

# We Want What's Ours

*Learning from South Africa's Land  
Restitution Program*

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# Introduction

Adanna came into this world swaddled in apartheid's indignities. Adanna's father was a white farm owner and her birth mother was one of his African farmhands. When Adanna's birth mother died, her father abruptly dropped her off in Kliptown, a town about 35km from Johannesburg, to live with an African woman named Ma Zwane and her son. That is the last time either Adanna or Ma Zwane laid eyes on him. Ma Zwane eventually adopted Adanna and she became a full-fledged member of the Zwane family.

Ma Zwane was a nurse. When looking at one of her pictures you see a middle-aged woman, lips full with pride, smooth dark skin impervious to the wrinkles time etches. Although the South African apartheid state made it especially difficult for Africans to own property in the cities, Ma Zwane was unbowed. She saved her modest earnings and eventually purchased two properties in Kliptown. Her properties brought in a steady stream of rental income and also earned her respect and social standing among her neighbors in Kliptown—a tight-knit, cosmopolitan community where Africans, Indians, Chinese, whites, and coloureds lived side by side—a place where people depended upon one another despite their differences.

Ma Zwane dreamed that Adanna would one day secure an education that could shield her from the indignities that apartheid hurled on black people. So, when Adanna finished standard eight (grade 10), Ma Zwane enrolled her in a commercial course where she learned shorthand and typewriting. Unfortunately, despite her education and specialized training, Adanna's skin color prevented her from advancing. "I could not get a job because at the time they were not hiring non-whites in the offices to do all that, and as a result there was nothing else I could do but go to the factory."<sup>1</sup> As the dreams Ma Zwane wove for Adanna began to unstitch, she prayed that the properties would provide Adanna with the extra layer of protection that she so desperately needed as a black woman living under South Africa's apartheid regime. But, after Ma Zwane died in 1955, Adanna's life began to unravel.

To execute its white supremacist agenda of subordination and separation, in 1963, the apartheid government proclaimed that only Europeans could inhabit Kliptown. Soon after, the government uprooted Adanna and her neighbors and relocated them to townships designated for their specific racial and ethnic groups. After forcing Adanna and her brother to move to Soweto (the township designated

<sup>1</sup> Confidential Interview: Adanna, Gauteng, South Africa (2008).

for Africans), the government demolished the two properties that they inherited from Ma Zwane and gave them only nominal compensation. With a heavy heart Adanna remembered, “when you own something, you feel proud that you have got something. But, when they take that away from you, you feel naked . . . You feel as if you are stripped naked. You are nothing.”<sup>2</sup> The bulldozers that razed Kliptown did not just demolish physical buildings, they destroyed Adanna’s vibrant community, stole her inheritance, and denied her dignity. The destruction and relocation was part of the apartheid regime’s strategy to subjugate blacks and cement their position as sub persons in the polity.

In many ways, Adanna’s story is not unique. South Africa is not the only nation where one group of people has subjugated another and stripped them of their property and dignity. History is replete with examples. The conflicts in Rwanda and Iraq are recent examples of this enduring historical trend. In the 1994 Rwandan genocide, the presidential guard initiated the mass killing of Tutsis in retaliation for the fatal attack on the plane of Hutu President Juvenal Habyarimana. Hutus massacred about 800,000 Tutsis and stole their property.<sup>3</sup> Leading up to the killing spree, Tutsis were dehumanized and equated to cockroaches that deserved to be exterminated.<sup>4</sup> Now, as the nation recovers from these horrendous events and seeks to promote peace, one of Rwanda’s central challenges has been to deal with the survivors who were displaced from their homes and property, and denied their dignity.

Similarly, during several waves of dispossession, the Arab Socialist Ba’ath party in Iraq oppressed and displaced its opponents as well as Kurds, Shiites, Turkmen, and Assyrians. The first wave was the Arabization campaign in which the state forced Kurds to leave their homes and farms.<sup>5</sup> The state then transferred the properties to Sunni Arabs from the South, ultimately displacing approximately 600,000 to

<sup>2</sup> Confidential Interview: Adanna, Gauteng, South Africa (2008).

<sup>3</sup> Nigel Eltringham, *Accounting for Horror: Post-Genocide Debates in Rwanda* (London: Pluto Press, 2004), xl; Mark A. Drumbl, “Punishment, Postgenocide: From Guilt to Shame to ‘Civis’ in Rwanda,” *New York University Law Review* 75/1221 (2000), 1249–50, noting that some Hutu “pillaged, stole, ransacked, and appropriated property from homes in which Tutsi had been killed or from which they had fled”; Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (Princeton: Princeton University Press, 2001), citing a USAID-commissioned study which attributes conflicts between neighbors to land scarcity, the author concludes by saying “[d]isputes over land are reported to have been a major motivation for Rwandans to denounce neighbors during the ethnic conflicts of 1994.”

<sup>4</sup> Llezlie L. Green, “Propaganda and Sexual Violence in the Rwandan Genocide: An Argument for Intersectionality in International Law,” *Columbia Human Rights Law Review* 33/733 (2002), discussing the role that radio transmissions played inciting hatred against the Tutsi and citing one broadcast that said, “You [Tutsi] cockroaches must know you are made of flesh! We won’t let you kill! We will kill you!”; Philip Verwimp, “Death and Survival during the 1994 Genocide in Rwanda,” *Population Studies* 58/233 (2004), stating that the violence against Tutsis was not spontaneous but the result of direction and organization of the national elite.

