background to the research study

Restitution is a process whereby the loss of land rights is addressed via a legal administrative process in order to make some form of reparation. The aim of restitution is to provide support to the vital process of reconciliation, reconstruction and sustainable development. Restitution is closely linked to the need for the redistribution of land tenure reform, thereby forming an integral part of the broader land reform programme currently underway in South Africa. The dispossessed people and their descendants have been victims of racially based dispossessions and forced removals during the years of segregation and apartheid.

According to Wilson & Ramphela, (1994:216), in the 23 years from 1960 to 1983 a total of 3.5 million people, almost all of them black, were subjected, in terms of government policy, to forced removal from their place of residence. The applicable racial laws were the **Group Areas Act, 1957 (Act 77 of 1957)**, **the Community Development Act, 1966 (Act 3 of 1966)**, **the Black Land**

Act, 1913 (Act 27 of 1913), the Slums Act, 1979 and the Housing Act, 1957 (Act 77 of 1957).

Wilson & Ramphela, (1994:217) have categorised forced removals in terms of the above legislation, as follows:

“Removals took place from one part of an urban area to another, primarily in order to segregate more clearly one ‘ethnic group’ from another; the expulsion from urban areas, of people who have lived there often for many years, on the grounds that they are not required for the functioning of the particular urban economy and should (for ecological reasons) be sent to one of the reserves or “black national states”; the ‘black spot’ or Bantusan consolidation removals, whereby people were moved from one part of rural South Africa to another in an attempt to reduce the number of islands in the archipelagos of ‘Black national states’, the so-called ‘betterment’ programmes to consolidate people living scattered through the reserves into villages; the massive movement of those compelled to move off white-owned farms (where they were living and working for generations), and prevented by pass laws and the state housing policy from moving to the cities.”

The Restitution of Land Rights Act, 1994 (Act 22 of 1994), as amended provides that restitution can take the following forms:

- “Restoration of the land from which the claimants were dispossessed;
- Provision of alternative land; alternative relief including a combination of the above-mentioned;
- Sharing the land, or budgetary assistance such as services and infrastructure development; and
- Priority access to state resources with regard to housing and land development programmes.”

¹ Restoring the right in land or equitable redress.

On 1 June 1998 the Commission on the Restitution of Land Rights and the Department of Land Affairs embarked upon a national awareness campaign, known as the "Stake your Claim" campaign. The aim of this campaign was to reach out and inform possible claimants about the restitution programme and the deadlines for the lodgement of claims. The full range of the communication media was utilised to cover every part of South Africa, including far-flung areas. The outcome of this campaign increased the number of claims from approximately 30 000 to a total of 63 455 claims during April 1998 to 31 December 1998.

The restitution website states that the restitution process is a constitutionally mandated programme, which is governed by the following statutes, **the Constitution of the Republic of South Africa Act, 1996 (Act 108 of 1996) and the Restitution of Land Rights Act, 1994 (Act 22 of 1994), as amended**. The abovementioned legislation provides for the restitution of full and equal engagement of rights in land to persons or communities who were dispossessed of land rights through discriminatory legislation since 1913. Restitution can be regarded as a vital factor in healing the wounds of apartheid and colonial conquest.

Restitution is a very long process, but the national Minister for Land Affairs and Agriculture has the power to settle claims through the S42D² memorandum instead of claims going to the Land Claims Court for consideration, so as to speed up the process.

3. Life-styles

According to the *Oxford Advanced Learner's Dictionary* (1995) life-style can be defined as a way in which an individual or group lives. It can also be defined as a standard of living in a certain community, that is a level of comfort and wealth available to a person or group in a certain community, area or country. The researcher attempted to link life-styles and restitution

² Section within the Restitution Act that gives the Minister the powers to settle a claim, instead of referring the claim to the land Claims Court.

through investigating the impact of financial compensation as a form of land restitution on the life-styles of the Paarl residents. The questionnaire was based on the LSM. The questionnaire measured the claimant's life-style before dispossession and after they received their financial award. In this study life-styles will be adapted into living standard measurements (LSM). The Living Standards Measurement Study was established by the World Bank in 1980 to explore ways of improving the type and quality of household data collected by government statistical offices in developing countries. The objectives of the LSM are to develop new methods for monitoring progress in raising levels of living, to identify the consequences for households of current and proposed government policies, and to improve communications between survey statisticians, analysts and policymakers.

The Privest Integrated Marketing Information as published in *Cosumerscope 2000: Bringing LSM to Life* (2000) describes LSM not as being a life-style typology or a "psychographic" segmentation tool. It is simply a robust indicator of the "principal axis" of the South African consumer market – an axis or index, which is essentially a reflection or measure of standard of living, wealth or affluence. South Africa has 8 LSM groups as illustrated in Table 1 below.

Table 1: LSM Table

Living Standard Measurement (LSM)	Characteristic
LSM 1	<p>This group consists of 6.2 million people. There are 3.6 million adults in this group.</p> <p>97% live in rural areas.</p> <p>81% live in traditional dwellings.</p> <p>None owns a family car.</p> <p>73% use informal taxis as their means of transport.</p> <p>58% of income earners enjoyed a</p>

	<p>holiday away from home during the last 6 months. None travelled by air.</p> <p>None surfed the Net or used e-mail.</p> <p>79% are unemployed (i.e. students, housewife, retired).</p> <p>Average h/h income = R800.00 p/m</p>
LSM 2	<p>This group consists of 6.5 million people. There are 3.8 million adults in this group.</p> <p>86% live in rural areas.</p> <p>67% live in traditional dwellings.</p> <p>2% own a family car.</p> <p>68% use informal taxis as their means of transport.</p> <p>6% of income earners enjoyed a holiday away from home. None travelled by air.</p> <p>None surfed the Net or used e-mail.</p> <p>73% are unemployed (i.e. students, housewife, retired).</p> <p>Average h/h income = R900.00 p/m</p>
LSM 3	<p>This group consists of 6.7 million people.</p> <p>61% live in rural areas.</p> <p>36% live in traditional dwellings.</p> <p>6% own a family car.</p> <p>83% use informal taxis as their means of transport.</p> <p>11% of income earners went away on holiday away from home. None travelled by air.</p> <p>None surfed the Net or used e-mail.</p> <p>69% are unemployed (i.e. students,</p>

	<p>housewife, retired).</p> <p>Average h/h income = R1 100.00 p/m</p>
LSM 4	<p>This group consists of 5.5 million people. There are 3.7 million adults in this group.</p> <p>27% live in rural areas.</p> <p>37% live in shacks and traditional dwellings.</p> <p>8% own a family car.</p> <p>85% use informal taxis as their means of transport.</p> <p>12% of income earners enjoyed a holiday away from home. None travelled by air.</p> <p>None surfed the Net or used e-mail.</p> <p>61% are unemployed (i.e. students, housewife, retired).</p> <p>Average h/h income = R1 500.00 p/m</p>
LSM 5	<p>This group consists of 5.1 million people. There are 3.3 million adults.</p> <p>77% live in large towns.</p> <p>70% live in "RDP" houses and hostels.</p> <p>15% own a family car.</p> <p>76% use informal taxis.</p> <p>14% of income earners enjoyed a holiday away from home. None travelled by air.</p> <p>4% used the Net and 3% used e-mail.</p> <p>61% are unemployed (i.e. students, housewife, retired).</p> <p>Average h/h income = R2 200.00 p/m</p>
LSM 6	<p>This group consists of 5.4 million people.</p>

	<p>There are 3.5 million adults. 77% live in large towns and metropolitan areas. 49% live in "RDP" houses whilst 38% live in flats, town houses and suburban type homes. 36% own a family car. 80% use informal taxis as their means of transport. 20% of income earners enjoyed a holiday away from home. 3% travel led by air. 9% surfed the Net and 14% used e-mail. 56% are unemployed. Average h/h income= R3 600.00 p/m</p>
LSM 7	<p>This group consists of 4.5 million people. There are 3.2 million adults. 79% live in large towns and metropolitan areas. 69% live in flats, town houses and suburban type homes. 78% own a family car. 38% use informal taxis as their means of transport. 32% of income earners enjoyed a holiday away from home. 6% used air travel to do so. 8% surfed the Net and 9% used e-mail. 50% are unemployed. Average h/h income = R7 300.00 p/m</p>
LSM 8	<p>This group consists of 4.2 million</p>

	<p>people.</p> <p>There are 3.2 million adults.</p> <p>81% live in large towns and metropolitan areas.</p> <p>94% live in flats, townhouses and suburban-type homes.</p> <p>100% own a family car.</p> <p>49% of income earners enjoyed a holiday away from home.</p> <p>25% used air travel to do so.</p> <p>21% surfed the Net and 28% used e-mail.</p> <p>35% are unemployed.</p> <p>Average h/h income = R13 200.00 p/m</p>
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4. Research question

In view of the foregoing, the following research question has been formulated: What is the impact of monetary compensation as a form of land restitution on the current life-styles of the Paarl residents?

5. Purpose of the research

Based on the research question depicted above, the following research purpose is submitted: To determine the impact of monetary compensation as a form of land restitution on the life-styles of the Paarl residents. The study will attempt to determine whether the financial settlement offer improved the life-styles of the residents or not.

6. Delimitation of the study

The research population will include the financially settled claimants and the Paarl Restitution Committee members. The research population will be stratified in terms of race, ownership and tenancy. In the Paarl case study, the owners will in the majority of cases be either white or "Coloured", while the tenants will be blacks. The reason for this is that blacks were not allowed to own properties in the Western Cape. A period of one year after settlement

(after receiving their financial award) of tenants and landowners was used to establish whether any immediate changes occurred in the life-styles of the Paarl residents.

7. Research approach and methodology

The study focussed on the restitution process of the Regional Land Claims Commission in Cape Town and the claimants of the Paarl residents and Paarl Restitution Committee. The study adopted a descriptive approach, to describe whether or not monetary compensation improved the current life-styles of the case-study. The primary data was collected by means of questionnaires based on the life standard measurement as explained on pages 4 - 8. The questionnaires were distributed to those claimants whose claims were settled through the monetary compensation option. This survey focussed on the life-styles of people prior to the racial evictions and the current life-styles they attained after their restitution awards.

The secondary data will include *inter alia* textbooks, and legislation such as:

- **The Rural Development Framework**, dated May 1997, as issued by the Rural Development Task Team (RDP) and The Department of Land Affairs, Pretoria;
- **The Green Paper on South African Land Policy**, dated February 1996, as issued by the Department of Land Affairs, Pretoria;
- **The Restitution of Land Rights Act, 1994 (Act 22 of 1994)**; and
- **The Commission on the Restitution Of Land Rights- Annual Report:** dated April 2000/March 2001, as issued by the Department of Land Affairs, dated March 2001, Pretoria.

8. Significance of the research

This study may provide a positive or a negative critique on the restitution process. The study attempted to determine whether restitution provides a better quality of life to the disadvantaged, displaced people of our country and provides an indicator for future similar endeavours.

9. Plan of the study

The study has been structured as follows:

Chapter 1: Introduction to the research

Chapter 2: International approaches and the South African context to Land Restitution

Chapter 3: Explanation of the case-study: Paarl residents

Chapter 4: Forced removals

Chapter 5: The South African restitution process

Chapter 6: Research approach and methodology

Chapter 7: Analysis and interpretation

Chapter 8: Conclusion and recommendations

Chapter 2

International approaches and the South African context to land restitution

1. Introduction

Research was undertaken by the Department of Land Affairs on international precedents for restitution in South Africa during 1998. The goal of the study was to collect and present information on the restitution processes internationally that could assist decision makers in developing ideas on how to develop the process in South Africa.

When considering restitution in the international context, it can be noted that land is only one example of an asset that may be returned through restitutionary remedies. Ancient art treasures from Greece are being returned by the United States, while Swiss bank accounts holding the unaccounted wealth of Jews are being hotly debated. Even human remains, such as South Africa's example, Saartjie Baardman - the so-called "Khoi Venus" whose remains were kept by the Musee de l'Homme in Paris – has been returned to the Griquas. Japan and Korea are debating payment of compensation to the sex workers who worked in the front-line brothels during World War II. Restitution for the loss of rights is thus a global topic, which leaves few countries unaffected.

According to the **Restitution of Land Rights Act, 1994 (Act 22 of 1994)**, restitution can be defined as the return of goods or property and/or the monetary compensation for wrongs of one people against another. The restitution of land as an asset most often appears as part and parcel of broader land reform programmes (including reforms such as tenure reform).

Restitution can be considered a part of land reform in so far as it is an intervention in land ownership, and is undertaken for reasons of social justice or

to improve economic performance. It differs from land reform, though, in that it uses non-market mechanisms imposed by law to facilitate change. Restitution is not as gradual as land reform, but rather a sudden and direct mechanism of restoring assets to former owners.

2. Types of restitution

The Department of Land Affairs came to the following conclusion when compiling their research report on the International Precedents for Land Restitution in South Africa in August 1999. This department's view was that during the course of the last century redistributionary measures tended to form a pattern from which four broad categories of restitution could be identified.

The types of restitution are discussed in the various regions of the world below.

Anglophone Countries:

The Department of Land Affairs Research Report on International Precedents for Land Restitution in South Africa stated that during the course of the last century governments started to acknowledge the rights of indigenous people who were displaced by colonial settlements. Reforms in countries with a colonial history could be classified into two sub-categories: Colonies of Settlement (USA, Canada, Australia and New Zealand) and Colonies of Exploitation (African countries such as Zimbabwe, Kenya and Tanzania). The former group is characterised by a history of assimilation of the indigenous population. Although widely differing approaches to restitution are currently followed, it focuses mostly on the recognition of native titles and the acknowledgement of a spiritual kinship to land. Colonies of exploitation have a distinct type of land reform, in which the focus is on the redistribution of white-owned land. This serves to correct imbalances in agricultural land ownership.

Asia and the Middle East:

The main objective of land reform in Asian and Middle-Eastern countries has been to break up feudal estates in order to discourage the advancement of communist ideology. This has been the case in countries such as Japan, Korea and Taiwan. Others, such as the Philippines, focused on economic goals in their approach to land reform. Rural unemployment and over-specialisation by large estates necessitated the establishment of a more efficient agricultural sector. Land reform programmes were focused on property relationships such as ownership, leasehold, sharecropping and landlessness. According to one source, these reforms only managed to alter dominant social relations marginally. Further reforms, specifically in East Asia, entailed the transfer of land to peasants without actually changing the operation of agriculture. They were successful, though, in creating a small class of independent, property-owning peasants and reforms also served to alleviate poverty. The same route was followed by Middle-Eastern countries dealing with landlord tenancies, such as Iran, Iraq, Egypt and parts of India.

South America:

According to the Department of Land Affairs in their report on international precedents, in the South American countries no tradition of small-farm ownership existed historically. Monopolies on the ownership of land stems from the history of colonial dispossession, when indigenous people were turned into labourers on large, semi-feudal estates. Land reform programmes aimed to address the highly unequal ownership of land. Large tracts of land lay unproductive for speculative purposes, while the majority of the population lived on marginal tracts of land. In Brazil, for example, land equal to five times the size of Germany lay unproductive, while 4.8 million people found themselves landless. South American land reform programmes are mostly accompanied by reforms in the labour structure, with land reform laws being enforced in conjunction with labour

laws. Countries such as Mexico, Bolivia and Chile transformed their distribution of land by redistributing estates using peasant labour (such as labour tenants) into capitalist estates using wage labour.

Former Soviet States and Eastern Europe:

The DLA research report also indicated that in former communist states, the primary purpose of land reform has been stated to be the restoration of legal rights, social justice and the improvement of economic efficiency. Land is not only restored to tenants, farm labourers and the landless, but to any person who has lost a right to land. The demand for land reform is complemented by the large supply of land vesting in the state. This has the benefit of reducing the cost of obtaining land to be used for redistribution. Restitution programmes cover a wide range of assets, including urban properties.

3. The international processes compared to the South African process

South Africa has a unique history and a diverse range of claims to deal with through restitution. It shares some characteristics with each of the functional types of restitution described above. However, making exclusive classification into any one group is a complex exercise. Some similarities and dissimilarities are explained below.

Anglophone Countries and South Africa:

Anglophone countries base their restitution processes on the rights of indigenous groups, thus placing restitution in a rural context. Claims for restitution are in many respects similar to claims lodged by traditional links to the land. Claims are also characterised by the fact that they are lodged by large communities.

The DLA report indicated that South Africa shares the same goals for restitution, such as economic development and redress, with Anglophone countries.

Colonies of settlement, such as Australia and Canada, attach importance to restitution as a remedy for past discrimination. This approach is also followed by South Africa, where restitution is considered as a mechanism of healing and is, as such, enshrined in the **Constitution of the Republic of South Africa, Act 1996 (Act 108 of 1996)**. Colonies of exploitation, such as Zimbabwe, acknowledge the importance of reconciliation, but restitution is not recognised as a programme apart from land reform. It is rather treated as a mechanism of redistributing white-owned land and bolstering economic development.

The Department of Land Affairs stated in their research report on international precedents dated (August 1999) that Anglophone countries may offer insights to South Africa on how to deal with rural claims lodged by traditional communities. The applicability of these examples to urban claims, however, is limited. South Africa and Zimbabwe share an African context and it may be argued that Zimbabwe might be the most applicable example. On the other hand, Zimbabwe's approach to land reform places it in the ambit of land redistribution rather than restitution. Zimbabwe has a dubious track record on land reform due to recent conflicts such as land grabbing and the dispossession of holders of land.

Asian and Middle Eastern Reforms and South Africa:

It is stated in the international precedents report that the goals of land reform programmes in Asian and Middle Eastern countries differ substantially from our local programmes. In the Asian and Middle Eastern case, land reform was aimed at economic reform (the break-up of large feudal estates), with an ideological underpinning (to prevent the spread of communism). While South Africa shares the economic element of this goal, it does not share the ideological element.

Reforms in Asian and Middle Eastern countries have widely differing rates of success; for example, the Philippines managed successfully to establish an independent class of peasants, while other land reform programmes, that is those in East Asian countries, only managed to alter social relations marginally.

From the countries in this category, the Philippines share the closest social and economic context to South Africa; for example, the Philippines has the same skewed gender distribution as South Africa, where small-scale agriculture is mostly dominated by women. The Philippines would be a more complex study, as deviations from land reform law are the norm. It also focuses only on agricultural reforms and not urban restitution.

South America and South Africa:

In the international precedents report (August 1999), it is stated that South American countries and South Africa have a history of colonial dispossession in common, but their restitution measures differ significantly. South American countries use restitution to rewrite their colonial history, addressing the inequalities of several centuries. South Africa, on the other hand, excludes the issue of its colonial past from restitution by addressing only dispossessions, which occurred during the apartheid years (dispossessions after 19 June 1913).

South American countries have a strong economic motivation for the redistribution of land, focusing on the redistribution of wealth. While South Africa shares this economic goal, it is not the country's main goal. South American reforms are furthermore closely associated with reforms in the labour market. This is not the case in South Africa.

Land reform in South America has not been a smooth process. Countries such as Brazil have experienced instabilities as a result of land reform, and large numbers of people have been killed by gangs, which were hired by their

landlords. While legislation has been enacted to facilitate reforms in Brazil, the government's commitment to it is often questioned. Even though South American countries share similar economic and social characteristics to South Africa, the factors described do not contribute towards good examples of *restitution*.

Former Soviet States, Eastern Europe and South Africa:

It was indicated in the research report that even though South Africa's history is far removed from communist history, the country still shares some characteristics with former communist states. Countries dealing with dispossession under communist rule share similar goals to the South African restitution process, such as redressing the wrongs of the past and improving economic efficiency. Furthermore, these countries restore land not only to the poor, but also to any person who has lost a right to land. South Africa also deals with claimants who are not necessarily the poorest of the poor. The majority of the land claims in communist countries are for urban land. This characteristic is shared by South Africa, where 85% of the claims lodged are for urban land.

Communist countries have a huge supply of state land, which can be used to compensate victims. In South Africa around 1 million hectares of land is vested with the government. In both cases this vacant land can be utilised to compensate the victims of apartheid for racially discriminatory laws and practices, relieving government of some cost of restitution.

