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The Truth and Reconciliation Commission and the Commission on Restitution of Land Rights : Some Comparative Thoughts

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Introduction

On 15 October 1996 in a small rural town of the Western Cape history was being made. The former Elandskloof community learnt that the Lands Claim Court (LCC) sitting at Citrusdal had issued a judgement instructing the state to return Elandskloof to them. The state had already reached a sales agreement with the current owner, a white farmer, for R4 million. This was the first restitution case to be settled in the Western Cape (indeed the first in the country) under the Restitution of Land Rights Act (RLRA) of 1994 which provided for a Commission on Restitution of Land Rights (CRLR).[1]

Two months later on 16 December, the Day of Reconciliation, the community took ownership of a 3 138 hectare farm in a day marked by ceremony and joy. Minister of Land Affairs and Agriculture, Derek Hanekom, personally handed over the title deed. The day commenced with prayers at the graves of those Elandsklowers not alive to witness this day of victory. A procession then made its way through different parts of the farm ending near a stream where the day's festivities were scheduled to begin. Speeches, prayers, a lunch and then sport (Hanekom brought along his rugby gear) music and dance followed right through the evening.[2]

The first urban restitution case to be settled in June 1997 involved the Dulabh family of King William's Town in the Eastern Cape. This received little media coverage unlike the Elandskloof case because the family itself chose not to speak to the media. While the family had lost ownership of the property under the Group Areas Act (GAA) in 1973 they had continued to occupy the property. They bought it back in 1994 taking advantage of the fact that racially based land laws had been repealed. They subsequently lodged a claim with the CRLR for R972 526 as compensation for, among other things, rent paid over the years and the cost of repurchase. The case was settled by the Department of Land Affairs (DLA) with an offer of R121 468.[3]

The Mayibuye I-Cremin Committee had reason to celebrate on 15 October 1997. The LCC set the seal to its claim lodged in 1995 for Cremin, an area some 50 kms from Ladysmith in KwaZulu-Natal. The decree sanctioning the return of the land to the previously dispossessed community was marked 'by singing, dancing and tears from land claimants and commission staff alike.' The DLA purchased the land from the current white owners for R407 256 which was restored to some 85 householders (26 of whom were women).[4] This was the first restitution claim to be settled in that province. Some months later, title deeds were handed out by Hanekom at a ceremony held in a marquee put up in an open area near Elandslaagte. This function was graced by the presence of President Mandela.[5]

On Heritage Day in 1998, the rural area of Diratsegae near Rustenburg in the North-West Province was marked by a day of celebrations 'in true African tradition with a feast that had

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songs, dances, ululating and praise-singing'. In attendance was the Chief of the Bakwena, J.C. Legoale, who was present with his people to receive title deeds to the land from which they had been removed four decades earlier. The handover was executed by Chief Patekhile Holomisa, chair of the parliamentary portfolio committee on land affairs while Geoff Budlender, the Director-General of the DLA, and Joe Seremane, the Chief Lands Claims Commissioner (CLCC), addressed the gathering. O.J. Tselapedi, Member of the Executive Council for Agriculture in the province, planted a tree.[6]

On Christmas Eve 1998 the front page of the Cape Times featured a beaming 83 year old Winifred Henry receiving a cheque close to R70 000 from Minister Hanekom and Acting CLCC Wallace Mgoqi. This was restitution for the forced sale of her home in Vasco, Goodwood in 1964 under the GAA. Hanekom and Mgoqi personally went to her home in Elsies River in Cape Town along with a bouquet of flowers.[7]

There will be many more such moments throughout 1999 - 'a year for rolling action on delivery of land claims.'[8] The most recent celebrations occurred on Human Rights Day where the Khomani San community in the Northern Cape became recipients of the restitution process. Title deeds to land from the Kalahari Gemsbok National Park and some private land on the southern boundaries of the park were handed over by Deputy-President Thabo Mbeki. Hanekom once more took part in this event as did the premier of the province Manie Dipico. This occasion made front page news in the Cape Times accompanied by colourful photographs.[9]

The above represents some of the successes of the CRLR. These events also mark some of the significant moments when the successful work of the commission emerged in the public eye accompanied by some symbolism and ritual. They also mark the difference between urban restitution and rural restitution. Yet these events and the CRLR itself have by and large not 'captured ... South Africa's imagination' as it has been noted that the Truth and Reconciliation Commission (TRC) has done.[10] In fact, even in these successful moments, it is the ministry of Hanekom (it is the DLA which purchases the land for handover) rather than the commission itself which takes the limelight.

More recently, restitution has relevance for election campaigns. Pictures of other former residents of Goodwood and Parow receiving cheques from Hanekom and Mgoqi soon made it on one of the Western Cape ANC's electioneering pamphlets during the registration of voters drive in early 1999.[11] Commentators have speculated on the significance of the settlement of the Khomani San's claim for the ANC in the Northern Cape.[12] The impact of the restitution process, however, over the last few years has been more local than national. A major conference such as this which again thrusts the TRC into the full glare of public and academic scrutiny provides an opportunity to examine from a comparative perspective one of the state's other reconciliation projects, the restitution of land rights.

Setting up the Commissions

The appointment of the CRLR preceded the TRC by several months. The RLRA was signed by President Mandela on 17 November 1994 and the five commissioners took office on 1 March 1995 after a long process of nominations from the public, a selection process to sift through the 212 names submitted,[13] public interviews and final appointment by the Minister

of Land Affairs. Wetsho-otsile Joe Seremane was appointed the CLCC - his headquarters were in Pretoria. His Deputy, Wallace Mgoqi, also took responsibility for the regional office in Cape Town serving the Western Cape and the Northern Cape. Three other Regional Lands Claims Commissioners (RLCC) were appointed : Emma Mashinini was based in Pretoria to serve Gauteng, Mpumalanga, North West and Northern Provinces; Dr Peter Mayende was based in East London to serve the Eastern Cape and the Free State; and Cherryl Walker was appointed to the Pietermaritzburg office for KwaZulu-Natal. In 1997 Durkje Gilfillan was appointed as the fifth RLCC when Mashinini was relieved of responsibility for Mpumalanga and the Northern Province. The LCC headed by Justice Fikile Bam was appointed only in March 1996.[14]

The CRLR was charged with responsibility for a) receiving claims for restitution from any individuals, communities and their descendants who had been dispossessed of their land rights by any racially based law[15] since 19 June 1913; b) assisting claimants to lodge their claims; c) prioritizing claims; d) communicating its brief and procedures; e) keeping claimants informed about the progress of their case; f) working towards the settlement of all claims; g) preparing reports of settled claims and claims under dispute for submission to the LCC ; h) monitoring the implementation of settlements.

Claimants were to be given until 30 April 1998 (later extended to 31 December 1998) to lodge claims on a prescribed form. The CRLR was tasked with completing the settlement of claims within five years, a ten year period was envisaged for the implementation stage.[16] The LCC would issue final decrees for each case submitted to it sanctioning the form of restitution and the amount of compensation. It could also make decisions in disputed cases where no settlement had been reached. Restitution could take several forms : restoration of the original land; allocation of alternate land; monetary compensation or other forms of relief.[17]

From the above, the restitution process which may be demarcated into five central phases - submission and acceptance, investigation, negotiation, adjudication and finally, planning and implementation[18] - are cast in an administrative, legalistic framework. Since the final stage of a claim is submission to the LCC for ratification all stages are determined by the court-driven process. There is an investigative/research process involved which the rules of the commission issued in May 1995 set out. [19]

The TRC established under the Promotion of National Unity and Reconciliation Act of 1995 likewise has had a strong investigative and research component. The TRC was tasked with establishing the 'causes, nature and extent of the gross violations of the human rights' from 1 March 1960 to 10 May 1994; to identify those responsible and to understand these violations from the perspectives of all involved. Amnesty was to be granted to all those guilty of such crimes provided they fully confessed to the nature and circumstances of the crimes. Victims whose human rights had been violated were to receive special attention from the commission in two major ways : 'restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them'. Investigations and hearings would be the route to obtaining these objectives. The TRC had to prepare a full report of all its activities and findings and make recommendations on how such human rights violations can be avoided in the future.[20]

The commissioners to the TRC were appointed on 15 December 1995 nine months after the CRLR had commenced work. Towering over the commission as the Chief was Archbishop Desmond Tutu. Internationally recognised, a recipient of the Nobel Peace Prize and widely respected in South Africa for his outspokenness, he has been described as 'the moral leader'. His Deputy, Alex Boraine, was to become 'the nuts-and-bolts man, the one who made things happen'.[21] Fifteen other commissioners were appointed. They - unlike the CRLR which has no Indian or coloured commissioners - are representative of the broad spectrum that makes up the South African nation. Commissioners include English-speaking whites, Afrikaners, Indians, coloureds and Africans. Seven of the seventeen commissioners are women (in the CRLR the numbers of male and female are equal). The appointment process to the TRC had also been long-drawn out - submissions of nominations (some 299); public interviews by a selection panel of shortlisted nominees; and final selection by President Mandela and the cabinet.[22]

From the beginning the TRC impressed with the speed at which it established its infrastructure. As a government spokesman commented :

> Within a few months it set up four offices, its internal communication is astonishingly up-and-running, the publicity it generates is better than textbook-perfect, it doesn't let itself be paralysed - neither by the bureaucratic red tape, nor by the government or any political party. ... The Commission is an example of how things <u>can</u> be done.[23]

The urgency with which it proceeded was determined by the limited time which it was given to accomplish its goals - a two year period which was then extended into late 1998.

The TRC moved quickly to define the responsibilities of commissioners at its first meeting on 16 December appointing them to its three committees : a human rights violations committee, an amnesty committee and a reparation and rehabilitation committee. Apart from the commissioners, additional individuals were appointed to the committees. Four regional offices were set up at Cape Town (also the head office), Johannesburg, East London and Durban. A Research Unit was headed by an academic from the University of Cape Town, Professor Charles Villa-Vicencio, and an Investigative Unit was headed by Commissioner Dumisa Ntsebeza. In addition, there was a media department and a legal department. After a month, commissioners went on a spiritual retreat. A photo session with eager reporters began with prayers.[24] This set the tone of the TRC.

Justice, Reconciliation and Healing

These three words frame the work of both commissions but in slightly different ways. The TRC draws its guidelines from the final paragraphs of the Interim Constitution of South Africa, a constitution that was the product of multi-party talks and negotiations. The TRC like that constitution is 'a historic bridge' connecting the past and the future. The constitution sets

> the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the

> transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.
> These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not retaliation, a need for *ubuntu* but not for victimisation.

The final paragraphs thus provide for an amnesty process for those guilty of various offenses arising out of the political conflicts of the previous decades. The TRC becomes the means through which both amnesty and the needs of victims would be addressed.[25]

For the TRC uncovering the 'truth' about the past leads to reconciliation. It is through knowing, remembering (establishing a collective memory) and documenting this that the new nation is born.[26] Reconciliation for Bishop Tutu is essentially about forgiveness and not revenge.[27] The National Unity and Reconciliation Act

> is based on the principle that reconciliation depends on forgiveness and that forgiveness can only take place if gross violations of human rights are fully disclosed. What is, therefore envisaged is reconciliation through a process of national healing.[28]

Healing occurs for victims through the emergence of the truth and through 'the telling' process whereby their experiences are acknowledged and heard.[29]

Mahmoud Mamdani's question at a university panel discussion on reconciliation threw open a set of issues around truth, justice and reconciliation : 'If truth has replaced justice in South Africa - has reconciliation then turned into an embrace of evil?'[30] The TRC found itself on the defensive in relation to the question of justice as the question emerged over and over again 'Why only a "Truth" Commission? Why amnesty? What about justice?' Its philosophical thinkers responded with the notion of 'restorative justice' as opposed to a 'retributive justice' more commonly associated with the criminal justice system. This

> wider conception of justice ... includes/interacts more closely with values like the common good, truth, reconciliation ... Restorative justice asks "How do we restore the well-being of the victim, the community and the offender?"

