

# Perspectives on Urban Land Restitution: what constitutes *good enough*?

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To EM – your example of faith, perseverance and strength is unmatched.

*“And we know that challenge  
produces perseverance; perseverance,  
character; and character, hope.*

*And Hope never puts us to shame”*

*Romans 5:3-4*

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# Abstract

The amendment of the Restitution of Land Rights Act (no. 2 of 1996) has reopened the period for lodging a land claim in South Africa until 2019. The previous period for lodging a claim closed in 1998 but claims lodged over 20 years have still not been attended to. There exists a concern that with the re-opening of land restitution within both rural and urban spaces, that previous claims will not be seen to, while new claims will take years to resolve. This is unacceptable. How can the process of land restitution be better managed, conducted and performed so as to fulfil the requirements and goals of land restitution – reconciliation and social justice.

The focus of this research turns to the urban space in the Western Cape through a purposefully selected case study of a successful land claim. South African cities and human settlements are growing, with South Africa being the most urbanised country in Africa. The competition for urban space will increase in time. With the demand for land being the contextual reality, urban land restitution needs to position itself in relation to South Africa's dispossessing past.

Through a qualitative research approach, a single case study of urban land restitution was used through which to answer the research questions: what constitutes good enough in relation to land restitution in a competitive urban environment? Findings revealed that urban land restitution is complex, with multiple layers, multiple actors and multiple challenges. It exists in a fine balance of factors influenced by competing agendas. Good enough in this space covers communication, recognition of individuals, respect and action. It entails a three dimensional process and accounts for change in people, place and space over time. Recommendations relating to these findings are themselves pitched at multiple levels from the national to the city space and at more general concerns. Recommendations attempt to promote good enough in a complex urban land restitution environment for the future.

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Reflective Journal (excerpt)

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# Acronyms

ANC	African National Congress
CoCT	City of Cape Town
CPOA	Constantia Property Owners Association
DA	Democratic Alliance
LCC	Land Claims Commission
NGO	Non-Governmental Organisation
NPO	Non-Profit Organisation
RDLR	(Department) of Rural Development and Land Reform
RDP	Reconstruction and Development Program
SARDA	South African Riding for the Disabled Association
TRC	Truth and Reconciliation Commission

# Definition of Terms

Claimants	A person or group of people who have lodged a land claim with the Land Claims Commission
Interested party	Participants in the research who have either a direct link to the case study or have been involved in wider urban restitution processes
Restitution	The restoration of that what was lost to the proper owner. A compensation or recompense for damage caused. It is an act of redress. Allows for allocation of an alternative site or redress through financial compensation if restoration of land is not possible.
Reparation	The right to have restored the property that was deprived in the course of conflict. The right to be appropriately compensated for property that cannot be restored.

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# 1

## INTRODUCTION

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### 1.1 Introduction

Land restitution has been a topic for discussion within South African development discourse since the 1994 democratic change in national governance. The Constitution of South Africa (no. 108 of 1996) mandated land restitution and reform as a central focus within social impact efforts. The Land Claims Court was tasked with giving effect to this mandate through the Restitution of Land Rights Act (No. 2 of 1994). Land claims could be placed from 1994 to 1998 after which the Court was absolved and its functions absorbed into the Department of Rural Development and Land Reform. The 'second round' of post-Apartheid land restitution was recently launched when the land claim period was extended until 2019 (Rural Development and Land Reform, 2014).

Land is an emotional and personal subject, especially for people affected by decades of dispossession, not just of physical geographical entities but also of political and socio-economic human rights. Land restitution offers historical redress for past social injustices (Cousin, 2008). However, concerns have been raised about the efficacy, efficiency and necessity for land restitution as reconciliatory action, especially since the extension of the claim period to 2019 (Atuahene, 2014). The processes and degrees of achievement of South African land reform program have been extensively documented (Walker, 2008, 2011; Deininger, 1999; Fay & James, 2009; Mammon, 2011). Much of the literature focuses on rural land claims with examples from urban locations being limited to a few high profile cases (Mammon, 2011). Findings suggest that the land reform process is inadequate and poorly executed. The 'second round' of land claims therefore presents an opportunity to improve the process if lessons learnt from the first round are revisited (Atuahene, 2014).

### 1.2 Background to the study

According to the Land Claims Commission (Walker, 2011) most urban land claims had been settled through financial compensation by the mid-2000s. Re-opening the claim period means more claims are likely to be lodged in the foreseeable future. Atuahene (2014) suggests that urban land claims must be reviewed because they exist beyond the realm of financial compensation; they also play out in the realm of social healing. Re-entering the land claim process means re-visiting what restitution actually means and entails – that as a reconciliatory tool for advancing social justice, it goes beyond the payment of monies to an acknowledgement of the role that memory plays in perpetuating or

resolving historical dispossession and socio-political trauma. Although people may have been recompensed, does this constitute *good enough* restitution and what role can urban planners play in smoothing the conflicting interface between competing claims?

This research report details the findings of a single case study that investigated a successful land claim in the suburb of Constantia, Cape Town. The study site is the identified location for the restitution of the land claim lodged by the Sadien family (Land Claims Court, South Africa, 2012). The identified restitution erf is not the site of historical ownership. It was identified by the Land Claims Commission and the Department of Transport and Public Works as a suitable alternative site because the original land was not available for restoration to the Sadien family. In the judgement by the court, the land was described as vacant and empty. This however is not the case as the land is and has been the location of the South African Riding School for the Disabled (SARDA) for the last 34 years. The public outcry that ensued surfaced the multiple contextual complexities at play in urban land restitution. Part of the public protest was that SARDA was not informed of the land claim on the site they lease from the Department of Transport and Public Works. SARDA found out about the award via a newspaper article. The lack of communication is considerably problematic and as of July 2014 an appeals process has been lodged to challenge the award in court (South African Riding School for the Disabled, 2013). One main contention is that the awarded site is not the site of original dispossession – but is it an appropriate or *good enough* alternative and if so, *good enough* for whom?

### 1.3 Rationale for study

Land reform is a current, relevant and an often emotionally and politically charged issue in post-Apartheid South Africa (Claassens & Cousins, 2008). The government needs to provide for future land challenges yet deal proactively with the lingering effects of historical land dispossession in the present. A pertinent need exists to conduct research into urban challenges in South Africa (Mammon, 2011). South Africa is the most urbanising city in Africa according to the latest State of African Cities Report 2014 (UN Habitat, 2014). Given the continuation of urban growth associated with population expansion, and infrastructure development, the competition for space and resources will only increase. How may social justice be prioritised in this context? How may *good enough* in relation to restitution actions be framed to inform the actions of urban planners who are faced with the implementation of land restitution policies? If planning is about land, and planners work with land, the rationale that planners have a role to play in the mediation of the urban land claims process stands. The involvement of the planner and land restitution process speaks to the development of the

sustainable city and a wider more inclusive city vision. Knowing more about the dynamics at play will empower planners to be engaged actors in urban and social agendas.

#### 1.4 Research problem

Twenty years after the advent of democracy in South Africa, the process of land reform still has a long way to go. The paucity of literature detailing the spatial, social, economic and other implications of awarded land claims in well-developed residential city suburbs in South Africa restricts the scope of insight with which city planners can approach the complexities of space management.

#### 1.5 Research purpose

Restitutional land is more than a geo-physical entity. It is a contested, symbolic and socio-political space that warrants consideration by city planners to inform just and fair planning perspectives and practices. This study will contribute descriptive qualitative information about a single urban land claim process and 'land as space' from the perspective of established residents, 'returning' claimants and other interested parties. Considering that the claim period has been extended and backlogs are already extensive, this study also serves to inform policy-making officials of better ways to structure and approach the system of land restitution within urban contexts.

#### 1.6 Research aim

To describe what interested parties consider constitutes *good enough* when addressing urban land restitution in South Africa.

#### 1.7 Research question

What constitutes *good enough* when addressing urban land restitution and social justice?

#### 1.8 Research objectives

- Describe what interested parties consider the social, spatial, economic and other issues arising from the awarded land claim to be
- Identify how the restitution process as outlined by National government in an urban context is experienced 'on the ground' by the parties involved.
- Determine how interested parties interpret and deal with / manage conflicting points of view
- Identify what contributions the planner could make in the multi-layered complexity that is urban land restitution.

## 1.9 Summary

The purpose of this chapter was to frame the background, rationale and focus of the study. It argued that research into urban land restitution has not been as extensive into that of its rural equivalent (Mammon, 2011). Current urban demands are only set to increase questioning the role and feasibility of social justice in the future (UN Habitat, 2014). It pointed to the need for investigating land restitution from the perspective of people on the ground in order to inform the role of the planner.

Following from here chapter two contextualises the study and describes the historical environment from which restitution related actions emerged and to whose remedy they are addressed. Chapter three presents the literature review where current thinking and debates on land restitution are discussed. This offers a theoretical positioning in relation to the conducted research. Chapter four covers research methodology and the steps used in conducting qualitative research in an urban land restitution context. Chapter five is a presentation of the research findings from primary research conducted through semi-structured interviews with a range of interested parties. Chapter six offers a discussion of the findings in relation to the literature review. Chapter seven provides a conclusion together with recommendations for action.

# 2

## CONTEXTUALISING THE STUDY

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### 2.1 Introduction

This chapter offers a broad contextualisation of land restitution in South Africa. It briefly describes the historical environment from which restitution-related actions emerged and to whose remedy they are addressed. In the first section two key legislations that created racially determined rural and urban spaces are discussed. The 1913 Natives Land Act and the Group Areas Act of 1950 were pivotal historical Acts that entrenched racially determined spatial segregation. The second section focuses on post-apartheid land redress strategies and the role of urban planners. The Constitution of the Republic of South Africa (no. 108 of 1996) is discussed as are other Provincial and National directives that guide land restitution actions. Land restitution efforts to date by the City of Cape Town are presented in the third section. The chapter concludes with a review of the research site which served as the chosen case study for investigation.

### 2.2 South African land dispossession: Natives Land Act (no. 27 of 1913)

The recent commemoration of the centenary of the 1913 Natives Land Act opened up renewed discussion around the legislation and the vast effect it had on land ownership. The 1913 Natives Land Act did not exist in isolation, nor did it originate in seclusion. It prohibited African land ownership throughout most of South Africa and regulated presence of African people on white-owned farms. The Act confined African land ownership to only 13% of the country's land and relegated the status of Africans to 'temporary occupiers' (Smith, 2008).

By the time diamonds were discovered near Kimberley in 1868, a vast majority of South Africa's land had been divided up and allocated between the ever advancing British, the two Boer Republics and the reserves for Africans (Penn, 2013). Within these reserves Africans were prevented from accumulating wealth and land as farmers. The political intention was for African men to be migrant labourers on mines, factories and commercial farms (Cousins, 2009). The creation of reserves eventually resulted in a cheap labour system to underpin the reliance of South Africa's blooming economy on mineral wealth. The 1913 Natives Land Act contributed to the entrenchment of a forced labour system populated by Black Africans. Cousins (2009) argues that the current land question in South Africa cannot be separated from the labour question and suggests that in addition to the racial distribution came class divisions – between wealthy capital on the one side, and poor, cheap labour



on the other. The effects of the 1913 Natives Land Act included racially segregated land and spaces; ownership of land in areas removed from economic cores and often of poor quality. It also reinforced the system of migrant and cheap labour and eventually formed the basis of the Apartheid system in South Africa in 1948 (Cousins 2009).

Considering current urban land restitution, the 1913 Natives Land Act could be viewed as a historical contributor to the designation of spaces – both rural and urban – based on race. The mandate of land restitution is social justice (Mammon, 2011). An awareness of the origins of legalised spatial segregation is therefore useful to the planning professional concerned with urban land restitution. While the 1913 Natives Land Act is itself not the topic of restitution actions, it also forms a frame and parameter in which South Africa's land restitution can be positioned. This historical legal frame allows for land claims to be contained and managed. The 1950s Group Areas Act also falls within these parameters.

### 2.3 South African land dispossession: the 1950 Group Areas Act

After the election of the Nationalist party in 1948, systems of entrenched and legalised racial segregation became a priority for the government. The development and application of the Group Areas Act of 1950 supported the notion of 'separate development' and aimed to legally divide and segregate residential and business sections in urban areas based on assigned racial groups. During the Apartheid years (1948 – 1994), the racially based division of land was weighted at 87% of the land and all major urban centres as a 'white core', with a black periphery on the remaining 13% (remnants of the 1913 Native Land Act) (Walker, 2011). In the 1960s and 1970s the 13% of allocated land was further divided into ethnically defined 'bantustans' (Walker, 2011).

While racial segregation, classification and struggles over land have been part of South Africa's history since the early colonial period, the 1950 Group Areas Act took the imposition of a racially based spatial order in urban areas to a new level (Walker, 2011). It restricted urban residents from owning and occupying property outside areas zoned for particular race groups. The legislation accompanied the forced removal of communities, individuals and households to alternative designated sites with often little to no compensation for property or assets lost. Walker (2011) writes that in time the major public spaces within South African came to be officially and unofficially designated in terms of race – mostly white. Walker (2011: 20) states that "(T)he scars these [Apartheid] processes have left on individuals, communities and urban landscapes are deeply etched". The present case study centres on the dispossession of land that occurred on the basis of the Group Areas Act. It classified Constantia as a 'whites only' suburb and required the Sadien family to sell and vacate their land.

## 2.4 South African democracy: The Constitution of South Africa (no. 108 of 1996)

While the effects of both colonisation and the Apartheid system created a turbulent and complex history, the position of land featured highly in the negotiations of inclusive and reformed governance in the 1994 democratic South Africa. The narrative of loss and restoration was used as a tool to mobilise resistance to apartheid during the 1980s – early 1990s. It also featured in the period of transition and constitutional negotiations during 1993 – 1994. After the highly turbulent 1970s-1990s in South Africa where demonstrations against segregation and Apartheid determined areas reached tense levels, the change in governance required a review of governmental policy and the legislated control of space. The official land restitution programme emerged out of this complex negotiated transition to democracy (Walker, 2008). In attempts at redress through democratic governance, land issues formed a key discussion point around which constitutional negotiations arose (Walker, 2011).

The Constitution of South Africa (no. 108 of 1996) indicates that in the approach to land reform, especially from the position of economic dispensation, the debate has to be future orientated. The protection of property rights is featured as the first concern in the section on Constitutional rights. Walker (2011) suggests that this constitutional position came from a 'grudging compromise' where a single property clause protected existing property rights against arbitrary state acquisition while simultaneously mandating a land reform program that would bring equitable access to land and tenure security for historically displaced people.

Constitutional mandates resulted in the establishment of the Department of Land Affairs (later renamed the Department of Rural Development and Land Reform) whose 1997 White Paper on Land Reform listed four objectives to achieve in addressing both urban and rural land restitution in post-Apartheid South Africa. These objectives are to redress the injustices of Apartheid, foster national reconciliation and stability, underpin economic growth and improve household welfare and alleviate poverty (Rural Development and Land Reform, 2014; Walker, 2011). The Land Claims Commission was tasked with implementing these and other related objectives.

## 2.5 The Land Claims Commission

The Land Claims Commission (LCC) was established in 1996. It was tasked as the institution in charge of post Apartheid land restitution processes. The Land Claims Commission emerged out of complex linkages between individual experiences, group mobilisations, public opinions and political responses (Walker, 2008). There has been extensive criticism and concern over the Commission's inability to meet targets both at national and project levels (Ntsebeza & Hall, 2007). The shortcomings and challenges of the Commission have been identified elsewhere (Walker, 2011) and will not be

addressed here. However, Walker (2011) writes that the demands placed on the LCC at a national level differ greatly from those at a project level. Filtered through the interpretation of a master restoration narrative. The demands have practical implications. For example, the national narrative demands numbers through the practical settling of as many claims and redistribution of hectares as possible. At the project level – or local application – the narrative focuses on time and process, not just practical outcomes (Walker, 2011). The power of the loss and restoration motif is its ability to demand attention and respect. “It organises and controls countless individual stories. Memories of place, of what is lost, the identities that percolate through those memories, the struggle to hold on to land” (Walker, 2008: 37). In short a divide exists between political intention and reality.

Walker (2008) identifies what she calls two less commonly appreciated domains in the narrative of dispossession namely the national political arena and the multiplicity of actual land dispossessions. The national political arena regularly uses the dispossession narrative as a summary of the past to motivate and justify present restitution policies. It applies not only to land reform but also to wider social transformation. The multiplicity of land dispossession exists in specific contexts with local dynamics that, in reality only correspond with the national account in the broadest of terms. The challenge is that the national land restitution policy must move from ideology to implementation – policy must become operational, action must happen (Walker, 2008).

The urban space is positioned at both a national and project level. Nationally, the urban context forms part of a competitive economic system that is densely populated and contributes to the twin national agendas of growth and development. ‘Successful’ restitution in an urban space aims to meet the numbers orientated national narrative. The challenge however is that the urban space is a complex space with multiple interested parties, scenarios and agendas. There is thus a need to focus on the project level in practical urban restitution. The urban space is a meeting of the national restitution narrative and the locally relevant project level. However, ensuring the effective meeting of multiple parties where the challenge presents itself. What is good enough in an urban restitution space that operates on both a national and project level?

Between 1995 and the end of 1998, the Land Claims Commission received almost 80 000 land claims. The Commission claimed to have settled 95% of these claims by 2010. The Commission also claimed to have settled all urban land claims (mostly through financial recompense). Walker (2011) however identifies that the Commission had been ‘less than forthcoming’ about formally settling claims where settlement agreements were yet to be fully implemented for example the District Six, Cape Town claims. The Restitution of Land Rights Act (no. 22 of 1994) was amended in 2014, re-

opening the period to lodge a claim. The need to review the land claim process, especially in an urban context, is therefore urgent. The challenge however as Walker (2011) continually asserts is that it is more than a case of 'returning what was lost'. Rather there are complex dynamics involved in contemporary land ownership, occupation and land use, which themselves are intertwined with the larger set of complex socio-economic, political and historical relationships (Walker, 2011).

## 2.6 Restitution of the Land Rights Act (no. 22 of 1994) – amended in 2014

The Restitution of Land Rights Act provides the legal means through which claimant communities can exercise their rights to have restored to them land and property which was lost under discriminatory legislation. Mammon (2011) argues that within an urban context, the Act creates tension between the workings of an urban land market and the need to promote social justice. The urban land market operates on a competitive basis that often excludes those not economically able to compete. The principles of social justice aim to facilitate the restoration of land rights. Navigating this relationship in an urban context while utilising the Act is a challenge for planners, development professionals and restitution authorities alike, especially when the mechanisms of land restitution straddle multiple realities.

## 2.7 Contextualising the mechanism of land restitution

Atuahene (2014) suggests that because property dispossession occurred in a wider context of racially based exclusion and marginalisation, restitution became possible through mechanisms such as the Truth and Reconciliation Commission (TRC) which acted as a remedy for the tangible and intangible aspects of historic wrong doings. The author suggests that post-Apartheid systems such as the Constitution and the Constitutional Court together with affirmative action programs have all acted as 'dignity restoring' attempts to transform South African society. The impact of the Truth and Reconciliation Commission especially in relation to the dispossession of property has been well documented as being ineffective (Walker, 2008). The need to address forced removals and property expropriation constantly arose during the TRC hearings. Walker (2008) suggests the need for a TRC dedicated specifically to the damage and trauma experienced by the dispossessed.