4. Outline of the various international restitution processes

The Department of Land Affairs identified the following phases as important in the international restitution processes, according to the International Precedents for Land Restitution Report (August 1999).

The phases of the various international restitution processes are explained below:

The Estonian process:

Lodgement of claims:

Claims are lodged at the municipality within whose jurisdiction the claimed area falls. Documents proving *ownership*, a *property description* and an *indication of the value* of the property must be submitted together with a completed *claim form*. Specific procedures for the lodgement of claims were established by the respective local governments.

Investigation:

The municipality completes the investigation into a claim, after which the claim file is forwarded to the relevant county office for a decision. Copies of the *Title Deed*, *Passport* (proof of identity), *Birth and Marriage Certificates* must be obtained during the investigation. In order to optimise resources, documentation is assessed in aggregate. If circumstances subject to proof (e.g. property description and proof of ownership) cannot be substantiated, an application for restitution can be denied.

Assessment:

When files on claims are completed, they are referred to the relevant county government for assessment and approval. Within the county government, there are three important structures dealing with restitution: the *Preparatory Group*, the *County Committee* (or in the case of urban claims a *City Committee*) and the *Central Committee*. The first two groups play an important role in the assessment of claims, while the Central Committee deals with appeals and disputes. The County/City Committees are special committees dealing with restitution, established in terms of **the Property and Ownership Reform Act, 1999 (Act of 1991)**.

Firstly, the preparatory group collects information on the specific claim. Since this group is comprised of relatively low-level skills, it will not do research but rather collect information and present it to the Secretary of the County/City Committee. The secretary assesses the information and prepares a *recommendation for the Committee*. The Committees has specific responsibilities laid down by **the Property and Ownership Reform Act, 1999 (Act of 1991)**:

The Committee must review and assess material substantiating claims. It must take decisions on claims and enter property to be returned into a register. It can decide not to justify an application, if it is unjustified or unsubstantiated. In reviewing applications, the Committee must assess the following:

- Whether the property complies with the specifications laid down by the Act; i.e. it must be unlawfully expropriated land with inseparably attached natural objects, structures, or other assets such as ships and agricultural inventory;
- On what basis the original owner held the land (ownership, leasehold, etc.);
- On what basis the expropriation took place. Types of expropriations which constitute valid claims are set out by legislation;
- Whether the applicant qualifies as an entitled subject.

Decision:

The County/City Committee takes decisions by majority vote on the same day that a case is presented to them. If all the conditions for restitution are satisfied, the Committee will declare a property to be the object of ownership reform and the applicants will be declared the entitled subjects. Applicants can submit new evidence after the Committee has made its decision. Such information will oblige the Committee to review the case and take a new decision if necessary. After a decision is taken, the file is sent back to the municipality for the decision to be conveyed to the claimant via mail. Such a claimant will then be invited to fill in

another form where s/he must state the desired choice between compensation and restitution. After a decision is taken, a period of one month is allowed for objections. If no objections are received, the decision will enter into force. A rehabilitation certificate, certifying the unlawfulness of the expropriation, will be issued. This certificate works like a court order and it initiates the process of restoration. The case is then passed on to a working group, which starts the procedure for return of compensation for property.

No real rights may be encumbered on a property until a decision has been taken on a claim. Violation of this restriction may void a transaction. Furthermore, if the current owners or users do not preserve the property in its current condition they may be ordered to be compensated for damages.

Implementation:

In the case of Tallinn Municipality, feasibility of restoration of an asset will be considered by the city government. At a city Council meeting compliance of a returned asset with city planning requirements as well as the potential disruption to current users of an asset will be considered. For both urban and rural land, the claimant will be advised to contact a surveyor to do the surveying and pegging of the land, if restoration of the property is approved. Such a surveyor will take the claimant through the process of getting the land registered.

If it is decided that compensation should be paid, the municipality will have to calculate the compensation due in terms of established formulas. Compensation vouchers will be issued for the amount to be paid to the claimant.

Disputes:

Claimants can file an appeal against the decision of the Committee within one month of the decision being taken. Such an appeal is lodged with a special body, the *Central Committee for the Return of Compensation of Unlawfully Expropriated Property* (the Central Committee). The Central Committee will

review the decision of the County/City Committee and will either certify the correctness of the decision, or send the claim back to the County/City Committee for further review. Appeal can also be directed to the Central Committee, if a claimant disagrees with the termination of the investigation into his or her claim. The County/City Committee will discontinue processing an application as soon as an appeal is filed. Legislation specifies that complaints must be heard within a period of two months. If a claimant does not agree with the decision of the Central Committee, a further appeal can be directed to a court of law.

The German process:

Lodgement of Claims:

There is no official claim form. A claimant writes a letter to the local (county) Office for Open Property Questions (OPQ), known as the AROV, if the claim is for residential property. In the case of a business or company claim, the claim is forwarded to the regional OPQ, known as the LAROV, or it is forwarded to the federal OPQ, the BAROV, if the claim concerns property which belonged to the Communist Party. There are over 100 county offices, six regional (provincial) offices and one federal (national) office.

The process started in 1990 and the closing date for the lodgement of claims was set at December 1992.

Registration of claims:

Claimant letters were originally stored unregistered in a storeroom. Claims were registered in order of receipt. For the first two years this was done manually. From 1993 a computer database was set up at county level, but not at regional and federal (national) level. This is due to a provision in the German Constitution prohibiting a national database in order to protect the individual citizen's rights to privacy.

As claims were registered, letters of acknowledgement were sent to the claimants and to the present owners. Claimants did not hear from the agencies again until their claim was processed, in many cases up to five years later. Files are opened in the name of the person who was dispossessed, not the claimant.

Until a decision is taken on a claim, the present owner may not develop or sell the property and it must be kept in a similar condition. An exception can be made for developers, who can obtain a clearance certificate from the regional OPQ (LAROV).

Initial screening:

There is no uniform system of batching (grouping) claims. The way in which claims are batched depends on the priorities and size of the particular office. It is done in terms of a mixture of types of claims and geographical areas. The types of claims are based on the guidelines set by legislation, but they are adapted to suit the specific claims received in the county. The Berlin LAROV office groups claims according to *Nazi dispossessions*, *GDR dispossessions*, *foreign claims* and *investment cases*. Teams were set up to deal with each of these categories of claims.

In smaller county offices, such as Potsdam Stadt, teams were set up in terms of geographical areas: three main towns, a cluster of villages, and a special team dealing with Jewish claims.

Prioritisation of claims:

The highest priority is given to claims on properties in which investors are interested. In these cases investors take precedent over claimants, unless the claimant can provide an alternative investment plan to back their claim. The emphasis is on job creation and economic development.

The second category of claims which enjoy priority with regard to processing are those of Jewish claimants who were victims of Nazi expropriations. Old age is another criterion utilised with regard to prioritisation of claims. Simple cases, where all relevant documentation is available, also enjoy a certain priority. Claimants who can afford to often hire lawyers (who specialise in restitution work) to do the necessary preliminary research to speed up their claims. Lastly, if a claim does not fall into any of the above categories, the principle of *first in, first out* applies.

Claims processing:

Three main documents are required by the local OPQ (AROV) clerk or regional OPQ (LAROV) administrative officer to which the case is assigned:

- The *Erschein* (certificate of inheritance);
- The title deed of the expropriated/claimed property;
- The expropriation/state administration file.

The claimant is responsible for obtaining an *Erschein*, which is a certificate proving inheritance of assets from the original owner. This certificate must be obtained from the local probate court and no claim will be processed without it. The title deed will be obtained by the OPQ clerk or administrative officer. Title deeds are available from the county magistrate's court. The OPQ clerk or administrative officer must also obtain the relevant expropriation or state administration files from the archives.

The OPQ clerk uses two main mechanisms to decide on the validity of a claim. The first mechanism available is the guidelines set out by the Property Act. If a claim falls within one of the six classes of valid claims, it will qualify as a restitution claim. All Jewish sales of property to Arian buyers are automatically regarded as having been under duress and therefore they also fall within the ambit of the Property Act.

The final legal test lies in the four provisions for exclusion from restitution: If a claim is not excluded by these provisions, it will be considered to be a valid claim. The second mechanism available to the clerk is legal advice from senior colleagues at the *Advisory Board*, which was established by the Ministry. The board is made up almost exclusively of West German trained lawyers, with the body consisting of 200 members. The board provides legal advice to OPQ clerks in unclear or complicated cases.

If discrimination by the present owner in obtaining the property is not clear from the expropriation files, the onus is on the claimant to provide sufficient proof. Oral evidence in the form of an affidavit will be accepted, but often further investigation and evidence are required. Claimants would generally hire a lawyer to assist them in obtaining the necessary evidence.

Calculation of compensation:

Compensation due to a claimant is determined in terms of fixed guidelines set out in two acts governing the process (the *Entschadigungsgesetz* and the *Ausgleichsleistungsgesetz*). The amount will be determined by the clerk or administrative officer dealing with the claim. Payment is made through transferable debenture bonds, which are issued by a special body, the *Compensation Fund*.

Final Decision:

When the OPQ clerk or administrative officer is convinced that sufficient information is available, s/he will make a decision on the settlement of the claim. Either restitution, compensation or (in a limited number of cases) alternative land will be granted. The clerk or administrative officer's decision will be written in the form of an initial offer and it will be endorsed by his or her supervisor. This supervisor is usually a middle- or senior-level administrative officer with a legal background. The proposed decision is then sent to the claimant and other interested parties for consideration. This stage of the process is commonly

known as a "*Hearing*". It represents a final opportunity for interested parties to make submissions and objections. Only serious arguments in the form of new evidence will be entertained. If there are no submissions within one month, the decision becomes final.

If restoration is feasible, it will be offered to the claimant, who then has a limited period to decide whether they want restoration or financial compensation. Only a limited number of claimants opt for financial compensation if they are offered restoration. The reason for this is that it is possible to sell the property at market value, whereas financial compensation is considerably lower than market value. An interesting aspect of the process is that when making the decision between restoration or monetary compensation, claimants are not told the amount of the compensation to be offered. It would, however, be possible for them to work out the compensation to be received according to a compensation formula.

If restoration is granted, accepted and finalised (after the 30 day "hearing" period has lapsed), the property is registered jointly in the name of the direct descendants. They are referred to as a "group of successors" or the "undivided community of successors". The OPQ does not consider what happens to the land after return to its responsibility. Claimants have the responsibility to decide amongst themselves how the property will be used, divided or sold.

Dispute resolution:

If a claimant disagrees with the decision of the local OPQ (AROV), the he or she may appeal to the regional OPQ (LAROV). Here a committee scrutinises the case and makes a ruling, which is then communicated to interested parties. If a claimant is still not satisfied, s/he may approach the Administrative Court for assistance. The Administrative Court deals with any disputes between a citizen and the state and between state departments. Restitution thus only comprises a small percentage of their full workload. The Administrative Court judges will act almost like an ombudsman. They will personally investigate the particular case and do research, using the status of their office to access information which may

not have been made available previously. With regard to the facts of the case, the Administrative Court is the end of the line in terms of appeal. Approximately 90% of all claims end up in the Administrative Court. Legal Aid will be made available if a claimant can prove that s/he earns less than a specified amount. Such legal assistance is known as *Beraftungshilfe* and it is available for any court proceedings, including restitution cases.

If a claimant wishes to challenge the law governing the restitution process and the challenge is deemed to have an impact on a wide number of restitution cases, the case will be heard by the Supreme Court.

The Canadian process:

The process:

The British Columbia Treaty Commission is responsible for accepting First Nations into the treaty process. The Commission facilitates the six-stage treaty process as follows:

Stage 1: Statement of Intent

The Treaty Commission asks the First Nations to provide some basic information with their Statements of Intent, such as the proper name of the First Nation, how the First Nation governing body is represented, how many aboriginal people the First Nation represents, the name and number of a contact person and a description (map) of the traditional territory. Statements of Intent are made available for public release by the Treaty Commission after they have been accepted as complete by the Commission and the First Nation, Canada and British Columbia have agreed.

Stage 2: Preparation for Negotiations

Within 45 days of accepting a Statement of Intent, the Treaty Commission must convene an initial meeting of three parties. This meeting, usually in the traditional territory of the First Nation, allows for the Commission and the parties

to exchange information, consider the criteria that will determine the parties' readiness to negotiate and generally identify issues of concern. When the Treaty Commission determines that all three parties have met the criteria, it will confirm that the table is ready to begin the negotiation of a Framework agreement.

Stage 3: Negotiation of Framework Agreement

The Framework Agreement acts as a "table of contents" for the treaty process and for the substance of the Final Agreement. The purpose of this stage is to allow the parties the opportunity to identify the subjects to be negotiated, the goals of the negotiation process, procedural arrangements and time frames for negotiations. At this stage the parties are also expected to undertake public information programmes. First Nations have the responsibility of informing, educating and consulting with their constituents, while the federal and provincial governments engage in general public consultations at the regional and local levels.

Stage 4: Negotiation of agreement in principle

This stage of the process represents the beginning of the substantive negotiations. It is during this stage that the parties examine the details of the Framework Agreement and the goal is to reach agreement on major issues, which will form the basis of the Final Agreement. The Sechelt AIP identified and defined a range of rights and obligations in relation to existing and future interests in land, sea and resources, structures and authorities of government, regulatory practices such as environmental assessments, amending processes, dispute resolution and funding issues. The Agreement in Principle will also confirm the ratification process (finalisation) for each party and refer to the implementation plan.

Stage 5: Negotiation to finalise a treaty

The Final Agreement formalises the new relationship among the parties and usually confirms the agreements in the agreement in principle. In Canada a

treaty concluded between these three parties is a unique constitutional instrument. Once it is signed and implemented, the rights contained in the Final Agreement will be constitutionally protected under Section 35 of the Canadian Constitution.

Stage 6: Implementation of treaty

Long-term implementation plans must be tailored to the individual agreement but they should include provision for communication strategies, monitoring and dispute resolution. At this stage the treaty negotiation process is essentially complete. There are no First Nations in this stage, so predictions regarding its efficacy would be premature.

Specific elements of the process:

- *Screening claims*

One of the most important principles of the Treaty Commission process is the presumption that claims based upon the established doctrine of aboriginal title are valid and deserve protection. In addition, the process relies on the doctrine of mutual recognition, whereby each party recognises the validity of each party's interests. In its five years of operation the Treaty Commission has rejected very few claims. However, they have requested more information in cases where the authority of the claimants is questionable or not clear in their original Statement of Intent.

- *Prioritisation of claims*

Claims are prioritised chronologically as the claim is accepted for negotiation by the treaty Commission. Moving from stage to stage is dependent upon progress at the individual treaty tables.

- *Research and investigation*

It is the responsibility of each principal to undertake their own research. Informal investigation into the authority of claimants and their constituency is undertaken by the Treaty Commission.

- *Engagement of claimants*

Claimants, as represented by their treaty negotiators, participate from the beginning to the end. There are various methods by which non-aboriginal organisations and individuals can be involved in the process. For example, Canada and British Columbia engage in public consultations at the regional and local levels through Regional Advisory Committees and Local Advisory Committees. Municipal governments participate through Treaty Advisory Committees. At the provincial level a Treaty Negotiation Advisory Committee also represents the interests of business, labour, environmental, recreation, fish and wildlife groups.

- *Dispute resolution*

All aspects of the negotiation and the provisions contained in the Final Agreement are the direct result of progress and discussion at the individual treaty tables. All three principals must agree on the final text before the AIP and Final Agreement are considered to be finalised.

- *Finalisation of claims*

Ideally, all agreements will contain an implementation plan. The Sechelt AIP provides for a basic plan for implementing the Final Agreement. The Final Agreement refers to specific steps such as agreement on time frames, obligations and activities required, communications strategy, monitoring plan and annual reporting mechanisms. It is indicated that the Implementation Plan will be appended to, but will not form part of, the Final Agreement.

In addition to the Implementation Plan, the Sechelt AIP also contains provisions for a simple ratification process of the AIP (and the Final Agreement). The Sechelt will approve the agreement pursuant to the provisions of the **Sechelt Indian Band Self-Government Act 1985**. This is followed by ratification by the legislative bodies of the federal and provincial governments. At this point the Treaty (Final Agreement) is considered final and binding.

5. Conclusion

Although the restitution process is relatively new in South Africa, there are a lot of similarities between the local processes and the various international processes: For example, in communist countries and South Africa the majority of the land claims are for urban land, although our processes have lately shifted towards the settlement of rural claims and sustainability. Both the above-mentioned countries have vacant state land available that can be utilised to compensate victims. In South Africa there is a moratorium on all vacant state land, that is, no vacant state land can be sold if there is a land claim against that property and there is a possibility that the claimants might opt for restoration.

Although there are similarities between the local processes and the international processes, there are also some differences in the procedures. The Asian and Middle Eastern reforms focus only on agricultural reforms, while the South African process focuses on restoring land rights. South America uses restitution to rewrite their colonial past, while the local process excludes the issue of our colonial past from restitution by only addressing dispossessions after 19 June 1913. It is evident that the local process can gain a lot from the international experiences to fast track our process. It is a reality that a lot of our elderly people are passing away without benefiting from the restitution process. The following chapter focus on a case-study based on the historical brutality of forced removals in Paarl. The Chapter includes a detailed discussion of life prior to dispossessions in Paarl as well as the Paarl restitution process.

Chapter 3

Explanation of the case-study: Paarl residents

1. Introduction

This chapter will provide a discussion on the Paarl claims, the forced removals, all legislation that was used to dispossess the Paarl community and the status on the claims as well as how many claims has been settled to date through the monetary option.

2. Background

Nkwenkwezi (2000: 6) indicated that before dispossession, the cottages in Paarl in which people lived were brick structures, some had electricity, others not. In most cases the toilets were outside, two families sharing one toilet and they used a bucket system. The water tap was communal, which served all the cottage blocks. Each cottage house was a two-roomed house with one bedroom and one room used as a kitchen and dining room. In some areas they used to help the farmers to slaughter the bulls in the nearby abattoirs and then they got meat free. They commented that there was no hunger, unlike now. They were central or close to their workplaces, town or shopping centres, schools, clinics, doctors, churches, community halls, recreation centres and so on. There was no need for transport for those who were young and energetic, only those who were aged (elderly people) and sick or had poor health used transport.

3. Forced removals in the Paarl area

Nkwenkwezi (2000: 6) stated that in most areas in particular those of a formal nature (brick cottages) were occupied by both African and "Coloured" people. They were mixed and shared facilities and resources. The cottages were named

after their owners, for example, De Villiers cottages, Berman cottages, Rabies cottages and Langvlei Estate. "Coloureds" and Africans were living there as tenants paying rent to the owners. They were living under informal (verbal) contract/lease agreements. The lease was not renewable, but they continued living there as long they paid rent on a monthly basis. There was no division or discrimination amongst them. According to the ex-residents, they lived in harmony (a feeling of brotherhood and sisterhood) and life was pleasant and enjoyable. As one of the claimants put it:

... "We were living in peace, love, harmony and happiness with the Whites and "Coloureds", visiting each other or sometimes inviting each other to our social parties. We lived Unbuntu, a sense of sharing resources, facilities and other things (humanness). During our childhood we played together with their children. There was no discrimination. ... "Only Pass Laws made life sour. The apartheid laws destroyed the bond of love and friendship created (amongst us) over those years. It was not costing us to live there unlike now, where we incurred a lot of transportation costs, because our areas were central and close to schools, doctors, clinics, town, workplaces and all other amenities."

Extracted from the Research Report done by Nkwenkwezi, 2000.

In 1960 there was the Poqo uprising against the notorious Pass Laws. After the Anti-Pass Laws Campaign the harassment increased significantly. People who were associated with Poqo were harassed and arrested by the police. Some died in the police jails, e.g. the Mpeluza family in Worcester, others are still missing (Nofemela family). Others escaped arrest and hid in surrounding areas. This posed a threat to the apartheid system and prompted the total removal of all areas where the African people lived. Some were transported by municipal trucks (those who were "fortunate") and dumped in front of a house with few belongings, others organised their own transport to load their belongings, according to one of the claimants.