Some justice in the conventional sense is also accomplished since the guilty have to publicly confess : 'naming can be seen as some punishment in the form of public shaming'. Justice is also provided through the provision of reparations (by the state) to the victim.[31] But Tutu cautions here 'The [reparation] amount is going to be symbolic ... The nation is saying sorry'.[32]

The language used most commonly by some of the chief figures involved in the restitution process - Derek Hanekom, Seremane and Mgoqi - would be 'reconciliation', 'justice', and to a lesser extent 'healing'. The mission statement of the CRLR specifically refers to its objectives 'to promote justice' and 'to foster and nurture a spirit of reconciliation'.[33] When he introduced the bill in November 1994 Hanekom explained that it was 'to bring justice to the victims of forced removals, and to take another gigantic step in healing the wounds inflicted on our beloved country'.[34]

Justice is to be obtained in the sense that the dispossessed now have a mechanism through which they can lodge their claims and have these settled. But justice is to be obtained within the parameters set by reconciliation. Hanekom stressed :

> The Bill is not about taking away people's land again. It is not about confiscation and coercion. It is about justice and reconciliation. It is part of our joint attempt to rebuild our country, to reach out to one another with compassion and fairness.[35]

He would later draw parallels with the TRC 'Land restitution, is in some way, like truth and reconciliation. We can't do absolute justice to all the victims of forced removals'.[36]

Seremane has emphasised the need to proceed 'stadig oor die klippe' :

> We're dealing with very emotive stuff. Everybody is the state's responsibility and in considering the claims we're forced to think of everyone.
> This is the challenge we are facing : whether we are going to be like the former regime and only look after a small group or whether we are going to try to work for reconciliation and dignity among all South Africans.[37]

The Interim Constitution determined that 1913 rather than 1652 was the date after which cases of dispossession would be considered. Seremane explains that 1652 would be, quite 'confrontational' apart from making all land subject to dispute, scaring off potential investors in the country and damaging South Africa's international image.[38] Commissioners reassure white owners of property : victims of forced removals lay a claim for restitution against the state - represented by the DLA - and not against the current owners of property.[39] Mandela particularly reassured white farmers at the signing of the bill at Tuynhuys that they need not be fearful.[40]

The rights of current owners of property are protected by the Bill of Rights in the final constitution of South Africa[41] : 'No one may be deprived of property'. Expropriation can only occur under two conditions : (a) if it was 'for a public purpose or in the public interest' with the latter meaning 'the nation's commitment to reform' and (b) if 'just and equitable compensation' is paid to the current owner with current land use and market value featuring as considerations. The coupling of these two provisions ensures that expropriations will not be the rule.

The needs of the victims, the current owners and the state's capacity to pay out huge sums of money thus all feature in the meting out of justice. Realism too features. Mgoqi, for instance, reassures white owners in the more elite suburbs of Cape Town that no awards would be made that would result in 'social disruptions'.[42] DLA officials explain that there was 'no intention to award a person a shopping centre such as Cavendish Square. That's ridiculous'.[43] The Act specifically points out that where restoration is envisaged the Minister would first have to issue a certificate that this was feasible. Provincial and local governments can also apply under section 34 of the Act to preclude restoration of land.

The whole process is a negotiated one especially when the dispossessed insist that restitution

must take the form of restoration of their former property. This is on the basis, as the DLA stresses, on the basis of 'willing buyer willing seller'.[44] There is, Hanekom emphasises, to be no 'land grab'.[45] Justice and reconciliation are thus obtained by the third part of the CRLR's mission statement 'to facilitate negotiated settlements, bringing together all the stakeholders'.[46] The CRLR has to perform, in the words of Mgoqi, a crucial 'balancing act' between claimants and current owners.[47]

Seremane thus stresses three words framing the restitution process : 'justice, reconciliation and negotiation'; 'retribution' was out.[48] 'Restitution was about rebuilding not revenge, and should be approached in the spirit of ubuntu or menslikheid'.[49] A documentary screened on SABC 3 to introduce Seremane[50] cast him as a perfect symbol of reconciliation. He is a 'bridge-builder', 'a man of forgiveness', 'a deeply committed Christian'. Originally a member of the Pan African Congress, he once hated whites and turned his back on the church. A young Seremane in the 1950s would have wanted to boot whites off the land. The older Seremane joined the South African Council of Churches in the late 1970s and headed its Department of Justice and Reconciliation. He embraces the man whose act of betrayal led to his imprisonment on Robben Island. He takes a position in the CRLR to support the initiatives of the ANC-led government, an ANC which has yet to account for the disappearance of his brother in the Quatro camps in Angola. Seremane is prepared to forgive those who are not delivering his brother's body and 'support the good they are doing'. The other commissioners come with extensive involvement in land and community issues either as academics, activists or lawyers.[51]

The 'Public Face' of the TRC

Both the TRC and the CRLR thus are concerned with 'dealing with the past' - in the case of the former this particularly means **finding out** what happened,[52] for the latter it is primarily about **undoing** the harms of the past by restoration or compensation. The limits to their functions are prescribed by the negotiated settlements which led to the birth of the new nation. The most marked difference that set the TRC apart from the CRLR would become evident in April 1996 when just four months after its appointment it held its first human rights violations hearings in the Eastern Cape. It was these hearings that became the 'public face of the commission'.[53] From that moment on the TRC became 'a potent representation of the burdens of rage and grief experienced by ordinary people.'[54]

Poet and journalist Antjie Krog explains the impact the process made on her :

> the Truth Commission microphone with its little red light was the ultimate symbol of the whole process. Here the marginalised voice speaks to the public ear, the unspeakable is spoken - and translated - the personal story brought from the innermost depths of the individual binds us anew to the collective.

It is, she notes with satisfaction, 'the voice of a very ordinary cleaning woman [that] is the headline on the one o'clock news'. But after months of listening to the voices of victims there is a dire need to 'hear the second narrative' - 'there can be no story without the balance of the antagonist'. This need is satisfied by the appearance of the perpetrators at the amnesty hearings. The parade at the hearings becomes multifaceted - there are also event or theme hearings, institutional hearings, political party hearings. Various voices surface : 'from

individual tales to the collective, from victims to the masterminds, from the powerless to those in power'.[55]

The TRC hearings are marked by much ceremony and ritual : prayer, singing of hymns, the lighting of a candle. Tutu dons his purple robes. Attention is given to where the victims are to be seated in relation to the commissioners and the audience. At the first hearing the victims walk into the hall towards their seats at the front; the commissioners walk over to them in gestures of welcome while the audience remains on their feet; victims join commissioners on a stage when they are called to tell their stories, this separates and distinguishes them from the audience of ordinary men and women. The national flag is prominently visible drawing all to the importance of the proceedings to the nation. Seating for the perpetrators poses different problems since some of them are serving time in prison. The amnesty hearings are bound by the judicial requirements of the judges who preside.[56]

The hearings become huge media events. As Hugh Lewin, a member of the human rights violations committee, explains :

> It is a great story. I don't think journalists have ever been presented with a story like this. every single day you get the best copy in town. You have copy which is local, you have copy which is heartrending, which is tearing, which is a challenge to approach. It is the best story that has ever hit South Africa in copy terms.[57]

From the very beginning the media department of the TRC realised the importance of the media. Arrangements were made with SABC radio to broadcast news of its work (including a weekly summary report) in all the radio stations broadcasting in the different official languages. Special teams of reporters were appointed by radio and the print media to cover these events. Live broadcast of hearings were heard on Radio 2000.[58] SABC TV screened a weekly programme hosted by Max Du Preez called TRC Special Report. Du Preez explains the success of the programme which went on to receive special awards drawing larger audience ratings than America's Funniest Home Videos : 'It is a basic need of any nation to know its past'.[59] The TRC noted that when several hearings were held in a particular week, reports on its work made up a third of the evening news bulletin on SABC TV.[60]

It was not only local journalists who covered the TRC. Foreign journalists were drawn to the TRC by several aspects of its unique features notably the volume of its public hearings and also the fact that politicians unlike other truth commissions in the world had to account for themselves.[61] The special hearing into the Mandela United Football Club which brought Winnie Madikizela-Mandela under the microscope drew '200 journalists from sixteen countries and more than twenty foreign television crews'. In many a home the television remained on for most of the day as the drama unfolded in a hall in Mayfair, Johannesburg. The day concluded with Tutu successfully coercing 'the Mother of the Nation' to say 'things went horribly wrong ... for that I am deeply sorry'.[62]

There have been many other moments at the hearings that have drawn special public fascination : Bishop Tutu breaking down after hearing victims' stories; Aboobaker Ismail and Neville Clarence (the victim of the bombing of the South African Air Force quarters) reconciling with each other; Dirk Coetzee's cold tabulation of how long it took to burn a

human body; Jeffrey Benzien's demonstration of the torture method he perfected whereby confessions could be extracted in under thirty minutes. The legal challenges which the TRC found itself drawn into because of the hearings - particularly its attempts to subpoena former State President P.W. Botha to testify - were also widely covered by the media.

The TRC is now in a position to evaluate the pitfalls and accomplishments of the hearings. Its report notes that the hearings satisfied the mandate of the commission since they provided 'healing', gave 'dignity', 'validation' and 'acknowledgement' to the victims and they uncovered various 'truths' and 'lies' about the past so that South Africans could now not claim not to know what happened. They provided opportunities for forgiveness, reconciliation and apologies. They gave voice to the voiceless.[63] The impact of the hearing is stated by a blind victim Lucas Baba Sikwepere :

> But I feel what has been making me sick all the time is the fact that I couldn't tell my story. But now I -it feels like I got my sight back by coming here and telling you the story.[64]

Who appears at the hearings and what impression this leaves about the past is a matter of much debate among academics. Only 10% of the over 21 000 statements made by victims were selected for hearing. The TRC explains that stories were selected to represent the range of conflicts over different times and to give voice to men, women and youth.[65] Brent Harris has argued that it is the male black voice that dominates and that these are not ordinary at all but that it is the experience of 'local elites' that have been privileged.[66] In their study of Lephina Zondi's testimony, Lalu and Harris argue that the subaltern remain voiceless; the individual testimony is subjected to a process of contextualisation. Lephina, they argue, 'is rendered voiceless (literally by the process of translation) and is simultaneously produced as the voice of Andrew Zondo or, at best, of his parents'.[67] Fiona Ross's analysis of the hearings is that 'men speak of their own experience, and women speak of others'.[68]

Jane Taylor has argued that the impact of the first year of hearings was that

> stories ... were dominated by those of long suffering and shocking loss. What fell out of these representations was South Africa as it was figured in the previous decade : a place of violent defiance, dispute, contest, activism.

The story of the perpetrators instead becomes 'compelling' - 'they are agents : they act upon others'.[69] Similarly, Pamela Reynolds asks what happens to 'heroism' ?