While the TRC served as a mechanism for social healing, other restitution strategies such as land claims also exist. Fay & James (2009) produced a typical restitution type pattern that represent key events in the restitution pattern: dispossession – policy formation – community formation – claim staking - transfer – post transfer and post restitution. Box 1 provides a summary of how to lodge a land claim (Rural Development & Land Reform, 2014).

## HOW TO LODGE A LAND CLAIM (Rural Development & Land Reform, 2014)

### WHAT

- Land claims are only for people who lost rights to land after June 1913
- It is a crime to submit a fraudulent land claim
- It does not cost money to lodge a land claim

### WHO

- Anyone, dispossessed of land or rights to land, due to racially discriminatory laws can submit a claim if they feel like they did not receive just and equitable compensation at the time of dispossession. An application for restitution for that right or equitable redress can be submitted.
- Individuals, direct descendants, a juristic person, an executor of an estate or a community representative can submit a claim

### HOW

- A claim needs to be lodged at designated points across the country. Usually these are government departments of RDLR or the LCC
- Supporting documentation is required with the necessary required paper work. Supporting documents include descriptors of the property, information about the department involved in the dispossession, the year of dispossession, information about compensation and personal particulars.
- After administrative processes have been followed, the LCC is required to investigate the merits of the claim.
- Supporting documents such as title deeds, surveying maps, archival records are also drawn on. The Commission then follows internal processes such as research and investigation to determine appropriate action.

### BOX 1: Lodging a land claim. Source: RDLR, 2014

While the mechanisms for lodging a land claim appear straight forward, the reality is that the complexity in the restitution process (in South Africa) has turned out to be, “not a state or current landowners who are intent on opportunistically challenging the claimants right to claim, but the practical problems that follow after that right has been assented to” (Fay & James, 2009: 9).

It is at the juncture of ‘practical problems’ that urban and regional planners may interface with land restitution. Planners and planning processes may serve as mechanisms through which land reform is realised. Campbell (2002) suggests that planners should be planning using situated judgement with and for others. Planning problems are situated and contested in space. Reading the context therefore serves a basis for ethical judgements. Watson 2003 calls for an agent to think about planning from a critical analytical and normative perspective which is grounded in a deep understanding of contextual difference and the ‘conflicting rationalities’ at play in the metanarratives of interested parties. Drawing on the work of Haraway, Campbell and Foucault, Watson (2003) suggests that the possibility of ‘embodied objectivity’ as a mechanism through which planning practitioners can begin to understand clashing rationalities, especially those arising in multicultural and multifaceted South African contexts characterised by the prevalence of difference. The influences these beliefs

and worldviews insert into a land claim scenario could 'make or break' the urban planning project. The next section considers land claim projects in the context of urban planning in Cape Town.

## 2.8 Urban land restitution in Cape Town

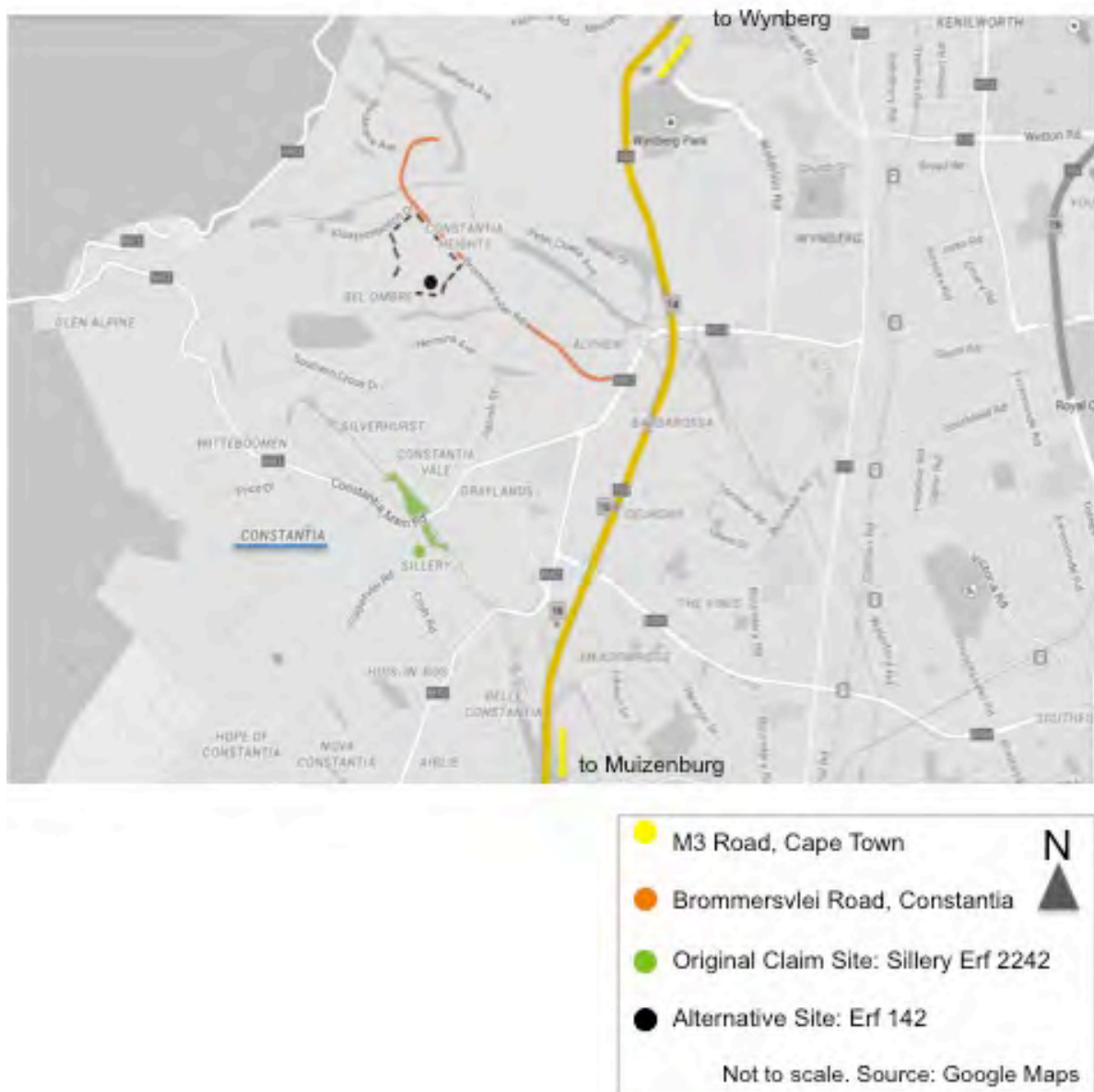
The period for lodging land claims was closed by 1998 and reopened in 2014. At that time the Land Claims Commission had approximately 10 000 claims within the City of Cape Town (Mammon, 2011). Given the nature and relationship between limited urban spaces, expanding populations, urbanisation and pressures from the competitive land market, the demand for urban land parcels continues to grow. This demand creates challenges in relation to available sites for restitution. Mammon (2011) writes that within the City of Cape Town there is a struggle to engage with appropriate and successful urban land restitution programmes that are related to relevant policy and delivery. The question then presents itself again – given the context of contested and limited land, how may 'good enough' restitution actions be gauged? Figure 1 shows sites of restitution in Cape Town – see overleaf.

Restitution in figure 1 refers to the returning of land to claimants (Mammon, 2011). These are divided between sites of complete restitution (red), sites of partial restitution (blue) and sites of claims but no restitution (yellow). Constantia is shown as a site in yellow – in process but not taken up yet.

## 2.9 Case study Constantia Cape Town Erf 142 – Sadien family and SARDA

The site identified for use as a case study is Erf 142 located in the suburb of Constantia, Cape Town. Constantia is situated along the M3, a busy secondary route that traverses the length of the southern suburbs. It is located at the base of the Constantiaberg Mountains and is a beautiful area with open spaces and vineyards. The suburb is considered to be wealthy and relatively homogenous in its socio-economic make up (South African National Census, 2011). The location of the suburb is presented in figure 2. This map also locates the original site for land claiming and the position of the site that is covered in the case study.

Figure 2: Location map of case study site. Constantia, Southern Suburbs, Cape Town. Source: Author



The restitution site in question is on Brommersvlei Road and comprises of 4 erven, the largest of which is Erf 142 measuring 9 hectares. This site is the identified location for the restitution of the land claim lodged by the Sadien family. The identified erf is not the site of original ownership. It was identified by the Land Claims Commission and the Department of Transport and Public Works as a suitable alternative site because the original land near Sillery was not available for restoration to the Sadien family. The alternative site was identified following a court decision that development on the land raised the value beyond the means of restitution capabilities ('Battle over prime Constantia Land' 2012).

Due to administrative and institutional challenges and incapacities, Erf 142 was awarded through the Land Claims Court to the Sadien family as a land restitutive gesture. In the judgement by the court, the land was described as vacant and empty. This however is not the case as the land is and has been the location of the South African Riding School for the Disabled (SARDA) for the last 34 years. The award of Erf 142 in a land claim, the 'SARDA' land, resulted in public outcry at the perceived 'injustice' of awarding land which was not in fact vacant but rather provides a much needed free service to disadvantaged disabled children. Part of the public protest was that SARDA was not informed of the land claim on the site they lease from the Department of Transport and Public Works. SARDA found out about the award via a newspaper article. The lack of communication is considerably problematic and as of July 2014 an appeals process has been lodged to challenge the award of Erf 142 in court. One main contention is that Erf 142 is not the site of original dispossession but rather an alternative site – but is it an appropriate or good enough alternative? The question of good enough for whom is also raised. Figure 3 shows the suburban context of Erf 142.



## 2.10 Background to the land claim and court judgement

In 1902 Mr D Sadien bought 3 portions of the subdivided Sillery Estate, one of which (Erf 2274) became the family home and source of livelihood through small-scale agricultural activities. The family farmed on site until alleged dispossession. In 1921, Mr D Sadien built a mosque on one section of his land that was donated to the local Constantia Muslim community. After Mr D Sadien's death, his wife continued to run the farm until her death in 1956. The farm was then purchased on auction by five of the Sadien brothers.

After the initial Group Areas Act inquiries, vast areas of Cape Town were declared 'white' by the 1961 proclamations that resulted in the apparent forced selling of the farm on Erf 2274 by auction. The farm was bought by Mr JA Badenhorst in March 1962 for R 13 550.00. Prior to the sale and transfer of the land through auction, the property was described as a market garden – an agricultural site. The Sadien family used the property to cultivate fresh produce for sale and utilised water from a nearby stream, which has subsequently been curtailed by authorities. The Sadien family argued that the site, at the time of dispossession, was both fertile and well watered and that the family were collectively able to lead a competitive lifestyle benefiting from the space.

The action of this particular court case (2012) was to determine whether just and equitable compensation as contemplated in section 25(3) of the Constitution of South Africa was offered depending on whether the court considered the dispossession of the described land to be in alignment with past racially discriminatory laws. The request of the Sadien family was for the restoration of Erf 2274 to them. Since the sale in 1962, the land had been placed into a trust managed by the Badenhorst family and had subsequently been developed extensively.

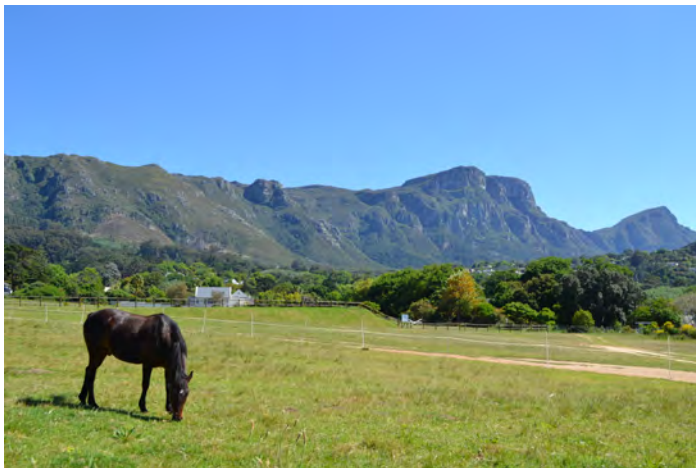
Contention over the commencement of development on the Sillery site was deliberated in court. It was found that even after the initial land claim had been lodged in 1999 (S38 of 1999 gazetted 1 April 1999 under notice 499 of 1999) that Erf 2274 had been developed. Development on the site involved in a land claim process requires communication with the Land Claims Commission. It requires that a notice of intent to develop is issued to the commission. The intention was debated in court – whether or not sufficient notice to develop the Sillery site was given. The court ruled that proper notice was given in compliance with the Restitution of Land Right Act (no. 22 of 1994).

The final outcome of the court case was that financial compensation for the Sillery site was insufficient but that restoration of Erf 2242 was not viable given the extent of development on the site and the value of the property. The Land Claims Court initiated the finding of an alternative site for restitution

purposes and Erf 142 (the SARDA site) was identified as suitable by the court. The debate and objections raised over this judgement suggest that 'good enough' land restitution, especially in an urban context, is complex and complicated. Images 1 – 4 below show Erf 142. Source Author.



**Image 1**  
Entrance to SARDA off Brommersvlei Road



**Image 2**  
Constantiaberg Mountains as viewed from Erf 142



**Image 3**  
Infrastructure on Erf 142 used for equine maintenance and riding lessons. Infrastructure is catered to disabled individuals needs.



**Image 4**  
Panorama of a section of Erf 142

## 2.11 Summary

The information presented in this chapter focussed on the contextual background to land claims and lodging of a land claim in South Africa. Some of the metanarratives embedded in the South African land debates served as a contextual backdrop to the current study. The discussion then shifted to urban land restitution in the City of Cape Town. The history of the case study site on Erf 142 in the suburb of Constantia was explained. The particulars of the research context were used to provide insight into the situation to which the question ‘what constitutes good enough in an urban land claim?’ is posed.

# 3

## LITERATURE REVIEW

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### 3.1 Introduction

This literature review will frame the master narratives in the discourse on land restitution in post-Apartheid South Africa land restitution. A case study of urban land restitution will be used to illustrate the theory of conflicting rationalities (Watson, 2003); a theory that cannot be ignored given the agendas of many stakeholders and the conflicts that arise during the implementation of redress procedures. Literature sources that raise questions on how to offer more appropriate actions of social justice including ease of administration, institutional capacity, budgeting, awareness and education are considered. It introduces themes, through which land restitution is often interpreted – by both the layman, the academic and the politician. Current realities and challenges of the twenty first century, patterns of urbanization and collective aspirations that demand recognition in how people relate to land and space are addressed. In addition the politics of land restitution will be briefly discussed. This will be viewed in light of contextual urban realities and the need to achieve both urban and rural sustainability in cities and settlements for the future. In particular, the literature review will indicate why and how the case study questions that form the basis of the research report were produced.

### 3.2 South Africa: the state of the State

The state of the State creates the macro context within which land is understood, regulated and managed. At the present time the South African state is primarily a redistributive state focused on the transformation of post-apartheid society. With regard to procedure, specifically the interaction between the government and the private sector, the South African state is a regulatory state striving to achieve specific outcomes laid out in the New Growth Path and the National Development Plan (NDP) (Republic of South Africa, 2010). These and other policies guide national economic development by mobilising the resources of society and directing them toward the realisation of common goals. The needs of the poor and social issues such as health care, housing, education, a social safety net and land ownership are placed at the top of the national development agenda.

Although the South African government says it is committed to building a developmental state, it paradoxically follows a neo-liberal economic agenda that favours privatisation, free trade, open markets, deregulation, reduced government spending and an increased role of the private sector (Gumede, 2009). A developmental state is a state where government is intimately involved in the

macro and micro-economic planning in order to grow the economy (Onis, 1991). The developmental state is normally sceptical of neo-liberalism and assigns greater importance to economic than to political reform. The building blocks of a developmental state is (1) an educated population with high levels of numeracy and computer skills; (2) a knowledgeable society with high levels of scientific literacy and a burgeoning knowledge economy; (3) a harmonious society with a strategic partnership amongst labour, government, industry and society; and (4) a society that efficiently allocates and distributes resources (Marwala, 2007). Progressive land reform hinges, amongst others, on the latter two foundations. In the developmental state, the emphasis of State planning is commonly placed on market share over profit, economic nationalism, protectionism, technology transfers, and the existence of a large, insulated and competent civil service, a subordinate civil society and an alliance between state, labour and industry (Marwala, 2007). A developmental state must be able to direct and support economic development through building a strong public service, creating an investor friendly environment, supporting small business development, using state owned enterprises effectively and driving strategic investment initiatives. It is therefore clear that the developmental state is about much more than simply accepting that the government has an important role to play in economic development. The developmental state also implies a specific institutional set-up in which the role of society, and in particular the private sector, is crucial.

Against this backdrop land, its legitimate ownership, use and equitable distribution clearly concern the emerging developmental state. The question is what the role of government should be in a predominantly free-market economy with due cognisance of South Africa's unique circumstances. In short, how may land restitution, productivity and economic viability be optimised while simultaneously ensuring historical redress? A developmental state possesses the “vision, leadership and capacity to bring about positive transformation of society within a condensed period of time” (Fritz and Menocal, 2007: 533). Twenty years into democracy and the land issues arising from decades of racially based socio-economic and political exclusion are as urgent as ever.

### 3.3 Land, development and historical redress

‘The land question in South Africa’ is a familiar but daunting phrase. Coupled with the many other challenges of social transformation, this question is vital given dispossessed people’s historical ties to land, the role of memory in space, the past hurts and the current governments’ push for restitution and reconciliation as precursors for building of a new nation. Space previously had been controlled and ordered by the apartheid government using racial classifications and dispossession tactics to separate people from their ancestral land and property. Land restitution has therefore been intrinsic to both rural and urban spaces and development agendas. The direction of development in South Africa

including land reform is premised on the Constitution (No. 8 of 1996) and the Bill of Rights (No. 8 of 1996). South Africa's transition into democracy in the mid-1990s involved social redress actions such as the Truth and Reconciliation Commission and in the case of land, the formation of the Land Claims Court powered by the Restitution of Land Rights Act (No. 22 of 1994). The reconciliation of spaces and places disrupted by the apartheid regime, of displaced people and their land also featured prominently in the development agenda of the new democratic government in 1994. With the latest amendment to the Restitution of Land Rights Act (No. 22 of 1994) the period of applying for land claims has been extended to 2019. Twenty years into democracy, the land question is still far from answered. Reality has revealed that land reform is complex and involves long, drawn out, complex and tedious processes (Walker, 2008). A range of spatial existences continue to create multiple and complex platforms for land restitution. The process of managing and awarding claims has however been contentious and unsatisfactory to date. More needs to be known about factors that could facilitate and make the land restitution process more efficient.

### 3.4 The South African land restitution process: early and current

South Africa as both land and country has experienced centuries of domination, rule, and subjugation by systems of power from both abroad and within, all of which have perpetuated structures of dispossession and exclusion. From the periods of colonial rule to the formation of the Union of South Africa in 1910 and the later years of the Apartheid system (1948 – 1994), systems of power, based on thoughts of racial or social superiority, have influenced how governance was structured.