The research report of Nkwenkwezi (2002:3), states that before the state's social engineered programme of forced removals commenced, the "Coloured" people were living together with the African people as tenants in the various parts of Paarl (e.g. Agterstasie, Back's Cottages, De Villiers Cottages and Jubilee). After Section 20 of the **Group Areas Act, 1957 (Act 77 of 1957)** was implemented; Paarl was demarcated into five areas, namely Paarl North, South, East, West and Central Paarl. The Berg River was used as a dividing boundary for the areas occupied by various racial groups living in Paarl. The Paarl Central, North, South and West of the Berg River were reserved for the White group. In other words, they were proclaimed as White group areas. The Paarl East of the Berg River was proclaimed as a "Coloured" group area, whilst the Africans were forcibly removed to an emergency transit camp called Langabuya and later some were deported to the (former) "homelands" and others to Mbekweni in Paarl

Nkwenkwezi (2001: 2) was of the opinion that the Paarl community members who were removed due to racially discriminatory laws lodged their claims between 1995 and December 1998 in compliance with Section 2 (1) and Section 11 (1) of the **Restitution of Land Rights Act 1994, (Act 22 of 1994) as amended**, and Section 25 (3) of the **Constitution of the Republic of South Africa Act, 1996 (Act 108 of 1996)**. The Paarl claims have been categorised by the office of the Regional Land Claims Commissioner: Western Cape (Land Claims Commission) as follows:

- "Individual and group ownership claims;
- Coloured tenancy claims;
- African tenancy claims;
- Group and religious institutions claims; and
- Farms and smallholdings claims."

Nkwenkwezi (2001: 3) indicated that, because of race and the demarcation that took place in Paarl the "African" and "Coloured" communities were removed under different proclamations issued in terms of the **Group Areas Act, 1957 (Act**

77 of 1957). Like the African people, hundreds of “Coloured” families were moved out of Paarl North and West to Paarl East, across the Berg River to make way for Whites. Some of the “Coloured” families were relocated to sub-economic houses, whilst others are still leasing municipal houses in Paarl East. The Paarl claimants thereby lost unregistered tenancy rights, including the rights to use and occupy the land.

Nkwenkwezi (2001: 1) indicated that there were various proclamations used to effect removals emanating from Section 20 of the **Group Areas Act, 1957 (Act No. 77 of 1957)**. In some cases, the Local Authorities were using health inspectors’ reports as a pretext to describe areas as unhealthy and not suitable for human habitation. The “Coloured” families from Paarl North and West were compelled to sell their properties to the members of the White group or to the Group Areas Community Development Board when these areas were proclaimed in terms of **Proclamations 36 of 1961, 204 of 1962 and 158 of 1972**, served in terms of Section 20 of the **Group Areas Act, 1957 (Act No. 77 of 1957)**.

Nkwenkwezi (2001: 4), stated that except for the “Coloured” owners who were compelled to sell their properties, there was also a group of 154 “Coloured” owners who formed the *Die Hervormed Weldadig Genootskap* in 1882, who lost their 14 properties when Paarl West was declared a White Group Area by the application of the **Group Areas Act, 1957 (Act No. 77 of 1957)**. The association disbanded in 1982, but reconstituted itself in 1997 to reclaim their dispossessed properties. The claimants applied for financial compensation for 11 of the 14 properties that they lost and full restoration of the other 3 erven.

Nkwenkwezi (2001: 3) indicates that the African people were living as tenants, because they were denied the right to own property in the Western Cape. This was as a result of apartheid laws that applied only to Africans particularly in the Western Cape. African people were forcibly removed from the various parts of Paarl to an emergency transit camp called Langabuya, which was established in

1951 for families that were removed from various squatter camps all over Paarl; others were later deported to the so-called “homelands” and others to Mbekweni in Paarl. In 1952 squatter camps were demolished, whereby 2000 Africans were removed to Mbekweni and Langabuya. African people suffered multiple forced removals, for example, some were forcibly removed more than once (from various squatter camps to Langabuya and from Langavuya to Mbekweni) and others were deported to the so-called “homelands”.

The Land Claims Commission (Department of Land Affairs) acknowledged that it could not restore precisely what was lost and considered a *reparation*³ amount to be offered to African claimants over and above the restitution settlement award of R17 500.00. To the elderly and aged claimants, a flat rate of *reparation* amount (for example R5 000) for hardship suffered was paid in cash considering that, even if they chose development, it would not be completed in their lifetime, over and above the financial compensation. Over and above the restitution settlement award, the concept of *reparation* is a form of acknowledging the hardship, pain and suffering experienced by people who were removed in terms of racial discriminatory laws and practices.

4. Current status of the Paarl claims

According to the Commission’s Annual Report (April 2001- March 2002), there have been 996 claims settled to date. This amount includes the beneficiaries as well as the primary claimants. It also includes all settled owner and tenant claims. The Commission is in the process of drafting submissions for ministerial approval to settle the Paarl “Coloured” tenants and the church claims.

³ According to the *Oxford Advanced Learner’s Dictionary*, the word “reparation” is defined as the action of compensating for wrong or damage done.

5. Conclusion

It is evident that all Paarl residents were living peacefully irrespective of their race. The African residents of Paarl suffered more than the "Coloured" owners and tenant due to racially discriminatory laws and practices. The African tenants were victims of multiple removals, while the "Coloured" tenants and owners were only removed once. They could live as tenants, because they were denied the right to own property, irrespective whether they could afford it or not. Although restitution will never be able to give back what they lost, it is just appropriate and understandable that the Regional Land Claims Commission motivated an extra reparation award, in addition to the restitution award, for the African tenants.

The following chapter will focus on forced removals in South Africa as well as a historically overview of removals in the Western Cape. It also focuses on the legislation that was used to remove people.

Chapter 4

Forced removals

1. Introduction

Land rights in South Africa have been a sensitive issue for many decades. Dispossession of the original inhabitants started with colonial occupation and continued into the second half of the twentieth century. The land on which black people, approximately 80 percent of the population, were allowed for permanent habitation has been gradually reduced to merely 13 percent of the country's territory. South African land laws were used during the apartheid era to entrench the political ideal of racial segregation. The policy of spatial race segregation became institutionalised under the National Party rule from 1948 onwards. Blacks were condemned to a life of poverty in the so-called homelands that were geographically and politically peripheral to the sources of wealth and power in the state. Van der Walt (1990: 2) has described the aims of apartheid as follows:

- "To define and physically separate various race groups;
- To provide a legal framework for administrative and political control over black population movements and concomitant land rights;
- To create and control a black unskilled labour market;
- To ensure through spatial-political separation that universal suffrage does not result in black majority rule."

Land laws were the most important instruments, which enforced apartheid policies. This will be discussed in this chapter.

2. History of forced removals in Cape Town

S Field (2001: 15), states that:

“ When European settlers arrived, the Cape was peopled by groups of herders known as the Khoi. The Khoi did not want to give up their independent way of life to work for the settlers, and the Dutch East India Company forbade its officials to enslave the local people. The Cape began importing slaves, who soon outnumbered the settlers.”

From 1650-1830 it was the slaves who did most of the work at the Cape and were kept all over the city, in the towns and on the farms of the Boland and in the outlying areas. Some freed slaves, both men and women, became prominent in the life of the Cape. The economy depended on slave labour. There is a common belief that the slaves all came from the East Indies, but research shows that slaves came from all around the Indian Ocean area. Most of those who came to the Cape were from East Africa, Madagascar and the Indian subcontinent or the East Indies, and a small number came from Angola and West Africa. Thousands of their descendants were born into slavery at the Cape.

In 1807 the British banned the slave trade, so no more slaves could be imported to the Cape. In 1834 slavery was abolished and slaves were freed, but they had to work for their old owners as so-called apprentices until 1838. All men (but no women) had the right to vote in local and central government elections – but only if they earned a certain wage or owned property. In Cape Town society in the middle of the 1800s an individual's status depended more on wealth and gender than on race.

Field (2001:16) states that from 1830 large numbers of Xhosa-speaking people lived in Cape Town. Some settled permanently, while others remained migrant workers. The first to settle and find work in Cape Town were hundreds of Mfengu from the Eastern Cape, some with wives and families. People were also

forced to come to Cape Town from the Eastern Cape after the cattle killing of 1857. The 1865 census recorded about 700 'Kafirs' in Papendorp (present-day Woodstock) and Cape Town, apart from prisoners on Robben Island. By 1900 there were about 1500 dockworkers in the harbour barracks and about 8000 'Natives' living elsewhere in the city, mostly in District Six. The Cape Town City Council employed Africans as street cleaners, at the Strand Street quarry and at the reservoirs on the mountain. Others worked as labourers for builders, coal merchants, the brickfields or the tramways, or as office messengers and cleaners.

According to Field (2001: 16) in the 1880s and 1890s many powerful whites came to believe that segregation was a good idea. They were influenced by false theories about inferior and superior races. There were some whites who spoke out against racism, but by 1901 it was urged that, as in the southern United States, blacks – coloureds as well as Africans – in Cape Town should be barred from trams, cabs and even sidewalks. At the time some black (coloured and African) men had the right to vote in elections for local government and for the Cape Parliament. To keep them in the minority, powerful whites made it harder for blacks to qualify as voters. De Klerk (1991: 101/102) states that the separation of the races could not have been achieved without the massive forced removals that became a true story of apartheid. The creation of the reserves and the establishment of ethnically pure bantustans resulted in millions of Africans having to resettle into ethnic enclaves. The displacement of populations through forced removals has been one of the best planned violations of human rights by the state.

According to Field (2001: 16), it became official policy to separate whites and blacks in government institutions like hospitals, jails and schools. Many privately owned facilities like theatres and bars, as well as sports teams, also became segregated. But it was more difficult to segregate residential areas. Since the 1840s most of Cape Town's lower-class areas had been racially mixed. Whites,

coloureds and Africans were neighbours in, for example, Kanaladorp, later known as District Six. It was far too expensive to build segregated areas. In 1891 the Editor of the *Cape Argus* commented that in Cape Town it was 'now too late to separate the white and coloured population as should have been done from the first'. Africans were an easier target than coloureds for residential segregation. By 1900 they made up about 10 000 of Cape Town's total population of about 160 000 and there was talk of a 'Kafir invasion'. The Prime Minister of the Cape Colony, W.P. Schreiner, believed that Africans did not really belong in Cape Town, although the city needed their labour.

Field (2001: 18) was of the opinion that the excuse for the first forced removal was the deadly bubonic plague, which hit Cape Town in 1901 during the Anglo-Boer War. African dockworkers who unloaded the hay were among the plague's first victims and as a result the health authorities blamed Africans for spreading the disease. Cape government officials used the **Public Health Amendment Act of 1897** to force Africans into locations. Most were forced into two locations, i.e. a barracks at the docks and another at Uitvlugt forest station (soon renamed Ndabeni) near modern-day Pinelands. The new locations were not healthy places to live. Some people refused to move from their homes in the city and were forced out, losing their property, while others merged into the coloured population. African Capetonians were already using the struggle tactics that became famous much later. There was resistance to carrying 'plague passes'. There were strikes and stay-aways, mass meetings on the Grand Parade and on the slopes of the mountain, and a protest march of a thousand men. The forced removals went ahead, but the residents won a few concessions. For instance, the ban on leaving the location on foot was lifted. Health regulations gave the authorities emergency powers for three months. When this time elapsed, the residents protested that they were being held in Ndabeni unlawfully and staged a stay-away from work. There were court appeals and petitions and delegations to the Cape authorities and later also to the British government.

Residents appeared in court justified the rent and fare boycott on the grounds that they were being kept prisoner in the location. Their defence lawyer argued that they were being kept in huts unfit for the accommodation of pigs. But they were found guilty and fined. Twenty-five years later there was a second forced removal. Ndabeni location was taken over from the government by the Cape Town municipality. As the city grew, the authorities wanted Ndabeni as an industrial site next to Ndabeni Station. Despite protests, the location was demolished and residents were moved to Langa, three miles further from the city centre and beyond the white suburbs. The people of Ndabeni lost their homes, their schools and their churches and had to start again in Langa. "The place of talk" had become the place of silence'.

De Klerk (1991:101) is of the opinion that forced removals have been justified by the state as the building of nations, the improvement of the people (Minister Piet Koornhof, quoted in *The Star*, 5 April 1982) but this process cannot be viewed as development-orientated. The following major forms of population removal are all apartheid measures:

- The clearance of the so-called "black spots";
- Homelands consolidation;
- The abolition of labour tenancy;
- Relocations of urban townships;
- Influx control and associated legislation; and
- Betterment schemes.

Filed (2001: 21) states that before 1948 only Africans were forced by law to live in segregated areas, but separate white and coloured areas were also developing. For a long time richer whites had been buying houses on big plots in suburbs like Kenilworth, Claremont and Rondebosch, which were too expensive for most coloured people. The result was residential segregation, even if it was not planned that way. Most coloureds in the suburbs were staying on smaller properties in coloured pockets set apart from whites. Tramway Road in Sea

Point or Harfield Village in Claremont are examples. These coloured pockets provided labour for the surrounding white areas. By 1900 some richer white areas like Milnerton, Oranjezicht and parts of Camps Bay had clauses in all title deeds to keep out coloureds and Africans.

Field (2001: 21) mentions that there were a number of factors in favour of segregated areas. Free compulsory education for poor whites made it possible for more people to move into whites-only areas. So did municipal housing schemes. In the 1920s and 1930s the Cape Town City Council built low-cost housing for the poor of all races. The Council was careful to keep coloured housing at a distance from white areas. Maitland Garden Village, Bokmakierie, Silverton and Kew Town were for coloureds only. Brooklyn and Epping Garden Village were for whites. **The Slums Act of 1934** gave municipalities the power to redevelop any area they considered a slum. The Cape Town City Council demolished many 'slum' buildings in District Six and built a thousand new homes for coloureds only. For example, residents of Well's Square in the heart of District Six were moved to the newly built Bloemhof-Canterbury flats below De Waal Drive. In 1938 and 1939 the Cape Provincial Government and Parliament both tried to pass laws to enforce coloured residential segregation. They failed, mainly because of massive protests led by Cissie Gool and other members of the National Liberation League.

Field (2001: 22) also mentioned that flats were built for coloured fishermen in Kalk Bay and semi-detached cottages were built in Hout Bay. Coloureds who could afford to buy in these areas were kept out by whites-only title deeds, so they moved into houses in areas like Athlone or Crawford. The poor moved into shacks in areas like Windermere or squatter camps between Bellville and Retreat. This meant that many areas of Cape Town were segregated before 1948. There were still a few mixed residential areas with white and coloured residents. These were mainly in the old inner-city areas of Mowbray, Salt River and Woodstock. There were also mixed communities where Africans and

Indians lived amongst the mainly coloured residents, in areas like District Six, Tramway Road or lower Claremont. Both coloureds and Africans lived in shack areas like Windermere and the Blouville settlement in Retreat.

3. Forced removals through expropriations

Field (2001: 23) indicated that the **Group Areas Act of 1950** aimed to stop mixed residential areas in South African cities. From 1951 the government took control of all property transfers and changes of occupancy that went across racial lines. By law owners were not allowed to sell or rent property to people of the 'wrong' racial groups. The system was administered by the Land Tenure Advisory Board (LTAB), later renamed the Group Areas Board. Some municipalities such as Bellville, Goodwood and Parow were controlled by the National Party. They helped the Board by drawing up plans for separate racial zoning in their areas. The Municipality of Cape Town refused to co-operate, but that did not stop the Board from deciding on racial zones for Cape Town. The Board proposed that railway lines should be used to separate white areas from coloured and black African areas. The plan was to move all blacks south of the Bellville line and east of the Simon's Town line. Even more blacks were to be removed from the area between the Simon's Town and Cape Flats lines. The only exceptions were domestic servants, who were needed in white homes.

Field (2001: 23) mentioned that these proposals were discussed at public hearings in 1956. Radical individuals and organisations boycotted the proceedings. The Board made only a few concessions, such as zoning lower Wynberg for coloureds, and went ahead with its plans. The first areas to be proclaimed in 1957/8 were those in the northern suburbs and those with fewest 'disqualified people', like Parow and Bellville. Black residents of Tramway Road were told they were living in a white group area; Windermere Africans in a coloured one. Later District Six and the coloured 'pockets' of Claremont were

declared white. If you were the wrong race, you were given a specific number of years in which to move. A resident of Black River, Rondebosch, said: ‘ This is my home – and if they want to get me and my family out of it they will have to bring their tanks and Sten guns’. In the end little force was needed to remove people from most areas.

The time of eviction varied from area to area. There were delays because people could only be forced to move if alternative accommodation was available. However, there was a shortage. By 1962 the Group Areas Board had only built about three hundred houses on the Cape Flats, so it looked as though the delays might continue. But by the end of 1959 the Cape Town City Council decided to make Council housing available to people who had been removed under the Group Areas Act. In fact, Group Areas legislation ‘compelled all local councils to set aside at least 40 per cent of all newly constructed homes for removed persons’.

According to Field (2001: 24), the National Party had followed its dream of a Western Cape without any Africans. The new Minister of Native Affairs, Dr E.G. Jansen, said in 1948: “Whatever claim, morally or otherwise, the Natives have in other parts of the Union, they have no real claim to be here in the Western Province at all. It is within the memory of many people today that there was a time that a Native was unknown in the Peninsula.” Field (2001: 24) mentioned that the National Party passed two new laws and changed an old law:

- “Firstly, in 1952 the Prevention of Illegal Squatting Act was applied to greater Cape Town. This Act forced local authorities (municipalities) to set up ‘emergency camps’, where shack dwellers could be ‘concentrated and controlled’. The Act also allowed local authorities to demolish ‘illegal’ shacks even if there was no alternative accommodation. The northern municipalities of Parow and Bellville began to remove African families. They were supposed to move to an extension of Nyanga, a new location. But the Cape Town City Council did not want to act against shack

dwellers. There was conflict about whether local or central government would pay for the new housing. The central government ordered the Council to build more housing for male migrant labourers at Langa – but no more family housing. More family housing for Africans was built in the early 1960s in Nyanga West, later renamed Guguletu.

- Secondly, in 1952 the **Natives (Urban Areas) Act of 1923** was amended in an attempt to prevent Africans from coming to the cities. Under Section 10 of this Act Africans were allowed only three days to look for work and for the first time African women had to get work permits in Cape Town. However, the government had to make a few concessions because employers wanted a more stable workforce and, in any case, this policy was too expensive to enforce. African men were given the right to live permanently in the city, but only if they could prove that they had lived in the city continuously since birth or for at least fifteen years, or if they had worked for one employer without a break for ten years. Wives and children of those who benefited from this law also had the right to live in the city.
- Thirdly, the so-called 'Natives (Abolition of Passes and Co-ordination of Documents) Act' was also passed in 1952. Every African man over the age of 16 had to carry a reference book with a photograph. Passes, work-seekers' permits and work contracts all had to go into this 'domboek' or 'dompas'. As these names show, the reference book was hated and despised. There were more and more pass raids against 'illegals'. For instance, on 1 December 1953 about eight hundred police took part in a massive raid on Windermere, where they arrested two hundred residents. To back up police, location inspectors were granted powers of search and arrest in 1958."

At the same time there were more and more shack clearances from Hout Bay to Elsie's River. 'Bachelors' – many of them married men with families – were ordered into single quarters in the locations and more than seventy new barracks were built at Langa. At Nyanga West all the houses built were designed so that they could be converted into single quarters. Africans were not allowed to buy houses, but could only take a thirty-year lease. Many were 'endorsed' out of Cape Town altogether: this happened to more than 18 000 men and almost 6000 women between 1954 and 1962 alone.

According to Field (2001: 26), while all this was happening in Cape Town, conditions in the Eastern Cape reserves were getting worse. The situation reached a crisis in 1960. A mass protest against the pass laws, organised by the Pan-Africanist Congress (PAC), was to begin on 21 March. In the morning people tried to march to Langa police station, but the march was called off for fear of violence. An evening meeting was held to report back on the events of the day, a day which had seen 69 protesters killed by police at Sharpeville in Transvaal (now Gauteng). Police dispersed the crowd at the Langa meeting, killing two more people. After a week-long stay-away, the government declared a state of emergency on 30 March. There were mass arrests and the PAC and ANC were banned. Opposition seemed to have been crushed.