> Images of pain offered through the TRC hearings and taken up by the media are of, archetypically, mothers in tears. There is little balance with stories of healing, surviving, battling, networking, growing over time, reordering.[70]

Van der Merwe's study of the impact of the TRC hearing on the community of Duduza supports the TRC's positive appraisal but he points to the tremendous disappointment that many victims felt when they came to the hearing only to find that their story would not be heard. Local people would have liked greater say in who and what was heard. The TRC's expectation that other victims would identify with the stories selected for hearing were not

met. Each person felt the 'uniqueness' of his/her own story and felt it should be heard. People specifically felt that high profile cases were targeted at the expense of ordinary people. The hearing while answering some questions left many unanswered and the questions that the community wanted answers to were not the same as those prioritised by the commission.[71]

For the opponents of the TRC, the emotions unleashed at the hearings merely legitimated their opposition. The fact that Tutu cries and what makes him cry become a subject of comment. This is not about truth they say - it is a subjective process. One prison warder in Worcester was reported as saying :

> You know, it's not the *waarheidskommissie*, it's the *huilkommissie*, the *traankommissie*, it's an advertisement for bleddy Twinsavers - you have to cry to be on it.[72]

The hearings of the TRC and their impact will long remain a subject of debate and analysis. What is of significance is that while these hearings were in progress and grabbed the national headlines, victims of forced removals watched from the sidelines. Forced removals were briefly raised at the TRC by a religious group in KwaZulu-Natal called Practical Ministries who submitted a memorandum asking for a hearing on removals. They quoted Father Cosmas Desmond, author of the now classic study on forced removals The Discarded People, to prove that forced removals were 'a gross violation of human rights'. They urged the TRC to recognise the 'heinousness of this crime'.[73]

Others were also calling for such hearings. Steve Robins of UWC's Department of Sociology and Anthropology warned that the TRC's focus on the evil villains of apartheid such as the Vlakplaas murderers 'could facilitate a process of national amnesia' in respect of other aspects of apartheid such as the pass laws, group areas removals, black spot removals and other aspects of racial discrimination and unequal allocation of resources. He would have liked the TRC's institutional hearings to include the role of 'urban planning professionals'.

> By investigating the demolitions and forced removals that went into the making of the apartheid city, the TRC could highlight the more ordinary, systemic and bureaucratic nature of segregationism and apartheid.[74]

Piet Koornhof, a former minister who had overseen many forced removals, caused some stir when he met the deadline for amnesty by submitting an application for his role in such removals.[75] But the TRC found that forced removals were not part of its mandate - it was concerned with 'events which emanated from the conflicts of the past, rather than from the policies of apartheid.'[76] This decision while couched in this manner is not surprising - if the TRC accepted victims of forced removals as victims of 'gross human rights violations' they would become eligible for reparations - yet a mechanism, the CRLR was specifically created to address this.

Andrea Weiss, a reporter for the Cape Argus, recognising that the TRC was unlikely to hold hearings into forced removals threw a challenge to the city of Cape Town to hold its own 'mini-TRC' -

> The principle would be the same - through the telling of personal stories, healing can begin. ...
> The hearings could obviously not be comprehensive, but would allow for a symbolic telling of the stories which make up the fractured fabric of our city. They would be there for us all to hear and to understand.[77]

Such calls emanated partly from the apparent comparison of the work-styles of the TRC and the CRLR. Neither the city council nor the CRLR took up this challenge. The CRLR as will be seen wore a straight jacket cast on by the RLRA.

Behind the Scenes at the TRC

Wilhelm Verwoerd warned some time back that the public hearings were in fact only one side of the work of the TRC and that there were 'less visible, and therefore less accessible' aspects of its work. He noted that 'Policy workshops, investigations and corroboration of statements, research work do not make good TV.'[78] The publication of the TRC report throws light on its methodology and the work behind the scenes[79].

Victims of gross human rights violations would get their introduction to the TRC process via appointed statement-takers. The latter were chosen for language skills and their ability to reach out to victims since this first telling of the story would be part of the healing experience. They made up 'the front-rank of those who gathered the memories of the pain and suffering of the past';[80] they were 'the shock-absorbers of the commission'.[81]

Once statements were taken they had to be captured onto a data-base which could be mined for information about specific violations and individuals - both perpetrators and victims. This 'state-of-the-art database system' also served a 'housekeeping function' enabling all to monitor stages of work. The next procedure then was the work of corroboration - verifying statements made by victims was important since victims would become eligible for reparation. This became the fundamental task of the investigators while the researchers had to provide the background to these violations. Investigators and researchers found that their work went through several phases - first, they were driven by the needs of the victim hearings; but, eventually, all victims' statements had to be corroborated whether they went to a hearing or not; then as the amnesty hearings progressed in 1997 the background to these had to be investigated.

The Investigation Unit was made up of sixty staff with twelve to each region but it would take some time before the full quota was reached. Their backgrounds varied - lawyers, former magistrates, former policemen, journalists, graduates with research abilities and those from the NGO sector. They had the benefits of overseas expertise as well. There were twelve researchers who were allocated two to three per regional office. They were predominantly professionals and graduates with university backgrounds.

Researchers and investigators found they had to devise their own methodologies as they set about their work.[82] As Dugard Zweledingo Maqekeza, as investigator, remarks they had 'no clue' as to how to go about their tasks. Another investigator, Zuko Camagu, comments 'we learnt as we were going along'. Researcher, Madelaine Fullard, admits that in the beginning as they rushed to meet the first round of hearings 'things were very chaotic'.

Investigators and researchers began identifying institutions that had the necessary information and eventually they separately held national workshops strategising and sharing experiences and 'team-building'.

For an investigator engaged in corroboration work - there would be searches for various types of information - death certificates, police records, hospital records, mortuary registers, court records, inquest records, newspaper cuttings, searches for witnesses. These were not easy tasks - the events occurred all over the country often at substantial distances from the commission's offices. There were also obstructions to this search for facts. The military established nodal points which meant that all queries for information had to go through this channel and investigators could not get past this. At police stations investigators found that 'patience' was a quality they had to develop if they were to be rewarded. Camagu explains :

> That's what we learnt from the powers that be ... Patience. Just wait. They can delay and phone this and that just wait there until they open the strong room and go for what you want.

Working with victims also needed special skills :

> We got ourselves in situations we were not expecting where we found ourselves playing the role of social worker - trying to comfort the victim. Learning to be sensitive to people's feelings. If they stop you at the end of an interview give them a chance. Let them sigh - let them talk.

Getting others to talk about the past was also a difficulty as some wanted to put great distances from that past. Collecting and looking at photographs of dead people some of whom had suffered terrible deaths with blood spattered all over the walls were also deeply emotionally disturbing for investigators. Among the victories of the investigating team would include the discovery of Askari bases in the Eastern Cape and the much publicised uncovering of burial sites in various farms where Umkhonto we Sizwe soldiers were dumped by their assassins.

While the investigators were investigating 'micro-incidents', the researchers were devising research themes and drawing up regional chronologies. Statements selected for hearings needed much background research and the commissioners needed to be supplied with information. As Fullard explains 'We couldn't embarrass ourselves in public and we had to be sure quite sure about the case.' Research meant looking, for instance, into municipal records to find minutes of joint management structures. Fullard explains how interviewing policemen became a 'root moment' :

> They were black policemen living in Bongoletu township several of whom were quite notorious ... It was an extraordinary experience talking to them and hearing from their perspectives and the violations happening to them. I mean all of them were attacked, their houses were attacked, the children were assaulted. It was quite a mind-blast for me. I can tell you.

Researchers ended up on first name terms with Eugene de Kock.

Visits to the National Archives at Pretoria meant intensive periods of work with unsorted materials that had been stacked in various rooms. Fullard describes her experience :

> We would walk into a room ... five times this size with shelving like that packed with files that we had to look through. ... There were old metal trunks we were sitting [on]. There were no tables or anything. We put some trunks on top of each other to make a table ... We sat there on this filthy floor, no table or nothing. We sat there going through stuff and it was a race for time.

Such feverish activity was rewarded :

> The highlights was definitely a moment in the Pretoria archives when I found a document - and I still get shivers - I found a document which was from the Western [Cape] Province Joint Management Council on the morning of the second attack by the Witdoeke in KTC where they're writing to the State Security Council, the highest security body in the state, asking for R3 000 to buy an ox for a victory feast for the Witdoeke.
>
> ...
>
> I still get the shivers.

For Fullard this was a very personal moment of victory. She had always been interested in the activities of the Witdoeke at Crossroads and had once worked for the Legal Resources Centre researching those cases and this revisitation of those events by the TRC after some ten years 'was actually a dream come true'.

The report of the TRC provides one with an impression of a body successfully adapting and changing to the various phases and needs of the commission.[83] When it became clear that the task of taking statements needed more resources the TRC made use of donor funding to appoint designated statement takers, making use of non-governmental organisations and community organisations to reach out to remote areas. It did not hesitate to change the system by which statements were entered on to the data-base to make the latter more functional. This went through five changes before a final form was settled on. When it became clear that the hearings had absorbed too much of the energies of investigators, the unit shifted focus to deal with the backlog of corroboration work. Donor funding was secured to build up the capacity of the investigators and minimum corroborative pointers were devised to speedily process those which were not going to the hearings. When the Durban office was deluged with last minute statements - resources were shifted to enable it to deal with the heavier work-load. Similarly when the amnesty applications flooded in the amnesty committee was given more resources.

When it was found out that often several investigators were asking institutions for the same information ways were devised to avoid this. Zuko Camagu explains how information coming in from the various regions was processed so that cross-referencing could take place - also how significant the analyst notebook (funded by the Dutch government) was to their work. They were quickly able to see what had come in and what needed to come in. Camagu explains 'We were able to draft methodologies that would help speed up the process because we were quite aware of time constraints'.

All investigators and researchers were fortunate to have sound administrative backup and resources. Fullard explains :

> The resources I must say in this place was good. It was good. We arrived at work the computers were set up even though it happened very fast. The commission's offices had only really opened a month before I came ... I think administratively this is one of the more jacked up organisations I've ever been into ... I suppose it's because it's not like you apply to a bureaucracy in another building where a committee must sit and approve, you know. Things have to happen chop chop.

Was the process perfect? Because of the speed at which things happened there were obvious shortcomings. As Dumisa Ntzebeza commented that one simply could not investigate an entire past of 34 years in the time-span that was given them.[84] Many statements only received the barest of investigation and when some victims became aware that what investigators were doing was just corroborative work there was a sense of disappointment. While the TRC's investigative unit uncovered burial sites many more possibly remain to be followed up.[85]

Fullard explains how because of time constraints the research department missed an opportunity to present 'cutting edge' research. Their research had to be very 'targeted research', 'incredibly narrow research'. Practicalities such as the size of the final report led to the downscaling of many theme/regional reports so that the public are presented with only a percentage of what they had. 'So much material was cut out. I would argue the nation was robbed'. 'I can hardly bear to open this report because when I open it what should be in there screams at me.'

There are other aspects of the way in which researchers and investigators worked that had many shortcomings. Speaking about relations particularly in the Western Cape, Fullard explains :

> I must say one of the great great tragedies of this commission was the lack of a strong working relationship between the Investigative Unit and the Research Department. It breaks my heart sometimes to open up statements and I see that the investigators said no information could be found - the person was detained and tortured in 1983. If only the person had spoken to me I could have said there was no state of emergency in 1983, the person has got the date wrong. It's 1985 and here's a list I can show you - his name is on that list of detainees. So I think that robbed the commission of a lot of added research value.