With the transition into a democratic inclusive style of governance, the advent of democracy in 1994 saw the need to construct and pursue systems of redress for past injustices. One early-established structure was to address the loss of land and property through the Restitution of Land Rights Act (No. 2 of 1994). The aim of this Act was to redress the incidence of land dispossession, which occurred between 1913 and 1994. The Natives Land Act (No. 27 of 1913) restricted the ownership of land by Black people to only 13% of South Africa's total area (Penn, 2013). Much of this land became the so called 'reserves' or 'homelands' that were established on assumptions about specific tribal identities (Penn, 2013). Later, additional Apartheid era legislature, not written or enforced in isolation, such as the Group Areas Acts (No. 41 of 1950 with amendments in 1957 and 1966)<sup>1</sup> was promulgated. The Group Areas Act prohibited the settlement and working of certain racial groups in designated areas. Legislature assigned racial groups to different residential and business sections in urban areas in a

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<sup>1</sup> The Group Areas Act (No. 41 of 1950) was signed into law on 27 April 1950. This law gave the Apartheid state power to do extensive damage and fragment South African society. Significantly, the first democratic election was held in the country on the same date 44 years later. Celebrated as Freedom Day, the symbolism that presents itself in the date offers a micro - narrative of restoration.

system of urban apartheid. The Group Areas Act (No. 41 of 1950) and other racially discriminatory laws were repealed in 1991 including the Abolition of Racially Based Land Measures Act (No. 108 of 1991).

### 3.5 The three components of current land reform

Land reform in South Africa can be understood via three components – restitution, restoration and redistribution. Restitution involves the returning of land to people who were dispossessed after the Natives Land Act (No. 27 of 1913), which legalized en masse land dispossession. Restitution is rights based, and the law provides for either the returning of the land, a restoration of land rights, or it offers financial compensation to those subject to forced removals with condition (Cousins, 2008). Claims can be made on both urban and rural land. By 1998 there had been nearly 80 000 land claims lodged with the Land Claims Court, most of them pertaining to urban plots (Cousins, 2008). Rural claims involve larger areas of land and in most situations once a claim has been lodged for rural land used for farming, the government negotiates a purchase price with the current owners, and claimants are required to develop an approved business plan for land usage post possession (Cousins, 2008).

Land redistribution is aimed at addressing the racially skewed urban and rural land ownership while tenure reform seeks to improve the rights of people whose land tenure is insecure such as farm workers and people living in the former homelands (Cousins, 2008). Land redistribution is not rights based and is undertaken as a ‘democratic era’ project in response to current situations (Cousins, 2008). Applicants are required to apply for government grants. Based on the common land market, the stance of the government is ‘willing buyer – willing seller’. Although expropriation of land, which also features under the umbrella of land reform as defined by the Constitution (No. 108 of 1996), is possible, fair compensation is paid. The Constitution of South Africa (No. 108 of 1996) mentions that “a person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled.... either to restitution of that property or to equitable redress” (Atuahene, 2014: 13).

To date, very little land has been acquired for redistribution through expropriation through the legal land reform channels. Land issues continue to punctuate South Africa’s recent history. Although the imprint of forced removals on the social and physical landscape of the country seems indelible, the impact of the official restitution programme on that legacy is less clear (Walker, 2008). By the mid-2000s, Walker (2008) writes that the optimism that had greeted the establishment of the Land Claims Commission had quickly vanished. It was estimated the commission had received about 64 000 claims. Recognising that Walker (2008: 14) was working with a majority ‘rural’ claim base, her

experiences produced the lament and need to better understand the structural constraints on land reform. She included the uncooperative natural environment and the dominance of a wider social non-agrarian economy. By 1999, over half of South Africa's population was classified as urban, with this number only steadily increasing over time.

### 3.6 The objectives of land reform

The objectives of redress are to address the injustices of apartheid, foster national reconciliation and stability, underpin economic growth and improve household welfare and alleviate poverty. Land reform in South Africa is an important tool for poverty reduction and a top priority in the development of 'positive transformation' (Cousins, 2009). The Restitution of Land Rights Act (No. 2 of 1994) made provisions for the establishment of a Commission on the Restitution of Land Rights and a Land Claims Court to provide action towards these and other objectives. The Restitution Act has recently been amended with the Restitution of Land Rights Amendment Bill and was signed into law in February 2014. The hope for amending this legislation is that it will add to further efforts for restoring land to the dispossessed, and work towards solving the challenges of current socio-economic and personal traumas. Regarding the contents of the Amendment Bill, it makes changes to the Restitution of Land Rights Act of 1994 in various ways. The major way is that it re-opens the window for restitution claims until 2018. In addition, those disposed under 'betterment' schemes are also able to submit restitution claims. The Amendment to the 1994 Restitution of Land Rights Act (15 of 2014) does not exist in isolation but rather must be read with the Communal Land Tenure Policy and the Recapitalisation and Development Policy (Centre for Law and Society, 2014). Walker (2011) writes that these aspirations as good as they may seem, have through their implementation and programming faced numerous barriers.

### 3.7 Barriers to land reform

The deepening of structural poverty has been raised as a massive concern of South Africa going into the future (Hall & Ntsebeza, 2007). Structural poverty refers to the complex social dynamics and power relations that limit the (re) distribution of resources in society. It adversely influences the physical and systemic (re) structuring of society (Bhorat & Kanbur, 2006). 'The past in the present' is how Walker (2011) describes much of the current land restitution procedures that are hampered by structural poverty. Reviewing the claim process, Walker (2011) mentions that for many claimants the post-apartheid restitution process has turned out to be long, frustrating and deeply disappointing, with frustration rising in proportion of time waiting for redress since 1994. The 1997 White Paper on Land Reform listed four objectives as determined by the then newly formed Department of Land Affairs. The Land Claims Commission claims to have finalised all urban claims (majority through



financial compensation) however the goal of settling all claims by 2005, then, 2008, then 2011 were unmet. The recent amendment to the Restitution Act (2014) has not in itself promised to settle all claims but rather allow for late claimants who did not meet the cut off date to lodge their claims and they have until 2019 to do so.

The Centre for Law and Society (2014) has identified a series of issues within the amended Restitution Act that it rates as problematic or causes for concern going forward. While many of these concerns apply to rural landscapes, they can also be applied to urban contexts. One concern is the clause to shift away from land holding associations and the transfer of land to traditional leaders. The shift is understandable when viewed against the failure of the Department of Rural Development and Land Reform to transfer restitution land to qualifying court-approved Communal Property Associations. The enactment of land restitution is now transferred to traditional leaders, which means that they are in positions to claim ownership of land that actually belongs to forcibly removed individuals. The Centre for Law and Society (2014) also points out that the backlog of restitution claims must be addressed with due consideration of the financial cost of re-opening restitution. The additional focus on costs will delay the processing existing claims. The clause that ceases grants when people are re-established on rural land is also flagged as a concern. Financial support will now be based on how viable and productive the land is. Other concerns are the lack of consultation with people on the ground, the absence of a dedicated judge of the Land Claims Court and the prohibitive costs of land restitution. Since 1995 the state has spent a total of R22.5 billion rand on the restitution process. It is estimated that it will cost the Department between R129 – 179 billion to settle claims lodged during the new proposed window for new claims (Centre for Law and Society, 2014).

### 3.8 The Master Narrative: loss, restoration and the subjugation of dignity

Walker (2008) argues that the ‘master narrative’ of loss and restoration has driven and continues to drive the restitution programme politically. The narrative places productive land at the centre of people’s well-being. It works well as a fable for political agendas, however as a basic programme of governance the ‘simple story’ of forced removals has proved to be increasingly problematic as complex issues are lost in simplicity (Walker, 2008).

The poles of land loss and land restoration, simplistically based on the reversals of action, reverberate throughout the discourse that drives restitution programmes. Walker (2008) illustrates the reversal of actions with the example of forced removals. The narrative of restitution is constructed around the ingenious idea of reversal. The task of restitution is reduced to the action of ‘simply turning’ the elements of dispossession of the past around “to put ownership of land in the hands of ‘the majority’,

restore those who were uprooted to the land from which they were torn, and reconcile those who lost with those who gained' (Walker 2008: 17). Walker (2008) continues by calling out the 'naïve hope' the reversal discourse provides as a larger solution to entrenched poverty, suffering, alienation, ignorance and conflict. Using discourse analysis, Walker (2008) critiques the narrative as too simple and the elements assembled, while true, as incomplete. Essentially land restitution is simplified into loss and restoration around the period of forced removals under apartheid and linked to legislation such as the 1950 Group Areas Act. However, as history reveals, the narrative of dispossession reaches before the parameters of the apartheid system, and as Walker (2008) argues, forms in itself a much larger and more complex history of not only dispossession but also significant instances of social change.

Walker (2008) identifies a 'hiatus' within the master narrative which she calls 'the intervening years'. These years unfolded between the critical point of dispossession and the restitution occurring in the 'present' and offer insight into what happened to individuals and communities, households and descendants, and the land and space from which they were removed. Walker (2008) argues that major social changes occurred in the composition of dispossessed communities and households, livelihoods and land use during the 20, 30 or 40 year interlude. By ignoring the intervening years, the master narrative also excludes parallel programmes of redress such as those undertaken through social development – housing and environmental conservation. The narrative of land restoration is 'hazy' on the relationship between social redress and economic development, making it potentially dangerous.

### 3.9 Dispossession, memory and the restoration of dignity

The history of land dispossession within Southern Africa can be traced back hundreds of years. The loss of land and space has encompassing physical, social, economic, political and psychological elements. It is felt at an individual and community level. Walker (2008) suggests that when the physical land has been taken away, the tangible embodiment of loss is coupled with the role of memory. There exists a subjective and symbolic dimension of loss for individuals and larger collectives (ibid, 2008: 34). Restorative justice is complicated by the multiple realms which the loss of land and space inhabit. The return of land needs to address more than the physical space. The idea of the 'promised land' and the biblical parallel of deliverance, freedom and justice, draws also on the collective identity, the group narrative and the need for redemption. Walker (2008) suggests that it is the collective identity that fuels the master narrative of loss.

Contributing to the discourse of restoration and narratives that drives it the contribution by Atuahene (2014) warrants consideration. She presents an in depth sociological and individual level analysis of

land reform in South Africa. Usual recourse in addressing appropriate redress for when the State takes property away, is to return the property or provide just compensation, most often calculated based on market value of the property rights confiscated (Atuahene, 2014). However, as illustrated by Walker (2008) the taking of land or property in most cases transcends that actual dispossession in the physical, and rather taps into the humiliating crushing of human dignity – a feeling that can be transferred through generations and through memory (Bohlin, 2004). On reviewing the transcripts of the Truth and Reconciliation, Walker (2008) identified the short fall of restitution within South Africa and its inability to address core issues around the violation of human dignity and loss of community – and the social and individual trauma stemming from that. Relating this to the appropriate redress actions as described by Atuahene (2014) it is evident that the physical act of land removals does not occur in isolation but rather carries with it a human effect – the dispossession of dignity. Atuahene (2014: 3) describes this as dignity taking and defines it as the state “directly or indirectly destroying or confiscating property rights from owners or occupiers whom it deems to be sub persons without paying just compensation to without a legitimate public purpose.’

Atuahene (2014) promotes the concept of dignity restoration where compensation for both economic harms and the devaluation of dignity is undertaken. Traditionally, and internationally, most programs aimed at the restoration and remedying of past property seizures have focused on reparation, often through tangible property or financial means, and have not in themselves catered for the restoration of dignity. Atuahene (2014) defines reparations as the right to have restored, the property that was deprived in the course of conflict, and the right to be appropriately compensated for property that cannot be restored to them. The difference as noted by Atuahene (2014) is the contrast of reparations being a reimbursement for taken goods (the outcome) versus the restoration of dignity being based on restorative justice. Restorative justice in a broader legal sense refers to the process of taking the needs of victims seriously and providing a platform for offender accountability. Zehr (2002) suggests that restorative justice is based on three pillars of harms and needs, obligations and engagement and from these pillars the encouraged outcome promotes responsibility, reparation and healing,

By basing the concept of dignity restoration on restorative justice, the outcome seeks to rehabilitate the dispossessed and reintegrate them into the fabric of society through an emphasis on process (Atuahene, 2014). Restorative justice, through the three pillars of harms and needs, obligations and engagement would in a South African land restitution context would seek to restore property loss, restore injury, restore a sense of security, dignity, and empowerment. This is paired with the restoring of deliberate democracy, social harmony and social support (Atuahene, 2014). “When reparations and restorative justice are married, dignity restoration is the offspring of this formidable union” (Atuahene,

2014: 3). Dignity restoration however is not often undertaken as it is considered as more time – consuming, complicated and more expensive than reparations.

Atuahene (2014) argues that in the case of South Africa the approach to restitution, has, unlike other countries, been done with attention to both reparations and the restoration of dignity. Reasons for this stem mainly from the context of wider human rights and ‘dignity depriving’ system of Apartheid, whose larger process of subjugation included death, detention, torture, political social and economic exclusion together with en masse psychological trauma (Atuahene, 2014).

Recognising both the master narrative and the interpretation of restitution through the lens of dignity takings and dignity restoration the actual picture when looking at on the ground ownership of land, the distribution there of and the location, paints a different picture to that communicated through both of these perspectives. Walker (2008) suggests that this very different picture from what the master narrative portrays is the reality, however, it offers very little usefulness in the understanding of actual deep-seated problems such as poverty, land hunger and inequality.

“For the claimants recasting their past for official validation, land restitution is not an abstraction – a general political project within a national (nationalist) discourse. Rather, it is a very specific endeavour, embedded in local histories and dynamics and directed, in the first instance, towards localised rather than national needs and constructions of the public good. The land under claim is not always ancestral, in the heroic sense of time immemorial. Much rural land was acquired by the disposed relatively recently, through migration to local conflicts or employment or the market. Some ties are tenuous.” (Walker, 2008: 44).

### 3.10 Symbolic interpretations and the domains of value

Theorists of landscape draw on the series of tensions that exist in the realm of that space. Tensions existing between the observer and the landscape are as Penn (2013) explains often due to a gap between viewer and what is viewed, between perception and reality and between different ways of ‘knowing’ or seeing the land. Walker’s (2008) ‘master narrative’ exists in this realm of the past in the present, and is itself contextualised through an understanding of the tensions that exist in space through a reading of the landscape.

Recognising the presence of macro-themes utilised in South Africa’s land narrative, Bohlin (2004) offers an alternative reading to the programme of restitution – and the landscape - within South Africa from the perspective of its symbolic implications. Drawing on the work of Walker (2000) where she

asserts that the restitution narrative is the 'founding myth of our democracy', Bohlin (2004) bases the interpretation of restitution via symbolic interpretation.

Bohlin (2004) draws on two case studies both in small towns or peri-urban contexts, where claimants received financial compensation for land – restitution rather than restoration. However, as indicated through research, the 'process was far from over'. Bohlin (2004) proposes an analysis on the 'domains of value' through which restitution is interpreted. This indicates that restitution options are often closely linked with the local context within which they are embedded – an assertion that is also made through the work of both Walker (2008) and Atuahene (2014). Domains of value refer to the sphere or existences through which restitution is interpreted. It is influenced by the social and cultural understandings of the restitution process and as Bohlin (2004) suggests, is often embedded in the local context. Through the case studies presented in the article, Bohlin (2004) investigates why in some contexts financial compensation was accepted over restitution and in other situations it was perceived as inadequate and lacking.

The idea of domains of value indicated that in some cases, money was accepted, as it was perceived to be processed more quickly and be more likely to succeed. According to claimants the procedures by which they could have had land restored to them seemed 'far – off' uncertain and complicated. An additional factor was that awards of land would be made to groups, while financial compensation was pitched at a household level. Contextual and realistic concerns regarding potential conflict over land, having sufficient resources to effectively make use of the space as well as the age of claimants (elderly), all contributed to the decision to pursue financial recompense. Bohlin (2004) suggests that a positive outcome for opting for cash compensation was it allowed for a feeling of strengthening current living situations and allowing for investment in existing housing and neighbourhoods.

In another case study, financial compensation was opted for or rather land claims were not pursued because of the deep feelings of rejection held by the marginalised community and that those in the centre of the town (whites) had rejected them in social and physical separation. They did not want to resurface deep feelings of marginalisation. Financial compensation was used as an investment for future opportunity (Bohlin, 2004).

Again the element of understanding through the process affected the decision to follow financial channels rather than physical land and as mentioned had, in some cases, the effect of 'buttressing a sense of belonging' in relation to places where they currently live (Bohlin, 2004). Conversely other claimants spent money on commodities which commemorated their pre-eviction existences and act

as a memorial commemoration. Financial compensation for some also acted as a recognition of some people's plight by wider society

However, as Bohlin (2004) points out, in both case studies the payment of financial restitution in the minds of the claimants did not make land claims 'a finished affair' (Bohlin 2004). Rather than producing 'closure' settlement seemed to have 'opened up the past'. Fay & James (2009) describe land reform as an 'inherently conflictual and turbulent process' and this is evident in the repercussions that Bohlin (2004) presented in relation to communities receiving financial compensation. "Money is, by its nature, an empty signifier, and the manner in which it is interpreted and invested with meaning is open-ended and not easily predicted" (Bohlin, 2004: 679). Money has in some communities caused conflicts and in contexts where lived realities are intertwined and people are heavily interdependent, conflicts can be irreparable, they also contribute to not fully sharing repercussions of the experience for fear of consequence on social and economic levels.

In response to this, Bohlin (2004) discusses the intricacies of the reconciliation in land restitution. Fay & James (2009), through the lens of anthropologists, have reviewed the practices of restitution and need for reconciliation however have identified a need to tangibly blame someone for dispossession and wrongs. As Bohlin (2004) identifies that actually most claimants were victims of legislature designed and implemented by anonymous politicians, policemen and bureaucrats. With this in mind the ability to blame someone one is very challenging. The question then arose: did the land claimants want restitution to be about reconciliation and what were the expectations surrounding that? Bohlin (2004) through analysis brings up words such as transformation of social relationships and the restoration of personal healing and redress. In general the accountability for action was placed with abstract notions of 'the state' or the municipality.

Fay & James (2009) drawing on the idea that restitution is often thought of as a wrong that needs to be 'righted' – and similarly to the 'master narrative' that Walker (2008) discusses, identify that through this idea – of the wrong needing to be atoned for – that there exists the element of blame. While it is not always made explicit, the existence and underlying question still remains – who is to blame and who is to be held responsible for that which restitution aims to out right. Fay & James (2009) suggest that if land is to be reclaimed, who has to lose it as a result and what then is the conclusion? The suggestion that while there are many challenges to restitution – not just in South Africa – but globally, the constant that remains is restitutions ability to be a persistent source of hope.

Domains of value (Bohlin, 2004), in the context of land reform, are found in memory, feelings, and relationships between people, communities and space. Value is found in symbols and in tangible goods. It has and can also be found in some aspects of the governments policies and discourses on land restitution with the ways in which claimants interpret and spend their awards, and the paths of meaning and value that are intentionally created through financial recompense. Bohlin (2004) recognised that money is given meaning in creative and open-ended ways – it offers in some ways a sense of hope.