Field (2001: 26) mentioned that more attempts followed to remove Africans from the Western Cape. Government control of Africans, now known as Bantu Administration, was tightened. From 1965 African workers had to return to their 'homeland' at the end of each contract period, and reapply for the job from there. This was to interrupt continuous employment or continuous residence to make sure that no more Africans acquired Section 10 rights to permanent residence. After 1966 the government built no more housing for Africans in Cape Town. By the late 1960s people who were 'endorsed' out of Cape Town were being sent to 'resettlement camps' in the Eastern Cape, and the Bantu Affairs Department could remove Section 10 rights, if a person was deemed 'idle' or 'undesirable'.

All these measures were intended to remove Africans from Cape Town, but people were desperate to come to the city, even at the risk of arrest. The official figures show that the African population rose from about 70 000 in 1960 to around 250 000 by 1974 – and the real figures were probably higher. New squatter areas grew, mainly near the airport. The Illegal Squatting Act of 1977 allowed Bantu Affairs officials to demolish shacks without a court order. The squatter areas of Unibel and Modderdam were demolished. Crossroads was also in danger of being demolished in 1977, but was saved for a time by strong community organisation and a Cape Supreme Court order against demolition. International protests put pressure on the government. Later government-backed vigilantes unleashed civil strife in Crossroads; many homes were burnt down and many people fled the area.

Field (2001: 26), more shack settlements went up at Khayelitsha, Nyanga Bush, Portland Cement and elsewhere, as people moved out of the overcrowded townships and more people came to Cape Town from the Eastern Cape. In 1983 Piet Koornhof, Minister of Co-operation and Development, announced the government's new plan. All Africans who had the right to stay in the Cape Peninsula would be moved to a new township, Khayelitsha, between the N2 motorway and False Bay. 'illegals' would be sent back to their 'homelands'.

Influx control was abandoned in 1986 and the Group Areas Act repealed in 1991. In 1994 the ANC-led democratic government set up a land claims process for people who had lost their homes or land through forced removals under apartheid.

4. Implementation of Land Law Acts of Forced Removals.

The Land Acts of 1913 and 1936:

The Black Land Act, 1913 (Act 27 of 1913) initiated racial segregation in the rural areas by identifying traditionally black land and reserving it for exclusive use and occupation by black groups. On the other hand, the remaining land was reserved for whites only. After the **Development and Trust Land Act, 1936 (Act 8 of 1936)** had been passed, the “reserved” land identified by the **Black Land Act, 1913 (Act 27 of 1913)** was developed further with the addition of the so-called “released” land. All the land which was reserved in these two statutes could be held either according to customary law or in terms of special land tenure, which rarely amounted to full ownership. Usually the state owned the land, effectively holding it in trust for the tribal communities actually living on the land. One of the aspects of this land policy was the consolidation process, which aimed at moving black ethnic groups into coherent areas, the so-called bantustans. In order to achieve political independence, the ideal of these entities, state purchases and expropriations⁴ of private “white” land took place before it was incorporated into the surrounding areas for “blacks”. The same laws were applied to justify expropriations of the so-called “black spots”, i.e. black property inside “white” areas. Black people were confined to a limited proportion of the land, which was not enough to live off. Large-scale poverty, overcrowding, overgrazing and lack of social service and facilities led to a social and ecological disaster.

Prevention of illegal squatting:

The prevention of Illegal Squatting Act, which was promulgated in 1951, has been described as the most draconian of all apartheid land laws. According to O'Regan (1990: 162/167) this Act consisted of two types of removals, namely:

⁴ Law/ government taking away property from its owner for public use without payment.

- **Criminal provisions:** S11 of the prevention of Illegal Squatting Act, provides that under the authority of any law, or in the course of his duty as an employee of the government or of any local authority, no person shall enter upon or into without lawful reason, or remain on or in any land or building without the permission of the owner or the lawful occupier of such land or building whether such land is enclosed or not.
- **Administrative procedures:** S5 of the prevention of Illegal Squatting Act, gave a magistrate administrative powers to make orders to remove persons from land and to demolish any structures in circumstances where the magistrate is satisfied that the 'the health and safety of the public generally' would be endangered if such a removal did not take place.

Although the act appeared as a race-neutral statute, it served the purpose of furthering the object of racial zoning. It provided for extremely harsh measures by both private landowners and public authorities against so-called illegal squatting. According to this Act all buildings and structures erected without the consent of the landowner or in contravention of planning and building regulations could be demolished and removed. In fact, this law hit only black occupants of informal settlements. Due to the definition of illegal squatting in the Act, it was possible for local and housing authorities as well as for private owners to move people from one area to another at will. The temporary shelters, which they were assigned to, were often not properly planned and approved by the building authorities. Consequently, those people remained illegal squatters and could be moved again, whenever it was deemed necessary or expedient to do so. Other land laws enforcing apartheid policies have subsequently followed the Prevention of Illegal Squatting Act.

Group Areas legislation:

Kaufman (1999: 4) mentioned that those areas which had been 'reserved' for "Whites" were divided into group areas for residential purposes on an all-embracing, countrywide scale by various Group Areas Acts. The last **Group Areas Act, 1966 (Act 36 of 1966)** followed the pattern established by the original **Group Areas Act, 1950 (Act 41 of 1950)** which designated segregated residential areas for each race group, "Whites", "Blacks", and "Coloureds". The latter group was divided into subgroups: Indians, Chinese and Malays and a 'residual' coloured group. Only people belonging to a certain racial group were allowed to own, occupy and use land in a certain area. Since everybody had been classified as a member of one of the groups mentioned, it was practically impossible to acquire ownership of land in an area other than one designated for one's race group. In addition, the occupation and use of land in contravention of the law was criminalised. The enforcement of the Group Areas Act led to countless forcible removals and dispossessions. After an area had been proclaimed for the exclusive residential use of a specific race group, people who did not qualify for this land had to move away and sell their property, or it was expropriated. Sophiatown in Johannesburg and District Six in Cape Town are examples of places where the Group Areas Acts led to hundreds of thousands of people being moved from mostly good houses in well-established neighbourhoods to small, badly planned townships on open farmland outside town in order to redevelop the areas in question for white occupation.

Further examples of laws promoting racially discriminatory land policies are **the Black Administration Act, 1925 (Act 38 of 1925), the Asiatic Land Tenure Act of 1946, the Rural Coloured Areas Act of 1963 and the Expropriation Act, (Act 63 of 1975).**

5. Forced removals in different areas within South Africa

District six removals:

The District Six community consisted of 60 000 families; they were removed in 1966 under the **Group Areas Act, 1966 (Act 43 of 1966)**. District Six was named as the sixth municipal district of Cape Town. It was originally established as a vibrant multicultural community that consisted of labourers, traders, shop owners and immigrants. The community had close links to the city and port. The first persons to be “resettled” were Black Africans forcibly displaced from the District in 1901. As more prosperous people moved away to the suburbs, the area became a neglected ward of Cape Town Municipality. District Six was declared a “white area” under the Groups Areas Acts of 1950 and 1982. These families are now scattered all over the Cape Flats, Langa and Gugulethu. (www.district6.co.za).

The Department of Land Affairs Information Bulletin, dated 14 April 2001 indicates that the District Six Land Claims Unit was established on 15 April 1998 to process the land claims for the District Six area. The unit disbanded on 14 April 2000, owing to a lack of funds. The work of the Unit was then incorporated into the current establishment of the Regional Land Claims Commission of the Western Cape. To date the Commission has received 2646 claims from the District Six area. The Commission has outsourced the research of the tenant claims to Prof. Leggasick and his team of students from the Department of History at the University of the Western Cape. At the same time research had been conducted on the claims submitted by the owners. A valuer has been appointed to determine the market value of all the properties within District Six at the time of the forced removals.

The Department of Land Affairs stated in its news bulletin, dated 2000/2001, that on the 26 November 2000 President Thabo Mbeki handed the certificate

confirming ownership (settlement certificate) to the chairperson of the District Six Beneficiary Trust, Mr Anwah Nagia. A land claim agreement was concluded between the Department of Land Affairs, the District Six Beneficiary Trust and the City of Cape Town (these signatories form the Steering Committee). These three parties have agreed to declare themselves willing to work together in order to fulfil their obligations in terms of the **Constitution (Act 108 of 1996)** and the **Restitution Act (Act 22 of 1994) as amended**, to implement a process of restitution of land rights, redevelopment or equitable redress, to people who lived in District Six.

Arising from the S42D Framework Agreement signed, the 1698 land claims received from tenants who lived in District Six prior to the start of the forced removals in 1966, in terms of **the Group Areas Act, 1966 (Act 43 of 1966)**, will be compensated in the following manner as per choice:

Table 2: Compensation per option

Number of tenant claims received	1698
1. Monetary offer by state to each tenant claimant	R17 500.00
% of tenant claimants opting for monetary compensation (R17 500.00)	50% of 1 698 = 849
Projected monetary compensation(849 ex-tenants X R17 500.00)	R14 857 500.00
2. The State's projected award for redeveloping District 6 (R9 060.00 re-establishment grant X 849 ex-tenants returning + R14 857 500.00 monetary award) + miscellaneous costs	R22 576 000.00
The State's settlement planning grant for redevelopment (R1 440.00X 849 ex-tenants returning), plus miscellaneous costs	R1 224 000.00
TOTAL (plus miscellaneous costs)	R39 899 000.00

The 849 ex-tenants who are returning to District Six will be able to apply for the provincial housing development subsidy, which is available from the City of Cape Town. The ex-tenants signed their Claimant Agreement during May and October 2001 and the last batch of claimants signed their Claimant Agreements in February 2002. The land claims received from the 614 property owners in District Six are in the process of being finalised and will be settled by means of a separate agreement between the State, ex-owners and other relevant parties involved.

(Newspaper articles and press clippings compiled by F. Zottl, 1996- 2000).

Protea Village removals:

Protea Village was initially the dwelling-area of former slaves of the Protea Estate; its origin pre-dates 1835. In the 1940s it consisted of 11,5 acres of land (28.4 hectares). The Protea Village Community in the Western Cape Province has submitted 132 claims.

The Protea Village research report (April 2001) states that in 1957 the entire area surrounding Table Mountain was proclaimed a White Group Area. The bulk of Protea Village fell within this area. A subsequent proclamation in 1961 affected the Protea Village area more specifically. The members of the Protea Village community, who were classified as so-called "coloured" under apartheid, therefore became targets for removal from the area. The forced removal of the Protea Village community took place in a series of identifiable waves over around a decade, rather than all at once. The timing of some of the specific waves of removals appears to have been determined by the construction and availability of sub-economic accommodation in different parts of the Cape Flats to which members of the Protea Village were removed.

The community lodged its claim on 8 April 1997. The main legal instrument for the removal and dispersion of the Protea Village community was effected by

means of the Group Areas Act and of later proclamations, issued in terms of it, which made Protea Village into a so-called White Group Area. A report by the Land Claims Commission showed that removal of the community, the motives of which were in fact racial although they were contemplated in terms of the ostensibly non-racial Slums Act, had already been planned for some time. These plans were not put into effect, presumably because the Group Areas Act proved to be a more convenient instrument of racial dispossession.

According to the Research Report, the bulk of the Protea Village community lived in the Stegman Cottages, which were located on Erf 242, Bishopscourt. According to the erf register, erf 242 Bishopscourt initially belonged to Wentworth Estate (LTD). The erf was then expropriated by the Provincial Administration and transferred to the Educational Trustees for the purposes of building a White primary school. The educational trustees were disbanded in 1987. On 27 April 1994 there was still no intention to use the erf for the purposes for which it was expropriated for and the erf in question reverted back to the State.

The Research report stated that as a community the members enjoyed land rights such as:

Housing

Although Protea Village was a deeply rooted community, inhabitants consisted mostly of tenants who paid rental to agents of the landowners for their dwellings; these arrangements seemed to be very informal and relaxed instead of contractual. The research report indicated a number of different dwellings as described by the community.

Land

The Community enjoyed access to land which was used for small-scale farming for subsistence and livelihood. Small-scale farming included growing food such as vegetables as well as growing flowers, which they sold in surrounding towns

for an extra income. Some of the villagers hunted in the area. The community members reported in their interviews that they had a safe environment and never used to lock their doors. They had to forfeit this right to safety when they were removed to the areas as indicated by the State. The community also enjoyed access to land for recreational purposes such as playing rugby, netball and so forth.

Water rights

The community enjoyed shared water rights by drawing water for their domestic needs and gardening from the spring and river. The spring was situated on erf 212, Bishopscourt. According to the deeds records, this erf was originally freehold land. It was later transferred to the City of Cape Town, which has owned the property since 1974.

Legislation effecting dispossession:

Racially discriminatory laws:

The Protea Village *Mandate to Negotiate* (November 2001) stated that in terms of the **Group Areas Act, 1957 (Act 190 of 1957)**, a substantial area surrounding the Table Mountain range, including Protea Village, was proclaimed a White group area. The residents of Protea Village, who were classified as so-called "coloured", became liable for dispossession in terms of the **Provincial Group Areas Act, 1961 (Act 34 of 1961)**. A further provincial proclamation in terms of the **Group Areas Act, 1961 (Act 34 of 1961)**, affected Protea Village. As has also been noted, there had been earlier plans to use the Slums Act, with racial motives in order to effect the removal of the Protea Village community. These plans were abandoned to favour the **Group Areas Act, 1957 (Act 190 of 1957)**.

Racially discriminatory practice:

In terms of section 1 of the **Restitution Act, (Act 22 of 1994)** as amended, the scope of racially discriminatory practices ranges over practices, acts or omissions, direct or indirect, by the State, at any level, or by any other functionary or institution which exercised a public power or performed a public function in terms of any legislation.

In addition to the impact of proclamations in terms of the Group Areas Act, the actions of the National Botanical Gardens in forcibly removing members of the Protea Village Community from the Garden Cottages and the Rondawel Cottages in particular constitute a racially discriminatory practice as defined in section 1 of the **Restitution Act, (Act 22 of 1994)**.

Mandate to Negotiate also stated that the Garden Cottages 7 to 12, which were on the mountain side of Rhodes Avenue, are technically outside the area declared a White group area in terms of the **Group Areas Act, 1957 (Act 190(a) of 1957)**. Thus the National Botanical Gardens as a sphere of the State applied a racially discriminatory practice to remove the people from the Garden and Rondawel Cottages. These cottages fall on the remainder of farm 875, which forms part of the Cecil John Rhodes's land bequest to the nation.

Current status of the Protea Village claim:

According to the Commission reports, the claimants who opted for the financial settlement were compensated on Sunday, 5 May 2002. The Regional Land Claims Commission: Western Cape is currently busy with negotiations with the Unicity (i.e. owner of Erf 242), Department of Public Works (i.e. owners of Erf 212) and the National Botanical Institute (i.e. Administrators of Farm 845, Kirstenbosch) regarding the remainder of the claimants who want to return to Protea Village.

Price Albert removals:

Schulz (July/October 2001), stated that the Karoo has for centuries been home to various nomadic tribes who survived as hunters and gatherers. During the 18th century colonists travelled through the Karoo in order to barter cattle with tribes living beyond the Kei River. Some settled in the Karoo in order to form illegal cattle trade links.

Schulz (July/October 2001) indicated that after 1778 Cape Colony boundaries were extended to include the Karoo region. Tracts of land were acquired from various chiefs in exchange for copper and beads. Alcohol is always mentioned as being given to tribal chiefs before entering into negotiations for trade of any kind. Each chief who entered into an agreement with Cape officials for acquisition of land received a walking stick with the VOC emblem engraved on the handle. "Queek Vallei" (Kweekvallei), now Prince Albert, is shown on a map of 1779 to be situated very near the early wagon route to the Kei River. Many tribes, however, were not in favour of the land invasion and continued to resist by means of attacks on colonial settlers. Planned counter attacks by the Cape colonists claimed thousands of indigenous people's lives. After the 'war' had subsided, indigenous survivors were contracted by Cape colonists as farm labourers, bringing with them their remaining livestock.

Schulz (July/October 2001), describes Prince Albert as a small Karoo town, situated near the foothills of the Swartberg mountain range, 67 kilometres north-west of Oudtshoorn. A village management board was constituted in 1881 after the town had been laid out on the farm Kweekvallei. Municipal status was attained in 1902. The Drops River catchment area provided an ample supply of water to villagers, and many claimants living in this area still use the endemic plants for medicinal and survival purposes. In 1962 legislation under the Group Areas Act was passed which affected Prince Albert and further entrenched the

then existing policy of separate amenities and services for the various racial groupings in South Africa.

Schulz (July/October 2001), stated that removals in Prince Albert took place in two phases:

First Phase: Prior to 1962, local authorities had already completed a first phase of forced removals in accordance with the provisions of the **Group Areas Development Act, 1955 (Act 69 of 1955)**, read in conjunction with the **Group Areas Act of 1950**. This removal involved all seasonal workers living on farms on the eastern outskirts of Prince Albert to the newly established township of Noordend. Only permanently employed farm staff members were allowed to continue to reside on farms.

Second Phase: From 1968 to 1972 all residents living on Commonage (Nuwerus) and owners and tenants living in central Prince Albert and Die Poort were forcibly moved, due to enforcement of the Group Areas Act, to the now extended township of Noordend. Grazing rights were lost on land leased by the Gereformeerde Kerk.

Schulz (July/October 2001) mentioned that the owners received minimal amounts for properties purchased by the Community Development Board at the time of dispossession. Tenants were not compensated financially for their lost residential rights. People who lost land rights in Prince Albert and its environs have lodged group and community claims for restoration of land rights. Individual claim forms were lodged prior to or on 31st December 1998. A survey conducted by LEED (Local Economy and Employment Development) has established that 60% of people living in the 460 households in Noordend are currently unemployed.

According to Schulz (July/October 2001), the following legislation was used to effect removals in Prince Albert:

Eroded rights:

The use of legislation to diminish rights of citizens classified as Coloured began after 1955. The **Group Areas Development Act, 1955 (Act 69 of 1955)** set up mechanisms for the establishment of a Community Development Board with powers to buy and sell property, to lay out townships, to build houses and to delegate these powers to a local authority. "This act was used over a number of years to remove and relocate clusters of Coloured or Bantu Residents living close to or within proclaimed 'White areas'. In Prince Albert this legislation was used to establish a Coloured township during the 1950s. Habitation of the first 'block' of Noordend started in the mid-1950s. All claimants were forcibly moved to this township.

Both areas known as Nuwerus and Rooikamp were demarcated as "White Group Areas", in terms of the **Group Areas Act, 1962 (Act 282 of 1962 paragraph a)** read in conjunction with Section 21 of the **Group Areas Act, 1957**, and the **Group Areas Development Act, 1955 (Act 69 of 1955, subsection 12-13, subsection 15-23, section 34)**.

Schulz (July/October 2001), removals continued until 1972, by which time the majority of claimants had been relocated, those living in Nuwerus moving last. Claimants were given a three-month notice period by municipal officials to vacate their properties. No resistance to that instruction was officially recorded. Claimants also state that possessions were roughly handled during the removals, resulting in many broken antique items and family heirlooms. Items of furniture, particularly musical instruments such as pianos, that could not be accommodated in small new houses had to be sold at below their market value.

Dysselsdorp removals:

The Department of Land Affairs Research Report (July/October 2001), indicates that Dyzelskraal was granted to the London Mission Society in 1838 for the purpose of grazing cattle belonging to the Pacaltsdorp mission in George. In 1872 garden and residential allotments were granted to inhabitants who resided in Dyzelskraal (later named Dysselsdorp). Dysselsdorp was administered by a Village Management Board and thereafter by the Divisional Council of Oudtshoorn.