Lack of sound co-operation stemmed from 'petty rivalry' between investigators and researchers. There were 'whole corridors [that] don't talk to other corridors'. The perception emerged that the research department was 'where the whites are and some people articulated it as the Investigative Unit being where the black people did the dirty dog work'.

> I felt in this office that the Investigative Unit didn't want us tampering in their work ... They had strong feelings about the domination of white people in this

particular region as well which I endorsed to some extent.

Zuko Camagu thinks that the interaction between the two sections was not too fraught with difficulties and that there was some useful co-operation. Yet he throws light on some of the jealousies that would emerge because of the overlapping nature of their work - finding information, interviewing people. He presents an investigator's view :

> I know that there were people who felt that we'd write the reports and also the final report. Somehow they [the researchers] won the day. We had to bring things to them and I don't think many people were pleased to find their reports were not taken seriously. We had to fight for that as well. Specially at hearings you would find the commissioners quoting some research work - it was based on the investigative work and we had to fight about those things. Why don't you quote my report you are quoting a research paper.
> And then they [the researchers] would be sitting in the panels helping them with questions and some investigators felt 'Well I dealt with those witnesses - I can also call them and help them the commissioners ask questions'. ... It became practice that investigators don't necessarily have to attend the hearings.

Camagu relates with a smile on his face 'I remember very well that we as an Investigative Unit monopolised the Guguletu Seven Case ... we kept them [the Research Department] at bey as much as we could.' Rivalries could, however, also take place within the unit itself :

> Many people thought they were special and of course we had our weekly meeting where people were trying to display their eloquence and understanding of the process. ... There were people who were always targeting important cases and we had to deal with that because the bias was there.

Camagu and Fullard are merely two of the many investigators/researchers appointed to the TRC and these are their personal experiences of one aspect of the system. The significance is that they point to ways in which people find themselves drawn into various strains and stresses when working within an organisation where co-operation is required and where work terrains overlap. All this has bearing on some of the difficulties that the CRLR found itself faced with. The TRC managed to submit a five volume report in October 1998 though the amnesty committee has yet to complete its process. While many can subject the whole TRC process to scrutiny and define the limits of its successes, one of the most critical newspaper editors in the country greeted the TRC's report with an accolade 'It is, at the end of the day a magnificent achievement'.[86] In the meantime by 1997 the CRLR had already been dubbed 'the Cinderella Commission' by none other than its own Chief Commissioner.[87]

Cinderella at Work

When the CRLR began work it inherited some 3 000 claims from the defunct Advisory Commission on Land Allocation (ACLA)[88] and by the end of its first term of office it had on its books some 7 095 claims. At the end of three years the CRLR had received a total of 24 516 claims (20 674 urban and 3 842 rural) with the Western Cape (6 911), KwaZulu-

Natal (6 910), and Gauteng (5 011) having the largest numbers of claims. [89]

After an extension of the date for submission of claims to the end of December 1998, a major 'Stake Your Claim' campaign was launched in June by the DLA, the commission and the National Lands Committee from the Bloed Street Taxi Rank in Pretoria. Apart from relying on the taxi network, a help desk was set up with a toll-free number, advertisements were placed in major newspapers and broadcast on seventeen radio stations, commission staff appeared on radio talk shows to answer questions. Pamphlets and posters were distributed.[90] This was the biggest restitution campaign launched and boosted the number of claims. Latest figures indicate that a total of 63 455 claims have been lodged, of these 12 000 are rural claims while 80% are urban.[91]

The number of claims lodged do not provide one with the magnitude of the task - one claim could involve thousands of individuals. District Six, for example, is registered as one claim but includes a total of 2 293 claimants and each of these represents several different households.[92] Elandskloof represented 230 families in 1996 but this would grow over the year to involve 350 families; the Lohatlha claim in the Northern Cape was estimated to include 5 000 families. The extent of land claimed also varies from claim to claim.[93]

By the end of March 1998 only seven claims had been settled.[94] Much of the focus on the commission then over the three years has been the slowness of delivery; the commission came to be evaluated in terms of its ability to settle claims. If October 1998 represented a milestone for the TRC when it handed over its final report; for the CRLR this was also a watershed moment. A review team appointed by Hanekom had completed its report of the entire restitution process. Seremane would lose his job in the first week of November after an unbecoming slanging match with the minister. The beginnings of this lay in Seremane's address to the parliamentary portfolio on land affairs and accusations and counter-accusations made good news coverage. All of Seremane's regional commissioners had called for Hanekom's intervention and Seremane bowed out ungracefully.[95]

The saga no doubt has its own internal (behind the press) and complicated history. Seremane tried to raise the race card in the dispute[96] but the central issue is non-delivery and who blames who. Warning signals that the commission was not functioning at full-steam and was having difficulties setting up its infrastructure were clearly sounded by Seremane in his first annual report. Things were clearly not happening 'chop chop'. The report refers to 'the cobwebs of bureaucratic red tape'; 'the ... ponderous workings of the public service and its accounting systems'; 'the delays in providing administrative capacity'. Seremane cautioned against 'the mind-set of regarding Restitution as a Cinderella minor programme'.[97]

Six months after he had been appointed, Wallace Mgoqi had just one member of staff to assist him in Cape Town. His special advisor, Elizabeth Davidson, would take office only in November 1995 and it would be well over a year before Mgoqi would get a communications officer.[98] Emma Mashinini was even less fortunate - at the end of her first year she had still not found permanent offices.[99] By the end of three years the commission's total staff complement reached 151 and the regional offices had all established satellite offices to deal with the more remote areas.[100] The commission's assessment nonetheless was that it was suffering from a 'lack of real capacity'. There was a greater need for more researchers, facilitators and fieldworkers. Mashinini's office still had complaints about lack

of computers 'lack of transport, insufficient office accommodation and furniture'.[101] As recently as February 1999, Elizabeth Davidson who became Deputy-Director of Research in the Cape Town office in 1997 pointed to a non-functional 'second-hand DLA computer' lying stacked out of the way in her office.[102]

When former Human Rights Commissioner Rhoda Kadalie took charge of the newly created District Six Unit within the commission in April 1998 she quickly faced the reality of her low status job. Her office was situated in a remote Customs House on the foreshore. She had no computers, fax machines, photocopiers - worse still she and her staff of ten did not get paid for two months due to 'administrative delays' and she had no budget. Things were only slightly better in the main regional office which got blamed for the state of affairs - the communications officer defensively pointed out that its 25 staff have to deal with 8 597 claims. He explained that the R1.3 million allocated by the DLA for the unit was spent totally on their salaries.[103]

The commission struggles with a poor national data-base system. It is faced with the reality that 'the ongoing problems with the data-base cast doubt on the absolute reliability of the numbers it generates'.[104] Davidson comments :

> All of us were battling with [an] inadequate knowledge system - data base - and we are continually being told that this is a problem which is going to be fixed in the next two or three months and I've been hearing that this is a problem which is going to be fixed in the next two or three years. ...
> Data-base is a corner-stone! You should be able to call up different types of fields, date of lodgement, or area of lodgement, owners and how many tenants you've got there. We can't do that.[105]

The system known as the Land Reform Information System cannot provide relevant information about the stage at which claims are and what information is still needed or the specificities of each claim.[106]

All these problems of administration and lack of infrastructure leads one to the torturous relationship between the commission and the DLA. The former serves an important role as being the intermediary between claimants and the DLA against whom claims will be lodged. It values this independent status because as Mgoqi once explained this will ensure that restitution does take place. He cites the Canadian experience of restitution where claims between the federal government and claimants remain long-drawn out partly because there is no intermediary body. In his opinion it would be quite anomalous to have a government playing a direct role in settling the cases made against it.[107]

Yet how independent of the DLA has the commission ever been? For one its budget is allocated by the DLA (its accounting officer is the Director-General) and the size of this has been one source of conflict. In 1995-96 an original amount of R850 000 was allocated to the commission but this was ultimately upped to R12 875 000. In 1996-96 while the TRC would receive R69 419 million from the treasury, the CRLR was allocated R14 051 000. The CRLR was dismayed to find that its budget for 1997-98 was only R6 945 000 - after protest it received R10 million, half of what it had asked for. It boosted its component of researchers, field workers, community liaison officers and legal officers from a grant of R15

000 000 over three years allocated to the Restitution Trust Fund by the Netherlands government.[108]

The struggle over the budget in Seremane's opinion has determined its Cinderella status, putting it in a position of beggar going 'cap in hand'.[109] He explains why the commission never went on an all out publicity campaign to advertise its brief in the first few years :

> I always say to people, 'Just wait. Do not go all out with publicity. Control it, because if you go all out, then you will get a massive response which the Commission cannot cope with. If our restitution programme is further compounded by the massive demand for restitution, we are not going to move any faster.'[110]

Yet communicating with potential claimants was a vital function of the commission and the belated 'Stake your Claim' campaign occurred with the support of R2 million from the DLA and R1,7 million donated by the Belgian government.[111]

Cherryl Walker explains one reason for the commission's slow settlement of claims :

> The Commission was given minimum resources and minimal capacity while at the same time, being expected to work effectively.[112]

Seremane has been more outspoken in his criticism : 'It was though the government had never planned to have a Restitution Commission'.[113] DLA officials counterattacked -they point out that the CRLR, underspent its 1996-97 budget by almost half hence the dramatic cut for the following year. As Jean du Plessis, the National Director of Land Restitution in the DLA put it : 'In the end it is not only about people and resources. It is about the proper management of the people and resources you do have'. [114]

The DLA and the commission are intertwined in various ways. The latter relies on it to provide the office space, the information system, all of which become subjects of frustration. But as Davidson explains there is 'this huge faultline through the commission from the beginning'. This is a reference to section 8 appointments within the commission which are in fact DLA staff paid from the DLA budget and the section 9 appointments - the field workers, researchers and community liaison officers - those doing the 'core' work of the commission but who, it is felt, are relegated to a 'peripheral' status by the DLA.[115]

A recent study of the restitution process facilitated by Colin Murray has pointed to the 'sensitive relationship' between the DLA and the commission, 'one subjected to mutual recrimination over administrative delays, motivation of officials, inefficiency, overlap and conflict of responsibilities, etc.'

> Commission staff routinely seize the moral high ground and accuse DLA staff of being "old guard" and obstructionist '... DLA staff tended to retreat into procedural issues and accuse the Commission of incompetence and a lack of thoroughness.[116]

The relationship becomes more embroiled as the commission moves through the various

stages in processing claimants' applications : research, negotiation, adjudication, and implementation.

There is little doubt that all parties in the restitution process grossly underestimated the 'investigative' work that needed to be done and the difficulties that this would throw up. When a claim reaches the office it has to be validated - is this a valid claim in terms of the Act?[117] If accepted as a valid claim a notice is then placed in the gazette and the current owners are notified. The next stage is the research stage. Researchers have to a) verify the identity of claimants - all claimants have to be identified b) provide proof of the claimants right in land c) identify the circumstances of the dispossession eg which law, the body responsible for the dispossession, the amount of compensation received, the losses suffered as a result of the dispossession, what structures were on the land at the time of dispossession, what does the claimant wish to receive - if restoration is envisaged is this feasible?