“Cash compensation plus they said the government objective of healing by promoting some sense of redress and amelioration of past pain. Because of its very nature however monetary compensation also resulted in uncertainty regarding what precisely the awards were compensating for thus leaving restitution open to continuous reinterpretation and contestation.” (Bohlin, 2004: 687).

Often through the role of memory, the memory of injustice is not primarily related to the existence of experiential connection but rather carries weight until the ‘moral accounts have been settled’. The definition of what constitutes ‘settled’ takes on particular elasticity (Bohlin, 2004). This is along similar tracks as the conclusions made by Atuahene (2014) and the need for dignity restoration that transcends the action of financial reward and often even the restoration of land as illustrated by Bohlin (2004). How then does the ‘state’ remedy deep social trauma? What are the implications of that in community living? Who can help?

### 3.11 Specifically urban land

Walker (2008:44) suggests that “they (urban claims) invoke similar motifs of community, belonging and loss as rural, but they validate very different notions of origins and the economic meaning of land”. The example of District Six is drawn on where it is argued that memories mobilise concepts of heterogeneity, rather than homogeneity, in a defiantly cosmopolitan urban space.

Within an urban context, Walker (2008) identifies that land dispossession occurs across a complex range of tenure forms and relationships to the land, and the economy – both then and now. Urban claims, like rural claims, can be titled as the basis of ownership, while others speak to birth right and group membership. Often, claims can be overlapping or competing for rights and claims. The development of legislation in the early years around restitution parameters had to include the rural but also the urban elements of claims. The constitutional debate that ensued on land reform was most visibly about land reform in the rural areas, however the legal language, as Walker (2008) describes it extended far beyond rural land.

The importance of addressing urban dispossession in the South African context is found in the important gap it fills within the conversation on land reform where the focus has previously been primarily on rural claims. Urban dispossession contributed en masse to the power of the apartheid state as urban exclusion based on race produced an ability to control urban spaces and spaces of economic power (and white power). Urban dispossession is important and requires attention as it affected a significant number of South Africa's population. While exact figures are not available, it is estimated that over 3.5 million people were forcibly removed from urban areas using the Group Areas Act (No. 41 of 1950). Urban claimants also currently accounted for 33% of the currently awarded restitution quota, Atuahene (2014). Standing at almost a third of the claimant group, the urban constituents contribute to the wider group substantially enough to require attention previous only focussing on rural spaces. 33% of the urban claimants carry their own form of dignity takings and thus require a unique form of dignity restoration applicable to an urban context (Atuahene, 2014).

By 1998, after three years of restitution that had been slow and not as effective as hoped, a ministerial review team identified 'five key dimensions' in the 'crisis' of the restitution process; slowness of delivery, 'unplannability', opposition between restitution and development, low levels of trust between implementers, and high levels of frustration. "It will take at least twenty years to finalise all claims provided that more resources are put in place, certain key policy gaps filled, systems and procedures streamlined and further decentralisation to the RLCC of responsibility take place" (Walker, 2008: 134). The slow rate of settling land claims was not simply a reflection of institutional and bureaucratic failure, weaknesses in original design and resourcing, in fighting, lack of leadership but rather the fundamental failure of delivery in the first 5 years reflects the ambiguities of the process itself (Walker, 2008).

"The disjuncture between the considerable symbolic importance that attaches to land politically at the national level and the low levels of commitment to land reform that the state has demonstrated in practice" (2008: 18).

The development of the restitution programme in South Africa, occurred in the context of discussion around the future of South Africa's economy, which post 1994 was focussed on macro-economic policies and mediating conflicting agendas between urban constituencies – big business and organised labour. Socially land restitution programme was developed parallel to, rather than together with reparations for human rights abuses perpetrated during the apartheid era as dealt with by the Truth and Reconciliation Commission 1995 – 2000. The TRC recognised that forced removals were a major example of human rights injustices, however redress was channelled into a separate



programme governed by its own parameters and indicators of success (Walker, 2008). The reoccurrence of the relationship between space and memory, and often the need to process trauma, is confirmed by Maharaj (2004) as discussed below. The subjective dimensions of the struggle around land as well as the different emotional dynamics informing people's relationships to land and place and the heavy weight of memory on the restitution programme demand acknowledgment. The truism of land being emotional continues.

Atuahene (2014) acknowledges that the complicated task for the Land Claims Commission included not only the processing of numerous land claims but also addressing the underlying dehumanisation, infantilisation and political and economic exclusion that enabled these dignity takings. The mandate of the Land Claims Court had running through it the need for dignity restoration.

“Analysis of the land restitution program has suffered from the dearth of work on urban dispossession because the constitution provides a remedy for property violations occurring between 1913 and 1994; and by the twentieth century, industrialisation and urbanisation moved the locus of power from rural to urban areas.” (Atuahene, 2014: 14).

What are the parameters of restitution? Some critiques believe that financial compensation is not considered adequate redress – the challenges as identified by Bohlin (2004) act as an example.

### 3.12 Politics of land restitution

The heavy political role that land redistribution and restitution currently occupies within South Africa, suggests that the process is often widely misunderstood and abused by populists. Du Preez (2014) identifies an opportunity for South Africans to better understand the issue especially when dealing with elections and the political fervour that is created. The suggestion is that through understanding the reality of land restitution, the political power so widely bought into (and abused) could be redirected elsewhere.

The latest African State of Cities Report (2014) has identified South Africa as the most urbanised society in Africa, and with this a desire for better homes, better jobs and better education over a fringe perhaps rural agricultural existence prevails. In light of the political rhetoric that is then generated out of the populist opinion - that land needs to be returned to 'original' owners (non white) and, given that in majority of cases financial compensation has been made, and often the provision of land in an urbanised context is not possible (or undesirable) - Du Preez (2014) argues that the power associated with this politicised issue needs to be addressed as it is often based on misconceptions. There is a

palpable need for the symbolism around the 1913 Natives Land Act to be reversed in application to both a rural but focused here on an urban level.

Maharaj (2004: 401) writes “in order for land reform in an urban context to succeed, local government and civil society bodies have to play a central role in planning and implementation”. He continues suggesting that a major flaw in the Restitution Act (1994) was aiming it at rural rather than urban contexts and realities. This produced an imposed break on post apartheid urban development. Maharaj (2004) suggests that this highlights the need to constantly review legislation and policy and their impact on the constituencies, groups and communities. There is great need within the development process to approach it in such a way that allows for healing within the development – both of those present, but also of those still tied emotionally to the space through the past (Maharaj, 2004). This is fully confirmed by Walker (2008) whose first hand experiences of the early Land Claims Commission warranted these conclusions – especially the need for healing through development. Walker (2008) locates this in the ‘master narrative’ which is itself located in the reading of landscape, however the lived realities of people, while contextualised, still need to be realistically addressed. Integration is raised as a critical feature of future land reform – the integration of government services for more effective problem solving. Added to this are concerns about the resources made available to the land reform process.

Hall (2010) acknowledges the successes on the ground of some restitution projects, however, the discrepancy between goals set by the RDP is noticeable 10 years post-apartheid. Hall (2010) advocates for a ‘political economy’ perspective to better enable an understanding of why land reform has been so limited together with an understanding of whose interests have been ‘remoulded’ or benefitted. Hall (2010) argues that within a global context, ideas around the fuel for land reforms lies in the premise for access to capital. However, within a South African context, the changing nature of opportunities – job losses, HIV / AIDS, changing profile of households, structure of the labour force, the vulnerability of the poor – change the relationship to land. Hall (2010) suggests that the demand for land, then, is likely to be contingent on whether the poor see opportunities for themselves in a growing urban industrial economy.

### 3.13 Urban land restitution: Cato Manor as an example

Cato Manor is an area about seven kilometres from the Durban city centre, in Kwa-Zulu Natal. It presents an interesting case study because, unlike District Six in the Western Cape where the legitimacy of land claims formed the point of departure for action, this was not the case within Cato Manor. The redress challenge in Cato Manor was restitution on one hand and the need for housing

delivery on the other. The dire need for upgrading of informal (often illegal) settlements was seen to 'trump' the land claims of dispossessed landowners and tenants.

The case of Cato Manor restitution is and continues to be complex. The area, originally a settlement of mixed racial groups, housing typologies, and occupations was declared a 'whites only' suburb in 1958. Prior to this the greater Cato Manor area had been the site of continued social and political violence and riots. It was also a settlement point for many 'squatters' in the city, and a site of contention for apartheid influx control laws and illegal activities. Complex social and racial relations between Indian landowners and African squatters also fuelled tensions. Post 1958, and the declaring of Cato Manor a white suburb, the land stood vacant for almost 25 years, as the hilly topography made housing difficult as well as challenging for the laying of infrastructure. The University of Natal bought large sections of the land for inclusion into its campus, as did the Durban City Council. Consistently through the 1980s, dispossessed land owners formed resident associations and lobbied for the return of their original land – pre informal settlement times – this was denied as many of these claimants were Indian, and the suburb was classified as white.

During the 1990s, Cato Manor became an increasingly contested space with the declassification of the site. Contextually during the time of South Africa's transition, there was major political violence on Durban's city periphery, leading to a swell in internal migration. The formation of the Cato Manor Development Agency in 1993 seemingly 'cemented' the direction intervention within Cato Manor was to take. The Agency had strong national and international backing with mandates from local and municipal governments for strategic redevelopment. Essentially, the CMDA, undertook the redevelopment of Cato Manor and the process of urban land restitution and lodged claims formed as minor part in the larger redevelopment agenda. Interestingly, Cato Manor had some of the highest land claims lodged for an area with most of these settled through financial compensation rather than restoration of land. The 'pushing back' of land claims from the agenda was due to multiple contextual agendas, often conflicting with issues of the past, present and future, the political environment, city visions and the 'greater good / public interest'. Legal battles over section 34 court applications were done.

Walker (2008) offering a 'lessons learnt' type analysis on the urban land claim process in Cato Manor, acknowledges the context was challenging, however, this is a large issue recognised as a lack in the restitution program – how do deal with the nuances represented and faced in dealing with urban land claims. Perhaps while some issues were 'case specific' – others can be identified as useful in recognising the need for addressing urban land claims better and how to integrate social divisions.

Additionally land restitution needs, especially in an urban context, some degree of political legitimacy. Cato Manor, unlike District Six, did not receive this, and Walkers (2008) assessment of this is because political legitimacy was limited.

The Cato Manor example demonstrates the need for post apartheid development discourse that, according to Marahaj (2004) can discern, acknowledge, articulate and assist development practitioners in spaces where history and memory from the past, from violence or dispossession, continue to confront the present – the emerging urban and rural post-apartheid reconstruction initiatives.

The early processes of restitution identified other issues as stemming from urban claims – not just their numbers. “More challenging was the design and implementation of settlements that could accommodate the constitutionally mandated rights of redress of very diverse groups of claimants within urban environments that generally had changed dramatically from the time when claimants were disposed” (Walker, 2008: 171).

Walker (2008) suggests that within the context of multiple claimants, a more creative or imaginative approach to reparations could have been undertaken. She concludes suggesting that the case of Cato Manor highlights the significant ambiguities of purpose that emerged around restitution programme objectives of redress, reconciliation and reconstruction.

*“There was a need for both officials and claimants to engage with more complex situations on the ground than most were ready to imagine or allow” (Walker, 2008: 173).*

### 3.14 Conflicting rationalities and the planner

A consistent thread presenting in the literature is the need to contextually examine the claim on land and recognise the nuances that exist in relationships, in processes and actions pertaining to land. Working in the reality of a multifaceted context where individuals and communities hold multiple identities and align themselves with a variety of worldviews and ideologies, the need for planning theory to acknowledge the diversity in practice exists. Watson (2003) recognises the existence of ‘various rationalities’ and asks questions to the assumptions that often inform development processes.

“Planning research needs to return to the concrete, to the empirical and to case research, notes a mindless return to empiricism, but as a way of gaining a better understanding of the nature of

difference, and generating ideas and propositions which can more adequately inform practice.” (Watson, 2003: 396).

Recognising that these questions have wider implications, Watson (2003) questions how to bridge the tension between acknowledging context-related diversity and the desire to produce normative theoretical positions to which multiple scenarios can be measured against. The challenge however, as identified by Watson (2003) is that experience ‘on the ground’ especially in a widely diverse and challenging context that is post-Apartheid South Africa, is just that – diverse, different and multiple, and that a clash of rationalities is inevitable.

Watson (2003) continues suggesting that planning theory needs to develop in a constructive way that assists planners’ to deal with diversity and conflict but that is also grounded and located in a particular form of research. Transcending current social theories, which only seem to offer ‘questionable generalisations’, the need for planning theory (and subsequently practice) to better understand the nature of difference and thus the formulation of practice is vital for today’s multifaceted South Africa.

One conclusion that is drawn from the diversity that exists within societal South Africa is the need to define the terms by which processes or even expectations are communicated or described. Watson (2003) draws on the example of the use of the word ‘proper’ in the provision and upgrading of human settlements across South Africa. The idea of what constitutes a ‘proper’ house presents a wide scope for the interpretation of acceptability.

Compounding the local level challenges are ideas about the state, the position, benefits and identity that citizenship affords as well as position of participation – and the role it plays in a development agenda. All of these exist in the context of a governmental system and the levels of flexibility and participation that allows for. The understanding of citizenship is, as Sandercock (1998) suggests is all fragmented by identity. Society is structured through culturally different groupings that are based on sexuality, ethnicity, gender or race (Sandercock, 1998 cited in Watson, 2003). Collectively Watson (2003) suggests that ideas and relationships and assumptions regarding the role and functioning of state, society and citizens constitute or define one set of ‘rationalities’ that could come into play in negotiation or collaborative type scenarios.

Within recent academic traditions, the desire for local knowledge construction from and within the South, has led to a more widespread recognition of the effect of ‘westernised’ or Global North type

thinking in the construction of systems in an African context. The transposing of knowledge into contexts from which it did not originate can be both beneficial and deterministic. The push for the development of locally contextually sourced knowledge – from Africans for Africans is a very empowering process. Watson (2003) drawing on the work of Chabal and Deloz (1999) argues that it is indeed a mistake to view Africa as a case of failed development (where transposed knowledge and transposed expectations have not taken root as expected or rather dictated by other contexts). Rather, the authors suggest, it is more prudent to embrace modernity in a way that is particular to the economy and culture of the context.

One example is the inability to separate politics from a socio-cultural consideration that govern everyday life (Watson, 2003) – as described in the politics of land reform by Du Preez (2013).

The position that politics occupies (and holds one could suggest as its own rationality) is heavily imbued with links to how people and communities interact with each other and with the state. Politics is highly organised and socially structured (Watson, 2003). The collective identity as offered through political affiliations as found as holding such value in an African context, can also be used to understand the role of the collective identity that underpins many societies in Africa. This exists in contrast to the western individual model of social interaction and lifestyle.

In development and working in multicultural and multifaceted contexts the prevalence of difference and it's effects can no longer be overlooked nought dealt with in the top down master plan professional knowledge approach. Previous planning theories which have attempted to recognise difference and multiculturalism handed in themselves represented and important advance however they contain universal assumptions which often do not hold in an African or global self context. Watson 2003 calls for an agent to really thinking about planning from both a critical analytical normative perspective which is grounded in a deep understanding of contextual difference backs which also considers that we can learn from practice about both the conduct of planets and planning's institutionalised settings.

### 3.15 Summary

This chapter addressed the land restitution literature in ten sections. It commenced with an overview of the post-Apartheid state in South Africa before reviewing the need for historical redress. Literature pertaining to the master narratives of dispossession and the restoration of dignity was also reviewed. The politics of land restitution was highlighted using an urban case example. The chapter concluded with a resume of critical issues facing urban planners concerned with land restitution.



# 4

## METHODOLOGY

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### 4.1 Introduction

This chapter details the research approach and process. It provides a rationale for the methodology followed and frames the methods that were used including the ethical position that was adopted and the steps taken to ensure the trustworthiness of the findings.

### 4.2 Methodology

The research question required a qualitative research design that would enable data to be collected in a contextually relevant setting, the land claim case, with the researcher acting as the data collection instrument. Case study methodology (Stake, 1978) was selected as the tradition of inquiry because it was considered to be the best methodological approach for the purposes of understanding and intervening in complex environments and processes such as those associated with the study and discipline of planning in urban African contexts (Duminy, Odendaal & Watson, 2014). Watson (2003: 404) drawing on the work of Yin (1994) about case methodology writes

*“A return to context also does not imply an abandoning of theory, or the production of potentially generalizable statements about planning. It is generally accepted in case research methodology that case studies are generalizable to theoretical propositions, and yield propositions which can be tested further in other cases”*

The city planner is confronted with a context of multiple realities – something they may not be equipped to deal with. A detailed investigation of a case example of land restitution such as the Constantia claim could therefore offer the planner some clarification of the conceptual, spatial and temporal boundaries operating within a case unit. While the outcome of case study methodology is not a product on which to base normative theory, it serves rather as a contributor to the body of knowledge.

A case approach, such as the one used in this study, would position the planner in a relevant hotly debated topic. Watson (2003:396) continues and positions case study research and planning as such:



*“Planning research needs to return to the concrete, to the empirical and to case research, not as a mindless return to empiricism, but as a way of gaining a better understanding of the nature of difference, and generating ideas and propositions which can more adequately inform practice.”*

The choice of methodology was premised on the idea that if one of planning’s primary roles is about land, the inclusion of planners is vital to urban land restitution cases and policies for process. Land restitution in an urban context involves negotiations on the best usage and management of space, among others. Sustainable and responsible future city expansion hinges on knowing more about the nuanced complexities operating in a case exemplar. Considering that many urban land claims have been settled (Centre for Development and Enterprise 2008), the recent 2013 settling of a claim in Constantia, Cape Town provided a current, circumscribed successful urban land claim case from which to garner information from the various stakeholders involved.

According to Flyvbjerg (2006: 237) “case studies often contain a substantial element of narrative which typically approach the complexities and contradictions of real life”. The value of narrative, in this instance the perspectives of interested parties on what constitutes good enough in urban land restitution, is the ‘richness’ of experience that a case can uncover. A case unit is bounded by place, context, persons and time. The Constantia site and land claim meet these requirements. It forms a discreet instance for understanding people and processes through detailed explanation of their unique stories (Stake, 1995). The identified case presents as an exemplar with special prominence. Through this ‘special prominence’ and interest in what occurs within the identified boundaries produces ‘casing’ (Duminy et al, 2013). Casing determines what the study is about, and where the content may be determined by previous issues (Stake, 1978 cited in Duminy et al, 2013). That which lies beyond the case boundary is the context for the case (discussed in chapter 2). The notion of ‘boundedness’ is essential for rigorous application of case study methodology because it enables the case to be defined (Flyvbjerg, 2011; Saven-Baden Major Howell, 2013). For the purposes of this study, the case was defined within the context of post-Apartheid land restitution.