The research report by the Department of Land Affairs, dated July/October 2001 states that claimants were dispossessed of their land rights by enforcement of the **Group Areas Act in 1966**. Racial boundaries divided the farm in half, making provision for members of Coloured and White Groups. Removals were brutal, lives were lost and those who resisted were imprisoned. Despite the fact that half of Dysselsdorp was designated Coloured, all residents of that group were forced to move into a housing scheme developed on a portion of the Dysselsdorp Commonage. The Department of Planning, on instruction from the Community Development Board (CDB), designed the housing scheme. CDB did not purchase any of the dispossessed properties. Affected properties are still registered in ancestor's names (names of the dispossessed). All homes were demolished. Both owner and tenant claimants lost occupation rights on residential and agricultural allotments. Although no written text was found to substantiate the removal, it appears that dispossession occurred in order to create a dependent work force of labourers who would benefit local White farmers by reaping and planting seasonal crops. The water that had sustained Dysselsdorp inhabitants, in the form of strong fountains, was re-directed to an irrigation scheme that benefits local farmers south of Calitzdorp today.

Implementation of the Group Areas Acts left inhabitants of Dysselsdorp completely stripped of all means to a self-sufficient life-style to which they were

accustomed. Claimants are requesting full restoration of land rights in order to reinstate their deeply rooted cultural dignity. Both owners and tenants held access rights to the Commonage for grazing, agricultural and collection of dry firewood purposes. Commonage rights were formalised in the **Village Management Board Act, 1919 (Act 17 of 1919)**, which made allowance for future residential development on a tenure basis.

According to the research report by the Department of Land Affairs (July/October 2001), the **Group Areas Act, 1957 (Act 77 of 1957)** was used to evict people from Dysselsdorp. *Government Gazette* number 102/1966 described the delimited White and Coloured areas of Dysselsdorp. The **Group Areas Act, 1972 (Act 177 of 1972)** extended the Coloured area to include the newly developed township. The division effectively cut the farm in half. The fertile agricultural land was proclaimed White. **The Slums Act, 1966 (Act 56 of 1966)** was used to evict people from the Coloured areas into the townships designed by the Department of Planning. Claimants from residences in the Coloured area, removed placed into the township designed by the Department of Planning.

The research report also states that claimants used the land for residential and agricultural purposes, farming vegetables and livestock. Products were produced for the local market. No restriction of movement on the farm was imposed on claimants prior to dispossession. No written record has been found in Community Development Board files of compensation paid to tenants or Coloured owners in Dysselsdorp. (White owners received compensation.) Oral accounts given by claimants confirm that no compensation was received. Claimants had erected homes at their own expense for which no compensation was paid after demolition.

Valuations provided in the District Council office files are not sourced. It would therefore not be fair practice to use the figures listed when calculating compensation.

Current status of the Dysselsdorp claim:

According to the research report by the Department of Land Affairs (July/October 2001), the population figures are currently estimated at approximately 13 000, with over 60% unemployed. The majority of residents rely on seasonal employment from local White farmers, who send trucks from as far as the George area to collect a labour force during planting and reaping seasons. The quality of agricultural soil in Dysselsdorp is extreme high. With water, abundant crops have been reaped in the past. Surrounding farmers have all become financially successful from various farming ventures. 250 houses have been erected with funding from the Provincial Housing Board.

Tramway Road removals:

Field, S (2001: 44) stated that Tramway road were situated on the hills below Lion's Head, Tramway Road stretched between the busy main roads of Regent Road and Kloof Road, with Ilford Street branching directly off Tramway Road. Although a culturally mixed area, this community was largely made up of coloured working-class families. It was part of the larger middle-class white suburb of Sea Point that formed part of Cape Town's Atlantic seaboard. The residents of Tramway Road lived in a small and contained suburban pocket. Extended family and neighbourhood networks, established over generations, provided a strong sense of identity and community spirit that cut across social boundaries.

Field (2001:46) states that today, the community of Tramway Road and Ilford Street no longer exist. A fenced, locked park with a gate now in the middle of

Tramway Road and divides it into two parts: Tramway Road at the lower end and Ilford Street at the upper end, which intersects with Kloof Road. These oral history interviews with ex-Tramway Road and Ilford Street residents explore the implications of living in a suburban pocket. The interviews trace the ways in which economic, social and political circumstances moulded these communities and demonstrate the devastating effects of forced removals.

According to Field (2001:47), the mid-area of Tramway Road became a residential site in 1877 when the Cape Town and Green Point Tramway Company built cottages for its employees, white tram guards and coloured tram drivers, grooms and stablemen. In 1895 the Tramway Company closed and gradually other residents moved into the area. By 1903 twenty-five cottages, fourteen houses and a small block of flats stood where the park is now situated. From the 1920s mainly coloured families and smaller numbers of Africans, Indians and whites lived in the mid-area. Coloured, Indian and white families occupied six houses in Ilford Street. Sometimes work formed one of the main reasons for residence in Tramway Road and Ilford Street, as many residents worked in the homes and business of white Sea Point families. Several of the men worked as painters, carpenters, drivers, delivery men and cooks. Men also worked for the Municipalities of Green Point and Sea Point and, after merging in 1913, for the City of Cape Town. The majority of the women worked as washerwomen and domestic workers.

Field (2001: 47) indicated that some families owned properties, but most residents rented their homes, as they could not afford to buy property. The majority of the residents were subtenants or had a subtenant. A shortage of housing and high rents meant that two and sometimes three households lived in one house. To accommodate each other, members of a household had to organise their lives to permit space to everyone. Males and females of different ages who lived in the same room devised strategies for privacy. Space being a problem, members of the same household carried out many activities together.

Field (2001: 48) indicates that many residents felt a deep sense of belonging to Sea Point. This came partly from the fact that some of the households had lived in the area for generations. Well-known Tramway Road families lived in the neighbourhood in the late 1800s and early 1900s – i.e. the Lawrence (1898), Paulsen (1900), Wepener (1901), Parker (1903) and Tiseker families (1903, if not earlier) and the Jacobs family (1923) moved to Ilford Street from King's Road. Jacobus Weppenaar, a tram driver, lived in Sea Point in 1883, but it is unknown whether he was an ancestor of the Wepener household of 1901. Several households were related to each other. From the 1920s to the 1950s blood and marriage related close to twenty-six families in Tramway Road and Ilford Street. In 1959 approximately two hundred people or fifty families lived there.

Field (2001: 49) mentioned that small and often irregular household incomes encouraged women to adopt careful financial and shopping skills. By purchasing the least expensive grocery items, households lived within their means. But on Sundays children could expect a special lunch and eagerly compared menus with playmates. Parents had to skimp on food expenses during the week to provide a more substantial meal on Sundays. In Christian households the afternoon meal on Sunday reflected the religious significance of the day. Residents supported each other in their struggle for material survival. This shared struggle and sense of community and family was reinforced by living in an isolated pocket surrounded by white communities.

In the 1950s the National Party intensified the racial separation that for decades characterised life in South Africa. The **Group Areas Act of 1950** legislated separate residential areas and in 1957 the government ordered the removal of people of colour from Sea Point. Tramway Road and Ilford Street lay in an area declared 'White' in the *Government Gazette* of 5 July 1957. Between 1959 and 1961 all persons of colour were removed from Tramway Road and Ilford Street to the Cape Flats.

Other forced relocations had previously taken place in Tramway Road. In 1903, under the **Native Reserve Locations Act of 1902**, the municipal council of Green Point and Sea Point removed African men who lived in the Council flats, then called workmen's quarter, to the Docks Location. At least three decades before the Group Areas Act declaration Tramway Road residents lived under the threat of eviction. It took the government a very long time to decide to put the coloured people out of Tramway Road.

The Group Areas Act encouraged 'strong talk' about forced removal in 1956, when tenants of the Council flats received notice to vacate their homes. They had to vacate their homes by 31 October 1956. According to Field (2001: 57), Mr Wannenburg (a lawyer) agreed to represent the Tramway Road Association for a nominal fee and set out to prepare an application to submit to the Group Areas Board. The Tramway Road Association declined the support of organisations that offered to protest against the neighbourhood's removal. The Association preferred to rely on their legal advice, religious faith and presentation as respectable citizens. The Association requested and received a one-year extension on residents' notice to leave their homes and received a total of three extensions. Bewildered, dismayed, fearful and confused, residents grappled to understand the notice for eviction. The notice and its implications unsettled their sense of self and dignity. The government pressed the Cape Town City Council to develop Bonteheuwel as a township for coloureds and in 1961 Council houses became available to persons who met the criteria for sub-economic housing, while others rejected Bonteheuwel as a suitable option.

Field (2001: 58) indicated that some residents moved to areas such as Mowbray, District Six, Lansdowne, Black River and Milnerton, only to have to move again when these areas were declared White. Individuals who travelled to Sea Point to work incurred high transportation costs. For some time after removal women and their children continued to fetch and deliver washing in Sea Point. However, the cost of transportation in relation to their wages proved too great. On the Cape

Flats residents struggled to adjust to their changed circumstances and unfamiliar surroundings. The loss of homes, of neighbours and friends and of a place that held personal meaning would take years to overcome. Infrequent public transportation and a lack of shops intensified the strain of removal on people's lives. Adults were presented with challenges they thought they would not overcome. But over time people did find within themselves an ability to carry on. Ilford Investments applied for permission to erect a multi-storey apartment block in the area. The Council refused, as Tramway Road was considered too narrow. In 1963 bulldozers flattened the Tramway Road houses and those on the north side of Ilford Street. The City of Cape Town landscaped a park, reserved for Whites only, which remains to the present day.

Status of the Tramway Road claim:

According to the Annual Report of the Land Claims Commission (April 2001-March 2002), the Tramway Road claims were settled and the signing of the Section 42D agreement took place on 25 September 2001 at Tramway Park, Sea Point. According to the agreement, 39 families would be restored to the dispossessed property, while 71 families received financial compensation. During the negotiations, the City of Cape Town indicated that it would release Tramway Park for development at no cost to the claimants.

The settlement package entails the establishment of the Tramway Road Community Trust, which will receive that land from the City of Cape Town. The Trust is responsible for paying out R17 500.00 per family (cost of a service site) to those 71 families that opted for financial compensation. The 39 claimants that are returning received R29 440.00 for the development of a top structure on the land. This amount includes the restitution discretionary grant and the planning grant. The whole settlement package to be paid by the state amounts to R2 390 660.00

6. Conclusion

It is clear that segregation and removals were a reality in Cape Town long before the apartheid policy was formulated. It is also evident that, although the apartheid regime used health and slums acts to remove and expropriate people, their motives were racially based, and that African people couldn't purchase properties within the Western Cape. Through the forced removals people lost a lot. Forced removals have been nothing but deliberate underdevelopment, which has resulted in overcrowding and contributed to the creation of massive landlessness within our country. The majority of the people couldn't afford relocation costs; a lot of the claimants had to struggle to get to work. Racial evictions, forced removals and racial discriminations were factors, which resulted in hatred amongst the South African nation. People's pride and dignity were taken away through the hardship and trauma that they had to go through. Even today, people are not healed. There can never be compensation for the pain and suffering of forced removals and dispossessions.

Chapter 5

The South African restitution process

1. Introduction

The South African restitution procedure will be discussed in this chapter. The chapter will include a detailed discussion on the process, entitlement to restitution as well as an outline of the process.

2. Historical background of land restitution

Land restitution was mentioned for the first time by the **Abolition of Racially Based Land Measures Act, 1991 (Act 108 of 1991)**, which had been enacted as a result of the land reform programme introduced by the then national government. **The White Paper on Land Reform, dated March 1991**, as issued by the Department of Land Affairs, paved the way for a number of other new land laws, such as the **Upgrading of Land Tenure Rights Act, 1991 (Act 112 of 1991)** and the **Less Formal Township Establishment Act, 1991 (Act 113 of 1991)**.

Kaufmann, (1999:6) stated that the Abolition Act, which repealed the 1913 and 1936 Land Acts, the Group Areas Act and other statutes, can be considered the most important of the promulgated Acts. An Advisory Commission on Land Allocation (ACLA) has been introduced to deal with land issues. Under amending legislation of June 1993 the ACLA's powers were increased and it became the Commission on Land Allocation (CLA). In essence the Abolition Act was aimed at placing certain defined categories of state-owned land. This meant that the ACLA/CLA could make binding orders with regard to vacant State land that had been acquired by the State or a development body under abolished racial laws. With regard to land actually used by the State, the ACLA/CLA was

only empowered to make recommendations to the Minister of Land Affairs. Only those claimants who suffered prejudice when the State acquired their land were entitled to restitution. The idea was that the ACLA/CLA determine the persons prejudiced and how such prejudice could be rectified by the allocation of that land. It was accepted that loss of land or of rights to use land without adequate compensation, the mere hardship of a forced removal and the loss of ancestral land, and the fact that land was acquired by the State against the clear wishes of the owner or occupant, could all constitute prejudice.

Kaufmann, (1999: 6) identified the following as functions of ACLA/CLA:

- ACLA/CLA should investigate all land held by the State and determine *whether it was acquired by means of certain racial land measures.*
- The secretariat would identify State land; find out how the land was acquired and who the previous owners or occupants were.
- Public hearings were held which served the purpose of a forum where a wide variety of difficulties, needs, aspirations, desires and pleas about the plight of the rural black communities could be aired.

However, the ACLA/CLA encountered a number of problems.

- Firstly, many submissions were made by individuals or groups who had been prejudiced long before the State has acquired the land, mostly during wars, by White settlers or by earlier authorities.
- Secondly, the recommendations made by the ACLA/CLA had to be implemented by often unwilling State officials.
- Thirdly, many White farmers whose land had been bought or expropriated for consolidation submitted claims, which raised the tricky question of whether restitution to these formerly advantaged people was possible in principle.

- A fourth problem occurred for the limited jurisdiction of the ACLA /CLA. In terms of the Abolition Act, land held by certain State authorities and developed or used for public purpose was confined to rural land claims and no provision for monetary compensation has been made in the Act. Criticism was also levied at the lack of assistance concerning the complex pro forma application requirements.

In light of the above it could be mentioned that despite the shortcomings and weaknesses of the land allocation procedures, the Abolition Act constituted the way forward for the restitution of land rights in South Africa. The Commission of Land Allocation dealt with more than 300 claims and almost one million hectares of land before it was superseded by the Interim Constitution's land claims procedure. The Interim Constitution directs the South African Parliament to establish a *Commission on Restitution of Land Rights*, in order to redress the injustices of the past, whilst observing fairness and justice in the process. The working of the previous Commission on Land Allocation is to be done by a new Commission.

3. Core Business of the Commission on the Restitution of Land Rights

The mission of the Commission on the Restitution on Land Rights is to have persons or communities, in the Western Cape Province, dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices restored to such property or receive just and equitable redress.

In order for the Commission to achieve its vision, it has stated the following mission:

- "To promote equity for victims of dispossession by the State, particularly the landless and rural poor;
- To facilitate development initiatives by bringing together all stakeholders relevant to land claims;

- To promote reconciliation through the restitution process; and
- To contribute towards an equitable redistribution of land rights”

According to the **Restitution of Land Rights Act, 1994 (Act 22 of 1994)**, the Commission espouses the following values, that is to promote gender equity, just and equitable redress; prioritising the needs of land development; needs-based prioritisation, integrated development and to promote the *Batho-Pele* principles.

The above principles are guided by the following:

- Presidential directives on the target for completion of land claims;
- The Urban Renewal Strategy and the Rural Development Strategy;
- The Ministerial directives on validation and prioritisation of projects; and
- The National Strategic Plan.

Ms Thoko Didiza, the Minister of Land Affairs, has outlined the following objectives for land restitution in the **Restitution of Land Rights Act, 1994 (Act 22 of 1994)**:

- A need to speed up the settlement of restitution claims;
- A review of the current method of calculating the monetary value for settling claims;
- A reduction of administrative costs through closer collaboration with other relevant departments;
- A refocusing of efforts in the settlement of rural claims;
- Restructuring the restitution process to enable the speeding up of claims and
- Integrated formulation of policy.

Restitution of Land Rights Act, 1994 (Act 22 of 1994) states that the functions of the Commission are:

- To investigate the merits of the claims;
- To mediate and settle disputes arising from such claims;

- To draw up reports with regard to unsettled claims for submission as evidence (together with any other evidence) before a court of law; and
- To exercise and perform any other powers and functions as provided by the **Restitution of Land Rights Act, 1994 (Act 22 of 1994)**.

4. Entitlement to restitution

The injustices of racial dispossessions occurred on three main levels:

1. Land dispossession leading to landlessness;
2. Inadequate compensation for the value of the property; and
3. Hardship, which cannot be measured in financial or material terms.

Restitution of Land Rights Act, 1994 (Act 22 of 1994) states that a person is entitled to restitution if:

- He or she is a person dispossessed of a right to land after 19 June 1913 as a result of past racially discriminatory laws or practices; or
- It is a deceased estate dispossessed of a right to land after 19 June 1913 as a result of past racially discriminatory laws or practices; or
- He or she is a *direct descendant*⁵ of a person referred to in paragraph (a) who has died without lodging a claim and has no ascendant who is a direct descendant of a person referred to in paragraph (a) and has lodged a claim for the restitution of a land right; or
- It is a community⁶ or part of a community dispossessed of a right to land after 19 June 1913 as a result of past racially discriminatory laws or practices; and
- The claim for such restitution is lodged no later than 31 December 1998.

⁵ The spouse or partner in a customary union of such person whether or not such customary union has been registered.

⁶ Any group of persons whose rights in land are derived from shared rules determining access to land held in common by such group, and includes part of any such group.

According to the **Restitution of Land Rights Act, 1994 (Act 22 of 1994)**, no person shall be entitled to restitution of a land right if:

- Just and equitable compensation as contemplated in S25 (3) of the Constitution; or
- Any other consideration, which is just and equitable, calculated at the time of any dispossession of such right, was received in respect of such dispossession.

If a natural dies after lodging the claim, but before the claim is finalised and

- Leaves a will by which the right or equitable redress claimed has been disposed of, the executor of the deceased estate, in his or her capacity as representative of the estate, alone or, failing the executor, the heirs of the deceased alone; or
- Does not leave a will contemplated in the above-mentioned paragraph, the direct descendants alone may substitute as claimants.

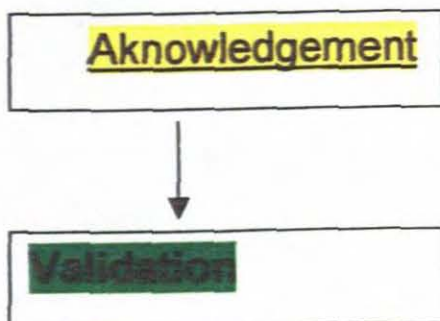
If there is more than one direct descendant who has lodged claims for and is entitled to restitution, the right or equitable redress in question shall be divided not according to the number of individuals, but by the lines of succession.

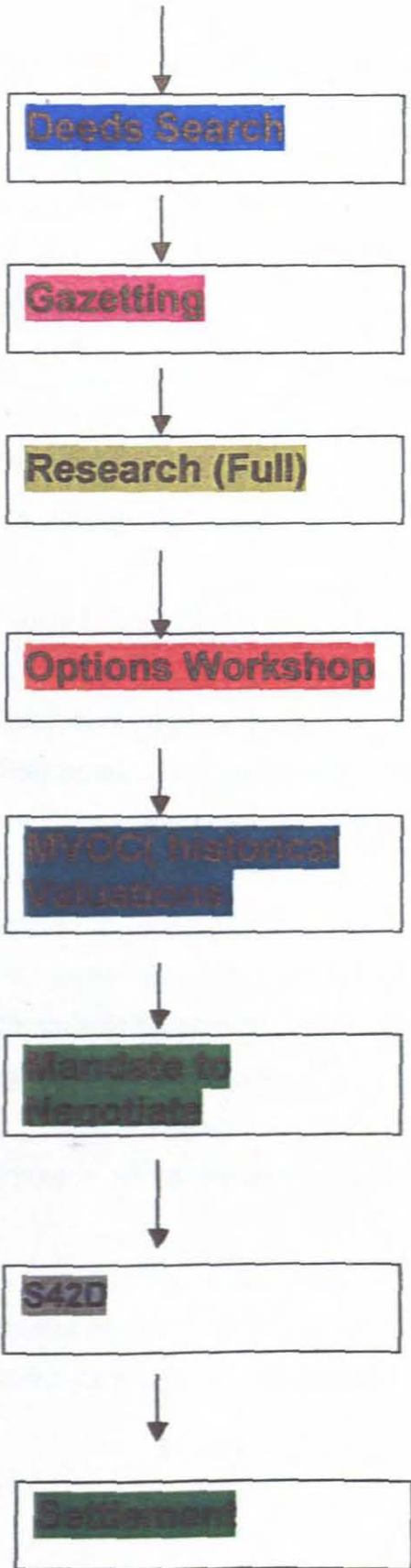
5. Outline of the restitution process

The restitution process is schematically presented below in Table 3.