This is a description of the research phase as it has been worked out now[118] but when the commission started there was little recognition of the importance of this phase. Elizabeth Davidson recalls : 'At that stage there wasn't a clear cut acknowledgement that investigation was the core business of the commission which sounds absurd to anybody who's read the Act'.[119] This is even stranger when one notes the commission's own rules of May 1995. In the beginning the commission was relying on the DLA to undertake much of its research work - especially for the rural areas.[120]

All commissioners received a wake-up call in May 1996. While court cases in which the TRC has been involved in have received much publicity, a judgement of the LCC in May 1996 regarding the Macleantown case would pass unnoticed by the public. Yet this was a critical judgement affecting how restitution would have to proceed.[121] Macleantown is a former white group area which lay in the border area between the Transkei and the Ciskei. Its black residents had been removed in the 1970s to a rural area in the more remote Chalumna District in the Ciskei. The dispossessed (who included both owners and tenants) began a campaign to return to their land in 1989> They lodged a claim with ACLA in 1992 and were among the first claimants in 1995 to put their case to the RLCC in East London. The case had all the elements of success - there had been negotiations between all the relevant parties which included the local council which owned the land in question and white ratepayers in the area. The agreement brokered was that the land would be restored but individuals would forfeit a return to the exact plots from which they were removed. All claimants would receive 1/4 acre of property regardless of the size of their original plots and regardless of whether they had once been owners or tenants. There was a strong development plan governing the resettlement. The process was locally driven. It represented the 'ethos of restitution'.[122]

With much celebration presided over by Hanekom who spoke about justice and reconciliation, a deed of settlement was signed in October 1995. Peter Mayende's regional report for his first year would proudly refer to Macleantown as being 'one of the first successes of the Commission' since the deed of settlement was signed 'just four months after the case was lodged with his office.'[123] But celebrations were premature. The LCC instead of sealing the settlement referred it back for further investigation. This represented 'an eye-opener' for all the RLCCs with crucial implications for how they would have to conduct their research before it went to court.[124]

The commission had proceeded with this case on the understanding that its own role was :

> one of facilitating a locally-driven process and ensuring that the principles rather than the finer details of restitution would be endorsed by the Court ... it did not see its role as investigating the particulars of individual dispossession or vigorously identifying individual claimants.[125]

Neither did it have the capacity in 1995 to undertake such an investigation. The LCC raised a number of questions and asked for much further information to be furnished. Was this for instance a community claim (which would then require a trust to be formed) or a set of individual claims grouped together (which would then require a full list of individual claimants)? The history behind each claimants link to a particular plot of land would have to be proved. Information about the land in question would have to be obtained from the deeds office. More details about what compensation individuals had received at the time of dispossession would have to be provided, details of the feasibility of restoring the land had to be provided, a full motivation would have to be provided for granting former tenants full ownership, and if individual claimants were representing others powers of attorney would have to accompany their application. The RLCC was required to take steps to ensure that all possible claimants had been reached.[126]

This case drew attention for the need for a very thorough investigative phase before a case reached the LCC. It also subjected restitution to the criticism that it was subjected to 'an overly technicist or legalistic' form. How accessible would the process be if the judicial requirements predominate?.[127] In the Cremin case the office in Pietermaritzburg was stretched trying to simply obtain certified identity documents of each claimant.[128] The research phase becomes 'the bottleneck' where claims get held up.[129] It is also the phase where the DLA and the commission intersect in ways which have caused much disgruntlement. Both are involved in the research phase - the commission especially requires the DLA to provide the archival research, the official material, while its researchers and field workers collect other information and interact directly with claimants. As the DLA is also the respondent in all land claims it has to deal with its own set of research questions which are very relevant to the negotiation phase which often proceeds concurrently. This leads to duplication of research. To the DLA also falls the task of providing answers on values of land both past and present, on formulating policy on 'just and equitable compensation' (both in terms of what claimants received at the time of dispossession and what current owners of property would require if their land is to be purchased), on providing feasibility certificates if restoration is envisaged. The Directorate of Restitution Research in the DLA is called on to service the research needs of both the commission and the DLA.

An account of how the research division evolved in the Cape Town office points to the difficulties of the commission.[130] Initially this was a function which was seen as being on 'the administrative side'. Early appointments were very 'ad hoc' and were filled on recommendation rather than by full advertisement of posts. Among the researchers were genealogists, established free-lance researchers, a former registrar of deeds, and post-graduate students from the University of Cape Town. The first researcher at the Cape Town office was only appointed in 1996 and there were no clear guidelines given as to what was required. Formal formats would evolve over time. Reports varied substantially from

researcher to researcher. Cases were being issued out first in terms of when they were lodged, then alphabetically, and then it would take time to realise that a geographical ordering of cases would make sense (and this would not always be implemented).

It was only in 1998 after she assumed charge of research that Davidson instituted a research forum within the office and internal workshops were then held on devising formats for the different types of claims that they were dealing with. A workshop to deal with tenants' claims was held as recently as January 1999. No national workshops bringing together all researchers and field workers were ever held.

Davidson returns to the relationship between the commission and the DLA. She recalls how she once requested research files from the DLA three times :

> I got two very snotty letters saying 'You've asked us enough. Now stop. We haven't got them and we don't know where they are. At the end of last year [1998] I got three big envelopes stuffed full of records. It's after three years and I couldn't understand why I couldn't have got them sooner.

The Directorate of Restitution Research for its part has a limited staff who are faced with their own difficulties 'serving two masters'.[131] It has had to deal with unsorted, scattered and unaccessible archival records. In 1998 it received a grant of R3.2 million from a Swiss agency so that archival files in Pretoria could be processed. Its researchers also located 'several truck loads' of documents in a cellar at the Department of Public Works.[132]

TRC investigators involved in corroboration work are faced with death certificates, mortuary records, police records. Restitution researchers need confirming identity records, marriage certificates and information about land transactions. While the TRC researchers/investigators were unearthing burial sites, secret Askari bases and documentary evidence of state complicity in violence, the big discovery of the Cape Town office of the CRLR at the end of 1997 was the records of the Community Development Board which had particular significance for all group areas victims since they provided vital proof of land transactions in the dispossession phase. Needless to say these did not make national news.[133]

The records were found in a room in the Deeds Office. The clue came from the former registrar of the deeds office who was now a researcher for the commission. While other researchers had been frantically trying to locate such material since 1996, this person eventually made a belated disclosure. Davidson comments :

> But he knew and it's very strange to me how you can work for two years for the commission and not appreciate the significance of something like that ... I can't say it was conscious. This is an old man who had worked right through the previous regime as a registrar of deeds ... there was an emotional block. It's all I can describe it as that prevented him from really seeing what he was looking at.[134]

The 'faultline' in the commission thus surfaces at various stages. Normally the cautious advocate, Mgoqi announced the discovery in uncharacteristic anger lashing out at 'civil servants', 'government officials' and 'government departments' who were 'bedeviling'

restitution by not co-operating because they were not in favour of change.[135]

Helena Broadbridge's account of her research experience within the commission is instructive and points to how much energy can be invested in just one claim. She and Jenny Gordon - both anthropology students looking to serve apprenticeships as part of their MA programme - were appointed to research the Ndabeni claim, one of the first urban restitution claims lodged. The Ndabeni community had been removed to Langa between 1918 and 1936 and were claiming compensation in the form of alternate land. While their brief was cast in the most general of terms they became aware of unresolved differences in the commission on the kind of research required. One argument favoured research directed to 'collecting legal evidence' and preparation of a 'legal document'. Another was open to 'a combination of sociological, anthropological and legal methodologies'.[136] The two researchers devised their own research programme.

To ensure that the Ndabeni claim of 106 applicants became representative of most eligible claimants Broadbridge and Gordon set up registration offices in Guguletu, Langa, Khayelitsha and at Kayamandu. A small publicity blitz was organised using radio, regional TV and door to door pamphlets. In addition, attempts were made to reach possible claimants in the Eastern Cape and elsewhere. This boosted the number of applications to 587. The researchers visited the homes of every one of the 106 original applicants and all 587 were required to fill out a detailed questionnaire (translated into Xhosa) - this was apart from the initial claim form that had been submitted. Genealogies of each claimant were prepared to indicate their eligibility. The data on this questionnaire had to then be tabulated. Apart from this personal contact the researchers undertook archival research, newspaper searches and secured photographs. The final result was a 36 page report (excluding long appendices listing claimants) which set out the history of Ndabeni, the removal to Langa, the socio-economic background of the current claimants and their wishes for restitution. This entire process took between five to six months.[137] This kind of process has been repeated for the other highly prioritised claim in Cape Town, District Six. It explains why restitution is such a long process. This was not even a particularly difficult case (Ndabeni's history has long been on record).[138] Rural cases where almost nothing has been written, which involve complicated land divisions since the dispossession, which involve non-literate claimants and which raise questions about chieftaincies are far more complex.[139]

The negotiations phase can also become quite drawn out because it involves many parties : the DLA, current owners, claimants and the commission and an amicable or 'win-win' situation has to be reached. At this stage valuations of property and offers of compensation can take quite long - in the former up to a year. David Mayson of the Surplus Peoples Project (SPP) who was involved in the Elandskloof negotiations for the community points to the frustratingly long process. The community had to have lawyers because the DLA (still in its initial stages of transformation) seemed to be 'reluctant partners in the restitution process' and because the current owners of property came with their own legal advisors. The DLA's overlapping role as the body against whom the claim is lodged and as the facilitator in the negotiations produces unhappy results, since the first role involves financial commitment. In Mayson's opinion 'justice' could become a casualty of the negotiations phase.[140] It could also be said that were it not for the involvement of NGO's like SPP this particular case would not have been part of restitution history. Hanekom himself has chided NGO's to suggest that things had to happen at a speedy pace 'that mirrors the speed and

arbitrary nature of forced removals'.[141]

Overall criticisms that the commission has lacked proper managerial strategy are valid. It failed to define specific phases for itself with the result that it tried to involve itself with all phases of the restitution process at one time and as a result performed unsatisfactorily in all phases of its work. It adjusted to changing circumstances rather slowly and sufficient strategising was lacking. Although all recognise that the land claims form itself is an extremely unsuitable starting point which particularly privileges property owners and which frames questions in far too general a manner - the form remained unchanged.[142] The commission also deliberately adopted a low public profile and lacked the kind of style that Hanekom brings to restitution. Leadership has to take some responsibility for these and other shortcomings. As one commission staff member observed :

> But Joe himself was part of the creation of the Cinderella image. It's one of those convoluted situations ... He chose to use the administrative procedures and structures as reasons for not getting things done and in the end the Commission's secretariat in Pretoria it became Joe's fortress.[143]

While the TRC has been very conscious of its role in formulating a new national history and correcting the official record, this aspect has not been given much attention by the CRLR. Kamedien of the Cape Town office has called on claimants to recollect the history of their dispossession and, if they can, to provide photographs. A victim of removals himself, he brings a romantic touch to his work. He explains 'Similarly to the Truth Commission, we are putting the puzzle together'.[144] There is a need for this side of the story as anyone who has been through the archival records will acknowledge. The official archive is bare of the human experience. There are many published accounts of well-known cases of forced removals but the list of cases that the commission has to deal with puts new names on the history and geography of dispossession. These will now enter the official record.