Both Yin (1984) and Stake (2011) approach case study research from a pragmatic position, asserting the importance of subjective creation of meaning, whilst not outright rejecting some acceptance of objectivity (Saven-Baden & Major Howell, 2013). The ability of power and rationality to shape and influence one another within the Cape Town urban planning environment formed the departure point for selecting case study methodology. Flyvbjerg (2006) proposes that the closeness of case study research to real life situation is important as it contributes to the development of a nuanced view of

reality including the view that human behaviour cannot be meaningfully understood at a rules based level. Because knowledge cannot be 'formally generalised' does not exclude it from entering into a collective process of knowledge accumulation. The value of which, as described by Flyvbjerg (2006), is that the case study not only contributes to knowledge accumulation but challenges the notion that scientific inquiry is the only legitimate method for knowledge development. Flyvbjerg (2006) suggests that in relaying a rich narrative through the case study, the researcher must 'keep it open' and refrain from playing the role of an omniscient narrator and summariser. He or she should rather share the narrative in its complex, many-sided sometimes conflicting way. To this end, the findings include direct quotes from informants. Flyvbjerg (2006) also suggests that the case should be related to broader philosophical positions that cut across specialisations. In this instance, the case study crosses the disciplinary boundaries between urban planning, history and sociology.

#### 4.3 Philosophical standpoint

This study is informed by the epistemology of constructivism that suggests that individuals make and socially construct their own meaning. Researchers are encouraged to search for individually constructed meaning and should attempt to understand the way meanings are constructed. 'Truth' is the result of perspective and therefore "knowledge and truth are created rather than discovered" (Saven-Baden & Major-Howell, 2013: 23). Constructivism is located within a critical social theory paradigm that holds a strong interest in social justice and transformation, important ideological stances in the post-apartheid land restitution debate. The common belief amongst critical social theorists is that research should involve an interrogation of existing power structures and should seek to transform the lives of those oppressed by these structures. In addition the recommendation is that people should participate as equals in discussion about the pursuit of truth – and it is important to recognise that ideologies inform and affect research (Saven-Baden et al, 2013). With this in mind, the study made use of methods that enabled respondents to reflect on existing power structures at play in the case study scenario.

#### 4.4 Research context

Constantia is considered a wealthy upper-class majority area within the desirable southern suburbs of Cape Town, Western Cape (StatsSA, 2012). It is one of the oldest suburbs in Cape Town being home to the first and still operational wine farms such as Groot Constantia that were originally planted by Governor Simon van der Stel in 1684. Initial insertion into the context occurred by approaching stakeholders who might act as 'gatekeepers' such as the Constantia Property Association and the Constantia Land Claimants Beneficiary Group.

#### 4.5 Selection of participants

Saven-Baden & Major-Howell (2013) suggest that social justice should be the underpinning idea of selection. Inclusion criteria for this study were those persons who had 'stakeholder'/'interested party' status. A stakeholder is defined as someone with an interest or concern in something. They can affect or be affected by achievements, decisions, success or failures (Saven-Baden & Major Howell, 2013). Selection occurred by identifying persons who were direct stakeholders in the Constantia claim or who held an interest of some form in the case. Participants all had an awareness of the land restitution and land claim process and had generated some form of opinion on the Constantia case.

Participants were selected based on their position as stakeholders and association with the land. They were identified through document research, media publications which identified them, and through suggestions from individuals following the case study (not word of mouth from other participants as this would have compromised the confidentiality of the people concerned). Multiple stakeholders concerned with land usage, ownership, property rights, title and ownership exist within Constantia, each contributing to the fabric of the research context and ultimately to the case unit. Potential informants within each interested area were identified through purposive sampling. Diversity in the participant type (gender / age / race) was important to ensure a range of views was given voice. Interested parties include:

- The Constantia Residents Association (CPOA)

While the Constantia Property and Resident Associations do not hold any legal bearing over the land itself, they are still considered an interested party as the restitution land borders multiple private properties and changes on the site directly affect neighbouring properties. The CPOA offer residents a central body to voice complaints to regarding service delivery, noise, vagrancy and traffic problems in the area. The association acts as the 'watchdog' for undesirable development in the area in an attempt to maintain the desired urban form and landscape characteristics. They also offer to give advice on town planning and building plan submissions. The association maintains their vision as "to conserve Constantia's rural and cultural landscape for all" and sees their mandate and responsibility to protect the environment, farms, public open space, natural systems, boundaries, avenues and streetscapes against further over or inappropriate development. Their website encourages residents of Constantia to join the CPOA to collectively act as custodians of Constantia assets.

- The South African Riding for the Disabled Association (SARDA)

SARDA are the current occupiers of the site in question. They have been renting the land from the Department of Transport and Public Works. As a non-governmental organisation they offer free horse

riding for disabled people and have been doing so on the land for over 30 years. The aim of the organisation is to provide the opportunity of therapeutic and recreational horse riding for disabled people so that they can benefit mentally, physically and socially (SARDA, 2012). SARDA argue that they were not informed of the land claim. They have launched a public awareness campaign 'Saving SARDA' and have asked the public to voice their objection to the land claim which would essentially shut down SARDA's operations.

- A cross section of all spheres of governance affected by land restitution

Interested parties at all levels of government were recruited: National and Regional Land Claims Commission, Provincial and City of Cape Town structures as well as at local ward level. This allowed for the perceptions, levels of involvement and experiences of government stakeholders to be recorded. A cross section of governmental representation was indicated because it allowed for higher-level engagement where policy implementation is appreciated.

- the land claimant family concerned

The Sadien family are the claimants in the case here presented. The Sadien family were owners of a site on the Sillery road, Constantia for which a land claim was instituted. The original site had been bought in 1902 by the family and was sold on auction under the Group Areas Act (no. 77 of 1957) to a private land owner deemed acceptable to own the property based on his racial classification. The returning of the Sillery site to the Sadien family as requested in the original claim was unavailable due to developments and changes on the land. The court ruled for the sourcing of an alternative site for restitution for the Sadiens and erf 142, the current site of SARDA was selected. It is this alternative site that forms the case study for research. The spokesperson for the Sadien family is the lawyer who has petitioned the case in court and in the public realm and acts a gatekeeper to the family. Access to engagement with the family was unfortunately denied by Mr Sadien which proved challenging to the research process. Table 1 provides a resumé of the study informants: their position in the claim case, the pseudonym used in the findings to represent their 'voice' and their level of experience or exposure to the issues associated with Constantia or other similar land claim processes.

**TABLE 1: INFORMANTS FOR STUDY**

<b>POSITION</b>	<b>REPRESENTED</b> (pseudonym)	<b>LEVEL OF EXPERIENCE</b>
Consultant	AC	extensive
Academic	CW	extensive
Tenant	FP	extensive
Government	LB	moderate
Government	LP	extensive
Government	MW	moderate
Government	PM	moderate
Government	PT	moderate
Consultant	NB	extensive
NGO	HS	extensive

#### 4.6 Entry to research context

Entry was gained through requesting interviews with informants via emails and telephonic requests. Information about the research question was shared prior to engagement as well as confirmation of student researcher position.

#### 4.7 Data collection methods

Case study methodology rests on the use of multiple data sources. The following data collection methods were used.

**Document analysis:** A document analysis was conducted before approaching stakeholders to ascertain and create a structure within which to position the identified urban land claim and to develop interview probes. Analysis was done on legal frameworks, court documents, academic papers on land, people and space. In addition public literature (newspaper clips) on the social dynamics involved was utilised. Information gathered from document analysis is included in different places in the thesis. It has influenced and contributed to the literature review and added value to the interpretation of context and findings.

**Semi-structured interviews:** A semi-structured interview of approximately 1-2 hours was conducted with each of the sampled stakeholders. A total of 23 hours of verbatim data was collected.

## 4.8 Data management

All interviews were tape-recorded, transcribed verbatim and stored electronically with back up and secure password to protect the information.

## 4.9 Data analysis

The first layer of data coding was done manually and involved inductive categorisation and theme building. Saldana (2013) refers to first cycle codes as a taking of ownership of the data where the final product is a 'themeing' of the data. The information is considered as simple and direct. Second cycle coding refers to an analytical classification, prioritizing, integrating, synthesising and conceptualising of first cycle analysis (Saldana, 2013). Second cycle coding in this study involved a reorganisation and reanalysis of data which required the linking of facts and categories into a coherent meta-synthesis (Saldana, 2013). The primary goal of second cycle coding was to develop a sense of categorical or thematic organisation from the first cycle. It was important throughout the analysis process to remember that human life cannot be artificially separated – it is itself “multi-layered, contradictory, multivalent, to be sure, but the strands are always interconnected” (Saldana, 2013: 208). Pattern coding was used as a tool for discerning the interconnections between strands that linked the perceptions of the informants regarding various elements of the Constantia land claim. Pattern codes refer to explanatory or inferential codes that identify emerging themes or explanations especially those concerned with power relations between people and structures (Saldana, 2013; Jacobs, 2006). Power is not reducible to individual agency but is instead constituent of a network of relations (Jacobs 2006). This analytic stance, as Jacobs (2006) argues, is useful when looking at a situation rooted in historical context and how power is translated by the parties involved. In doing so, the analysis ensured each of the study objectives was addressed and the research question answered.

## 4.10 Ensuring rigour

Babbie and Mouton (2008: 276) identify four notions of objectivity to be used within a qualitative methodology: credibility, transferability, dependability, and confirmability. Credibility was achieved by providing an audit trail of the analysis process. Transferability was enhanced by triangulating the findings with the literature and by using multiple informants. Dependability was assured by providing evidence of informant voice in the form of anonymised verbatim quotes including contestations and outlier perspectives throughout the reported findings. The findings were also confirmed through a member-checking interview with a participant who is deeply familiar with the topic. The findings were presented to certain informants over email to ensure an accurate reflection of their points of view and to gain clarity.

#### 4.11 Researcher positionality

Qualitative researchers are encouraged to acknowledge their worldviews and positions in research. Often these worldviews align with philosophical positionings. Recognition of worldview provides insight into whether the research has been tailored to fit into personal stances, positionality and is in nature reflexive (Saven-Baden, Major Howell, 2013). There exists an 'essential choice moment' when a philosophical position is identified and chosen together with a complementary choice moment where personal stance, positionality and reflexivity exist (Saven Baden, Major Howell, 2013).

A personal research stance is defined in the position taken towards an issue that is derived from a persons beliefs and views about the world. It reflects deeply the attitudes and concerns about what is important, and is not a static entity. Identifying personal stance recognises the effect it has on research in different ways (Saven Baden, Major Howell, 2013). Questions around race, class, gender and age are useful starting points together with how these factors influence how one experiences the world. Identifying issues important to the researcher and how that influences the work allows for reflection on personal stance. Levels of education and life experiences also affect research (Saven Baden, Major Howell, 2013).

My personal research stance is influenced from being a female, mid twenty year old white student currently completing my Masters degree in City and Regional Planning. I have a social science background in history and sociology and work experiences in the public and private sector. As a novice planner and researcher I am most concerned with making people feel heard. I acknowledge that there is always more than one voice in a story. Work experience at Provincial government level has allowed me to develop insight into government level procedures. I recognise that the capacity of government is stretched thin. As revealed in the literature review (Hall, 2010; Bohlin, 2004) there is a general attitude and belief around the need for government to provide basic services and to facilitate social change. Given the limited capacity of local government, this expectation is not always possible. I believe that city planners can facilitate aspects of the land restitution process and in so doing, extend the delivery capacity of government.

By conducting this research for a University qualification, I have the responsibility to share the findings with stakeholders in various sectors. Cognisance was taken of the limitations related to conducting interviews and the potential for bias to affect my objectivity and neutrality. Researcher bias could have influenced interpretation. The potential for bias was managed through awareness of my positionality and through the trustworthiness steps as outlined above. A reflective journal of the interview process

was kept to maintain a reflexive researcher stance. See appendix for an excerpt from the reflective journal.

#### 4.12 Ethical considerations

Ethics approval for the study was granted by the University of Cape Towns Engineering and the Built Environment ethics committee (see appendix). Relating an ethical awareness in research to planning and the presence of conflicting rationalities Watson (2003: 402) argues that

*“Planning in a context of conflicting and competing rationalities also raises important questions about ethics in relation to both researchers and practitioners. Planning is fundamentally an ethical activity as it raises questions about what should be done for whom and by whom and with what benefits and losses. But in a situation of competing rationalities critical questions raised about the universality of ethics. Understandably because planners work with space and the case study is located in space there is the need to find an appropriate basis for ethical judgement.”*

Recognising that participation is affected by the sensitive nature of the subject matter, the need for ethical awareness was prioritised throughout each interview. For example, there was a concern that what was said could maybe be used against a participant. Risks to the participants were minimised by using pseudonyms in verbal and written reports. Informed consent was obtained before interviews were conducted (see appendix). Participation was voluntary and no compensation was offered for time other than a thank you.

#### 4.13 Summary

The value of qualitative research is found in its ability to conduct a study and present its findings in a sound and empirical way. Qualitative research aims to provide context and meaning to the perspectives of persons affected by an urban land restitution claim. The validity of the research is only as sound as the described research methods presented here. The intention of this chapter was to confirm that evidence based, sound methodology was used so that the study may be duplicated if need be. It also confirmed that the ethical interests of participants were protected.



# 5

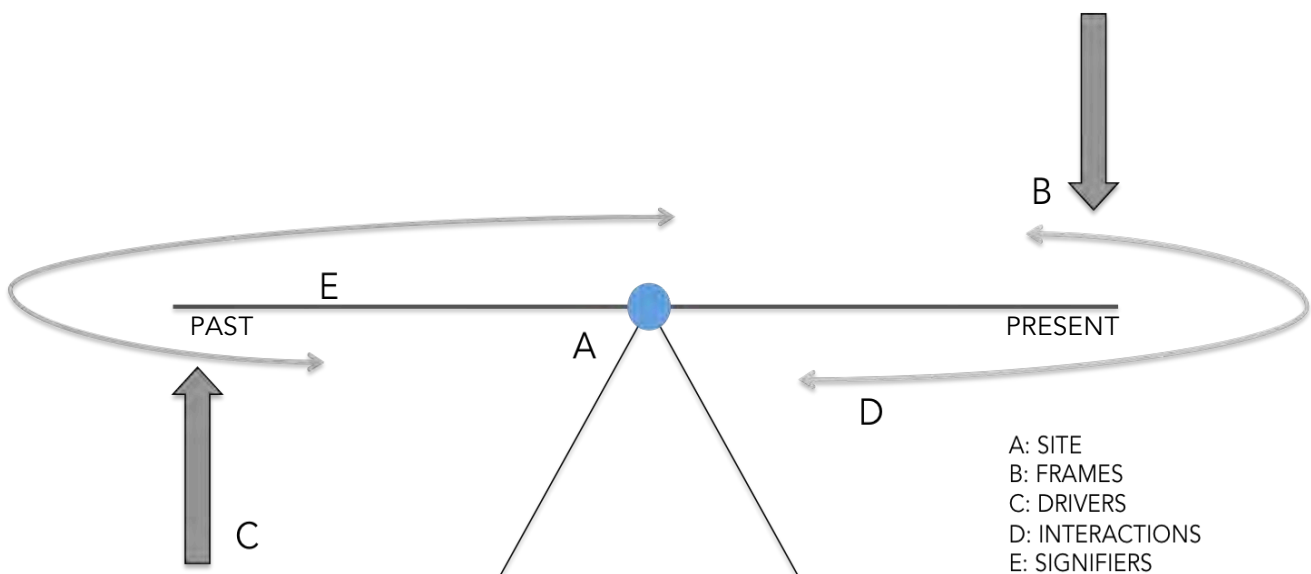
## RESEARCH FINDINGS

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### 5.1 Introduction

This chapter presents the findings of cross case inductive qualitative analysis of verbatim transcripts of 10 interviews. It seeks to describe participants' perspectives on the research question: "what constitutes 'good enough' when addressing urban land restitution and justice"? The findings represent the comparable and competing views of the respondents as interested parties in an urban land restitution context. The data confirms that land restitution is characterised by multiple complexities, dimensions, claims and counter claims. The respondents' perspectives coalesce in considering good enough as an attainable compromise; an outcome that hinges on transparent communication between interested parties. In answering the research question, the findings suggest that good enough may emerge through considered negotiation at the INTERSECTION of multiple relational paradoxes. Illustrating this intersection, Figure 4 depicts the findings in visual form. It was constructed to illustrate the multiple paradoxes that govern and characterise the restitution experience while attempting to discern what constitutes good enough in the midst of complexity. Figure 4 will be used to explain the dynamic relationship and intersection between five nodal points, identified through inductive data analysis, at which urban land restitution relationships intersect: site, frames, drivers, interactions and signifiers.

**FIGURE 4: NODAL POINTS IN URBAN LAND RESTITUTION RELATIONSHIPS**



## KEY: NODAL POINTS ON FIGURE 4

### **A: SITE**

Site refers to the restitution space. It is physical, located in a context and forms the nexus around which multiple interactions occur.

### **B: FRAMES**

Frames are structural forces that contribute weight to the interaction. A frame occurs 'on paper' and includes policy and law.

### **C: DRIVERS**

Drivers constitute overt motivators of or tacit counter forces to frames. They have potential to be seen in a negative light but are not themselves necessarily negative. Drivers exist in the public realm and are widely used, accessible, relatively well known and transmitted through colloquial means. Included in drivers are sources of political influence such as public figures and the media.

### **D: INTERACTIONS**

Interactions occur between individuals and institutions at different levels of power and on multiple layers and scales of influence. Interactions are (in)consistently occurring, adding movement or stagnation to the restitution process. Interactions cover formal and informal communication.

### **E: SIGNIFIERS**

Signifiers exist within personal capacities and operate on a time continuum between the past and the present. They include non-tangibles such as meaning, identity and the social unconscious on an individual level but tie into a wider meta-narrative of loss and legacy.

The findings at every point in Figure 4 must be considered in relation to the multiple levels, roles and positions that every other point occupies. The complexity of working in a socially based, human subject context such as urban land restitution is the presence and existence of multiples – multiple realities, multiple layers and multiple dimensions. Products of this multiplicity are its effects (outcomes) and affects (impacts) on interested parties, all of whom understand 'good enough' differently. The next section details the findings within and across the nodal point.

## 5.2 Findings

The findings that confirm each of the nodal points are summarised in Table 2 and explained in the remainder of the chapter. Each point is presented individually and supported with verbatim quotes from the data. However, the dynamic interaction between the themes and categories captured in Table 2 must be kept in mind and becomes evident towards the end of the chapter when the findings are considered as a whole. Each point has a descriptive theme which exemplifies its dynamic relationship within the restitution process. The data has consistently offered and alluded to paradoxes in these relationships and thus each theme is expressed as a paradox. Categories that confirm the theme are offered together with interview excerpts. References after each quote refer to a specific

code arising from the classified interview with the corresponding line and page number for credibility and tracing.

**TABLE 2: NODAL POINT SUMMARY**

POINT	THEME	CATEGORIES
SITE	“Land is not land”	Land as space Land as people Land as memory
FRAMES	“A broken working system”	Institutional (in)capacity Gaps in policy implementation Ticking boxes / bureaucratic bungles
DRIVERS	“Façade of (dis)satisfaction”	Politics Public realm City directives Economics Multiple actions/reactions
INTERACTIONS	“Backward looking while looking forward”	Multiple relationships Multiple layers Multiple scales
SIGNIFIERS	“(Dis)illusionment of time and memory”	Meta-narratives of loss / legacy / currency Identity and meaning The social unconscious

### 5.3 The site of urban land restitution: “Land is not land”

The paradox of land is not land speaks to land as owned yet not owned because it is more than a physical entity, place or space, it is also about people and memory. Nothing is what it seems – land is not just land, it is much more and occupies multiple dimensions.