<sup>5</sup> They did this by not allowing Kurds to purchase property, renew licenses for economic activities, or attend school, as well as by confiscating their oil for food ration cards, dismissing them from employment, arresting their family members, and destroying their homes. John Fawcett and Victor Tanner, *Brooking Institution-SAIS project on Internal Displacement: The Internally Displaced People of Iraq* (October 2002), 9, available at <<http://www.brookings.edu/fp/projects/IDP/articles/iraqreport.pdf>>.

800,000 Kurds.<sup>6</sup> Kurds were deprived of their property and dignity. Upon the assassination of Saddam Hussein, the Ba'athist reign of terror ended and an estimated 500,000 people returned to the homes and farms confiscated by the Ba'athist state.<sup>7</sup> To avoid further conflict, the new Iraqi state must find ways to peacefully resolve disputes between past and current owners.

In South Africa, Rwanda, Iraq, and numerous other nations, when the wars stopped, apartheid and colonialism fell, the dictatorships ended, and the genocides halted, the governments that emerged from the ashes had to navigate the perilous landscape surrounding the return of land and other property to displaced or decimated populations. These nations had a choice: they could ignore the fact that people were deprived of their property and dignity, or they could address it. Many states have taken action. Iraq, Colombia, South Africa, Nicaragua, the United States, Canada, Australia, Germany, the Czech Republic, Hungary, France, the Netherlands, Kosovo, and the Baltic Republics are among the many states that have provided a remedy for past property dispossession that occurred during war, communism, or conquest.<sup>8</sup>

When a state takes an individual or community's property, the appropriate remedy is to return the property or to provide just compensation, which is most commonly calculated based on the market value of the property rights confiscated.<sup>9</sup> But, under certain circumstances, the state has done more than confiscate property—it has also denied the dispossessed their dignity. I have coined the term dignity takings to describe this phenomenon. *Dignity takings* are when a state directly or indirectly destroys or confiscates property rights from owners or occupiers whom it deems to be sub persons without paying just compensation or without a legitimate public purpose.<sup>10</sup> I argue that a comprehensive remedy for dignity takings entails what

<sup>6</sup> Fawcett and Tanner, *The Internally Displaced People of Iraq*, 16; International Crisis Group, see <<http://www.crisisgroup.org/en/publication-type/key-issues/research-resources/conflict-histories/iraq.aspx>>.

<sup>7</sup> Deborah Isser and Peter Van der Auweraert, *United States Institute of Peace Special Report: Land, Property, and the Challenge of Return for Iraq's Displaced* (April 2009), 3.

<sup>8</sup> Mark Everingham, "Agricultural Property Rights and Political Change in Nicaragua," *Latin America Politics and Society* 43/61 (2001); Frank Rainer, "Privatization in Eastern Germany: A Comprehensive Study," *Vanderbilt Journal of Transnational Law* 27/809 (1994); Nicolas J. Gutierrez, Jr., "Righting Old Wrongs: A Survey of Restitution Schemes for Possible Application to a Democratic Cuba," *Miami Year Book of International Law* 4/111 (1995), providing a review of restitution programs used in the Baltic Republics, Bulgaria, the Czech Republic, East Germany, Hungary, Nicaragua, Poland, Romania, and Slovakia; Mariana Karadjova, "Property Restitution in Eastern Europe: Domestic and International Human Rights Law Responses," *Review of Central and Eastern European Law* 29/235 (2004); Bernadette Atuahene, "Property Rights and the Demands of Transformation," *Michigan International Law Journal* 31/765 (2010).

<sup>9</sup> Yun-chien Chang, "Economic Value or Fair Market Value: What Form of Takings Compensation is Efficient?" *Supreme Court Economic Review* 20/35 (2012); Robert Innes, "Takings Compensation and Equal Treatment for Owners of Developed and Undeveloped Property," *Journal of Law and Economics* 40/403 (1997), 430–2.

<sup>10</sup> Bernadette Atuahene, "From Reparation to Restoration: Moving beyond Restoring Property Rights to Restoring Political and Economic Visibility," *Southern Methodist University Law Review* 60/1419 (2007). Property-induced invisibility was the term I used in my prior work. Through empirical interrogation, property-induced invisibility evolved into dignity takings.

I call *dignity restoration*—compensation that addresses both the economic harms and the dignity deprivations involved.

International law and most programs aimed at remedying past property seizures have focused on reparations rather than dignity restoration.<sup>11</sup> *Reparations* is “the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them.”<sup>12</sup> The focus of reparations is reimbursement for the property taken (i.e. the outcome). In contrast, dignity restoration is based on principles of restorative justice and thus seeks to rehabilitate the dispossessed and reintegrate them into the fabric of society through an emphasis on process. As John Braithwaite states, restorative justice is interested in “restoring property loss, restoring injury, restoring a sense of security, restoring dignity, restoring a sense of empowerment, restoring deliberate democracy, restoring harmony based on a feeling that justice has been done, and restoring social support.”<sup>13</sup> When reparations and restorative justice are married, dignity restoration is the offspring of this formidable union.

Most states that have addressed past property violations have not undertaken dignity restoration because it is a more time-consuming, complicated, and expensive remedy than reparations. South Africa’s colonial and apartheid-era land dispossessions are a quintessential example of dignity takings, and the post-apartheid government is unique because it has tried to move beyond reparations to facilitate dignity restoration. It understood its land restitution program as an opportunity to restore property as well as dignity to its black citizens.<sup>14</sup> Consequently, this book uses the South African case to empirically explore the nation’s attempt to facilitate dignity restoration.