While the CRLR does not have public hearings and it does not publicly acknowledge its role in preserving and documenting an important past, it like the Truth Commission will serve as a 'repository of South African memory',[145] a kind of memory bank. The commission needed to (and needs to) address this function more directly and there are undoubtedly opportunities of recording this past which have already been missed. The commission's most recent annual report refers to a visit to former Farmerfield residents in the Eastern Cape where they :

> listened to heart-rending accounts from elderly men who had experienced the removal first-hand. The scene could have been taken out of a Truth and Reconciliation hearing as account after account of hardship, poverty and death as a result of the removal, poured forth.[146]

One hopes that this was recorded but it is more likely that it was not. Broadbridge's reflection is valid :

> Memories, histories, identities are complex concepts, and their manifestations in the land restitution process warrant more attention than the Commission presently gives them.[147]

An embattled commission however, while it does include academics, has little time to spare for such deliberations. Outsiders will have to engage in those issues.

An account of the restitution process that focuses on it only 'as a bureaucratic and judicial mechanism'[148] obliterates the many hours that commission staff spend interacting with people and does not recognise claimants' engagement in the process thus especially missing the many meanings and significance of restitution. In the words of Neville Alexander who was appointed one of the facilitators for District Six : 'Yearnings, identity, self-esteem. Restitution is about all this.'[149]

Meanings Behind Restitution

Richard Levin has pointed to how rural communities are frustrated by the restitution process since there is little appreciation for the finesse of the legal process. Justice means restoration of the land.[150] For urban communities where restoration of land is not, in general, the feasible option and where financial compensation is being sought, there is a danger of restitution becoming 'a commoditized process' as commission staff themselves recognise.[151]

In an earlier study of a few urban communities in Cape Town who have engaged in the restitution process, I have argued that many claimants emerge with significant private and positive meanings and these are worth considering here.[152] In many ways while victims of gross human rights violations have received acknowledgement and some healing through the TRC, it is the TRC that has controlled/managed the process which does not leave room for much agency on the part of victims to engage with that process, hence the frustration of a community like Duduza. While certain aspects of the restitution process reveal a 'top-down approach'[153] in many ways the CRLR's problems of capacity and more particularly its focus on the legal process has forced victims of forced removals to devise their own strategies to achieve healing and reconciliation. Leadership has emerged from within communities.

Protea Village, once located at the foot of the Kirstenbosch Gardens in Cape Town, was home to a hundred odd families who were then scattered apart in housing estates all over Cape Town as a result of the GAA. The majority were tenants whose occupations included gardeners, domestics, drivers, dressmakers and factory workers. In March 1995 this former community reconstituted itself at a reunion organised on the now vacant site where their homes had once been. Since then the reunion has become an annual event. It was spurred by the dawn of the new South Africa and the empowering elections of April 1994 but also by the restitution process. A Protea Village Action Committee was constituted and restitution meetings were hosted.

The occupation of the vacant space is hugely symbolic. Eileen Nomdo explains :

> The past three years have been a process of healing for our community ... When we started planning the first reunion, many were still very resentful and bitter about the way we had been forced from our homes. By meeting old friends and sharing life stories, we have been able to replace it with love and a sense of hope.[154]

Protea Village then is often referred to as the 'Healed Village' and its members have offered to assist other communities to go along that same path.[155] Other communities have indeed followed the reunion route which is then used to publicise and facilitate restitution.[156] The most publicised reunion was the gathering of the former community of Tramway Road at Sea Point on 6 April 1997. This happening was a joint effort by the Tramway Road Restitution Committee and the Cape Town office of the CRLR which followed the lead given by the people of Protea Village.

The commission asked former Tramway Road residents to 'bring a picnic basket and a few old photos of bygone days. We will spend an enjoyable day reminiscing about the past and talking about the future'.[157] The gathering, attended by about a hundred people, was preceded by a service at the church of the former community. and the picnic took place on the nearby playgrounds maintained by the Cape Town City Council, a space which was once home to some of those removed. Mgoqi put away his legal garb, participated in the church service and basked in the sun with residents. The press sought out the old and people posed for pictures before a wall deemed to be the last remnant of an old home.[158]

Yazeed Fakier would devote two full pages over two separate issues of the Cape Times to the reunion and to the community's history. They came he said, 'to remember the days when life was good'. He captured the following image :

> They also brought along old photographs that they shared and discussed with great pride.
> Their picnic baskets in hand and dressed in their Sunday finery, they excitedly pointed out imaginary sites in the park. 'There was Gopal's Shoe Repairs', says one. 'Tisseker's General Dealer was right here,' says another. '... and there was Allie Parker's shop,' says a third.[159]

Fakier's phone never stopped ringing after his articles appeared, former residents were thrilled with the publicity and wanted copies of the spread of photographs.[160] The reunion was very much about coming to terms with the past and the ensuing publicity served as a final acknowledgement of the trauma of the dispossession. For the old this was a moment of glory and recognition.

Not all communities have been able to go the reunion route on sacred space since that former space has long been transformed. A meeting in a concrete building would have to do. One such meeting took place in the first week of June 1996 when former residents of Black River, Rondebosch, assembled at a madressa in Athlone. The prime movers behind this meeting were two retired men in their sixties, Ebrahim Osman and Ghamza Adams. They made door to door visits, phoned people and placed advertisements on the Voice of the Cape and Radio 786, two local radio stations whose listenership is Muslim. Contacting people was quite an experience for Ghamza Adams. It meant knocking at wrong doors and receiving some abuse. But it also meant joy at discovering a former resident whom he had known as a child.[161]

The main purpose of the meeting was to listen to Don de la Harpe, a community liaison officer of the Cape Town office of the CRLR, explain how a land claims form should be filled and how a restitution committee should be constituted. The significance of this meeting,

however, lay in the visual and emotional impact of meeting former residents. The children of the past now met as aged grandparents with a joint mission. The undercurrents at the gathering were significant. As people moved to take their seats they talked and recalled their friends and their sporting clubs.[162] The restitution meeting served a similar function as the reunion in getting people to embrace what was good about the past. Broadbridge who attended several meetings with the Ndabeni community similarly notes :

> Between report-backs from the committee and from my colleague and me, several committee members and individual community members embarked on emotional and gesticulative political speeches and song, recalling the community spirit of Ndabeni ... People responded with applause and song to these representations of belonging, hope and happiness. in so doing they affirmed their identification with the historical and present Ndabeni community.[163]

Filling out a land claims form provides that other encounter with the past. Various documents are required and for some this could be a torturous process. For Ghamza Adams the process represents an exciting adventure of discovery. He not only went to get the details for his own form but also did research for his wife's family. Clearly, there is a sense that the city now belongs to all and there is less resistance to seeking official help. There is also some astonishment and excitement at finding the relevant information. Ghamza recalls his visit to the Civic Centre:

> I was so dumbstruck to see everything that they got there. I mean they just pull out the drawers - here's all the maps hanging. You know some of that maps are so old it was like material.

Ebrahim Osman also describes his experience in a positive manner. 'I'm learning things because I'm delving into the past now'.[164]

Others recognise that the commission's capacity is limited so they take on leadership positions. Jane Mzongwana is one such person. She took 74 year old Ellen Makwela of Langa to the deeds office and helped her file a claim for properties in Crawford and Welcome Estate. Mzongwana felt it was her mission to publicise restitution amongst African people in Cape Town and she set up an information centre in Guguletu.[165] Others have tried to ensure that filling in the form is not such a lonely and cumbersome experience - it becomes a community effort. This has been the case for the community of Protea Village and also for the former Goodwood Acres community. Brenda Gumba, a secretary at the University of the Western Cape, helped her largely impoverished and not very highly educated community. House meetings or gatherings at a hall were held frequently to put people through these stages. For Gumba this is an intensely rewarding experience though she vents some frustration at the commission for being an unpaid fieldworker.[166] In her opinion, the commission needed to do much more. Gumba also places limits on what she will do to help people fill in the forms. When young people phone her for help she advises them but the homework has to be done by them.

The results are rewarding. An 80 year old former Goodwood Acres woman walks in to a meeting with drooping shoulders. Gumba takes them through various stages setting what she

describes as 'homework' for the next meeting. When they reconvene a few months later, Gumba notes that those who return :

> They just walk different. Their whole stance is different. They've found their things and they found some people helpful and others not but it was easy enough and I think that gives me great joy.

Jasu Madhu formerly of Claremont, undoubtedly had a bounce to her step and a sense of purpose when she managed to discover an old electricity account and clinic cards of her young children, all of which were proof of residence. She also found a photograph of the old house with neighbours around. She then energetically and happily dashed off to the city to get her erf number, which she found easily enough.[167] Anne Ntebe of Protea Village describes people's delight as someone managed to remember a landlord's name.[168]

For many families, the process represents a recovery of family history with younger members going through this tract into the past and emerging with some new found respect and understanding for their elders. While Ghamza gets the necessary information, it is his son who tries to write a short account of what the removal meant to his grandmother. The telling of this story thus draws three different generations of a family together. For others who lack the necessary literacy skills telling this story is difficult and others have to do this for them. This has implications for the commission's memory bank as memories get filtered through a variety of sources and mediums.

From the various stages which individuals take - attending a reunion, restitution meeting, visiting the offices of the commission where help is given, going to collect all the documents needed to accompany their form, filling in that form and submitting it (some do this in a public form) - they encounter various meanings behind restitution and receive that acknowledgement which is so vital. For District Six claimants winning the huge battle to prevent the application of section 34 brought together the community and the smell of victory was sweet. As Alexander pointed out : 'Section 34 assumed there was no community but people fought it and regained some sense of community'. [169]

One other moment of acknowledgement is when a claim is gazetted. This brings such delight, a sense of accomplishment and anticipation. Further contact then takes place via the researchers and fieldworkers. Pam Wernich points to the significance of their research work :

> Sometimes we sit in the archives and sometimes we dig in the vaults of the deeds office. Sometimes we're at the Surveyor General, Master of the Supreme Court ... but a lot of time we're just speaking with people ... a very important component is getting the story of dispossession... I just think that for the person who submits a claim - if you're going to confine the process to the den of research that looks at money values you're missing the boat. You're not addressing ... the loss of the right and whatever trauma that went with that.

She got to know the whole community of Malmesbury right down to every intricate marriage relationship.[170] Jean Blanckenberg too remembers how one claimant took her in his combi

to his former home in Constantia :

> In the end you could see the same picture though the physical reality is bulldozed land. They could visualise it and I could visualise it in the end.[171]

Researchers learn how to deal with family conflicts arising out of the restitution process[172] and how to listen and it is in the latter that many claimants receive comfort - at last they are being heard and they are important enough for a researcher to talk to them.