#### **‘Land as space’**

The first category ‘land as space’ is about tangibles - location, position and purpose. Land exists as the natural environment and may be romanticised for the physical beauty of the site. Land is something of value, a commodity that occupies the focus of people and of governance based on its location and its power to hold multiple uses, forms and functions. Physical land offers representation of a potential economic commodity that could be used in the future for social mobility. Land, especially land earmarked for restitution, becomes a competitive space. Land exists in a context where it is sought after because there is a shortage and in some cases represents a site for concern regarding wider social activities or threats to its existence.

“Being able to ride around in such a lovely spot and be able to look up at the mountain, birds, it gives them (disabled people) a totally different dimension to their lives...and that is being taken away” FP

212: 7

“Location has a lot to do with what is good enough” LP 54: 2

“It is a commodity with which they can trade” AC 305: 10

“Land in whatever form is such a crucial element of governance” AC 282: 9

“And so you have one physical piece of land that now has three claims on it” AC 54:2

“There is a very huge shortage of land in the city” PM 69: 3

“Vacant land is a risk – vacant land that can be developed is particularly a risk to a community so they want to know what is happening” LB 196: 7

### **‘Land as people’**

The second category ‘land as people’ refers to what land represents symbolically to people, families and communities in the past and present, i.e. across the passage of time (see Figure 4). The symbolism of the land is passed down through generations and, like everything else in the site (point A), exists within and across time and space. People hold the symbolism of the land as subjective reality, a reality that becomes embroiled with external forces which add pressure (points B and C) and promote movement (point D) during a land restitution process.

Of importance here is the complexity of the relationship between physical land and the people who owned it. The removal or dispossession of the physical impacts heavily on the individual and the community and its social effects are far reaching over time both backwards and forwards (past and present). Land as people puts faces to the restitution process, making it personal by transcending physical space.

“So what did they lose? Did they lose land? On a very superficial scale, that’s what they lost, but that is an insulting simplification of what they lost because what they lost was legacy, they lost currency, they lost standing” AC 23: 1

“it (restitution) is in the continuity of land holding and the identification of the disaffected community”  
NB 100: 4

“and for the Group Areas Act to dispossess them of that land is something that was not ok” PT 92:3

“Restitution is supposed to be about advancing social justice, but I don’t see it doing that” PM 406:

## **'Land as memory'**

The third category 'land as memory' is a place that also holds collective experience. It shapes an emotive identity, a longitudinal life path and has a story to tell in intergenerational familial trauma. Memory of the land occupies a personal space that once again transcends the physical and stretches over time. Memory is personal. It is also inter-generational; however identification with the strength of that memory is altered over time. Engagement with memory of land and space during land restitution acknowledges that the past cannot be recreated, it can best be dealt with creatively in the present bearing the future in mind.

“the land is where the emotion is, we can't look at it in terms of hectares, it's the emotional thing in terms of hurt and that was where generations were” NB 92:3

“the emotion of land is also quite elastic, and as time marches on those problems start eroding because of different social networks” NB 118: 4

“so now we second and third generation who are going to the papers and saying 'what is this about? We don't really understand what was lost” AC 614:20

“you can't recreate the past, the past is the past and it's a myth that you can go back, and it's a whole acknowledgement of layer and dealing creatively with something” NB 200: 7

“they need to resolve because it closes some chapter in their life” PM 313: 10

“I have asked the claimants to please record their memories (of land) because the future is about that” 312: 10

## **'GOOD ENOUGH' AT POINT A**

In summary, what constitutes 'good enough' at Point A? Restitution is concerned with the realistic redistribution of resources. The site forms the context for a restitution process. Recognising that land is multi-layered and holds multiple roles and positions is a first step in answering where good enough lies. 'Good enough' takes cognisance that things extend past surface value. It unfolds in recognition of multiple interpretations of what 'land' is and in dealing creatively with these interpretations.

“you can't recreate the past, the past is the past and it's a myth that you can go back, and it's a whole acknowledgement of layer and dealing creatively with something” NB 200: 7

#### 5.4 The frames of urban land restitution: “a broken / working system”

Frames (Point B in Figure 4) act as forces pushing on the flow of time within the restitution process. Frames include formalised (state and civic) structures that are positioned to operationalize pertinent restitution policies and laws in practice and ‘on paper’. The paradox of “a broken working system” speaks to the perceived intentions and failures of the mechanisms (frames) that are meant to ensure post-Apartheid urban land restitution happens. Challenges of institutional (in)capacities, gaps in policy implementation and technical and bureaucratic ‘bungles’ substantiate the theme of an ambitious but dysfunctional legal and organisational frame. A consistent and reoccurring focus in the data is a concern around the process of land restitution as undertaken by the Land Claims Commission (LCC) – namely a lack or inefficiency to deliver on the restitution of land. The relationship here identified presents itself in the views of participants when gazing in on the LCC and those expressed when gazing out. The positions of experience – ‘gazes’ - refer to how people see the commission and experience it versus how its officials see and experience themselves. The theme – a broken working system- views the LCC as both a channel for redress and a source of lost hope through its inability to deliver. The LCC as a government institution has a ‘social contract’, a responsibility. Its actions are accepted in good faith by interested parties who hold hope in its power to deliver yet its work is flawed creating the paradox ‘a broken working system’.

#### **‘Institutional (in)capacity’**

The first category ‘institutional (in)capacity’ raises the concern of participants about the temporal nature of the Land Claims Commission, that its role and function is in flux and thus its approach to the task is perhaps not met with as much seriousness as it could be. The position of the Commission in a wider governmental hierarchy and in relation to the judicial system was also recognised. Officials working in that capacity are aware of their precarious position and the limits to their reach. The need for accountability in the institutional structure was also raised. Communication – which is addressed in point D on Figure 4 on interactions – was also consistently raised as a concern. Skills and the ability of staff at the LCC to complete tasks were also identified as examples of institutional (in)capacity. The power of the decisions made by the LCC was however not undermined as the effects were and are far reaching. Interested parties expressed concern at the need to ‘chase’ after information, while internally positioned participants recognised the need to close gaps in the process where these challenges were being experienced on the ground. The Land Claims Commission as a broken / working system is symbolic of the channel through which justice is undertaken. The need for sensitive and appropriate mediation for claimants and counter claimants resides with the LCC. They are mandated to give voice to people who need assistance however there is a caution to the levels of success in fulfilling this aspect of the social contract.

“Land Claims Commission is a commission! So once you have done your work you disband and go  
be employed elsewhere as a bureaucrat” AC 656:21

“the Commission is like a child in as far as the court is concerned; we cannot go to the judge ‘stop  
now please do this’. That we cannot do. We just sit there and observe and abide by the decision of  
the court” PT 365: 12

“I can’t believe the time it takes to resolve one land claim – and there are thousands of them in the  
back” PM 363: 12

“Decisions affect huge numbers of people” LB 39: 2

“I must say - we are different. They (the LCC) have good social skills...but we have technical people”  
PM 154: 5

“I can tell them what to do because I know their systems. Otherwise if you don’t tell them, they wont  
do it, you’ll realise after and then it will be embarrassing like this case” PM 169: 6

“..the background to all this mess up in my mind is inefficiency and lack of organisation” FP 102:4

“...we had no official notification...its all been sort of blowing in the wind towards us” FP 56:2

“..it’s all a case of battering at their door for some kind of help” FP 204: 7

“In the claimant community there is such a strong need for mediation, and facilitation, and facilitation  
needs to be presented not in an official capacity, but in a capacity of people who understand what  
they lost and people who speak the idiom” AC 167:6

“if they speak the idiom, because, in those meetings, with the Land Claim Commissioner, it’s this kind  
of conversation that needs to be understood ... it needs to be this conversation happening – the one  
where they get in the car afterwards they have the conversation because that is where the anxiety  
and distrust come in” AC 713: 6

“Claimant communities have been struggling to find voice” AC 183: 6

“They try and see solutions and they are given opportunity but they don’t always fully have the  
capacity to understand how to interact with that opportunity” AC 187: 6

## **'Gaps in policy implementation'**

The second category refers to 'gaps in policy implementation'. While there is a link to the challenge of institutional (in)capacity, the difference refers to gaps in outlined process as identified by interested parties. The need for better research is expressed as proxy to decision making. Given that the Land Claims Commission makes decisions that are widely impactful (see above), the need for solid research is highlighted – as are the current experiences. Relating the current process to the need for a more holistic approach is identified in the experience of one interested party viewing policy implementation as being law based. The need for policy implementation to be cognisant of effects that extend beyond the law was expressed.

“they (LCC) do not do sufficient research – it’s a bit of a lottery almost” FP 229: 8

“it shouldn’t just be a legalistic process – so to take a law based response to restitution and land reform as the only thing, is not going to solve the problem – and here we are – we haven’t solved the problem, and so the law was only part of the story” LP 225: 8

“we are trying to seal these gaps but we cannot do everything” PT 489: 16

## **Ticking boxes / bureaucratic bungles**

The third category ticking boxes / bureaucratic bungles refers to how participants involved in the identified land claim case have experienced the restitution process thus far. Drawing on the relationship between how people see the Land Claims Commission (the gaze in) and how they see the process (the gaze out), ticking boxes refers to the 'gaze in' – the perspective and experiences of people and institutions of government. It is not surprising that these 'gazes' exist here too together with the forces as described in point B as both are forces contributing to the restitution process.

Ticking boxes and bureaucratic bungles are experienced in the delivery of services, the sharing or lack of sharing of information and the time it takes for action. The nature of the process as 'linear and technical' has been described as frustrating and needing to be shortened. The experience of misaligned actions has resulted in strife and bottlenecks. There is general consensus for improved efficiency.

“The Land Claims Commission is insufficiently inspired to deliver ... so when you have land claimants who do not have opportunity and who have a profound reliance on the Land Claims Court to deliver – it’s just not good enough” AC 107: 4



“We still await official information on that front, that we have future here. The problem is whether due process was actually followed through correctly from start to finish” FP 182: 6

“It’s been a creeping process as opposed to sitting down and working it out” FP 279: 9

“when the processes aren’t aligned certainly does give rise to strife and I cant think of examples in which it has worked successfully” NB 60:2

“very linear, very technical process” NB 182: 6

“we need to find a way of shortening the whole process” PT 378: 12

“it’s a bit of a bottleneck and that’s what you’ll see in the way in which the process goes” MW 34:2

“we’ve got this thing very much under control now” MW 48: 2

“I try by all means not to negotiate directly with claimants; otherwise it becomes a conflict” PM 100: 4

“its difficult because under the law, everybody has the same rights, but under the law, in reality not everybody was in the same situation and not everybody has had the same opportunities” MW 488:

16

“you can’t restore land when there is something on it – otherwise you will be playing games with them – the claimants” PT 339: 7

“I have come to realise the cleaner the deal, the easier it is going to be for them, largely the claimants don’t have the capacity .... and a proposal that is put forward that is clean and simple and satisfies the whole legal process and the role players, it can work, it must work to benefit the claimants” LB

488:16

## **‘GOOD ENOUGH’ AT POINT B**

In summary, what constitutes ‘good enough’ at Point B? The dynamic of point B seems to be the need for direction and action which is inclusive yet decisive. ‘Good enough’ within existing frames will, once again, recognise the presence of multiples and that urban land restitution does not exist solely on paper – it is 3 dimensional.

“it shouldn’t just be a legalistic process – so to take a law based response to restitution and land reform as the only thing, is not going to solve the problem – and here we are – we haven’t solved the problem, and so the law was only part of the story” LP 225: 8

### 5.5 The drivers of urban land restitution: “Façade of (dis)satisfaction)”

Drivers (Point C in Figure 4) are overt motivators of or tacit counter forces to frames, exerting equal but sometimes opposing pressure on the restitution process. Drivers exist in politics, the public realm, the wider city context, economics and the taken actions and subsequent reactions by interested parties and bystanders, all creating a “façade of (dis)satisfaction”. The paradox here is that drivers have potential to be seen in a negative light but are not themselves necessarily negative. How, in a context of finite resources do you navigate realistic distribution of resources – and who gets what? The findings revealed veiled satisfaction, people seeming satisfied on a surface level, but in reality not so much.

#### **Politics**

The first category of politics in a land restitution process pervaded the data. Its overt and covert presence contributes strongly as a driver of the land restitution agenda especially in the lead up to elections. Land restitution is used as an election issue; either as strategy to garner votes with promises to deliver land to people previously dispossessed of their assets or as counter agenda. The political tension is evident with participants asking questions about deliverables. It is not assisted by some land restorative contexts where communities are unlike the covered case study and lack the ability to effectively engage with process.

“And then in 1994 we voted for a democratic government and all that, now the question will be asked ‘okay you voted – what did it do?’” PT 450: 15

“you’ve got a whole range of very clearly political agendas that operate in relation – this is very political territory – and so communication to one will be propaganda to another” MW 148:5

“we’ve always got to bear in mind the political implications of land use – and you’ve got a general election coming up in 2016 – how is that going to be used in the lead-up to those elections?” AC

378: 12

“Communities who lack sophistication and who have been divided and disempowered are easily manipulated” LP 134: 5

## **Public realm**

The second category of the public realm refers to the information that is disseminated via different platforms and is available to anyone wanting to engage with conversation on urban land claim processes. Information about the purpose of restitution – that restitution is about reconciliation, justice and social integration - is lacking and needs to be placed responsibly in the public realm. One challenge which has recurred in each democratic election in South Africa is the creation of expectation especially around the deliverables of land restitution. This expectation in the public realm is a contributor to the weight and force of public opinion as driver

“Restitution is not about turning things upside down to say – just because you own this land now – it was our fathers land – we must take it back from you. Its about reconciliation” PT 102:4

“Restitution is an integrated process and it is about social integration” PT 301:10

“Justice delayed is justice denied” PT 384: 13

“We’ve got an election coming. We’re opening it up again. It’s creating expectation. It is creating expectation” AC 633: 20

## **City directives**

The third category ‘city directives’ recognises that drivers do not exist in isolation. A common category in the data was city directives about urban land and the forces which govern them in relation to the process of land restitution. The City articulates the need to embrace densification in the face of growing human settlements and urban pressures, the need to comply with by-laws and how the application of local municipal regulations works. Expressed here is also recognition of the ‘intangible’ elements and value of restitution in a city context. The City talks about liberated spaces and the need for collective meaning in the City to be incorporated in future planning. Within the City there is recognition of the success and power that comes from acknowledging the past in City design. Participants deeply involved in city structures identified the importance of ‘liberated spaces’ and the need to not have them but to incorporate them into a wider designed city fabric that acknowledges and recognises the power and impact of restitution.

“the City needs to embrace densification, it needs to recognise urban pressures” AC 363: 12

“it shouldn’t be an issue them having the land as long as they comply with regulations like everyone else has to” AC 409: 13

“you get liberated spaces – and in Cape Town we have a few – but we haven’t in a design sense incorporated meaning and feeling enough into urban land restitution” LP 193: 7

“I think it (the construction of meaning) needs to be more explicit, almost planned into things” LP 210:

7

## Economics

Economics emerged as a fourth category and a very powerful driver in the restitution process. Data spoke to the way financial issues complicated restitution by reducing its meaning and subverting the original goal of social justice. Recognising that land, property and development require financial contributions, the ability of claimants themselves to ‘afford’ restitution is raised as a concern. The context within which urban land restitution occurs does not go unnoticed. The economic change over time from what was lost to what is now – especially in relation to market value is identified in the research. If financial restitution is preferred the case of market related value for land is presented as is the precariousness of the contemporary financial market – that it is not particularly sensitive to restorative efforts and that profit is desired by most people. The economics of land restitution are extensive.

“there is a huge amount of money going into the economy through the restitution process...the economies wheels are being oiled through fairly significant injections of cash” MW 90:3

“when it becomes a financial thing, it becomes complicated” NB 22:1

“if it is purely a financial thing, then where is the social justice in that” NB 44: 2

“people don’t always understand the process of a bond, so can they afford a bond. If you don’t have an asset then you can afford to top up what you get from the state” LB 215: 7

“can you afford the context?” LB 280:9

“one of the biggest dilemmas of the result of urbanisation is that the land that is being claimed has risen exponentially in value” LB 82: 3

“developing land is going to cost them” PT 120:4

“the market is not particularly sensitive to restitution of any kind” LP 184: 6

“in urban land restitution it is even worse...they will be given financial compensation which equals your RDP, the value of an RDP...I mean that is peanuts” LP 30: 1

“there is a big gap between what you lost and what you’re getting” PM 33:2

“but that’s typical of people in urban areas –obviously he is looking at this as a business opportunity” PM 294: 10

“the whole business of land tenure...is in the process of being altered so everything is being turned into some municipal evaluation as opposed to these open spaces” FP 206: 7

## Action / Reaction

The fifth category 'action / reaction' as a driver refers to how people react to (in)decisions. Actions taken by government or decisions made in court are met with opinions and reactions themselves, referred to by one participant as 'public hysteria'. Action / reaction as a driver contributes to the façade of (dis) satisfaction. People seem or report being satisfied with a decision or action, when they often are not. Interested parties and participants identified the need for actions and engagements to be open and iterative rather than adversarial. Taking of cases to court often causes adversarial reactions which are compounded by years of distrust and lack of action.

“to not go through public participation and do an arbitrary allocation...is just asking for trouble, it leads to grievances, and all parties are grieved and how then do you take it forward?” NB 43: 2

“Engagements need to be an iterative process – keep opening up options rather than closing them down” NB 167: 6

“court becomes very adversarial, and that is the last thing you want – you want to forge consensus” NB 187: 6

“I do not know what went on in that court room for the judge to arrive at that decision” PT 153: 5

“the LCC judges are very progressive. All their judgements have been in favour of claimants in most cases” PM 198: 7

“This has happened. There is no trust as a result of the lack of action over all these years and the inefficiencies and attitudes” LB 389:13

“the division of the asset is a complicated matter” LB 466: 15

“I’ve often been called to calm hysteria” MW 175: 6

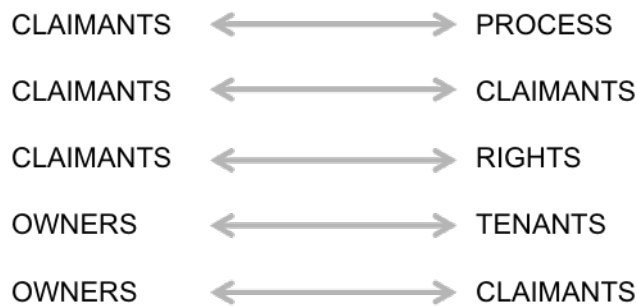
## GOOD ENOUGH AT POINT C?

In summary, what constitutes 'good enough' at Point C? The dynamic of point C seems to be that engagements that occur in relation to restitution need to be kept 'open', easy and conciliatory. When engagements go to court they have been identified as adversarial which shuts processes down and leads to simmering grievances.