In South Africa and many other nations, dignity takings occurred within a larger process of subjugation that included the use of death, disappearance, torture,

<sup>11</sup> Atuahene, “From Reparation to Restoration,” 1444; Scott Leckie, “Housing and Property Issues for Refugees and Internally Displaced Persons in the Context of Return: Key Considerations for UNHCR Policy and Practice,” *Refugee Survey Quarterly* 2/5 (2000).

<sup>12</sup> United Nations, *Report of the Committee on the Elimination of Racial Discrimination*, UN Document A/51/18 (16 August 1996), §2(c); Charles J. Ogletree Jr., “The Current Reparations Debate,” *U.C. Davis Law Review* 36/1051 (2003), 1055. Ogletree emphasizes four features of reparations: “1. A focus on the past to account for the present; 2. A focus on the present, to reveal the continuing existence of race-based discrimination; 3. An accounting of past harms or injuries that have not been compensated; and 4. A challenge to society to devise ways to respond as a whole to the uncompensated harms identified in point three.” Eric A. Posner and Adrian Vermeule, “Reparations for Slavery and Other Historical Injustices,” *Columbia Law Review* 103/689 (2003), 691, asserting that “paradigmatic examples of reparations typically refer to schemes that (1) provide payment (in cash or in kind) to a large group of claimants, (2) on the basis of wrongs that were substantively permissible under prevailing law when committed, (3) in which current law bars a compulsory remedy for the past wrong . . . and (4) in which the payment is justified on backward-looking grounds of corrective justice, rather than forward looking grounds such as the deterrence of future wrongdoing.” There are, however, a few authors whose definition of reparations involves restorative processes, but this is not the norm.

<sup>13</sup> John Braithwaite, “Restorative Justice: Assessing Optimistic and Pessimistic Accounts,” *Crime and Justice* 25/1 (1999), 6.

<sup>14</sup> *Land Affairs Department: Annual Report, 2001–2002* (2002), 7. Former Minister of Agriculture and Land Affairs Thoko Didiza explains that “the struggle for dignity, equality and a sense of belonging has been the driving force behind our work as the Land Claims Commission. . . .”

educational disruption, political exclusion, incarceration, sexual violence, and psychological terrorism. The taking of property both exacerbated and reflected the dispossessed group's subordinate position in the polity. As such, dignity restoration often occurs in tandem with other non-property related measures. For instance, in South Africa, the post-apartheid state has tried to remedy the full spectrum of dignity deprivations through several distinct, but interrelated measures. The Truth and Reconciliation Commission brought to light the political repression, psychological violence, death, and torture perpetrated under past regimes.<sup>15</sup> The post-apartheid constitution gave blacks civil, political, and socio-economic rights; and the Constitutional Court was the institution created to defend these newly acquired rights.<sup>16</sup> Affirmative action programs created opportunities for formerly disadvantaged groups whom prior regimes systematically excluded from opportunities in the public and private sectors. The post-apartheid state's attempts to facilitate dignity restoration have occurred in conjunction with these other efforts to upgrade blacks from their old status as sub persons to their new status as dignified members of the polity.

The central question that this book considers is: when there has been a dignity taking, what does dignity restoration require? There are, however, several normative questions that precede this. For instance, should a nation provide remedies for past dispossession? If so, what type of remedy is most appropriate: the return of land, monetary compensation, symbolic gestures, or apologies? Who should receive a remedy: people displaced during a specific time period? If so, which time period; and should their heirs qualify if those individuals are dead? How much financial compensation should a state pay when using its powers of eminent domain to take property from current owners and give it to dispossessed populations? Lastly, how should a nation decide all of this? Scholars have already developed a rich literature that addresses these very important questions.<sup>17</sup> Building upon this foundation, this book takes as its starting point those states which have decided to look backwards and provide a remedy for past dispossession.

There are several reasons that states have decided to remedy past property violations. The first is to protect human rights and promote justice. According to the Universal Declaration of Human Rights and other international jurisprudence,

<sup>15</sup> James L. Gibson, "The Contributions of Truth and Reconciliation: Lessons from South Africa," *The Journal of Conflict Resolution* 50/409 (2006); Jay A. Vora and Erika Vora, "The Effectiveness of South Africa's Truth and Reconciliation Commission: Perceptions of Xhosa, Afrikaner, and English South Africans," *Journal of Black Studies* 34/301 (2004), arguing that the TRC offered a way to separate the racism and violence of South Africa's past from the current government.

<sup>16</sup> Heinz Klug, *The Constitution of South Africa: A Contextual Analysis* (Oxford: Hart Publishing, 2010).

<sup>17</sup> Atuahene, "From Reparation to Restoration"; Bernadette Atuahene, "Things Fall Apart: The Illegitimacy of Property Rights in the Context of Past Theft," *Arizona Law Review* 51/829 (2009); Atuahene, "Property Rights and the Demands of Justice"; Bernadette Atuahene, "Property and Transitional Justice," *UCLA Law Review Discourse* 58/65 (2010); *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, Neil J. Kritz ed. (Washington, DC: United States Institute for Peace, 1995); Eric K. Yamamoto, Margaret Chon, Carol L. Izumi, and Frank H. Wu, *Race, Rights, and Reparation: Law of the Japanese American Internment* (New York: Aspen Publishers, 2001); Posner and Vermeule, "Reparations for Slavery".

a person arbitrarily deprived of property with no payment of just compensation is entitled to an effective remedy.<sup>18</sup> Another reason is that remedying past property violations can confer legitimacy on the state and its governing structures;<sup>19</sup> and building legitimacy is especially crucial after regime or leadership transitions. Also, states have decided to address past property violations because this is sometimes necessary to legitimize existing property arrangements. When property rights are systematically acquired by theft, it is difficult to justify state protection of these illegitimately acquired rights. Remedying past property violations sanitizes existing property rights and removes the stench of past theft. In addition, when current and past owners have rights to the same property, ownership is contested, property rights are unclear, and economic development is hindered.<sup>20</sup> By remedying past property violations, states can clarify existing property rights and promote economic development.