Ghamza Adams and Ebrahim Osman tap into the vocabulary of the TRC. For them the process means coming to terms with 'what was done to us'. Ebrahim Osman explains :

> The idea was because we felt, you know, that we ... started life, we started knowing ourselves in Black River, right we were [a] very close-knitted community. We were a big family and that whole thing was shattered, you know, through the group areas ... When we came together we decided because ... of what was done to us and it was done to our families especially our older families. You know, we could take it at that point in time but what about our mothers and our fathers ... how did they take it ... so we decided ... we're going to do something about this ...[173]

Anne Ntebe also sees the process of putting in claims as 'making a statement' about the 'human rights being violated' when they were forcibly moved.[174] John Valentine, the audio-visual expert of Protea Village, explains his motivation :

> In the old days I held my bek. Now we have the power to challenge ... No matter what you get out of the claim, it is the first time the people of Protea Village stood up for their rights.[175]

Yet the whole process lacks something vital. Ntebe, a lecturer in Social Work at the University of Cape Town who chairs the Protea Village Action Committee, explains :

> I had a lot of anger ... I wish I could come face to face with those individuals who actually implemented it to tell them what they actually caused because you're now talking about a system who did it but it is a faceless system ... We actually had white people who walked ... they actually had the authority and they thought they had the authority to walk through our houses, to go and look into our bedrooms, to inspect what they wanted, regardless of what they were looking for and ... on their journey through our house they would say 'O that's a nice antique, that's nice brass' and quickly try to make a deal with my mother thinking that we don't deserve to have such lovely furniture ... Today I am so arrogant I would kick them out.[176]

That 'faceless system' needs confrontation. Letticia Daniels is a psychiatrist who comes from humble beginnings. Her grandfather had been a driver and her grandmother had worked as a char as did her mother. Because of the GAA they had to sell a treasured, fairly middle class home in Rondebosch which had been bought from hard savings. The person who had bought the house had done so as an investment and rented this out. This discovery as she

went about filling her land claims form filled Letticia with anger. She feels that various parties which had benefitted from other people's misery need to account for themselves.[177] Many individuals thus want and need more than the restitution process offers. William Londt a former resident of Goodwood is explicit :

> I still maintain that former State President P.W. Botha, under whose department the forced removals took place, should have appeared before the Truth and Reconciliation Committee [sic] for the atrocities that took place.[178]

The CRLR is unable to respond to such needs, the TRC too has failed to get Botha to confess his past.

In the end though, it is delivery that is going to determine final meanings of the restitution process. The 'Healed Village' is now a very frustrated village - while Protea Village was one of the earliest claims lodged it had not yet been gazetted in February 1999 and it does not feature in the list of cases selected for comment in the annual report of the commission. As the old die before compensation is received there will be some bitterness so delivery in the end is important.

This paper started out by pointing to the very public face of the TRC and also to its behind the scenes work. In the latter respect the CRLR is engaged in similar work but its central difference from the TRC is that its public face became one of non-delivery. While the legal process dominated the work of the amnesty committee of the TRC and determined the engagement of the 'perpetrators', in the case of the CRLR it is the victims of forced removals who become subjected to the legal process and this makes them victims all over again. Urban communities have demonstrated a willingness to engage in restitution and through their own efforts have derived much meaning.

One final thought which might determine final reckonings : while restitution enters a phase of delivery with Winifred Henry receiving her cheque from Wallace Mgoqi and Hanekom, the Sunday Times carried a headline pointing to how the TRC's listed victims may in fact not receive cash payouts of R26 000 each spread over six years as recommended by the reparations and rehabilitation committee of the TRC.[179] The government could opt for symbolic reparations such as the most recent naming of a school in Johannesburg after Ahmed Timol. Both processes are far from final completion. It will be some time before the successes in terms of reconciliation can be evaluated. The CRLR has particularly entered a new phase under the new leadership of Mgoqi. All claims have now been submitted and there can be a clear focus on delivery. The review team's recommendations have been adopted and the move is now very much towards limiting the role of the LCC to only disputed cases leaving others to a simple administrative process. The review involves the restructuring of the restitution machinery to eliminate conflict and duplication between the DLA and the commission.[180] Whether the DLA and the commission can come together and work for the good of the process remains to be demonstrated.

NOTES

1. Cape Times, 16 October 1996. For the history behind this case see D. Mayson, 'Land Restitution in the New South Africa' (Surplus Peoples Project, Unpublished paper, 1996) also Annual Report 1997 Commission on Restitution of Land Rights, 1.4.1996-31.3.1997, pp.27-29.

2. Cape Times, 17 December 1996 (Report by Roger Friedman with pictures by Benny Gool).

3. Land Info, Vol.4, No.5, August/September 1997, pp.17-18; Annual Report 1998 : Commission on Restitution of Land Rights, p.11. The case was 'precedent-setting' in that the court accepted the claim as legitimate even though the claimants were already in possession of the property.

4. Annual Report 1998 : Commission on Restitution of Land Rights 1.4.1997- 31.3.1998, pp.11-12; Land Info, Vol.5, No.3, June/July 1998,pp.12-13.

5. Land Info, Vol.5, No.3, June/July 1998, pp.12-13.

6. Land Info, Vol. 5, No. 4, August/September 1998, pp.17-18.

7. Cape Times, 24 December 1998.

8. The Commission News, Vol.1, No.2, 2/99.

9. Cape Times, 19 and 22 March 1999.

10. See S. Nuttall and C. Coetzee (eds), Negotiating the Past : the Making of Memory in South Africa (Cape Town, 1998), p.1. Some restitution cases like District Six in Cape Town and Cato Manor in Durban do receive substantial coverage.

11. See Pamphlet 'ANC Ministers Worked for a Better Life' (ANC Western Cape), 1999.

12. Saturday Argus, 3/4 April 1999.

13. A selection panel made up of Mr. B. Sibisi (Chair) ; Justice M.D.J. Steenkamp; Prof N. Olivier; Ms A. Claasens; Advocate M. Gumbi; Ms B. Jack and Professor L. Tager was tasked with this responsibility.

14. Other judges are Alan Donaldson; Antonie Gildenhuys; Justice Moloto and Shenaaz Meer.

15. This was later amended to include racially based practices.

16. The Commission News, Vol.1, No.2, 2/99. This was a goal set by the DLA. See Green Paper on South African Land Policy(DLA, 1996), p.34.

17. See pamphlet Land Claims under the Restitution of Land Rights Act (1994) (CRLR); 'Roles and Functions of the Regional Land Claims Commissioner', prepared by Wallace Mgoqi.

18. This is fully described in M.Brown,J.Erasmus, R. Kingwill, C. Murray, M. Roodt, Land Restitution in South Africa : a Long Way Home (Idasa, Cape Town), pp.15ff.

19. See Government Gazette, 12 May 1995, No.16407 and 'Roles and Functions of the Regional Land Claims Commissioner', document prepared by Wallace Mgoqi. Once a claim was lodged the RLCC was tasked with : a) establishing the validity of the claim and the bona fides of the claimant; b) obtaining all information relevant to the claim ; c) defining the status of the land in question - whether it was state-owned land or private land, details of current owners, the use that such land was being put to; d) detailing the nature of and the date and body responsible for the dispossession; e) finding out the amount of compensation, if any, which the claimant had received at the time of dispossession and how this was calculated; g) establishing whether there were other claims to the same land; h) providing a map indicating the situation of the land in question.

20. See Truth and Reconciliation Commission (Justice in Transition, 1995)pp.5-6; Truth and Reconciliation Commission of South Africa Report (TRC, Cape Town 1998), Vol 1, pp.55-57.

21. See article by Gaye Davis, Mail and Guardian, 30 October-5 November 1998.

22. The appointment is briefly discussed in A. Krog, Country of my Skull (Johannesburg, 1998), pp.16-21.

23. Quoted in Krog, Ibid., p.21.

24. Ibid., pp.21-22.

25. See Truth and Reconciliation Commission (1995), pp.1-4.

26. TRC Report, Vol.1, pp.17,48-53.

27. Krog, Country of my Skull, pp.109-110.

28. Quoted in M. Hay, Ukubuyisana : Reconciliation in South Africa (Pietermaritzburg, 1998), p.53.

29. TRC Report, Vol. 1, pp.4,16.

30. A. Krog, Country of my Skull, p.112.

31. See W. Verwoerd, 'Continuing the Discussion : Reflections from within the Truth and Reconciliation Commission', Current Writing, 8(2), 1996, pp.73-80.

32. TRC Report, Vol.5, p.402.

33. First Annual Report 1996 Commission on Restitution of Land Rights, p.1.

34. Hansard, Debates of the National Assembly, 1994, No.14, cols 3991-2, 3995.

35. Ibid.

36. Argus Sunday, 6 October 1996.

37. Argus, 22 October 1996.

38. Argus Saturday, 30 September 1995.

39. Argus Northern, 25 September 1995.

40. Land Info, Vol.1, No.3, November/December 1994, p.3

41. Act 108 of 1996.

42. Argus (Finance section), 17 February 1996.

43. Sunday Times, 27 August 1995.

44. Green Paper on South African Land Policy, p.12.

45. Argus Sunday, 9 June 1996.

46. First Annual Report 1996 : Commission on Restitution of Land Rights, p.1.

47. UWC History Honours Seminar on Land Restitution, 17 October 1996. A tape-recording of this seminar is in my possession.

48. Cape Times, 20 September 1995; 18 February 1996.

49. Cape Times, 6 August 1997.

50. This was titled No Man's Man : Joe Seremane. The producer and director was Hennie Serfontein. Unfortunately I did not record the date of screening.

51. Cherryl Walker is an academic who was teaching in the Sociology Department at the University of Natal. She is well-known fo rbooks on gender and women and resitance. From her activities with the Surplus Peoples Project and the Association for Rural Advancement she together with Laurine Platzky produced the now classic study of forced removals in South Africa, The Surplus People (Johannesburg, 1996). Emma Mashinini is better known as a trade unionist but she was also associated with the Transvaal Rural Action Committee and was once in the department of Justice and Reconciliation within the Church of the Province of South Africa. Dr Peter Mayende, a member of the PAC, is a sociologist who worked at Unitra before moving to the Institute for Multi-Party Democracy. Ms Durkje Gilfillan is an attorney who had worked at the Legal Resources Centre in Pretoria specialising

in land issues. She was also a trustee of the Transvaal Rural Action Committee. Wallace Mgoqi also comes with a legal background. He worked as an advocate with the Legal Resources Centre in Cape Town and has the distinction of having a squatter camp - Wallacedene named after him for his role in preventing its destruction.

52. TRC Report, Vol. 1, p.7.

53. TRC Report, Vol.5, p.7.

54. This is from Ingrid de Kok, 'Cracked Heirlooms : Memory on Exhibition' in Nuttall and Coetzee (eds), Negotiating the Past,p. 58.

55. Krog, Country of my Skull, pp.32,56,103,237.

56. This was drwan from from Krog, Country of My Skull, p.26 and B. Harris '"Unearthing the "Essential" Past : the Truth and Reconciliation Commission and the Making of a National Public Memory', Paper presented to the South African and Contemporary History Seminar, History Department, UWC, 28 April 1998, pp. 20-22; and TRC Report, Vol.5, pp.2-3.

57. Rhodes Journalism Review, May 1997, p.10.

58. See TRC Report, Vol. 1, pp.356-358.

59. Rhodes Journalism Review, May 1997, p.9.

60. TRC Report, Vol. 1, p.358.

61. According to Krog, in none of the seventeen previous truth commissions in the world did politicians participate (Krog, Country of my Skull, p.101). The TRC Report spells out other ways in which the South African commission is different from other such commissions : its size and budget; its powers to grant amnesty; its huge investigative powers; its witness protection programme (See TRC Report, Vol.1, pp.54-55).

62. Krog, Country of My Skull, pp. 243, 259.

63. TRC Report, Vol.1, pp.8,16,112,114,147; Vol.5, pp.8,351,356.

64. Quoted in Krog, Country of my Skull, p. 31 and TRC Report, Vol.5, pp.352.

65. TRC Report, Vol.5, p.9; Vol.1, pp.168.170.

66. Harris, '"Unearthing" the "Essential Past"', pp.26-27.

67. P. Lalu and B. Harris, 'Journeys from the Horizons of History : Text, Trial and Tales in the Construction of Narratives of Pain', Current Writing, 8(2), 1996, p.34.