Route of a Claim

Table 3: Outline of the Restitution Process





6. Explanation of the restitution process

The Restitution process consists of six phases, namely:

Phase 1: Lodgement and registration;

Phase 2: Screening and categorisation/batching;

Phase 3: Determination of qualification in terms of Section 2 of the Restitution Act;

Phase 4: Preparation for negotiations

Phase 5: Negotiations

Phase 6: Implementation/ Settlement support and development planning.

Phase 1: Lodgement and registration

Acknowledgement of a claim

After completing and submitting the official land claim form and submitting it at any Regional Land Claims Commission nationally on or before 31 December 1998 at 24h00, the claimant gets a reference number (alpha-numerical) and is notified by letter. In all correspondence to the Commission claimants must have their individual reference number in order for officials to assist them. The Commission also establish a database with all claims submitted for record purposes.

Phase 2: Screening and categorisation/batching

All claims that were received are being screened. Preliminary feasibility studies and the batching of claims are done at this stage and the preliminary options of claimants are taken into account.

Deed Search

This search is done at the Deeds Office. In order to complete a deed search the following documentation is needed: Erf Register that shows the current owner, the disposed party, the acquisition date, highlights the racial laws or practices applicable to the specific areas, it shows the title deed number of the dispossessed ownership and when property was registered in the name of the current owner; Expropriation Notice that highlights that the dispossessed was forced to sell his or her property to the Community Development Board; Title Deeds indicates purchase price and the date when the property was bought and the registration date at the Deeds Office in the name of the dispossessed person. Present owner details, which can be time consuming, because it can take \pm 3 days to obtain information on current owners. After all this information has been obtained, a deeds search report needs to be compiled by the deeds researcher.

Phase 3: Determination of qualification in terms of Section 2 of the Restitution Act

Validation

All claims submitted to the Commission need to be validated. The reason for validation is to establish whether the claim meets the requirements of the Restitution Act. It is stipulated by section 2 of the Act that a restitution claim will be accepted for investigation if:

- The claimant was dispossessed;
- Of a land right, whether registered or unregistered;
- After 19 June 1913;
- As a result of past racially discriminatory laws or practices;
- The claimant was not paid just and equitable compensation;
- The claim was lodged not later than 31 December 1998.

According to the Ministerial objectives, all claims lodged nationally needs to be validated by the end of June 2002.

Gazetting

After a claim has been validated it is published in the *Government Gazette*. The purpose of this is to get all interested parties, e.g. stakeholders or current owners, to inform the Commission of any changes, alterations or intentions of selling the property. Gazetting protects possible buyers who may be unaware of encumbrance of the land. It is also important to gazette claims, because stakeholders need to be involved as soon as possible. Restitution is a public process and is part of the broader transformation process. A copy of the government gazette is being send to the claimant.

Phase 4: Preparation for negotiations

Research

Thorough research is done on every claim. The researchers interview every claimant and compile a research report which includes the following information: verifying the details of claimants, history and background of the dispossession, the extent of the properties, details of the current owner, the current use of the property and ascertaining what the claimant wants and whether the current owner are willing to sell.

Options workshop

An options workshop can only take place after a claim has been validated. Such a workshop is held in preparation for the actual negotiations to settle a claim. The purpose of the workshop is to inform and explain to claimants the different forms of the compensation, the pros and the consequences of each form. This

will help them to make their decision. At the options workshop an indication of interest form is issued to claimants. This form needs to be completed by claimants and is submitted together the S42D.

Monetary value of the claim (MVOG)

It is the monetary value of a claim. Coetzee (2001: 311) states that the MVOG is calculated by subtracting the actual compensation paid (derived very often from apartheid state documents and often disputed by claimants) from what valuers consider to be an "equitable" value. This represents the basis of the restitution "package" to be used in negotiation between the state, i.e. Land Claims Commission/ Department of Land Affairs and the claimants.

Negotiations position

This is an internal document that the Project Officer draws up in order for him/her to start preparing the process of negotiations with all interested parties. The purpose of this document is to record the progress of the claim as well as to determine a package that would encompass all issues considered and reflects the needs of the claimants. The negotiations position consists of the background of the claim, the historic and current property description of the land claimed, summary of positions of all interested parties, the settlement proposal, the nature of the restitution package, summary of settlement proposals, the financial implications as well as the policy implications. The negotiations position forms part of the Mandate to Negotiate.

Phase 5: Negotiations

This phase includes the agreements that have been reached between all interested parties, the preparations of the mandate for approval, dealing with disputes and the Deed of Settlement.

Mandate to Negotiate

It is a submission seeking ministerial approval to negotiate with all stakeholders in order to settle the claim on behalf of the State. This document can take up to eight weeks before it is approved and it is subjected to changes. The Mandate to Negotiate is drawn up by the Project Officer and includes the negotiations position, summary of settlement proposals, the financial implications as well as the policy implications.

Section 42D

This is an section within the Restitution Act allowing the minister to settle the claim administratively instead of referring the claim to the Land Claims Court. This is agreement between the State, claimants and stakeholders. This includes who the claimants are, what they want, and what they will get. It also includes the position of all stakeholders. It can take up to eight weeks before this document is approved. It can also be subjected to change. Individual S42D forms are signed with claimants. All S42D forms are processed and claimants are paid out. Its set out the conditions of pay-out. The Commission holds Settlement Ceremonies with all the claimants, the Minister of Land Affairs and all relevant stakeholders.

Phase 6: Implementation/ Settlement support and development planning

In cases where claimants opted for the monetary option, their claims are settled in Phase 5. For those opting for redevelopment or any other restitution option, their claims are referred to the Post-Settlement Unit, where detailed land planning are being done as well as the Transfer of Land and Development funds.

7. Review and redesign of the restitution process

During the Ministerial Review in 1998 the land claims process was reviewed. Solutions were sought to the problems and complexity of the process. This is discussed below.

Complexity of the process

The Department of Land Affairs estimated that a total of 67 531 claims has been lodged with the Commission on Restitution of Land Rights. [This number is subject to the validation process currently underway.] It is therefore clear that an enormous responsibility rests on the shoulders of the Commission on Restitution of Land Rights and the Department of Land Affairs to give effect to the huge and complex task of restoring land rights.

Although initial progress with the settlement of claims has been slow, the establishment of institutions, policies and systems to advance the restitution process should be seen as a significant achievement. Also, with the introduction of certain measures as recommended by the Ministerial Review, a remarkable increase in the number of settled restitution claims has recently been achieved. So far about 110 775 people have been beneficiaries of the restitution programme.

8. Re-engineering of the restitution business process

The Review Task Team identified the multiple lines of authority and accountability of the role players, i.e. the Commission and the Department of Land Affairs, as contributing to the slow pace of delivery. It was therefore recommended that the Commission on Restitution of Land Rights should be integrated with the Department of Land Affairs, with the Department retaining its

separate identity. In terms of this recommendation all the restitution staff of the Department of Land Affairs have been relocated to the Commission, which is now solely responsible for the processing of claims, while the Department of Land Affairs' role is of a supportive nature.

The Department of Land Affairs proposed that attention needs to be given to the mapping of a clear path in terms of which restitution claims can be dealt with from lodgement to settlement. Other steps embarked upon to enhance the pace of delivery and increase efficiency include the following:

- The use of project teams focussing on specific areas;
- The handling of claims in batches;
- Outsourcing while at the same time retaining control;
- The settling of a large number of claims through negotiations as opposed to the lengthy process of litigation;
- Referring only disputed cases to court;
- Direct access reviews and appeals; and
- The use of alternative dispute resolution mechanisms to fast track the process.

The above-mentioned re-engineering process resulted in alleviating the duplication of functions, eliminating competition for human, material and financial resources and brought about a dramatic increase in delivery.

After the completion of the 1999 amendments to the **Restitution of Land Rights Act, 1994 (Act 22 of 1994)**, the shift from a judicial process which was court-driven to an administrative approach within a legislative framework was implemented. According to this approach, the Minister of Land Affairs was granted powers to settle claims on the basis of agreement between the various parties. This shift forms part of the Commission's focus on expanding and decentralising its powers and authority in order to finalise claims more swiftly and effectively, in that Ministerial powers to make awards on restitution are delegated

to officers in the regional offices. This has resulted in a phenomenal and exponential increase in the number of claims settled. Together with this the concept of the Standard Settlement offer was been introduced. This is a standard offer of financial compensation by the Minister of Agriculture and Land Affairs to all claimants in a certain urban or peri-urban area for the purpose of the full and final settlement of their claims in terms of section 42D of the **Restitution of Land Rights Act, 1994**.

During the 1998 Ministerial Review, the Department of Land Affairs came up with the following possible solution:

- *Integrated Development Approach*

Settlement plans and development strategies are considered as prerequisites for the finalisation of any restitution claim where the claimants are restored to land. The aim with this approach is to ensure delivery, not only the quantitative settlement of claims, but also the qualitative finalisation of claims through the restitution process. Since the achievement of both quantitative and qualitative restitution results cannot be achieved single-handedly, it requires the involvement of all relevant role players, i.e. provincial and local government structures, municipalities and district councils to ensure co-operation in terms of efforts and resources. It furthermore requires the need to join forces with other components within the Department of Land Affairs, such as State Land Management, Redistribution and Tenure, Surveys and Mapping and National Spatial Planning.

- *Focus on rural claims*

According to the strategic direction of the Commission on Restitution of Land Rights the focus should be on the rural claims received. The rationale for this is not only because of the concentration of abject poverty in these areas, but also because rural claims involve larger numbers of people. These claims are mostly

community claims, whereas most urban claims are individual household claims, with some exceptions.

If the total number of claims lodged is analysed, it can be seen that about 80% of these claims are urban claims, involving about 300 000 beneficiaries. In contrast to this, the 20% rural claims received represent about 3,6 million people. The aim is therefore to apply the 20 / 80 principle, i.e. do the 20% rural claims with an impact on 3,6 million people, while at the same time not excluding the urban claims which will be dealt with in tandem with the rural claims.

- *Validation campaign*

A validation campaign is currently underway in the offices of the Commission on Restitution of Land Rights. The goal is to validate all claims lodged by the end of 2002. Once all claims lodged are validated, it will be possible to measure accurately the settled claims against the lodged restitution claims. This will enable the Commission on Restitution of Land Rights to determine realistically the progress made with the restitution programme.

9. Conclusion

In view of the above, it is clear why restitution takes so long. There is more to the process than just paying people out. It is a time-consuming and very complex process. During the Budget Speech this year President Thabo Mbeki announced that all land claims must be settled by the end of 2005. If the claims are settled at the current rate, this target will be impossible to reach. The need to acknowledge that majority of the land claims offices are understaffed. This is an important factor which leads to low productivity and slow pace of service delivery. The next chapter is an overview of the research approach and methodology that was used as well as the research population and questionnaire design.

Chapter 6

Research approach and methodology

1. Introduction

This chapter provides an explanation of the purpose of the research, as well as the methodology that was utilised to conduct the research. The research process is explained in terms of the research population and the questionnaire design.

2. Purpose of the research

The purpose of the study is to determine the impact of monetary/ financial compensation as a form of restitution on the current life-styles of the Paarl residents. The research has focussed on the restitution process of the Regional Land Claims Commission in Cape Town and the claimants of the Paarl residents who opted for monetary/ financial compensation as a form of restitution.

The study adopted a descriptive approach, because the research attempted to describe whether or not monetary compensation improves the current life-styles of the Paarl residents. The primary data was collected by means of questionnaires, which were distributed to those claimants whose claims were settled through the monetary compensation option. This survey focussed on the life-styles of people prior to the racial evictions and after their receiving restitution rewards. A period of one year after receiving the financial award was used to determine whether or not restitution had an impact on their lives.

The purpose of the questionnaires is to survey the impact of monetary compensation life-styles of the Paarl residents as well as to survey the views of the respondents towards restitution.

3. Research population

According to Bless & Higson-Smith (2000: 87), a well-defined population is the set of elements that the research focuses upon and to which the results obtained by testing the sample should be generalised. It is essential to describe accurately the target population. This can be done by clearly defining the properties to be analysed, using an operational definition. Once this is done, it should be possible to compile a list of all elements of this population, or at least to determine whether or not an element belongs to population under investigation.

The research population in this study is all the Paarl claimants who accepted financial settlements. Up to date 996 claims have been settled. This figure includes both the primary claimants and the beneficiaries. For the purposes of this study the focus is on the 182 claimants who were the primary claimants, as the primary claimants were the originally dispossessed in most instances, while the beneficiaries were only direct descendants of the dispossessed. The reason for selecting the Paarl area is because of its demographics and diversity. The research population was stratified in terms of race, homeowners and tenancy.

4. Stratification

According to Bless & Higson-Smith, (2000: 91), the principle of stratification is to divide the population into different groups, called strata, so that each element of the population belongs to one and only one stratum.

In this case the population has been stratified in terms of race i.e. African, White, "Coloured" and Indian and between home ownership and tenancy. The "Coloured" respondents will represent the owners, while the African respondents represent the tenants. The reason for this is that Africans were not allowed to purchase property during the apartheid era. According to the Land Claims

Commission, there were not many claims lodged by White property owners. The white claimants did not respond to the questionnaires that were posted to them. This won't have an impact on the outcome of the analysis. By the time that this research was undertaken, there were only two White claims settled. There was also no Indian in Paarl at the time of dispossessions.

5. Questionnaire design

According to Bless & Higson-Smith, (2000:107), the most structured way of getting information directly from the respondents is by means of a scheduled structured interview. This method is based on an established questionnaire – a set of questions with fixed wording and sequence of presentation, as well as more or less precise indications of how to answer each question. A questionnaire must be presented to each respondent in exactly the same way to minimise the role and influence of the interviewer and to enable more objective comparison of the results.

The questionnaires utilised in this study was designed to investigate the impact of financial compensation as a form of land restitution on the life-styles of the Paarl residents.

The questionnaire was designed based on the Living Standard Measurements (LSM). This is an accepted mechanism to determine whether financial compensation had an impact on the life-styles of the Paarl residents. The questionnaires were also based on the claimant's life-style before dispossession and after they received their restitution award. Questionnaires (Annexure B) were distributed to 83 owners and to 74 tenants. The questionnaire included had a covering letter (Annexure A) explaining the purpose of the study to the respondents.

After the questionnaires were returned, a database was established based on the Statistical Package for the Social Sciences (SPSS) computer package. This correlates the results in terms of categories. SPSS is one of the most popular statistical packages utilised to perform highly complex data manipulation and analysis with simple instructions. It is designed for both interactive and non-interactive (batch) uses. This also makes the analysis much easier for the researcher. According to the SPSS website, SPSS (Statistical Package for the Social Sciences) is a data management and analysis product produced by SPSS, Inc. in Chicago, Illinois. Among its features are modules for statistical data analysis, including descriptive statistics such as plots, frequencies, charts and lists, as well as sophisticated inferential and multivariate statistical procedures like analysis of variance (ANOVA), factor analysis, cluster analysis and categorical data analysis. SPSS is particularly well-suited to survey research, though by no means is it limited to just this topic of exploration. It can take data from any type of file and use them to generate tabulated reports, charts, and plots of distributions and trends, descriptive statistics, and complex statistical analysis.

According to Liu Tai in her book *Introduction to SPSS*, dated October 2002, the package is good for organising and analysing data. It can rearrange data, calculate new data and conduct a variety of statistical analysis. Theoretically there is no limit in the size of data files. Files could also be exchanged with other software, changing the appearance of output, or cutting and pasting into different programs.

6. Conclusion

The research that was conducted was exploratory in order to achieve the purpose of the study. Although the focus was on the whole population, the questionnaire was only based on the primary claimants. In order to achieve its purpose, the population was stratified in terms of race, home owners and tenants. The analysis of the results will be done in the following chapter.

Chapter 7: Research analysis and interpretation

1. Introduction

The responses were tabulated and the response to each question averaged. Graphs were also used to illustrate the responses. Questions 13-17 and 20-21 were not tabulated, nor were graphs used, because the general responses and opinions of the claimants were narrated.

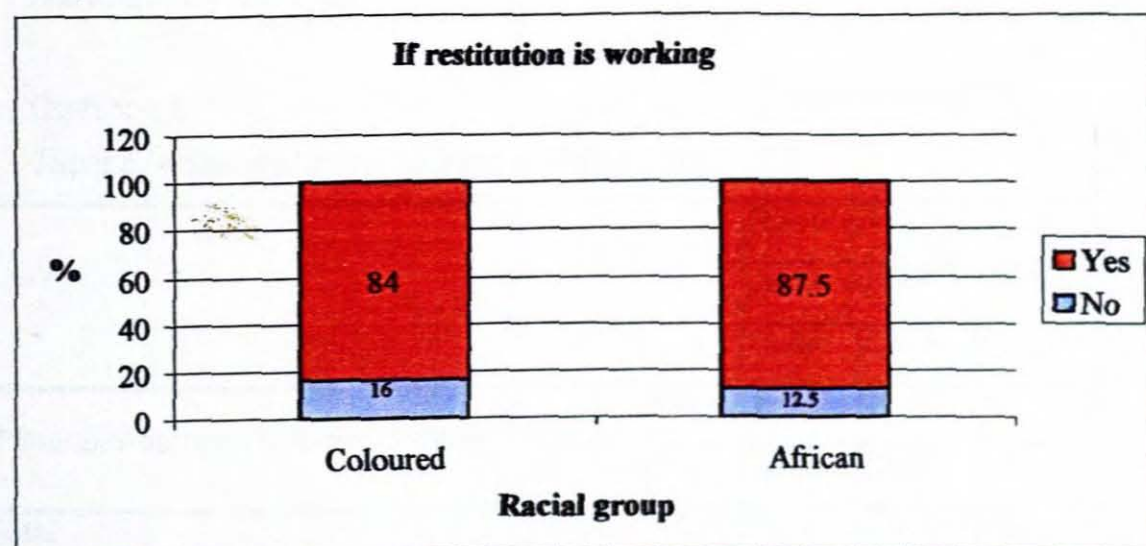
The questionnaire was designed based on Living Standard Measurements (LSM) to determine whether the life-styles of the Paarl residents improved due to restitution. As indicated earlier, the questionnaires were also based on the claimant's life-style before dispossession and after they received their restitution award.

25 questionnaires were received from the owners and 40 from the tenants, which in this case are Africans (Africans were not allowed to own properties in the Western Cape) and the owners were "coloured" people, that is the response of the "coloureds" will be the response of the owners and the responses from the blacks will be the response from the tenants.

2. Analysis to the questions

Question 1

Figure 4: Is restitution working?



		Racial group			
		Coloured		African	
		Count	Col %	Count	Col %
If restitution is working	No	4	16.00	5	12.50
	Yes	21	84.00	35	87.50
Total		25	100.00	40	100.00

Table 5: If Restitution is working

Although the majority of the respondents felt that restitution is working (refer to Figure 4 & Table 5), there is a huge difference in the response from the "Coloured" and the African respondents. The "Coloureds" felt that although the process is working, the money that was paid out to them was far less than the value of their properties, as well as the fact that the process did not take into account the trauma of the people. They also felt that the process is too slow, because there are still people waiting to be paid out. The African respondents

felt that the process did not meet their needs, the process was not fair and it was not what they expected.

Question 2

Table 6: If financial compensation was first option

		Racial group			
		Coloured		African	
		Count	Col %	Count	Col %
If financial compensation was the first option	No	3	12.00	4	10.00
	Yes	22	88.00	36	90.00
Total		25	100.00	40	100.00

The monetary compensation was their first option, as illustrated by Figure 6. The owners felt that they had no choice. Some of them wanted their property back, but changed their minds because it would have taken longer for their claim to be settled. They could have gone to the Land Claims Court, but it would have been too costly. 4% stated that they lost both their parents and they were unemployed, so the finance helped them to pay for the house and the burial of their parents. In terms of the comments received 85% of the tenants said monetary compensation was their first option, while 2,5 % felt it was the people's choice, because they have houses now. 2,5 % said land was their first option, but because they cannot be returned to where they were evicted from because the majority of them are old. 2,5 % felt that they need the money very much and another 2,5% felt that the money was much needed in their different situations. 2,5% felt that they had no other choice.