### 5.6 Interactions within urban land restitution: “Back looking while looking forward”

The restitution process is dynamic, not static. Interactions occur between individuals and institutions at different levels of power and on multiple layers and scales of influence. Recognition of individuality and autonomy in these relationships is important to people affected by the effects of multiple complexities and realities at play. The question in these multiple relationships then becomes “good

enough for who – and for when”? The multiplicity of relationships and corresponding interactions evident in the data exist between the following.



The paradox of ‘backward looking while looking forward’ indicates the catch 22 that may result from urban land restitution for different interested parties: losers if they do and losers if they don’t/ winners if they do and winners if they don’t....it all depends on the particulars of the site, the case and the individuals concerned. A contemporary land claim takes into account what occurred at the point of dispossession to determine the merits of the case. The continuum of what happened in the past up until the point of redress hinges on what happened to the space and people concerned with the passing of time. The passage of years spanning the past and the point of redress may, for example, have allowed for some people to establish themselves elsewhere or to gain access to financial resources. The contestation here is that with access to resources comes the ability to ‘jump the queue’ of the administrative process of the LCC and go straight to the land claims court. Those that have access can do this, those that do not, cannot. Essentially the paradox here presents itself that in an effort to provide redress of loss of opportunity to leave a legacy, those who were dispossessed and were the original claimants have themselves become the dispossessors. This collectively also exists in the realm of the multilayer multi natured nature of land restitution.

### **Multiple relationships**

In line with prior examples given, the presence of multiple (complex) relationships is not surprising. As illustrated above relationships were identified as occurring on and across multiple levels. It was also mentioned that people wanted to be recognised as individuals in the process and that homogenous grouping of people, especially claimants, was unwelcome. These multiple relationships allow for communication and interaction at different times and require degrees of flexibility from participants in the exploration of outcomes of restitution.

“it is important to negotiate with every individual, because each case is different” PM 60: 2

“you get the sense that things were happening in the background” NB 26:1

“it is an exploration of alternatives ... and people / communities being open to in terms of outcomes, different agendas in the process, community, authority. Different players, different frameworks” NB 154: 5

“Restitution is about reconciliation, its also about claimants and at the end of the day being happy” PT 100: 4

## **Multiple layers**

Multiple layers refer to not only the complexity in relating but the depth and multifaceted reality in which relationships occur. Layers are present in the process, in people, in the element of being bound by time, and in the degrees of quality of life. Layers hold a qualitative element and allow for potential understanding of where people position themselves in relation to the restitution process. One element of the contributing dynamics can have multiple layers. There are also multiple dimensions.

“we need qualitative restitution...as long as we sit here we are writing history.” PT 416: 14

“I don’t know if there is a capacity to understand the need for facilitation and leadership so that people can feel understood and can really feel that they then have been recognised and they have then been, somehow, compensated” AC 641: 21

“well you know when you get a windfall like that, you are not going to pass it up, it is against human nature” FP 220: 7

“it is taking people through things trying to flesh out where significance resides” NB 137: 5

“we can’t be open ended we can’t negotiate for 10 – 15 years” PT 286: 10

“I think given something of a choice should go some way for compensating for the trauma” LP 91: 3

“there needs to be a wider debate on how far back we go ... once you go back beyond the generations there are another set of questions” LP 59:2

“ there is an appropriate time for stakeholder engagement and the settlement of the claim is not that time” MW 212: 7

“the impact of restitution in those families...not something to be taken lightly. It also means that the quality of life...to me we could see the impact, the importance of restitution to our claimants – we could see it. Really we could see it” PT 478: 16

“tying a financial grant to the housing subsidy is good enough. Its not going to take away the hurt and its not going to take away the pain but there is no way to measure that ... but its closure and that is hugely significant” MW 533: 17

## Multiple scales

Multiple scales are different to multiple layers as layers refer to those within certain elements while scales refer to where these occur. Positions include interpersonal levels, administrative levels, institutional levels and judicial levels. The scales of interventions also vary as do the nature of relationships between the scales. Power in the process of relating across scales requires awareness.

“But he is as much of a politician as anyone else, so at an institutional level, I don’t know if he fully understands the need (re: intervention to assist a process moving forward)” AC 655:20

“The judge changed the slant of the case enormously” FP 71:3

“Because restitution must not be seen as an isolated thing, it must be seen in the midst of all the other programs” PT 261:9

“I can’t say anything about a court award – the court is essentially my boss” MW 250: 8

“At least for the next ten years we will be seeing people doing their own form of restitution in a sense, coming out of areas of real poverty to live in the urban areas and I think in a sense that what we need to realise is the legacy of a much greater picture around forced removals – so then urban restitution becomes the privileged few in comparison” LP 179: 6

## GOOD ENOUGH AT POINT D?

In summary, what constitutes ‘good enough’ at point D? The dynamic of point D seems to be the nature of interactions and how they occur not only all the time but within themselves as layered and at different scales. Good enough in these situations seems to be recognising people as individuals in the midst of complexity and scale, but also being cognisant of context, time, place, position and process.

“I think you can’t only be backward looking. You have to be forward looking” LP 67:3

## 5.7 The signifiers of urban land restitution: “(Dis)illusionment of time and memory”

Signifiers are deeply personal and operate on a socio-historical, cultural and psychological time continuum between the past and the present. Signifiers include non-tangibles such as meaning, identity and the social unconscious on an individual level but tie into wider meta-narratives such as collective loss and legacy. The paradox illusion and disillusionment plays out over time, hope of restitution is raised or deferred.

## Meta-narratives of loss / legacy / currency

These meta-narratives of loss / legacy / currency refer to land in the physical but also the effect of dispossession in the personal. Loss/legacy/ currency reverberated throughout the data as



meta-narratives that permeate the discourses and interpretations of peoples lived experiences of the urban land restitution process. The narrative offers in itself recognition of the human spirit in the face of adversity when viewing what people have accomplished in the face of historical injustice and personal tragedy. It also offers a warning to the actions of the past being repeated in the present.

“Their own sense of legacy and inheritance – they are not able to leave anything behind because you get to a stage in life where it's no longer about your own drive; it's about what you can leave” AC 505:

16

“Let's look at the human spirit in face of adversity” AC 756:24

“There are issues of expectation saying you need the land but you don't perpetuate previous conditions” NB 59: 2

### **Identity and meaning**

Identity and meaning emerged in the data as core to the human experience of land dispossession and restitution. These subjective signifiers are constructed by people's lived realities of place, people and time. The traumas of forced removals or dispossession have contributed to peoples personal identity and meaning as well as to group identities as claimant communities.

“And he spoke about a Constantia that still resonated, resonated in his very being. And for him it was ‘that's gone’ that what you call Constantia is not really the true essence of what is Constantia – that's gone” AC 556: 18

“They want to be recognised as individuals not as a collective group...to be treated with respect as separate family lines that grew up and contributed in different ways” AC 572: 18

“we are described as vacant land, so we are vacant land in that judgement – mentally, emotionally, physically we don't exist” FP 168: 6

### **Social unconscious**

The social unconscious is not unlike the contribution made by information in the public realm. The difference however is the absorption of the restorative experience and how that is processed by individuals and those involved in land transfer. Elements of personal responsibility and personal reflections contribute to this dynamic as does the way people adopt and adhere to social directives.

“where does your own responsibility kick in? So there is that too – but also in the restitution process, people feel they have not been heard or understood” AC 780: 25

“I have to be neutral...but in all fairness, at the end of the day, there is that period whereby you capture your thoughts – you think about these things and say but this is what happened so is it fair or is it unfair? PT 251: 8

“people have an innate respect for the law, even when the law isn't a good law” LP 27: 4

## GOOD ENOUGH AT POINT E?

In summary, what constitutes ‘good enough’ at point E? The dynamic of point E seems to be that which occurs across the continuity of time and occurs on a personal yet collective level. The impact of loss of legacy, standing and currency can probably never be quantified yet the importance of addressing its effects is one element of the restitution process.

“And he spoke about a Constantia that still resonated, resonated in his very being. And for him it was ‘that’s gone’ that what you call Constantia is not really the true essence of what is Constantia – that’s gone” AC 556: 18

## 5.8 Summary: the dynamics of urban land restitution

This chapter used Figure 4 and Table 2 to reflect the dynamics of urban land restitution. Using the voice of participants, it presented findings that suggest ‘good enough’ hangs on a balance. It pivots and it see-saws depending on the perspective being taken. The good enough is that point of paradox where the dispossessed become the dispossessors. Where original claimants multiply because time doesn't just happen to people but to land and space. It presented the perspectives of participants on the complexity of working with land in a socially based, human subject context. The presence of and interactions between multiple realities, multiple dimensions and multiple claims in the context of land, space and place were explored. The findings pointed, through participant voice, that the recognition of loss must form the basis for ‘good enough’. Loss, in a land restitution context, includes and extends beyond land as physical entity to the significance of land as legacy, currency and social standing. The multiple complexities and realities in the land restitution system called for overt recognition of individuality and autonomy. Good enough happens when the multiplicity of relationships is acknowledged and managed.

The findings in this chapter also raised a challenging question: good enough for who? The answer requires a peeling back of structural, ideological and systemic layers. Because land restitution and more importantly restitution in an urban context is not uni-dimensional, the notion of the claimant is not uni-dimensional and all of this exists in the process of time pressurised by multiple forces. Time does not just apply to people but to land and space and is important for understanding ‘good

enough' because it forces interested parties to look backward and forward. The outcomes of urban land restitution becomes good enough when the people concerned are met with respect not only for who they are now (if time and positioning has been favourable to them) but for who they represent as people who have constructed identity and meaning from incidences in the past around dispossession. The next chapter offers a discussion of the findings in relation to the literature review and theory. It unpacks the concepts here described and positions them in relation to existing frames of thought and action.

# 6

## DISCUSSION

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### 6.1 Introduction

Using the literature review as point of reference, this chapter discusses the research findings presented in the previous chapter. The problem statement, presented in chapter one, argued that the paucity of literature detailing the spatial, social, economic and other implications of awarded land claims in well-developed residential city suburbs in South Africa restricts the scope of insight with which city planners can approach the complexities of space management. City planners would benefit from knowing more about land claim processes from the perspective of established residents, claimants and other interested parties to inform just and fair planning perspectives and practices. The structure of the discussion systematically addresses each nodal point of the case study presented in Figure 4 (page 46) theorising what is considered 'good enough' in relation to the dynamics of the restitution process as a whole. Integrating the findings with relevant literature, the discussion addresses critical factors that could guide the reasoning, attitudes and actions of planners concerned with urban land restitution.

### 6.2 Locating the planner

The planner functions in a restitution context with multiple conflicting rationalities (Watson, 2003). As a thinking / acting / attitude holding person, the planner has joint responsibility for the implementation of planning policy. The planner therefore needs to be skilled in recognising the contextual, structural and socio-cultural complexities and nuances that exist when working with both space and people – in certain times and certain places (Watson, 2003). Planning towards the goal of good enough urban land restitution means discerning what conflicting rationalities are at play in a specific land claim case and acting as a lubricant to resolve the emergent challenges. Planners do not take things at face value. Instead they need to investigate text, question motive, research intentions and validate actions. In short, the findings suggest that good enough becomes possible when planners act as professionals that communicate clearly, respectfully and inclusively. In the next section, critical factors arising from the findings of the Constantia case study are presented to inform the thinking behind planning actions.

### 6.3 Thinking about land: peeling back the layers

The first theme 'land is not land' points to the need for thinking about land as space, as people and as memory. While the land claim site refers to the actual restitution space, it is also located in a context and forms the nexus around which multiple interactions occur (Bohlin, 2004). The land claim and the physical site are always positioned in a wider restitution process. Land therefore becomes a multi-layered space that is both the site for tangible action while embodying meaning and identity for individuals, families and communities. Good enough in addressing the challenges of urban land restitution specifically at a site level requires 'peeling back of layers' of the restitution process, a dynamic rather than static event. The complexities and nuances of the restitution experience are communicated in the literature as occurring on multiple layers (Walker, 2008, 2011; Cousins, 2009; Bohlin, 2004). This means thinking about restitution land as:

- the space in which social transformation occurs (Cousins, 2009). Tracking South Africa's development agenda, land reform is a top priority in garnering a positive transformation in society. Land becomes a visible site for transformative social action.
- a domain of value (Bohlin, 2004), a tangible space that holds the intangible. The effects of the dispossession of land and property reveal themselves in the effect of the removal of the tangible on the intangible – on people. The value of land is found in the ability of people to maintain and hold on to it over time. Value is found in the cumulative and continuous benefit of ownership. The removal of the land becomes the denial of value at a personal level. The restitution of land becomes the restoration of value at a personal level (Atuahene, 2014).
- a collective experience of trans-generational memory. Atuahene (2014) argues that physical removal from land carries a human effect. The relationship between memory and time must be explored as part of the planning process. The land, its uses, its ownership, its value amongst others all change over time. These shifts occur in the physical realm but also within people's realities, creating intergenerational intersections between the intangible and the physical. Land is intertwined with and itself becomes memory (Walker, 2008). Time and the changes that occur in the physical also have an effect on what people remember, or on the power of emotions linked to the land (Schadeberg, 2005).

In summary, 'good enough' reasoning by the planner will recognise the extent to which urban land restitution issues, concerns, realities extend past surface value and that they unfold in multiple interpretations of what 'land' means.

## 6.4 Thinking about frames: 'a broken / working system'

The Land Claims Commission (LCC) was identified in the data as a key frame for directing land restitution. It was perceived both internally and externally as a 'broken / working system' from two positions – those who gazed in on it from the outside and those who gazed out at land restitution from inside the organisation. The LCC is both a channel for redress and a source of lost hope through its inability to deliver. Respondents felt that the actions of the LCC are accepted in good faith by interested parties who hold hope in its power to deliver yet realise and experience its mechanisms as deeply flawed especially for people who lack the resources to go directly to the Land Claims Court. Levels of frustration were high in both positions with some interested parties suggesting that, by not working efficiently or postponing action, the LCC deliberately intends to delay the finalisation of claims so that participants are forced to settle for financial compensation or pass away leaving their claims unresolved.

The institutional inefficiencies of the Land Claims Commission are well documented in the research literature (Bohlin, 2004; Walker, 2008; Fay & James, 2004, Maharaj, 2004), contemporary press (Du Preeze, 2013) and internal LCC evaluation reports (Rural Development and Land Reform, 2014). Concerns centre on the time it takes for a claim to be addressed, staff functionality and the ownership of cases with regard to responsibility and proactive action. The Centre for Law and Society (2014) recently highlighted the reopening of the South African restitution programme as a cause for caution. Given the backlog of claims that already exist, the reopening is likely to compound an already fraught restitution system. Predictions by the Centre for Law and Society (2014) include even longer time to process claims, and if staff capacity and capability are not addressed then a continuation of the lack of communication and action is likely to follow. In addition the financial costs to the Department of Rural Development and Land Reform are expected to be high with many claims being lodged in the new opening period, and people seeking or choosing financial recompense over restitution of land (Centre for Law and Society, 2014). Rather than confirming the documented shortcomings of the Land Claims Commission evident in the data, the discussion focusses on factors at play in influencing 'good enough' from a planning perspective.

- adopting an inclusive stance

Maharaj (2004) argues that for land reform to succeed, especially in urban contexts, local government (together with civil society bodies) needs to play a central role in planning and implementation – effective planning and implementation. Maharaj (2004) suggests that this requires constant policy and practice review. A view supported by Walker (2008) and the in depth practical experiences garnered from work with the early Land Claims Commission.

- adopting a research orientation

Interested parties indicated that insufficient research had been conducted in relation to many land claims, despite this being a directive of the land claim process (Rural Development and Land Reform, 2014). Poorly resourced and insufficiently staffed, the Land Claims Commission themselves realise that there are gaps in the implementation process due to lack of empirical information (Rural Development and Land Reform, 2014). Acknowledging the differences present in multiple contexts, the need for realistic research is obvious. Considering the contribution of research to effective urban planning, Watson (2003), writing with a reality of the nuanced African context, calls for deep critical engagement with normative planning theories backed by research so that planning and the conduct of planners can be tailored to contextual differences.

- adopting a three dimensional approach

One concern raised by interested parties in the current study was the way in which ticking boxes became the benchmark for success. The magnitude of the human effects of the land claim is reduced to a paper exercise (Atuahene, 2014). Recognising that the current government cannot realistically be responsible for solving all problems resulting from Apartheid era forced removals and dispossession, the structural determinism for completion of restitution tasks is understandable. The use of 'tick-boxes' as the measure for success is where concern arises. The Land Claims Commission together with the Department of Rural Development and Land Reform reported that by March 2014 it had finalised 77 622 across South Africa with approximately 8470 cases pre-1998 cut-off date remaining (Rural Development and Land Reform, 2014). This number will increase with the reopening of the land claims process. What the Department considers 'finalised' refers only to the technical process. Is it good enough in terms of the mandates of social justice and restitution to only complete the basic requirements for a land claim? Is it good enough to pay someone out rather than return the land to them that their rights were lost from?

How can planners operate within existing frames without ticking too many boxes and becoming overly bureaucratic? While policy and the law views the facts of the land claim case, the case also affects people deeply. A three dimensional planning approach will gaze in and gaze out – this means attending to the paper requirements of the frame (Land Claims Commission, 2014) while ensuring the restoration of dignity (Atuahene, 2014) and facilitating human (personal / individual / communal) level interactions (Bohlin, 2004; Atuahene, 2014). The LCC acknowledges that the nature of its processes is 'linear and technical' and therefore frustrating and needing to be shortened (Rural Development and Land Reform, 2014). The experience of misaligned actions has resulted in strife and bottlenecks (Walker, 2008). The findings of this study suggest that transparent service delivery i.e. sharing of information and shortening the time between actions is likely to be perceived as improved efficiency.

Bohlin (2004) argues that financial compensation is a way of interpreting land restitution via symbolic means. Symbolic interpretations such as financial pay-outs which were used in forms of commemoration (items of sentimental value, a plaque, a memorial to the past) transcend the 'ticking of boxes' by acknowledging the domains of value through which restitution is understood. Conducting a study on a case where restoration to the land was not feasible but rather financial compensation was paid out, Bohlin (2004) investigated what the money was spent on and the meaning it offered people as redress to past injustice. Bohlin (2004) pointed out the role of time in making a choice in what channel of restitution claimants decided to pursue. Old age claimants, wanting to have the power of some form of closure or perhaps release the burden of administration, chose finances over land restoration. While they came to the LCC process with historical perceptions of time, they recognised the value of financial investment for future opportunity or for investment in memorial commemoration.

Considering the notions of dignity restoration and value domains, three dimensional planners could engage the social and cultural understandings of the restitution process that are embedded in a local context. Good enough planning functionality within the LCC frame will recognise the need for clearly articulated direction and action which is inclusive, timeous and decisive (Walker, 2008). Planning will once again recognise the presence of multiple layers and that urban land restitution does not exist solely on paper – it is three dimensional, extending beyond what is on paper to the relational needs of people for dignity and affirmation (Atuahene, 2014).