Finally, states have decided to remedy past property violations because a failure to do so can potentially imperil current stability.<sup>21</sup> South Africa is the perfect case in point because its failure to rectify its land inequality is like a sea of oil waiting for a match. In one of the most impressive public opinion studies on land reform in South Africa to date, James Gibson surveyed 3,700 South Africans and found that 85 percent of black respondents believed that “most land in South Africa

<sup>18</sup> *Universal Declaration of Human Rights*, General Assembly Resolution 217A (1948), 71. U.N. GAOR, 3rd Session, 1st plenary meeting, U.N. Document A/810 (12 December 1948). It asserts that a person arbitrarily deprived of her property with no just compensation is entitled to an effective remedy. *Universal Declaration*, article 17 paragraph 2, stating, “No one shall be arbitrarily deprived of his property”; *Universal Declaration*, article 8, stating, “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”; *Factory at Chorzow (Germ. v. Pol.)*, 1927 P.C.I.J. (ser. A) No. 9 (July 26). There is, however, some debate as to whether this right to a remedy applies to historic wrongs or if it is time limited. Jon Elster, “On Doing What One Can: An Argument against Post-Communist Restitution and Retribution,” *Eastern Europe Constitutional Review* 15 (1992), 15, arguing that restitution after a long duration of time has passed is only appropriate when all guilty parties can be punished without inconsistencies; Jeremy Waldron, “Superseding Historic Injustice,” *Ethics* 103/4 (1992), 6–7.

<sup>19</sup> All governments require a threshold level of legitimacy for citizens to obey the law without excessive coercion. Atuahene, “Things Fall Apart,” 829; Alan Hyde, “The Concept of Legitimation in the Sociology of Law,” *Wisconsin Law Review* 379 (1983); John Simmons, “Justification and Legitimacy,” *Ethics* 109/739 (1999); Tom R. Tyler, “Psychological Perspectives on Legitimacy and Legitimation,” *Annual Review of Psychology* 57/375 (2006).

<sup>20</sup> Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (New York: Basic Books, 2000); Daron Acemoglu and James Robinson, *Why Nations Fail: Origins of Power, Poverty and Prosperity* (New York: Random House, 2012); Roy L. Prosterman and Jeffrey M. Riedinger, *Land Reform and Democratic Development* (Baltimore: The Johns Hopkins University Press, 1987), 74–7 and 94–8. Stable land tenure has been linked to increased agricultural productivity and an increased Birth-and-Death-Based-Modernization Index rating, which signifies a higher level of development.

<sup>21</sup> Atuahene, “Things Fall Apart”; Luke Zunga, *Farm Invasions in Zimbabwe: What Lessons for Democracy in Africa?* (Ferndale: Truth House Publishing, 2011); Deena I. Abu-Lughod, “Failed Buyout: Land Rights for Contra Veterans in Postwar Nicaragua,” *Latin American Perspectives* 27/32 (2000); Michael Fishbach, “Settling Historical Land Claims in the Wake of Arab-Israeli Peace,” *Journal of Palestine Studies* 27.1/38 (1997); Saskia van Hoyweghen, “The Urgency of Land and Agrarian Reform in Rwanda,” *African Affairs* 98/353 (1999).

was taken unfairly by white settlers, and they therefore have no right to the land today.”<sup>22</sup>

Gibson’s most troubling finding was that two of every three blacks agreed that “land must be returned to blacks in South Africa, no matter what the consequences are for the current owners and for political stability in the country.”<sup>23</sup> According to Gibson’s data, most blacks, whether they live in rural or urban areas, see the land as stolen and want it back even if redistribution will provoke political unrest. If the post-apartheid state does not adequately address past land injustice, current stability may be in jeopardy.<sup>24</sup>

For all of these reasons, South Africa’s post-apartheid state has decided to look backwards and address the dignity takings that occurred under colonialism and apartheid.

## I. Brief history of dignity takings in South Africa

The first European land seizures in South African history began with the founding of the Cape Station by the Dutch East India Company (VOC) in March 1651.<sup>25</sup> The VOC gave the native population the option of leaving or remaining on their land as the servants of the Dutch.<sup>26</sup> In 1679 the VOC began to pursue a more active land acquisition policy, which granted white settlers land as long as it was brought into cultivation within three years.<sup>27</sup> The VOC acquired this land from natives through brute force or sometimes through purchase from community leaders. But, since these leaders were unfamiliar with Dutch law or the concept of the permanent sale of land, some scholars have concluded that the early land purchase deals were based on deceit.<sup>28</sup> The British conquest of the Dutch colony in 1806 did not lead to any changes to the racially oppressive land policies existing at the time.<sup>29</sup>

<sup>22</sup> James L. Gibson, *Overcoming Historical Injustices: Land Reconciliation in South Africa* (New York: Cambridge University Press, 2010), 31.

<sup>23</sup> Gibson, *Overcoming Historical Injustices*, 32.