Question 3

		Racial group			
		Coloured		African	
		Count	Col %	Count	Col %
If restitution process is too long	No	9	36.00	0	.00
	Yes	16	64.00	40	100.00
Total		25	100.00	40	100.00

Table 7: Is the process too long

Question 4

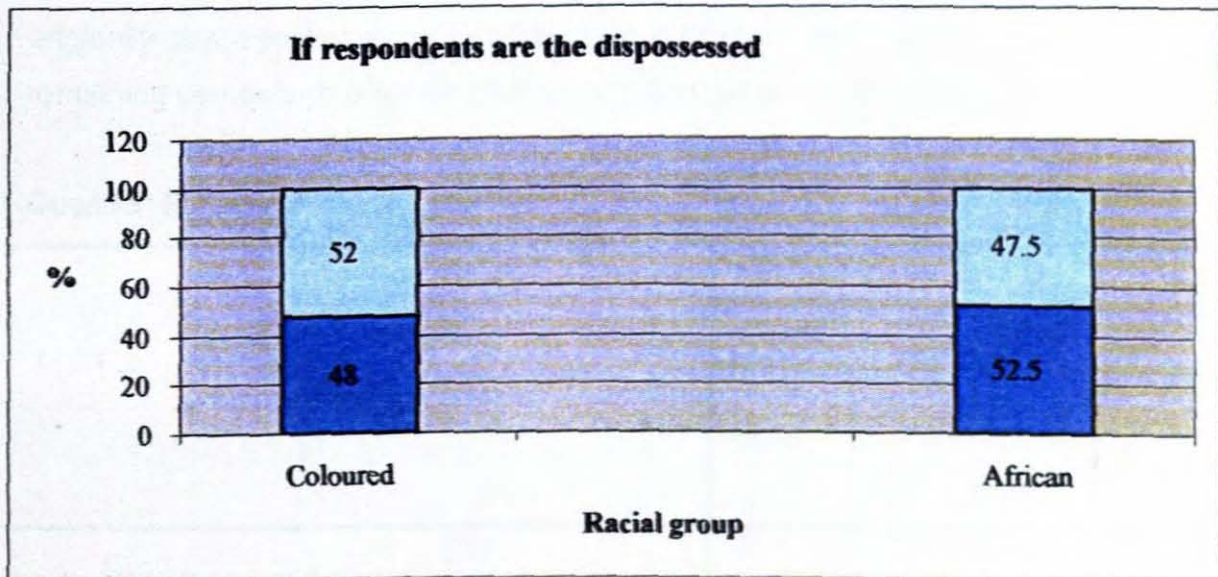


Figure 8: If respondents are the dispossessed

		Racial group			
		Coloured		African	
		Count	Col %	Count	Col %
If respondent are the dispossessed	No	12	48.00	21	52.50
	Yes	13	52.00	19	47.50
Total		25	100.00	40	100.00

Table 9: If the respondents are the dispossessed

52% of the owner claimants and 47.50 % of the tenant claimants are the originally dispossessed victims as indicated in Figure 8 and Table 9. The remaining percentage is either children or grandchildren of the dispossessed.

Question 5

		Racial group			
		Coloured		African	
		Count	Col %	Count	Col %
If the restitution was sufficient for all beneficiaries	No	14	56.00	19	47.50
	Not applicable	0	.00	1	2.50
	Yes	11	44.00	20	50.00
Total		25	100.00	40	100.00

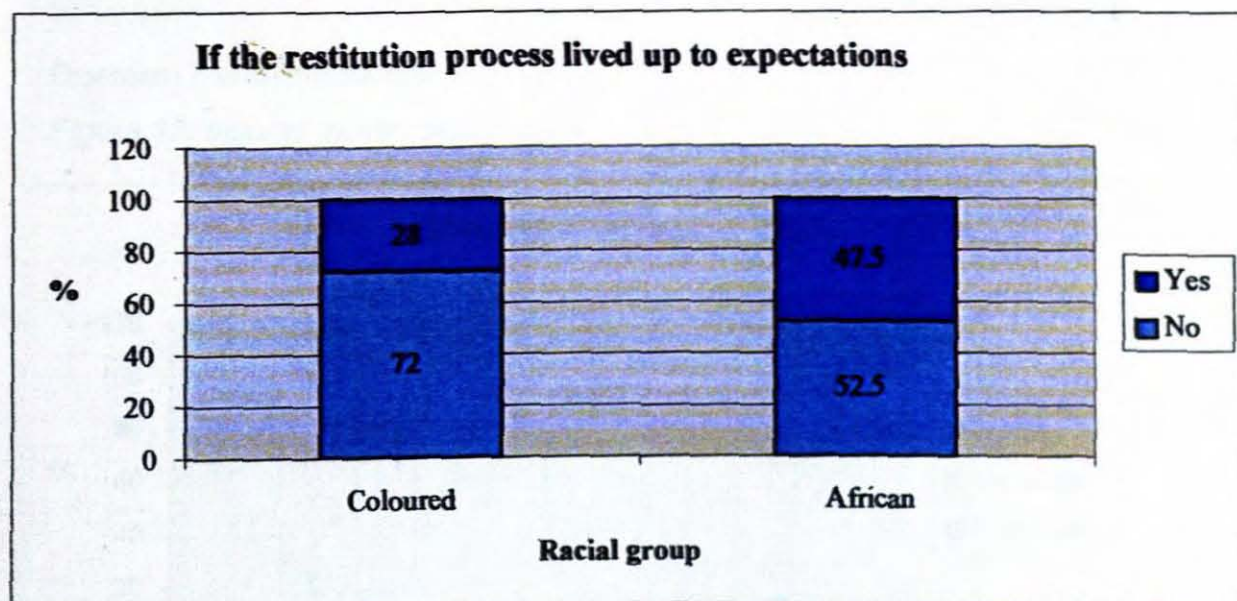
Table 10: Was the money sufficient

In the light of the above (Table 10) 56% of the owners said that the restitution award that they were paid was not enough for all the beneficiaries. They felt that they were not paid enough for their property. The money still had to be divided. 50% of the tenants felt that the money was adequate, but there were

respondents that did not complete this question. The rest felt that the money did not cover their expenses or losses of being removed from their places. They also had to share the award.

Question 6

Figure 11: Did the process live up to expectations.



		Racial group			
		Coloured		African	
		Count	Col %	Count	Col %
If the restitution process lived up to expectations	No	18	72.00	21	52.50
	Yes	7	28.00	19	47.50
Total		25	100.00	40	100.00

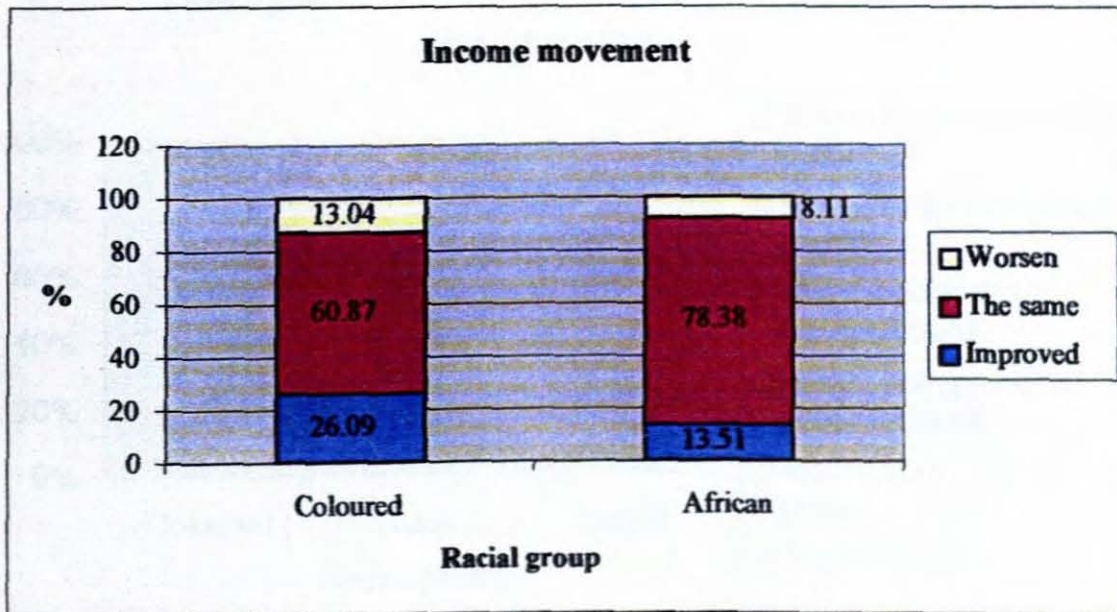
Table 12: Did the process live up to expectations

According to Figure 11 and Table 12, 72% of the owners ("Coloureds") and 52,50 % of the tenants (Africans) felt that restitution did not live up to their expectations. The owners expected today's market value and refunding for what they had before, e.g. livestock and poultry. Properties are valued higher than the refunding they received. They expected the process to be quicker and some of

them wanted to unveil their parent's graves. The tenants said that due to damage sustained they expected more than the R40 000.00 per dispossessed erf they received. Some African respondents felt that they got the least of everything. First Whites, second "Coloureds" and then the Africans. Some said the amount for beneficiaries was not enough, because they were promised a certain amount only to find out it was too little to accommodate their families.

Question 7 and Question 8

Figure 13: Income movement



		Racial group			
		Coloured		African	
		Count	Col %	Count	Col %
Income movement	Improved	6	26.09	5	13.51
	The same	14	60.87	29	78.38
	Worsen	3	13.04	3	8.11
Total		23	100.00	37	100.00

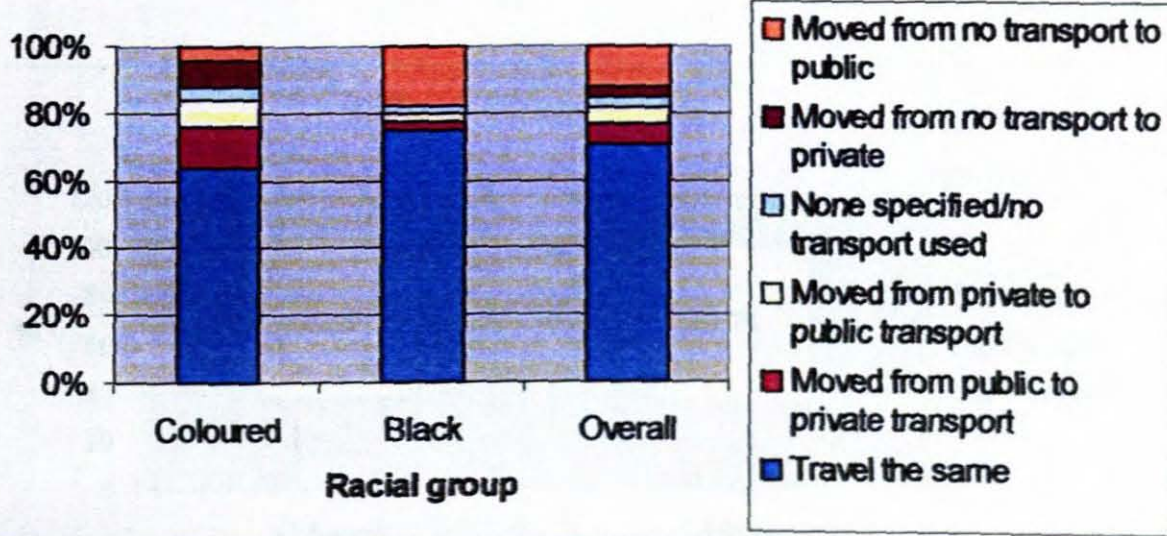
Table 14: Income movement

It is clear that majority of the claimants are still the same as it was at the time of dispossessions. 26,09% of the "Coloureds" and 78,38% of the Africans indicated that their income did improve. 13,04% "coloureds" and 8,11 % of the Africans indicated that they are worse off in terms of income, as illustrated in Figure 13 and Table 14.

Question 9 and Question 10

Figure 15: Changes in travelling pattern

Changes in travelling patterns from time of dispossession



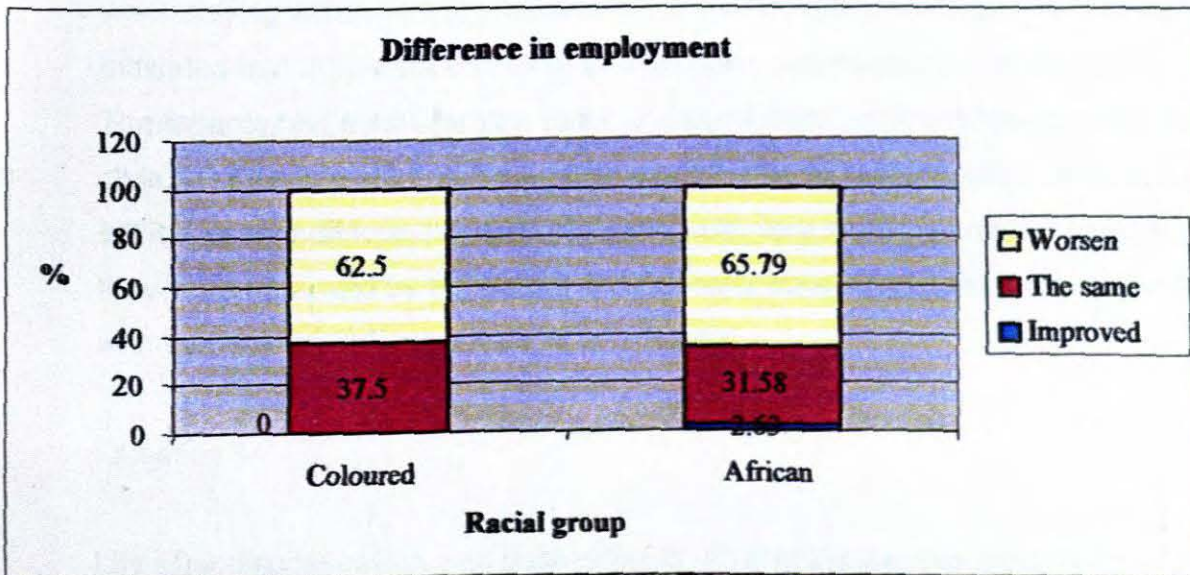
Changes in travelling patterns from dispossession	Racial group					
	Coloured		African		Total	
	Count	Col %	Count	Col %	Count	Col %
Travel the same	16	64.00	30	75.00	46	70.77
Moved from public to private transport	3	12.00	1	2.50	4	6.15
Moved from private to public transport	2	8.00	1	2.50	3	4.62
None specified/no transport	1	4.00	1	2.50	2	3.08

oved from no transport to	2	8.00	0	.00	2	3.08
ivate						
oved from no transport to	1	4.00	7	17.50	8	12.31
ublic						
otal	25	100.00	40	100.00	65	100.00

Table 16: Changes in travelling pattern

Question 11 and 12

Figure 17: Difference in employment



		Racial group			
		Coloured		African	
		Count	Col %	Count	Col %
Difference in employment	Improved	0	.00	1	2.63
	The same	9	37.50	12	31.58
	Worsen	15	62.50	25	65.79
Total		24	100.00	38	100.00

Table 18: Difference in employment

Question 13

Although there was a difference in terms of ownership and tenancy, it is evident that all of the respondents were happy in Paarl before they were evicted. Respondents said that they were living a very economically acceptable life-style. During telephonic interviews between the researcher and the respondents, they said that they were still at school and by the time that they arrived home all their furniture was thrown out and the houses were locked. Their parents were still at work. They also indicated that they had an average life-style, they had a comfortable life-style and their travelling expenses were minimal, because they were staying within walking distance from their friends and shops. Respondents indicated that they were travelling all over Paarl before they got a place to stay. The tenants had a satisfactory, safer and comfortable ordinary low-income life-style. They could still survive on their wages. Some said life was dull and they felt it was very difficult, because the laws were very strict towards Africans and they were harassed by the police. The Africans were living in mixed communities with the "coloureds", but were still very happy.

Question 14

Life after dispossession was quite difficult. 46% of the owners indicated that they had financial setbacks. 24% had to find new buildings for their shops. They had to adapt to new circumstances and life was tough. 24% were already pensioners when they were removed and could not use this money for much. They had to buy new furniture. 6% of the respondents are happy and satisfied in old age homes, while others are still middle class and are actually worse-off than before. Others are middle class and settled where they are. The tenants are worse off. The owners at least got money for their properties, while tenants were just thrown out. Their life-styles were very bad due to their poverty and they went from bad to worse. It was very depressing. Houses were not completed; there were no taps, no schools, no ceilings, no outside toilets and no hospitals. They

had to travel longer distances, moved in next to strangers and lost good life-styles due to racial segregation.

Question 15

According to the owners their life-styles were still the same after receiving the awards. At the time of receiving money their life-styles did change to a certain extent. It made life easier at that specific moment. They could spend money on medical bills and invested some of the money. 60% indicated their life-styles are still the same and there is no more money left and they have a lot of holes to fill. The tenants felt that their life-styles had a slight change and improvement. Some said their life-styles are more or less the same, maybe even worse because they received nothing compared to what they lost and the money still had to be shared. They could afford to pay rent now. 32% indicated that their life-styles are better now, but it is not enough. 9% are grateful for the process; they could pay arrears, furniture, water and electricity etc.

Question 16

24% of the owners indicated that restitution did not at all improve their life-style. 40% felt there was not really much of a change. 28% were of the opinion that their lives only changed for that specific time after receiving the award. 4% felt that their lives only changed to a certain extent, while the remaining 4% felt that their lives did change and that they discussed everything before using the money. The majority (70%) of the tenants stated that restitution did change their lives and that they paid their bills; they were even able to improve their homes. 2,5% even thought that it was a dream. 15,5% was of the opinion that restitution did not by any means improve their lives. 2,5% said restitution only improved their lives a little bit, while the remaining 2,5% were not sure whether or not restitution improved their lives.

Question 17

30% of the owners felt that monetary compensation was the easiest and quickest way out, because some of the claimants still had to share the money. 8% needed the money desperately. 4% felt it was their best option. 20% felt that the process would have been too long if they opted for restoration and the possibility of not getting it back. 12% said it was their only option. 4% said their mother was at the end of her bedridden life. 8% needed the money to pay for education and health services and to cover the rental debt. The last 4% was of the opinion that the land government offered was not enough.

50% of the tenants felt that it was the easiest way out. 15% opted for money to buy what they want for themselves and to change life-styles. 5% chose money to overcome poverty. 15% needed money to cover their debts, to extend their current homes and to improve their life-styles. 5% are claiming their parents' house. 10% thought it was the best option, but Commission officials misled them.

Question 18 and 19

		Racial group			
		Coloured		African	
		Count	Col %	Count	Col %
Difference in safety levels before removal and present	Improved	0	.00	1	2.50
	The same	16	66.67	5	12.50
	Worsen	8	33.33	34	85.00
Total		24	100.00	40	100.00

Table 19: Difference in safety levels

Question 20

It seems that the majority of the claimants, irrespective whether they were homeowners or tenants, spend their money on health services. Some of them used it to go to an old age home and invested the rest, while others used it on the education of their children or grandchildren. The tenants of Mbekweni used their awards to extend their homes, while some just used it to spoil themselves.

Question 21

The Paarl claimants are of the view that restitution is working, but the process is too long, but there are some claimants that understand that the process needs to be lengthy in order for the Land Claims Commission to compensate the correct people. There are also those that are very grateful for the process as well as for the current government that are trying to redress the injustices of the previous government. They also acknowledge that the government has not been able to make up for all the pain, loss and trauma, but are grateful that they are at least getting something back. There are those who were not happy with the process and who expected more than they received.