In summary, the planner will take the lived experiences of interested parties into consideration and interpret them beyond the structures imposed by formal frames of policy, procedures and practices. If land restitution is about social justice and inclusion and an attempt at remedying 'the past' then the process needs to extend beyond the tick-box and delve deeper into what it means to people subjectively.

## 6.5 Discerning the drivers of urban land restitution: getting behind the façade of (dis)satisfaction

The drivers of land restitution are tacit forces operating in politics, the public realm, the wider city context, the economics of urban land, and the impact of actions taken by those in power as well as the reactions of those affected. Although these forces are not necessarily negative in themselves, their interactions have the potential to create facades of (dis)satisfaction with the land restitution process depending on who gets what. The 'why' of land restitution is clear (Cousins, 2008, Walker, 2008,



Atuahene, 2014, Hall & Ntsebeza, 2007). The 'what' of land restitution is less clear pointing to the most pertinent 'good enough' questions that these drivers consider namely: how, in a context of finite resources, may the realistic redistribution of resources occur and who gets what? Who mediates them – and who is trusted to do that well? When engagements go to court they have been identified as adversarial which shuts processes down and leads to simmering grievances. This perpetuates the façade of dis(satisfaction). How then does the planner interact or intervene?

Restitution is an 'inherently conflictual and turbulent process' (Fay & James, 2009). It operates in realms of conflicting rationalities (Watson, 2003). While Watson's (2003) work on conflicting rationalities ultimately aims to produce normative theory, in this particular case, this cannot be done due to its inability to be transposed into other contexts. However, the tools Watson (2003) suggests the planner utilise in conflicting spaces can be drawn on here to mediate action. Action that is cautious yet decisive and is without underlying motivations, political or personal agendas is the tool to use in bridging the realms and opinions of dissatisfaction. Essentially there is a need to gain a better understanding of the nature of difference (Watson, 2003). Planners can assist here by basing action and information in the public realm on neutrality, sensitivity and professionalism and importantly act within the mandate of the law in the restitution process.

## 6.6 Analysing urban land restitution interactions: looking deep

The multiple interactions that occupy and characterise the restitution process occur at different levels and are affected by relations between concerned parties and complexities of power on multiple layers and scales of influence. Nothing in the process of restitution is simple when the land claim brings multiple interactions together at a particular point in history. Looking deep involves backward looking while looking forward. Sourced directly from the data, this reference to the need for analytic thinking corresponds with the literature on the processes and dynamics of land restitution (Walker, 2008; Bohlin, 2004; Cousins, 2008). In essence, the restitution relationship pivots on the power of time and the events that occurred in the interim between the point of dispossession and the claimant lodging the claim for restitution (Walker, 2008). The planner concerned with 'good enough' analysis, will take master narratives of time into consideration.

Walker (2008) writing on the master narrative that characterises restitution in South Africa describes a hiatus within the narrative that is described as the 'intervening years'. These intervening years occur between the points of dispossession and the present and offer insight into what happened to individuals, communities, households and descendants over time. It also speaks to the role of time and change that happens when relating to land and space. Walker (2008) argues that major social

change occurs between people, within communities and households in the years – 20, 30, 50 years – that act as an interlude between dispossession and redress. Together with people, site, context, economics and environments also change.

The data presented the argument that what occurred in the intervening years actually had a massive outcome in how claimants approached the process of redress.

What then is good enough here? How does the planner determine the effects of the intervening years – or do they?

The planner has to be multiple lensed. The nature of interactions and how they occur not only all the time but within themselves as layered and at different scales. Good enough in these situations seems to be recognising people as individuals in the midst of complexity and scale, but also being cognisant of context, time, place, position and process.

The planner has to understand the relationship between claimants and site over the intervening years and how this relationship is transferred (or not at all) to younger generations? Are claimants disillusioned and therefore become complacent? The intergenerational element appears here again

## 6.7 Reflecting on the signifiers or urban land restitution: making sense of the (dis)illusionment of time and memory

Signifiers are deeply personal and operate on a socio-historical, cultural and psychological time continuum between the past and the present. Signifiers include non-tangibles such as meaning, identity on an individual level and the social unconscious at a collective level. Signifiers also tie into wider meta-narratives such as collective loss and legacy. The paradox illusion and disillusionment plays out over time, hope of restitution is raised or deferred.

In summary, good enough occurs across the continuity of time and occurs on a personal yet collective level. The impact of loss of legacy, standing and currency can probably never be quantified yet the importance of addressing its effects is one element of the restitution process.

## 6.8 Summary

The position of planning as an agent for promoting social transformation is at the core of this discussion. Planners are equipped to deal with the structural logistics of urban land use. However, the paucity of literature detailing the spatial, social, economic and other implications of awarded land claims in well-developed residential city suburbs in South Africa from the perspectives of affected parties restricts the scope of insight with which city planners can approach the complexities of space management. The purpose of this study was to inform planning practice by identifying what interested parties in a single urban land claim case study considered 'good enough' urban land restitution to be. While the findings cannot be generalised, the discussion provides several pointers for enabling planners to contribute, appreciate and be facilitators in a land claims process. In particular, it has argued that planners hold a frame of mind that is able to peel back, interpret and respond to multiple layers of complexity. The ability to reason systemically and act in ways that affirm the humanity of the people concerned is needed to advance the restitution process in a dignified manner through the field of planning.

# 7

## CONCLUSION & RECOMMENDATIONS

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This chapter draws the research report to a close by considering the study limitations, making recommendations pitched at a national level, institutional level and a 'wider engagement' level, revisiting the researcher's assumptions and finally, by offering concluding comments about what 'good enough' may entail in the context of urban land restitution.

### 7.1 Study limitations

The greatest limitation to this study was the unwillingness of the Sadien family to engage with the researcher. The experience has been described in an excerpt in the reflective journal (see appendix). Whilst data was collected from a range of interested parties including those directly involved in the case, the input and perspective of the land claimants themselves was lacking. This was not due to a lack of effort by the researcher but rather a denial of the request for participation in the research. All interested parties participated in the semi structured interviews voluntarily and were informed that they were allowed to end the interview at any time without repercussion. The Sadien family gatekeeper declined a meeting or an interview and it was gauged as disrespectful to attempt to bypass this decision.

The resulting limitation to the study is the lack of direct voice and input from the land claimants themselves. It had been hoped that descriptions of the restitution experience, especially for the family directly affected by Apartheid era dispossession and democratic restitution would have been presented. While other directly affected participants were interviewed, this 'side' of the experience is missing. The value, which is lacking, would have been in what those awarded the claim themselves thought good enough meant in relation to what was lost and awarded.

Relating this limitation to the presented findings (figure 4 page 46) would undoubtedly shift the dynamics in the ways of relating. The voice of the directly affected land claimant family would present its own rationality. This would be in competition or conflict with other voices operating in the complex relationships found in urban land restitution processes.

Reasons for the refusal for participation in the research are multiple and it is not the intention to superimpose personal thoughts on the claimants' refusal to participate in the study. However,

referring back to the element of the 'social unconscious' as mentioned in both the findings and discussion chapters, an element of the role of the social unconscious could be an explanation for not participating. Pressure or concerns from group dynamics that exist in the social unconscious could also be contributors. There are multiple possibilities with regard to the hesitation to participate however the issue of the case being contested in court and not wanting to compromise or undermine legal proceedings is also a valid concern.

## 7.2 Recommendations

Having traversed the research process and engaged with both literature and involved interested parties in answering what constitutes good enough when addressing urban land restitution and issues of social justice, recommendations are proposed. Actions that can contribute to this process are offered. We need qualitative restitution. Recommendations are presented as interventions. Given the multiple levels that restitution traverses, the interventions here are pitched at different scales.

### **National recommendations: direction and communication**

There presents a need for general public education about the purposes and goals of land restitution in South Africa. The challenges of dense and competitive urban spaces require particular attention. It is often in these spaces that fear, myths and opinions are generated. The need for clear communication about the purpose and position of restitution within the South African development and social justice agenda would aid in tempering the reactions of people to restorative attempts. The challenge however lies in the political power and agenda that land restitution garners. The creation of expectation and the promise (or failure) of delivery in relation to the emotive nature of land restitution and dispossession generate a discourse of often-negative reaction to constructive attempts of redress. The positioning of land restitution as a tool for social justice meets the definition in the data that presents it as a tool for reconciliation. The action here required is not aided by a political agenda. Data indicates that restitution processes do not work well when they become adversarial or combative which is often the result of political junctures. The research and information also revealed the existence of multiple communities who held strong feelings and opinions on years of being misled and inappropriately engaged with.

As indicated in the findings chapter, the power of information placed in the public realm should not be underestimated because people base their actions on available insights. If a 'public information approach on the benefit and needs for constructive land restitution' is undertaken, the hope for constructive (as opposed to obstructive) actions from interested parties could arise. While perhaps

idealistic, the power of correct, clear, direct information should not be underestimated. Suggestions to aid in achieving this include an editorial in major newspapers run by the Department of Rural Development and Land Reform. This could take the form of an advert or poster offering clear information on what land reform encompasses, who is responsible for what and how to go about lodging a claim. It could perhaps be useful to communicate expectations and time frames. This information and action is linked to the drivers at point C on the findings diagram (page 46). It contributes to the information placed in the public realm and could affect the restitution relationship through clear communication of facts rather than hearsay, confusion or mediation of information through a proxy.

### **National recommendations: intergovernmental relations**

There is a great need for better intergovernmental cooperation and interaction when engaging on land restitutive matters. Communication between spheres of government and governmental departments has been identified as a bottleneck in the restitution process. Interactions between the Land Claims Commission and the Western Cape Provincial Department of Transport and Public Works has been identified as particularly challenging and strengthening this relationship could be of value on multiple levels. Relating this to the case study, administrative and communication failures between these two departments resulted in confusion regarding status of occupation on Erf 142. This is now the subject of a court case.

### **Institutional level: the Land Claims Commission**

Institutional capacity at core bodies such as the Land Claims Commission are consistently identified in the data and the literature as short comings on the ability to deliver in respect of the restitution process. The lack of skilled employees to make strategic decisions and to better conduct the processes of land reform contributes to this short fall. Filling gaps in employment, and creating a staff function that is efficient and effective would go a long way to enhancing the efficacy of the Land Claims Commission. Skills training, administrative capacity, data management, responsibility and ownership together with professionalism would channel the process and create a body of action. The action of efficiency would hopefully allow for trust to be re-established in the LCC and its ability to work and fulfil mandates and responsibilities to the public. The value of human capital and the investment in staff who have an impact and play an influential role, impact on outcome and people. There is also a need for the Commission and staff to be accessible and available to claimants and citizens wanting information or assistance with land claims procedures.

Recognising that the LCC does not operate in isolation and is required to work with other governmental departments and institutions, the challenge of fully efficient outcomes is registered. The argument however is to attempt to create a tight functioning internal system at the LCC which has efficient staff, effective process and garners trust from the general public in fulfilling land claims.

Required in addition to this is the need for staff and project officers to be sensitive to the contexts within which they work. South Africa is a multi-contextual country with different languages, different cultures, practices and beliefs. Drawing on the call by current claimants to be recognised as individuals and for communities to be recognised not as homogenous groups, the need for an LCC staff component that understand these nuances presents itself. Differentiation within the claimant group results in different needs in desired outcomes. There exists a need for government staff who “speak the idiom” of communities, who are aware of the power imbalances and challenges within community level engagement and who can act as neutral mediators to restitution negotiations.

An additional concern as voiced by interested parties and found within the literature (see chapter 3) is the level of economic redress offered to those who opt for financial restitution. Currently financial restitution is largely based on scales similar to those of an RDP house (Rural Development and Land Reform, 2014). There is a need for more market relevant compensation structures. Motivation for this is to provide substantial redress and not to widen the gap between what was lost through dispossession and what was received in restitution. Financial restoration needs to be complicit with market goals. Review of this policy needs to occur at national level. There is an awareness that resources are finite and that financial compensation has the potential to be costly to the state, however the current scales of financial redress is not considered good enough as compensation is not relative – and it needs to be.

### **Institutional Level: City of Cape Town**

Recognising that restitution occurs within a city context, the institution that is both provincial and city government requires recommendations tailored to impact at both of these levels. The findings presented a potential for incorporating memory into city design through the creation of ‘liberated spaces’ or ‘spaces of memorialisation’. The incorporation of qualitative human valued elements into city structures and planning procedures is relevant and apt. While not wanting to create a ‘city of plaques’ working with the past in the present and creative engagement with city history allows for recognition of struggle. While we cannot change the past, we can work creatively with engaging with it in the present. This is a space where the LCC, Provincial government, the City of Cape Town,

planners and urban designers can work together with communities and individuals in creating an inclusive and engaging City.

### **Institutional Level: Restitution Commission**

The temporal nature of the LCC was raised as a concern within the data. The perceived perspective (refer to 'gaze in' discussion in section 5.4 and 6.4) is that because of the temporal nature of the commission work is perhaps not taken as seriously as it could be. Within the findings one participant made reference to the need for a semi-permanent entity to give authority and success to the land restitution process. This is a potential for action in the re-opening of the restitution process and is here presented as a recommendation. Creating a similar structure to the post-Apartheid Truth and Reconciliation Commission, if established, the Restitution Commission could deal with the human elements of dispossession. This recommendation ties in well with the principle of dignity restoration (see section 3.9).

One caution in pursuing a semi-permanent body like this would be the message it communicates about the ability for the resolution of land claims. Is land restitution featuring within South Africa's development agenda indefinitely or is it only for a season? How are limitations and structures placed on the time frames of this institution and what message does it communicate? The answers to these questions will obviously have cost implications and should therefore be extensively debated.

### **Institutional Level: Land Claims Court**

Looking at other bodies within the institutional category, the Land Claims Court is currently perceived as untouchable, unquestionable and prescriptive. The law is the primary settler of claims and it is needed to be a decisive measure in arbitration. The recommendation is here that cases that are escalated to the Land Claims Court are well researched and well documented so that decisions made can be holistic and well informed. The court requires input to make decisions and if this input is quality and based on inclusive mediation processes, then decisions are rounded rather than fragmented.

Ideally through addressing the institutional challenges at the Land Claims Commission and creating a functioning active institution, the need for cases to be decided in the Land Claims Court should be reduced. As indicated in the data, when cases go to court they become adversarial and this restricts mediation processes and channels of engagement. The Land Claims Commission needs to improve its function so as to avoid restitution that becomes retributive and is not reconciliatory. An additional challenge through the failings of the LCC is that under the law everyone has the same rights but not everyone is in the same situation. While it is your right to go to court, many claimants cannot afford a



lawyer and thus have been failed by the Land Claims Commission. Restitution cases should be before the Land Claims Court as a last resort. However, when this does happen there is a need for softer issues to be addressed against the pragmatism of the law. Is there a way to amend legislation so as to accomplish this?

Working through the actions required for both lodging and investigating the validity of a land claim, areas of weakness were identified and are here offered as a recommendation for remedy. The LCC currently has a process flow diagram for the undertaking of land claims and restitution, however the data suggests that a valuable approach would be to keep the process as more iterative and keep opening it up rather than closing it down. Within the flow process there are critical points and decisions about who needs to be engaged, where and how to do so. This requires forward thinking by the Commission and staff so as to proactively engage. The time it takes to fulfil and complete a claim is also cause for concern. Proactive engagement would assist in addressing this.

The recommendation here is for the employment of technically skilled and competent people within the Land Claims Commission to proactively engage with site visits, geo-technical studies, environmental reports, zoning procedures and layout plans. They would offer proactive practical skills and technical advice that would contribute to reducing time and creating internal efficiency.

### **Wider engagements**

With attempts to bolster the institutional capacity at the LCC, the opportunity for the body to engage and partner with parallel organisation could be viable. The need for local 'on the ground' facilitators and mediators has been expressed. The recommendation is here to establish a 'core team' of facilitators or mediators at the Land Claims Commission who cover a wider range of racial, cultural and language groupings, to ensure sensitivity to a diverse claimant body. Drawing on local level organisations such as NGOs and NPOs within contexts could assist in creating holistic awareness and employment in contexts and communities.

Strong working relationships with other sectors of government should also be fostered with strong incentives for co-operation offered (other than goodwill and general public service). These are in line with the directives of government to ever be striving for better service delivery. The hope is that through strong internal institutional capacities, the wider system of service delivery is improved.

### **Wider engagements: mediation**

Mediation also requires the participation of interested parties and a willingness to engage. There exists, like much of South African relationships, the need to forgive and be willing to engage in restorative processes. The willingness to be open to mediation and negotiation processes also assists in not perpetuating cycles of the dispossessed becoming the dispossessor.

The power of mediation lies within the ability to negotiate an outcome through communication / hearing / engagements and interacting. Given that the master narrative of loss and restoration (see section 3.8) is present in land restitution there is a need for a creative engagement with the past especially in an urban context.

### **Wider engagements: restitution land**

Given the nature of land restitution and restoration in an urban context being directly linked to the urban land market, the need for a review of the moratorium on the sale of restitution land requires attention. Data indicated that often, especially in an urban context, the pressure from developers on land recipients often results in the sale of land that had been hard pressed to obtain. Review of the moratorium together with review of the rates holiday would allow for land recipients to better establish themselves without pressure from developers to sell the obtained assets.

### **Wider engagements: parameters to restitution**

Tying in with the need for public education and awareness of the role of restitution, the parameters to the scope of its effects must be communicated. Restitution cannot only be seen as a channel for redress. Peoples' own responsibility to building South Africa today needs to be communicated (see findings chapter 5).

## **7.3 Conclusion: the essential features of 'good enough'**

Drawing on the findings and discussion chapters the essential features of good enough in an urban land restitution claim are offered. These conclusions are sourced from each of the different sites and points of relationship and interaction in the urban land claim experience.

'Good enough' is not tangible, and in itself the concept holds multiple interpretations. There needs to be a 'peeling back' of many layers within process, within people and within space to gauge how people experience restitution in relation to dispossession and loss. 'Good enough' emerges fleetingly within a dynamic process with due consideration of the nature of multiple relationships. Good enough requires inclusive and decisive action in a three dimensional context. Good enough consistently asks

questions to the process, it goes deep and beyond two-dimensional (paper and procedure) task performance. Good enough fosters open engagements; it is conciliatory rather than adversarial. Good enough is multi-lensed and it sees people as individuals. Good enough recognises that time causes change. Change occurs within the physical as well as within the individual.

Good enough occurs when competent people implement policy, it occurs when there is self motivation and skilled employees in positions of authority and power. It also occurs when there is an acknowledgement by institutions of peoples lived realities – of their previous existences, of the years spent in forced removal locations and how people made the most of their lives despite challenging situations. It looks at their positions now and responsibly tracks what could have been versus what currently is. The planning interface with urban land restitution lies between acknowledgement of history and an active dialogue in the present.

Finally, good enough occurs in time and over time. Things, people, spaces, landscapes, society, governments, decisions all change over time. Restitution is about reconciliation and not retribution. Restitution cannot change the past nor can it recreate it in the present. It is also unable to return exactly what was lost but the process of restitution should compensate by 'doing a good job'. Good enough recognises the relationship between justice and dignity. In short, good enough is qualitative restitution built on trust in the restitution process.

# 8

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# Appendix