68. Rhodes Journalism Review, May 1997, p.7.

69. Ibid.69., May 1997, p.3.

70. Ibid., p.7

71. See H. van der Merwe, 'The South African Truth and Reconciliation commission and Community Reconciliation : a Case Study of Duduza', Centre for the Study of Violence and Reconciliation, Witwatersrand, 1998,pp.4-9.

72. Quoted in Claudia Braude, 'The Archbishop, the Private Detective and the Angel of History : the Production of South African Public Memory and the Truth and Reconciliation Commission', Current Writing, 8(2), 1996, pp.60-61.

73. Land Info, Vol.4, No.3, April/May 1997,pp.9-10.

74. Cape Times, 6 August 1997.

75. Krog, Country of my Skull, p.121.

76. See TRC Report, Vol.1, pp.60-64; Vol.5,p.11.

77. Cape Argus, 3 June 1997.

78. Verwoerd, 'Continuing the Discussion', p.72.

79. The following account is drawn from TRC Report, Vol. 1, pp.138-43, 326-41, 374-81.

80. TRC Report, Vol. 5, p.5.

81. Mail and Guardian, 30 October-5 November 1998. These are the words of 'Chief' Mabizela, researcher for the TRC.

82. The following is based on interviews with Madelaine Fullard, Zuko Camagu and to a much less extent with Dugard Zweledingo Maqekeza, 4 March 1999.

83. See particularly TRC Report, Vol.1, pp.154-57, 326-336.

84. Mail and Guardian, 30 October-5 November 1998.

85. SABC 3, Evening news bulletin, 10 April 1999, item on burial sites.

86. Mail and Guardian, 30 October to 5 November 1998 (editorial).

87. Mail and Guardian, 12-18 December 1997.

88. This commission was created in terms of the Abolition of Racially Based Land Measures Act of 1991 and was charged with examining cases for the restoration of land where such land was state owned. Its functions were limited and powers of implementing its recommendations were in the hands of the State President.

89. First Annual Report 1996 : Commission on Restitution of Land Rights, pp.8,14; Annual Report 1998 : Commission on Restitution of Land Rights, p.4.

90. Land Info, Vol.5, No.3, June/July 1998, pp.16-17.

91. See paper by W.Mgoqi, 'The New Approach to Land Claims, the Administrative Approach and the Role of the Land Claims Court' Presented at a workshop in Cape Town organised by the Legal Resources Centre, the Surplus Peoples Project, the Commission and the DLA, 22 March 1999.

92. The Commission News, Vol.1, No.2, 2/99.

93. First Annual Report 1996, pp.18,20; Annual Report 1997, p.28.

94. Annual Report 1998, p.4. The seven were Elandskloof (Western Cape), S. and R. Dulabh (Eastern Cape), Cremin (KwaZulu Natal), Ratsegaai (North-West), Farmerfield (Eastern Cape), Ronaldsvlei and Groenwater/Skeynfontein (Northern Cape).

95. All this was extensively reported in the Mail and Guardian. 9-15 October; 16-22 October; 23-29 October 1998 (Letters from Hanekom and Budlender).

96. He for instance argued that white RLCC's received more prompt attention from the DLA than his black commissioners (Mail and Guardian, 16-22 October 1998.

97. Annual Report 1996, pp.3,4,9.

98. Sunday Times, 27 August 1995; Interview with Elizabeth Davidson, 17 February 1999.

99. Annual Report 1996, p.9.

100. Satellite offices were established at Kimberley, George, Mmabatha, Bloemfontein, Cato Manor and Durban. Of the 151 staff, 90 of these were section 8 staff (those drawn from the public service - the DLA -to perform an administrative function) and 61 were section 9 appointments, individuals under contract such as researchers, field workers, community liaison officers. Annual Report 1998, pp.22.

101. Ibid., pp.7,59.

102. Interview with Elizabeth Davidson, 17 February 1999.

103. Report on District Six Task Team by Wallace Mgoqi, March 1998; Athlone News, 28 October 1998

104. Annual Report 1998, p.39.

105. Interview, 17 February 1999.

106. See Brown et al, Land Restitution in South Africa, pp.13-14.

107. See UWC History Honours Seminar, 17 October 1996.

108. Annual Report for 1996, p.10; Annual Report for 1998, pp.21-22; TRC Report, Vol.1, p.300.

109. Mail and Guardian, 30 October-5 November 1998 (Seremane to editor).

110. Land Info, February/March 1997, Vol.4, No.2, p.13.

111. Land Info, Vol.5, No.3, June/July 1998, pp.16-17.

112. Land Info, Vol.4, No.3, April/May 1997, p.31.

113. Land Info, February/March 1997, Vol.4, No.2, p.12.

114. Mail and Guardian, 12-18 December 1997; 23-29 October 1998 (Letter from G.Budlender to the editor).

115. Interview with Davidson, 17 February 1999.

116.Brown et al, Land Restitution in South Africa, pp.1,11.

117. There are many parts to answering this question - eg has the claim been lodged on the proper form, did the dispossession occur as a result of a racially based law or practice after June 1913, has the claim been lodged within the prescribed period (initially 30 April 1998 then 31 December 1998), is the claim 'vexatious or frivolous'? The claimants' identity has to be confirmed.

118. This was spelt out on 7 April 1999 by the new Research Manager in the Cape Town office, Kwandi Kondlo, to academics representing the Western Cape region who will become involved in the research process as a result of a DLA/Commission initiative.

119. Interview with Elizabeth Davidson, 17 February 1999.

120. See 'What Happens After a Claim has Been Lodged at the Commission' by M.G. Kamedien, RLCC office Cape Town, 7 June 1996; Annual Report 1996,p.12.

121. The following is based on the very thorough analysis by R. Kingwill and M. Roodt in Brown et al, Land Restitution, pp.88-124.

122. Brown et al, Land Restitution in South Africa,p.102.

123. First Annual Report, 1996, p.23.

124. Annual Report for 1997, p.51.

125. Brown et al, Land Restitution in South Africa, p.102.

126. Ibid., p.104.

127. Ibid., pp.90-91, 106.

128. Ibid., p.19.

129. This is the phrase used most often by commissioners - see eg Annual Report 1998, p.23.

130. This is based on an interview with Elizabeth Davidson, 17 February 1999.

131. Brown et al, Land Restitution in South Africa, p.22.

132. Land Info, Vol.5, No.3, June/July 1998, p.19.

133. A news item appeared in the Cape Metro section of the Sunday Times, 21 December 1997.

134. Interview Davidson, 17 February 1999.

135. Sunday Times, 21 December 1997 (Cape Metro section).

136. H.T. Broadbridge, 'Relevant, Important and Credible : Reflections on Applying Anthropology in the South African Land Restitution Process' (MA, UCT, 1997), p.57.

137. Ibid., pp. 38ff and Appendix 1.

138. See C.Saunders, 'Segregation in Cape Town : the Creation of Ndabeni', Africa Seminar Collected papers, Vol.1, 1978 (Centre for African Studies, Cape Town), pp.43-63; C. Saunders, 'From Ndabeni to Langa, 1919-1935', Paper presented at Cape Town History Conference, University of Cape Town, 1978; video Ndabeni, produced by members of the History Department of the University of Cape Town.

139. Land Info, Vol.4, No.1, December 1996-January 1997, pp.28-29; Vol4, No.5, August-September 1997, pp.14-15.

140. Mayson, 'Land Restitution in the New South Africa', Unpublished paper, SPP, August 1996, pp.6-8.

141. Cape Times, 2 December 1996.

142. To his credit Kamedien of the Cape Town office provided claimants with useful guidelines on how to fill in the form. See 'A People's Guide to Ex-Tenants of Forced Removals', prepared by M. Kamedien, 9 December 1996.

143. Interview Davidson, 17 February 1999.

144. UWC History Honours Seminar on Restitution, 17 Oct. 1996.

145. Nuttall and Coetzee, Negotiating the Past, pp. 1,13.

146. Annual Report for 1998, pp.14-15.

147. Broadbridge, 'Relevant, Important and Credible', p. 68.

148. This is in fact the main focus of the book by Brown et al, Land Restitution in South Africa and is one of its main weaknesses.

149. Panel discussion on 'Land Restitution and Community Building in District Six'at IDASA, Cape Town, 26 June 1998.

150. R.M. Levin, 'Politics and Land Reform in the Northern Province a Case Study of the Mojapelo Land Claim' in M. Lipton, F. ellis and M.Lipton (eds), Land Labour and Livelihoods in Rural South Africa : Vol.Two : Kwa-Zulu Natal and Northern Province (Indicator Press, Pietermaritzburg, 1998).

151. Interview with Elizabeth Davidson, 17 February 1999 and Pam Wernich, 9 August 1997.

152. See 'Land Restitution in Cape Town : Public Displays and Private Meanings', Kronos, 1998, pp.240-259.

153. Broadbridge, 'Relevant, Important and Credible', p.4.

154. Athlone News, 26 February 1997.

155. Ibid.

156. The people of lower Claremont or what is today Harfield Village, had a gathering away from the public gaze in 1997. A 'Reunion Bash' which featured musicians from the former area was held later. (Information from Jasu Madhu, former resident of Claremont; Cape Argus, 1 October 1997).

157. Sunday Times (Cape Metro), 6 April 1997.

158. Cape Times, 7 April 1997.

159. See Cape Times, 16 and 23 April 1997.

160. Telephone conversation with Fakier, 23 April 1997.

161. Interview with Ghamza Adams, 10 March 1997.

162. Interview with Letticia Daniels, 19 April 1997.

163. Broadbridge, 'Relevant, Important and Credible', p.65.

164. Interview Ghamza Adams and Ebrahim Osman, 10 March 1997.

165. Cape Argus, 20 February and 17 March 1997.

166. The following is based on the UWC History Honours Seminar on Restitution, 17 October 1996.

167. Personal observance. Madhu nonetheless needed my help to fill in her form.

168. Interview Anne Ntebe, 6 May 1997.

169. Panel discussion at Idasa on 'Land Restitution and Community Building', 26 June 1998.

170. Interview Pam Wernich, 9 August 1997.

171. Interview Jean Blanckenberg, 9 August 1997.

172. This is quite a common occurence as families debate who has the most right to claim. The commission recognises all descendants as eligible and conflict emerges when it is argued that the other members of the family for instance had not lived in the house at the time of dispossession.

173. Interview Ghamza Adams and Ebrahim Osman, 10 March 1997.

174. Interview Anne Ntebe, 6 May 1997.

175. Argus Sunday, 17 September 1995.

176. Interview, 6 May 1997.

177. Interview with Letticia Daniels, 19 April 1997.

178. Athlone News, 3 February 1999.

179. Sunday Times, 7 February 1999.

180. See Mgoqi, 'The New Approach to Land Claims' and Mgoqi and Jean du Plessis, 'Project Overview : the Restitution Transformation Project', Papers presented at workshop in Cape Town, 22 March 1999. The danger in the new process is that the commission may get swallowed up by the DLA structures. That independence which was valued initially is already affected as both parties now merge and pool resources to become accountable to the Director-General of Land Affairs.