<sup>24</sup> Mark Lichbach, “Will Rational People Rebel against Inequality?: Samson’s Choice,” *American Journal of Political Science* 34/1049 (1990); Manus Midlarsky, “Rulers and the Ruled: Patterned Inequality and the Onset of Mass Political Violence,” *American Political Science Review*. 82/491 (1988); Edward Muller et. al., “Land Inequality and Political Violence,” *American Political Science Review* 83/577 (1989).

<sup>25</sup> M.F. Katzen, “White Settlers and the Origin of a New Society, 1652–1778,” *The Oxford History of South Africa: Volume I, South Africa to 1870*, Monica Wilson and Leonard Thompson eds. (Oxford: Oxford University Press, 1969), 187–9; Michael A. Yanou, *Dispossession and Access to Land in South Africa: An African Perspective* (Mankon: Langaa Research & Publishing Common Initiative Group, 2009), 9–10.

<sup>26</sup> Leonard Thompson, *History of South Africa*, 3rd edn (New Haven: Yale University Press, 2001), 31–2.

<sup>27</sup> Leonard Guelke, “Frontier Settlement in Early Dutch South Africa,” *Annals of the Association of American Geographers* 66/25 (1976), 25–42, 29.

<sup>28</sup> Michael Robertson, *Land and Post Apartheid Reconstruction in South Africa* (Oxford: Oxford University Press, 1998), 304–5; Yanou, *Dispossession and Access*, 10–11.

<sup>29</sup> Thompson, *History of South Africa*, 52–7.

In fact, land dispossession accelerated as the British conquered new communities and took the best land for themselves.<sup>30</sup>

Native populations did not give up their lands easily and fought several wars to resist British encroachment. For instance, in 1834 under the leadership of Gcaleka, the Xhosa waged a guerrilla war against the British. While initially successful in driving the British back, the arrival of British reinforcements led to the defeat of the Xhosa and the execution of Gcaleka.<sup>31</sup> Despite their valiant efforts, native populations ultimately were decimated by smallpox, retreated inland, or remained under colonial authority. Those natives under colonial rule were forced into servitude as herdsmen, domestic servants, or agricultural laborers, and many had to pay the colonists rent, tax (in the form of a share of their produce), or labor service.<sup>32</sup>

Since the early nineteenth century, British officials used forced removals and relocations as a way to assert colonial authority and control the indigenous population. But, soon after the union of South Africa was formed in 1910, the land seizures and relocations took a decidedly legal turn. The 1913 Natives Land Act led to only 7 percent of the country's land being reserved for "natives."<sup>33</sup> The 1936 Native Trust and Land Act eventually expanded this number to 13 percent.<sup>34</sup> The acts forbade Africans from purchasing or renting land outside of the reserves, which relegated Africans to being labor tenants or full-time employees on 87 percent of their native land. Land plots situated outside of the designated reserves and purchased prior to 1913 were called black spots and remained under the constant threat of eviction.<sup>35</sup> Consequently, one scholar remarked that "[t]he Natives Land Act thus turned into law the process of dispossessing Africans of their land that had been going on for the past 200 years. Law, not war, was the final means of conquest."<sup>36</sup>

The twentieth century brought with it industrialization and urbanization, and shifted the center of economic activity from rural to urban areas.<sup>37</sup> Although the newly formed South African state encouraged Africans to labor in urban areas, they were not supposed to plant roots there. The motivating ideology was that Africans, like farm animals, did not belong in the city, but rather in the rural areas. This ideology was most influentially articulated in 1922 by the Transvaal Local

<sup>30</sup> Monica Wilson, "Co-operation and Conflict: The Eastern Cape Frontier," *The Oxford History of South Africa: Volume I, South Africa to 1870*, Monica Wilson and Leonard Thompson eds. (Oxford: Oxford University Press, 1969), 242–3; Thompson, *History of South Africa*, 37–9.

<sup>31</sup> Thompson, *History of South Africa*, 75–6.

<sup>32</sup> Katzen, "Origin of a New Society," 184; Thompson, *History of South Africa*, 110–11.

<sup>33</sup> *Natives Land Act 27* (1913).

<sup>34</sup> *Native Trust and Land Act 18* (1936).

<sup>35</sup> Bradley Skelcher, "Apartheid and the Removal of Black Spots from Lake Bhangazi in Kwazulu-Natal, South Africa," *Journal of Black Studies* 33/761 (2003), describing the removal of a black spot in KwaZulu-Natal from 1956 to 1974.

<sup>36</sup> Zohra Dawood, "Race and Space: Dispossession through the Group Areas Act," *Surplus People Project* 85 (1994).

<sup>37</sup> Saskia Sassen, "Cities Today: New Frontier for Major Developments," *Annals of the American Academy of Political and Social Science* 626/53 (2009), 53–4 and 67–8, asserting that even as heavy industry, which initially grew urban centers, wanes cities will continue to be the focus of growth as structural reliance on service sectors located in urban areas will drive their growth.

Government Commission chaired by Colonel C.F. Stallard—popularly known as the Stallard Commission. This commission concluded that the African should only enter the city “when he [was] willing to enter and to minister to the needs of the white man” and should be forced to depart “when he [ceased] so to minister.”<sup>38</sup> Scholars have offered different rationales for the impetus behind laws and policies that assumed whites were natural urbanites and Africans congenital rural dwellers; the most prominent being military considerations, political domination, and capital accumulation.<sup>39</sup> As agriculture began to lose its dominance and urban economies became more lucrative, the state used a complicated web of mutually reinforcing laws to minimize and control black presence in urban areas.