4. Conclusion

It is quite evident through the analysis above that restitution is not reaching its goals in terms of development, as claimants opting for the monetary option instead of development or acquiring alternative state land. It is a loss for the country's economy when people are opting for the monetary compensation. If claimants opted for redevelopment or acquisition of alternative state land, it would lead to job creation, access to better basic services such as health services, education which will lead to sustainability. Through development full participation of beneficiaries will be needed, which include women and the uneducated. In this case the uneducated refers the claimants of whom the

majority are poor and uneducated. This will also lead to the empowerment of women. Through restitution women are for the first time in many decades proud property owners.

Through the redevelopment option restitution can lead to transformation. The poorest of the poor can now again be the proud owners of the land they were dispossessed from. To enable the Commission to reach its development goals it must ensure that all restitution claims are resolved in such a way that they are part of the process of overcoming deliberately created injustices of the past.

Chapter 8

Conclusion

1. Introduction

This Chapter will conclude or determine the impact of monetary compensation as a form of restitution on the current life-styles of the Paarl residents, based on the analysis that was undertaken in Chapter 7. It will also determine whether or not the financial settlement offer improved the life-styles of the residents.

2. Conclusion

It has been shown in Chapter 7 that monetary compensation did have an impact on the Paarl respondents, irrespective whether the impact was positive or negative. It is evident that the Paarl respondents had a very easy-going, happy middle-class life-style before they were removed from their homes. People had to resettle and the areas where they were removed to were not finished yet. Some claimants indicated that the cement and paint were still wet when they moved into their new homes. These cement and paint fumes could be the reason why a lot of elderly people suffer from chest problems today. These people had to adapt to new circumstances, because they were thrown in with strangers. Some claimants even said they were drifting like loafers before they got a place to stay. They had to find money to buy new furniture. The homeowners were fortunate enough to be paid for the properties, while tenants got nothing for their homes.

There has been an indication that the people's life-styles did change because of the money, even if it was only to a certain extent. Some of the elderly claimants indicated that they could now at least afford to go to an old age home or to a retirement village because of the restitution award. They also indicated that they

got their human dignity back that was taken away by the apartheid regime. They also spend the money on health services.

Other claimants spent their award on their children's or grandchildren's education in order for them to have better life-styles. Some improved their social life-styles by improving their homes, buying home appliances, for example, televisions, telephones were installed, they covered their debts, and electricity was installed. All this was made possible through restitution.

In the light of the above, it is clear that restitution does have a positive impact on people's lives, even if it is only at the time of receiving the restitution award.

Although restitution is an open process and people cannot be told what to do with their money, they must be advised on their different options and how to invest their money in order for them to benefit in the long run.

Restitution is unfortunately a very long, slow process. Why is the process so slow? Is it because of a lack of co-operation and dedication from the Commission staff or is it because of the technicalities involved in the process?

There could be various reasons for the delays, but one of the main reasons is the lack of staff. Staff are overworked. The Regional Land Claims Commission: Western Cape is at the moment under-staffed and posts are being frozen at national level, which means even if there are vacancies, it will take a long time before they will be advertised and claims will just lie unattended until a Project Officer is employed to deal with them. Project Team members will deal with telephonic enquiries, but the processing for that area has to wait until someone is employed.

Another factor that slows down the process is the duration of the different phases within the restitution process. The negotiations between the commission and other State departments that do not co-operate also slow down the process.

Poor governance between State departments plays a major role in contributing in slowing the process. The route of a mandate to get to the minister can take up to 2-3 months and could still be subject to change. It depends on whether or not the minister feels approves the settlement package. Because of the complexity of the process that leads to the slow pace of service delivery, the Commission has shifted from a judicial to an administrative process.

As identified by the Ministerial Review of 1998, the following factors contribute towards the slow pace of delivery:

- The legal and procedural intricacies of the **Restitution of Land Rights Act, 1994 (Act 22 of 1994)** have had a negative effect on the speed at which claims were settled;
- The over-extension of the Land Claims Court's jurisdiction in terms of the **Labour Tenants Act, 1996 (Act 2 of 1996)** and the **Extension of Security of Tenure Act of 1997**;
- A lack of guidance with regard to the meaning of the concept "just and equitable" compensation;
- A disregard among certain groups for the **Restitution of Land Rights Act, 1994 (Act 22 of 1994)**, in the form of selling of land susceptible to land claims, indiscriminate evictions and the deliberate interference with the original geographical description of the land subject to claims; and
- The adversarial relationship between the drivers of the restitution process, i.e. the Commission on Restitution of Land Rights and the Department of Land Affairs.

The broader development context of restitution are extensively replaced by claimants that direct their pre-settlement options to monetary compensation rather than redevelopment or acquiring alternative state land. The acquisition of property is therefore replaced by the need of claimants to settle their debts as a result of high unemployment rate currently experienced within our communities. This cyclical effect of short-term reduction in financial obligations deprive most of

our communities of long-term financial sustainability, which will follow from investing in property and if appropriate skills development programmes would have been presented.

The researcher in Mbekweni made an observation when some claimants were financially compensated in December 2001. Some of these claimants wanted to extend their current homes (improving the housing conditions). They bought the building material (sand and stones) with their awards, but now the cash has been used and they cannot even continue with the building or extension of their homes.

If they opted for redevelopment or alternative land they would have automatically qualified for two grants at the Department of Land Affairs and they could have benefited in the long run by renting/ letting their current house and continued making money by using the land or house as a security to obtain loans from a bank.

The money that is offered to people is insufficient and inadequate. As a claimant stated, " We must not only be compensated for the financial loss, but also for our lives that were lowered to a mere existence, a struggle for survival. We lost far more than what we are being paid out for." In a lot of cases where money had to be divided, people received next to nothing. The fact that the Commission is currently under-staffed and the fact that there is no clear policy on certain issues are factors that contribute towards the process being slow. The fact that service providers do not produce what they are supposed to and the Commission has to redo it also slows down the process. Insufficient information from claimants, officials solving family disputes and the low morale of both claimants and Commission officials contribute toward the process taking so long.

Although we have to admit that the process is long and time consuming, we have to take into account that restitution in South Africa and in Africa is one of a kind

and a relatively new process. There are also certain factors that are beyond the control of the project officials. The process is very technical, complex and there are a lot of procedures that need to be followed to ensure that the rightful claimants are being awarded.

Claimants also have to acknowledge the fact that the Land Claims Commission is trying to speed up the process through having special projects, for example, the Western Cape Office has a special project called the Aged Project that focuses on the old and needy people. The Commission also has a Western Cape African Tenancy Project, which focuses on the African tenants in the Western Cape as well as the Standard Settlement Offer (SSO) Project that focuses on all those claimants who opt for financial compensation. The Department of Land Affairs is also busy with a Nation Validation Campaign to validate all claims. Shifting from a judicial to an administrative process was a good move from the Commission, because if claimants were opting to settle their claims through the Land Claims Court, it would have taken longer and it would have been more costly for the claimant. If a claimant opts for this route, the claimant pays all fees.

3. Recommendations

Based on the research that has been done on the restitution process, the following recommendations can be made to the Regional Land Claims Commission: Western Cape:

- That the Project Officer should have detailed workshops regarding the different forms of restitution explaining to the claimants the advantages and disadvantages regarding each. They should especially focus on financial compensation, because it was clear through the study that the majority of claimants went for money because they thought it was the quickest way out.
- That claimants must be advised rather to opt for redevelopment than money. By opting for redevelopment they could improve their current life-styles.

- That the restitution process should be sped up; for example, if a Mandate to Negotiate leaves the Land Claims Commission to seek ministerial approval, it can take up to 3 months before the minister will approve it. It might be subject to change and will be returned to the Regional Office for changes and will go back via the same route. After this is approved, the S42D is drafted and is also sent to the minister for approval via the same route and this can also take up to 3 months to be approved. The route to the minister needs to be shortened. *In terms of decentralisation, the Act needs to be amended to the effect that the powers of the minister need to be limited in terms of S42D. For example, claims with a monetary value of less than R100 000.00 need to be settled by the Regional Land Claims Commissioner. This in effect gives the Commissioner wider powers to settle smaller claims and this helps to speed up the settlement of smaller claims instead of following up the route to the Minister.*
- That the duration between the phases also needs to be revised.
- That the Standard Settlement Offer should be re-looked at again. The money that is offered to claimants is not adequate. In most cases these amounts were insufficient and not enough to be shared by all the beneficiaries. *If claims are being settled through SSO's, the researcher think that we will lose the vision of giving land back to the people.*
- That the Commission should take into account the sizes of properties when paying people. It is unfair to pay all claimants the same amount that is R40 000.00 per dispossessed erf for owners and R17 500.00 for tenants. It is also unfair to pay a claimant with one property the same amount as a claimant with multiple dwellings on one property.
- That proper planning system should be put in place. Planning must be done in advance. Project Officers should not take on a lot of projects at the same time.
- That there must be clearer policy directives; for example, there are no clear directives on how to process and settle church and business claims.

- That the Land Claims Commission should employ more employees. It is clear that the shortage of staff and the fact that those that are currently employed by the Commission overwork themselves, leads to low productivity.
- That there should be better corporate governance between State departments. There is not a lot of co-operation from State departments, although they are obliged to assist in terms of the Constitution.
- That restitution was never intended to cover debts, but was a form of redress to people who suffered through the apartheid policies regarding land ownership. The Commission does realise that it will never give people back what they lost, but it is at least trying to address the mistakes of the apartheid regime through the restitution process.
- That the Commission must try to correct the imbalance of the 87% versus 13% in land ownership. The process gives money to people, especially Africans, but they still own only 13% of the land and parcels of land are being sold to foreigners. Restitution is the only programme that will manage to give land back to the people, and if this does not happen land is being sold at exorbitant prices by estate agents and the poorest of the poor cannot afford to buy these properties.
- That transformation and integration takes place. Our country needs to be transformed with Africans having businesses and living in urban areas, something, which is not presently happening. For example, integration will then eliminates Africans living in Mbekweni, "Coloureds" living in Charlestonhill, New Orleans etc. and Whites living in or nearer to the towns. Due to racial segregation, people have to travel long distances to work and to access other social amenities.
- That claimants do not look at the long-term investments, in that their descendants will have the benefits of owning and making profits of the land that was dispossessed from their ancestors due to racial laws and practices. Claimants must be urged to opt for the land, because if they don't, our land

will fall into the hands of foreigners. Through opting for land, claimants will ensure better life-styles for their descendants.

- That decentralisation of powers to regional offices will ensure that quicker payments can be made to people, because some claimants are complaining that they waited a long time for their money after signing their individual S42Ds.
- That the Commission must also determine the definition of "just and equitable compensation". Although this did not happen in the Paarl claims, there were claims that were rejected on the basis that they were paid just and equitable compensation at the time of dispossession. The researcher is of the opinion that even if the law can define it, people could have never received just and equitable compensation for what they lost and for all the hardships and trauma that people went through.
- That emotional trauma and inconvenience must be taken into account when determining the monetary value of the claim, as the Commission examines what the claimant lost during dispossession, that is the size of the property or land rights.

BIBLIOGRAPHY

BOOKS

- Bless, C & Higson-Smith. 2000. **Research Methodology and Statistics: An African Perspective**. 5th Edition. Cape Town, Juta & Co. Ltd.
- Coetzee, J & et al. 2001. **Development Theory, Policy and Practice**. Cape Town, Oxford University Press Southern Africa.
- De Klerk, M. 1991. **A Harvest of Discontent. The Land Question in South Africa**. Idasa, Cape Town.
- Field, S. 2001. **Lost Communities, Living Memories. Remembering Forced Removals in Cape Town. Centre for Popular Memory**, University of Cape Town. Cape Town, David Phillip Publishers.
- Fitzgerald, F & et al. 1995. **Managing Sustainable Development in South Africa**. Oxford, Oxford University Press.
- Hornby, AS & et al. 1995. **Oxford Advanced Learners Dictionary: International New Student Edition**. Oxford, Oxford University Press.
- Murray, C et al, 1990. **No Place to Rest. Forced Removals and the Law in South Africa**. Oxford University Press, Cape Town.
- Tai, L. October 2000. **Introduction to SPSS. Version 10.0**. Centre for Social Science Computation and Research. University of Washington. Seattle.
- Wilson, F & Ramphela, M. 1994. **Uprooting Poverty: The South African Challenge**. Cape Town & Johannesburg, David Philip Publishers.

COMMISSION REPORTS

- Gordon, J. **Impotence & Omnipotence: Problematizing the Articulation of Anthropological Perspective within the Land Restitution Process**. September 1997. Unpublished Masters Degree of Arts in Anthropology submitted to the Department of Social Anthropology, University of Cape Town.
- Paul Len Turok.
A neighbourhood Attitude. June 1978. Unpublished Thesis for Bachelors Degree in Architecture. School of Architecture, University of Cape Town.

Consolidated Business Plan for the Commission on the Restitution of Land Rights, April 2000- March 2005, J Maree, Pretoria.

The Commission on the Restitution Of Land Rights- Annual Report: April 2000- March 2001, as issued by the Department of Land Affairs, dated March 2001, Pretoria. ✓
①

Unpublished Document, Department of Land Affairs: 2000, Cape Town

Unpublished Research Report compiled by the Project Officer Star

Nkwenkwezi to the Department of Land Affairs: 2001, Cape Town .

Unpublished document: Paarl African Tenancy Mandate to Negotiate ✓
compiled by the Project Officer, Star Nkwenkwezi to the Department of
Land Affairs: dated 13 August 2001.

Unpublished document: Paarl Coloured Tenancy and Ownership Mandate
to Negotiate compiled by the Project Officer, Star Nkwenkwezi to the ✓
Department of Land Affairs: dated 18 January 2001.

Unpublished Research Report on the International Precedents for Land
Restitution in South Africa as issued by, Service Provider to the
Department of Land Affairs, dated August 1999.

Unpublished document, Department of Land Affairs, 2000.

Unpublished Research Report on the Protea Village Community Claim as
issued by, Researcher Sally Gross to the Department of Land Affairs, dated
April 2001.

Unpublished Research Report on the Prince Albert Claim as issued by,
Service provider Kathleen Schulz to the Department of Land Affairs, dated
July/October 2001.

Unpublished Research Report on the Dysselsdorp Claim as issued by,
Service provider to the Department of Land Affairs, dated July/October
2001.

Unpublished document: Protea Village Tenancy Mandate to Negotiate
(Batch 1) compiled by the Project Officer, Zelda Vos to the Department of
Land Affairs: dated November 2001).

JOURNALS

Rural Development Framework, dated May 1997, as used by the Rural Development Task Team (RDP) and The Department of Land Affairs, Pretoria.

Land Information Journal. Focus on New Policy Directions, June- August 2000, Volume 4 No 7, Department Of Land Affairs, Pretoria.

Consumer Scope 2000. Bringing LSM to Life. Privest Integrated Marketing Information.

POLICY AND LEGISLATION

Green Paper on South African Land Policy, February 1996. The Department of Land Affairs.

The White Paper on South African Land Policy, September 1998. 2nd Printing, the Department of Land Affairs.

The Restitution of Land Rights Act 22 of 1994.

The Constitution of the Republic of South Africa, Act 108 of 1996.

Sechelt Indian Band Self-Government Act, 1985.

Black Administration Act 38 of 1925.

The Asiatic Land Tenure Act of 1946.

The Rural Coloured Areas Act of 1963.

The Expropriation Act 63 of 1975.

The Slums Act 56 of 1966.

The Property and Ownership Reform Act of 1991.

Public Health Amendment Act of 1897.

Natives Urban Areas Act of 1923.

Illegal Squatting Act of 1977.

Black Land Act 27 of 1913.

Development and Trust Land Act 8 of 1936.

Group Areas Act 36 of 1966, 41 of 1956, 43 of 1966, 190 of 1957, 34 of 1966, 282 of 1962, 177 of 1972, 77 of 1957, 36 of 1961, 204 of 1962 and 158 of 1972.

Group Areas Development Act 69 of 1955.

Village Management Board Act 17 of 1919.

Natives Reserves Location Act of 1902.

Abolition of Racially Based Land Measurement Act 108 of 1991.

Labour Tenant Act 2 of 1966.

Upgrading of Land Tenure Rights Act 112 of 1991.

NEWSLETTERS

Information Bulletin on the Closure of District Six Land claims Unit, dated 14 April 2001.

Newspaper articles and Press clippings compiled by F. Zottl, Communication Officer, 1996- 2000, Cape Town.

The Commission News: Newsletter April 2001; Volume 3, Issue 5.

WEBSITES

<http://dla.pwv.gov.za/restitution/background.res.htm>, accessed on 05/05/2001.

www.uthunulu.org, accessed on 01/06/2001.

www.districtsix.co.za, accessed on 11/06/2001.

ANNEXURE A



PENINSULA
TECHNIKON
SKIEREILAND

FACULTY OF BUSINESS
**DEPARTMENT OF PUBLIC
 MANAGEMENT & LAW**

ENQUIRIES/NAVRAE:
 Ms D Morrison
 Tel: (021) 959 6184

TL Mngese
 P256 Mbekweni
 Paarl
 7626

Dear Sir or Madam:

I am currently doing my Master's degree in Technologiae: Public Management at Peninsula Technikon. My research focus on the Restitution (land claims) process and to determine the impact of monetary compensation as a form of Restitution on the current life-styles of the Paarl community.

I have chosen to do my research on the Paarl claimants that are already financially settled. I have designed the attached questionnaire and would like you to answer the questions that I compiled based on my topic. Your answers will assist me when compiling my final reports as well as to do determining whether or not restitution is really working.

Once you completed the questionnaire, please return it to Mr Mahatle @ M132 Mbekweni, Paarl

Your cooperation will highly be appreciated.

Yours sincerely,

(Ms) EO Reid

ANNEXURE B**QUESTIONNAIRE****SECTION A**

1. Do you think restitution is working? If No, please motivate.

 Yes No

2. Was the financial compensation your first option? If No, why did you choose it?

 Yes No

3. Do you think that our restitution process is too long?

 Yes No

4. Are you the dispossessed? If No, how many beneficiaries are involved.

5. If you are not the dispossessed, was the restitution award enough for all the beneficiaries.

6. Did the restitution process live up to your expectations? If No, what were your expectations?

SECTION B

The next set of questions are based on the living standard measurements.

7. At the time of dispossession, what was your salary/ income?

a. R 800.00 p.m

b. R 900.00 p.m

c. R 1 100.00 p.m

d. R 1 500.00 p.m

e. R 2 200.00 p.m

f. R 3 600.00 p.m

g. R 7 300.00 p.m

h. R 13 200.00 p.m

8. What is your current your salary/ income?

a. R 800.00 p.m

b. R 900.00 p.m

c. R 1100.00 p.m

d. R 1 500.00 p.m

e. R 2 200.00 p.m

f. R 3 600.00 p.m

g. R 7 300.00 p.m

h. R 13 200.00 p.m

9. When you were removed due to racially discriminatory laws, what form of transport did you use?

a. Used your own car

b. Traveled by taxi

c. Traveled by bus

d. Traveled by train

10. What is your current form of transport?

a. Use your own car

b. Travel by taxi

c. Travel by bus

d. Travel by train

e. none of the above

11. At the time of dispossession were you:

a. employed

b. unemployed

12. Are you currently:

a. employed

b. unemployed

13. What was your life-style like at the time of dispossession?

14. What was your life-style like after you were dispossessed?

15. What was your life-style like after you received your restitution award?

16. Did restitution improve your life-style?

17. Why did you choose financial compensation?

18. Tick off in the appropriate block

How would you describe your neighbourhood at the time of dispossession?

a. safe

b. peaceful

c. unsafe

d. high incidence of
crime

e. None of the above

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19. How would you describe your current neighbourhood?

a. safe

b. peaceful

c. unsafe

**d. high incidence of
crime**

e. None of the above

20. What did you spend your restitution award on?

**a. health and welfare
services**

b. education

c. social services

d. accommodation

e. all of the above

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f. none of the above

21. What are your views on the restitution process?

For statistic purpose, please answer the following questions:

22. What racial group are you?

A	B	C	D
WHITE	COLOURED	AFRICAN	INDIAN

23. At the time of dispossession were you:

A	B
TENANT	OWNER