The first major law that sought to regulate African presence in urban areas was the Natives (Urban Areas) Act of 1923, which expanded the number of urban locations where the state could compel natives to move. Natives could occupy, but not purchase a residence in these urban locations, which came to be called “townships” or “locations.”<sup>40</sup> This act allowed those Africans who qualified under section 10 of the act as amended to temporarily reside in the townships only with a pass in hand at all times; and it allowed only domestic servants to live in town.<sup>41</sup> The Urban Areas Act ensured that there was no settled African urban labor force, and thus created a pool of vulnerable migrant laborers who, at any moment, could be sent to the native reserves and deprived of their livelihood. This vulnerability made African laborers less likely to organize and strike for better wages, which minimized the risk to white supremacy that a pool of empowered African laborers would pose.<sup>42</sup>

The urban locations set aside for African laborers were often deplorable slums. In *African Population Relocation in South Africa*, Maré describes what people endured when they relocated to the township of Nondweni: “People were moved on trucks and excess possessions had to be left behind . . . [T]he pit toilets filled up with water because the ground is not sufficiently porous; cases of typhoid fever, malnutrition related diseases and pneumonia occur frequently.”<sup>43</sup> In the 1920s, there were initial attempts to clear the slums and build model townships near urban areas, but these failed to remedy the overcrowding because they were not large enough to accommodate the influx of migrants to the cities.

<sup>38</sup> T.R.H. Davenport, *The Beginnings of Urban Segregation in South Africa: The Natives (Urban Areas) Act of 1923 and its Background*, (Grahamstown: Institute of Social and Economic Research, 1971).

<sup>39</sup> Paul Maylam, “Explaining the Apartheid City: 20 Years of South African Urban Historiography,” *Journal of Southern African Studies* 21/19 (1995), 24.

<sup>40</sup> *The Natives (Urban Areas) Act* (1923) was amended and expanded in 1930, 1937, 1944, 1952, 1955, 1956, 1957, 1964, and 1971. The *Natives (Urban Areas) Consolidation Act* (1945) had the same restrictions as the 1923 Act, but established section 10 rights.

<sup>41</sup> Davenport, *Beginnings of Urban Segregation*, 78.

<sup>42</sup> Elaine Unterhalter, *Forced Removal: The Division, Segregation and Control of the People of South Africa* (London: International Defense and Aid Fund Publication Ltd., 1987).

<sup>43</sup> G. Maré, *African Population Relocation in South Africa* (Johannesburg: The South Africa Institute of Race Relations, 2000), 15.

Consequently, African workers and their families were forced to live in overcrowded, unventilated rooms with no provision for sanitation.<sup>44</sup>

The Native Administration Act of 1927 was the next major law responsible for the dislocation of Africans in urban areas.<sup>45</sup> Prior to 1927, each jurisdiction had its own policies for removing Africans, some jurisdictions being more aggressive than others. As a result, the act centralized the state's power by allowing the Governor-General—whom the Act deemed the Supreme Chief of all natives—to remove any “tribe or Native” as he deemed necessary for the public interest.<sup>46</sup>

Seven years later, the state pursued more creative grounds to dislocate urban Africans. Under the guise of a public health measure, the 1934 Slums Act further consolidated the presence of Africans in urban areas.<sup>47</sup> The Act created a standard for housing and allowed the government to clear and seize any property falling below this standard.<sup>48</sup> Instead of resolving the problem of slums, the Act simply created new shantytowns far from the city center, which had inadequate housing, forcing many Africans and coloureds to illegally squat. The crowded, substandard conditions promoted illegal activities as people sought to eke out an existence.<sup>49</sup>

The Nationalist party came to power in 1948 and escalated the existing system of apartheid.<sup>50</sup> The apartheid regime forcibly removed millions of urban blacks from their homes and property in order to create a society where each race and ethnic group lived separately. The apartheid government enacted the Group Areas Act of 1950 and 1957, which assigned each ethnic group an area where only they could live, own property, and conduct business.<sup>51</sup> Whites, Asians, coloureds, Xhosa, Tswana, Venda, Pedi, Swazi, Zulu, and South Sotho each became pieces of a racial and ethnic jigsaw puzzle, and with great force and destruction, the government attempted to move the pieces of the puzzle so that every group was in their “proper” place. A civil society organization, the Surplus People's Project, reported that the Group Areas Act was responsible for most of the relocations in urban areas,

<sup>44</sup> Nigel Worden, *The Making of Modern South Africa: Conquest, Apartheid and Democracy*, 4th edn (Oxford: Blackwell Publishing, 2007), 67–9.

<sup>45</sup> *The Native Administration Act 38 (1927)*.

<sup>46</sup> Leonard Lazar, “Legal Centralism in South Africa,” *The International and Comparative Law Quarterly* 19/492 (1970), 495.

<sup>47</sup> Maylam, “Explaining the Apartheid City,” 27.

<sup>48</sup> Gibson, *Overcoming Historical Injustices*, 13. As part of the Act, loans were made available for communities to build new housing for all races, but the program was rarely used to provide housing for Africans or coloureds; Welsh, “The Growth of Towns,” 234–5.

<sup>49</sup> Worden, *Making of Modern South Africa*, 69; David Welsh, “The Growth of Towns,” *Oxford History of South Africa, Volume II, South Africa 1870-1966* (Oxford: Oxford University Press, 1971), 235–6.

<sup>50</sup> Saul Dubow, “Afrikaner Nationalism, Apartheid and the Conceptualization of ‘Race,’” *Journal of African History* 33/209 (1992). “In the case of apartheid, racist ideology both reflected and grew out of already existing notions of human difference. But, in helping to systematize and rationalize such assumptions, it also worked to entrench them legislatively and ideologically.”

<sup>51</sup> David Welsh, *The Rise and Fall of Apartheid* (Charlottesville: University of Virginia Press, 2009), 55, asserting that the Group Areas Act was a key part of segregation as it covered all races and replaced existing legislation with a unified system; Alan Mabin, “Comprehensive Segregation: the Origins of the Group Areas Act and its Planning Apparatus,” *Journal of Southern African Studies* 18/405 (1992).

displacing about 860,400 people.<sup>52</sup> The apartheid government transferred seized property to a different racial or ethnic group for residential occupation, sold it for commercial or industrial purposes, or kept the land for governmental use.<sup>53</sup>

By 1950, previous laws already relegated Africans to either rural reserves or urban locations on the city's periphery, so the Group Areas Act mainly affected Indians and coloureds who had been long established and intermixed in urban areas. Yet, some African communities were also affected by the Group Areas Act. For instance, from 1900 to 1965 a community in Simonstown called Luyolo was the only permanent African location in the Cape Peninsula. Luyolo's 1,600 male residents worked primarily at the nearby port and quarry and the women worked as domestic servants in and around town.<sup>54</sup> Mr. Rabodila, a former resident of Luyolo township, lamented the impact of the Group Areas Act on his community:

I was born in Luyolo, yes. Luyolo location in Simonstown and I grew up there and it was a very nice place—vibrant . . . Then, we were a closely knit community; very close. We were not a big location. It was a small, small location, yes. But, as the years go by, when the apartheid government took over, they started now to forcefully remove all the African people from the towns and they all dumped us in Gugulethu . . . And there now people and families were broken down and people are now trying to come to terms with the new environment because it was a desert of a place, yes. But anyway, we couldn't do otherwise because it was the system then which was applied. And to tell you the honest truth, things were never the same again because that was the most cruel law of apartheid. They call it the Group Areas Act. That was the most [pause] it dealt a big blow to African people and that is why we are in this plight, yes.<sup>55</sup>

Throughout the 1960s, the apartheid state “deproclaimed” (i.e. eradicated) townships, particularly in Transvaal and Orange Free State, further decimating an already embattled urban African presence.<sup>56</sup> It started in 1955 when the Tomlinson Commission established Bantustans or Homelands, which were purportedly autonomous nation states that the apartheid government set aside for different African ethnic groups. Townships were deproclaimed and Africans were forced to move to the Bantustans if their townships were within 75km or less of them. Accordingly, “[i]t was calculated in 1983 that throughout the Republic 730,000 people had been forced to move through the policy of deproclaiming townships, and that a further 184,000 people were under threat of removal.”<sup>57</sup>

In a further blow to the land rights of Africans living in urban areas, in 1968, the apartheid government abolished the thirty-year leasehold—a quasi-form of

<sup>52</sup> Laurin Platzky and Cheryl Walker, *The Surplus People: Forced Removals in South Africa* (Johannesburg: Ravan Press, 1985).

<sup>53</sup> Elizabeth S. Landis, “South African Apartheid Legislation I: Fundamental Structure,” *Yale Law Journal* 71/1 (1961), 21–4, describing the sale of seized land after three months to any individual or company that was racially allowed to buy it, for companies this meant that the controlling interest of the company had to be of the appropriate race.

<sup>54</sup> Dawood, “Race and Space.”

<sup>55</sup> Confidential Interview: Rabodila, Western Cape, South Africa (2008).

<sup>56</sup> Platzky and Walker, *The Surplus People*, 33.

<sup>57</sup> Platzky and Walker, *The Surplus People*, 33.

ownership.<sup>58</sup> Also, for Africans who had managed to own homes, the state denied them the ability to bequeath their houses to their heirs.<sup>59</sup> The apartheid regime also discontinued the provision of sub-economic housing for Africans and abolished the provision of family accommodations, resulting in an 186,000 housing shortfall in urban townships by 1980.<sup>60</sup> Consequently, even when the apartheid state did not formally deproclaim their townships, many Africans were forced to abandon the townships and move to the Bantustans due to limited housing options.

As demonstrated by this brief history, from 1651 to the demise of apartheid in 1994, the colonial and apartheid states used a well-orchestrated symphony of laws and brute force to dispossess blacks. As a result, in 1994, whites owned about 87 percent of the land although they constituted less than 10 percent of the population.<sup>61</sup> There was one unifying chord over the centuries—dispossession was part of a larger strategy to subjugate blacks whom white authorities considered sub persons not worthy of full and equal inclusion in the political community.

Mr. Carol—a coloured man from the community of Die Eiland—lamented: “I suffered because of apartheid because of segregation . . . I was a second class citizen, even worse than that. I don’t think you will ever know what it really was like not to be treated as people. Not to be treated as human beings.”<sup>62</sup> Historian Leonard Thompson explained how whites justified this subhuman treatment:

Virtually all the Whites in the region, in common with their contemporaries in Europe and the Americas, regarded themselves as belonging to a superior, Christian, civilized race and believed that, as such, they were justified in appropriating native land, controlling native labor and subordinating native authorities.<sup>63</sup>

The historical record is clear: the dispossessions in South Africa were part of a larger strategy that dehumanized and infantilized blacks—they were dignity takings.

After a long, hard-fought struggle, apartheid ended and a multiracial democracy committed to justice and human rights was born.<sup>64</sup> Like many other states in transition, the new South African state had a choice: it could either address past land theft or ignore it. Under the leadership of President Nelson Mandela, the state decided to address it. An important part of the post-apartheid state’s strategy was

<sup>58</sup> T.R.H. Davenport, *South Africa: A Modern History* (New York: Macmillan Press, 1977), 342. The leaseholds were originally granted during World War II, but not made available for renewal and local governments were pressured to purchase the leased property.

<sup>59</sup> Pauline Morris and Sheila T. van der Horst, “Urban Housing,” Sheila T. Van der Horst and Jane Reid eds., *Race Discrimination in South Africa*, (Cape Town: David Phillip Publishers, 1981), 94.

<sup>60</sup> *Survey of Race Relations in South Africa* (1980), 310.

<sup>61</sup> Johan van Rooyen and Bongiwé Njobe-Mbuli, “Access to Land: Selecting the Beneficiaries,” *Agricultural Land Reform in South Africa: Policies, Markets and Mechanisms*, Johan van Zyl, Johann Kirsten, and Hans P. Binswanger eds. (Cape Town: Oxford University Press, 1996), 461; Cheryl Harris, “Whiteness as Property,” *Harvard Law Review* 106/1707 (1993).

<sup>62</sup> Confidential Interview: Carol, Western Cape, South Africa (2008).

<sup>63</sup> Thompson, *History of South Africa*, 122.

<sup>64</sup> P. Eric Louw, *The Rise, Fall, and Legacy of Apartheid* (Westport, CT: Praeger, 2004), 107–57, describing the resistance by the ANC and PAC to apartheid by non-violent means, direct action, and armed resistance from the 1940s until the 1980s; Walter Sisulu, *The Road to Liberation: 30th T.B. Davie Memorial Lecture* (Cape Town: University of Cape Town, 1990), 5, calling for a peaceful transition out of apartheid and describing the ANC’s commitment to it.

section 25.7 of the South African constitution, which mandates 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.”<sup>65</sup> The Commission on the Restitution of Land Rights (otherwise known as the commission) was the administrative agency charged with making this constitutional promise a reality.

An enormously complicated task lay before the commission because a comprehensive remedy for past property injustices in South Africa required more than providing compensation for physical takings. It involved confronting the underlying dehumanization, infantilization, and political and economic exclusion that enabled these dignity takings. That is, it involved dignity restoration. The following section describes the methods I used to investigate the circumstances under which the commission facilitated dignity restoration and when it did not.

## II. Methodology

This book introduces the terms dignity takings and dignity restoration and uses empirical methods to develop the concepts. The primary data source was in-depth, semi-structured interviews of people who participated in the South African land restitution program. The book purposely privileges their voices and perspectives so that the reader can hear from people who are often not given a platform to speak.

I completed 141 semi-structured interviews of 151 urban claimants, which lasted between thirty and ninety minutes each. These interviews were audio taped, transcribed, and conducted with the promise of confidentiality (pseudonyms mask the respondents’ identities). I conducted 80 percent of these interviews entirely in English and used a translator when the respondent was not comfortable speaking in English. All interviews took place in person and not over the phone. I conducted most interviews one person at a time, but in a few instances I used focus groups.

In addition to the semi-structured interviews, I relied on three other sources of data. First, I conducted twenty-six semi-structured interviews of bureaucrats, whom I refer to as *commission officials*, working in the central land claims commission as well as in the Gauteng and Western Cape regional land claims commissions. Each interview lasted between thirty and ninety minutes, was audio taped and transcribed, but not confidential. Second, I occupied an office in the central land claims commission in Pretoria and conducted participant observation for seven months. I was in South Africa from February to August of 2008 to conduct all fieldwork.<sup>66</sup> Third, I utilized secondary sources such as government documents, books, newspapers, and academic articles.

<sup>65</sup> *Constitution of the Republic of South Africa*, (1996) §25(7).

<sup>66</sup> The research was funded primarily by the Council on Foreign Relations International Affairs Fellowship and the American Bar Foundation. The Land Restitution Commission provided supplementary funding.

The existing literature and public conversation about land reform has focused primarily on rural claims,<sup>67</sup> and thus this book fills an important gap because it focuses on property rights violations that occurred in urban areas. 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, industrialization and urbanization moved the locus of power from rural to urban areas.<sup>68</sup> The power of white authorities was predicated upon their ability to control these burgeoning urban spaces, so urban dislocation was key to the subjugation of blacks and maintenance of white power.<sup>69</sup> Also, urban dispossession is important because it affected a significant portion of the South African population. While there are no exact numbers, it is estimated that 3.5 million people were forcibly removed from urban areas as a result of only one of the many laws used—the Group Areas Act.<sup>70</sup> Lastly, it is important to focus on urban claimants because they accounted for 33 percent of the 1,551,249 people who benefited from restitution awards as of 2008.<sup>71</sup>

To investigate the impact of the remedies provided to those forcibly removed from urban areas, I first selected communities removed in the Gauteng and Western Cape provinces (see Figures I.1, I.2, and I.3). Included in the sample are communities in or near Johannesburg, Soweto, Pretoria, and Cape Town, which are among South Africa's largest cities. The selected communities captured the full range of respondent types including: Africans, coloureds, Asians, and whites; former tenants and owners; people who received financial compensation, land, and housing; and people who received financial compensation of varying amounts.

<sup>67</sup> Derick Fay and Deborah James, *The Rights and Wrongs of Land Restitution: "Restoring What Was Ours"* (Abingdon: Routledge-Cavendish, 2008); Ruth Hall, "Land Restitution in South Africa: Rights, Development, and the Restrained State," *Canadian Journal of African Studies* 38/654 (2004); Deborah James, *Gaining Ground?: Rights and Property in South African Land Reform* (Abingdon: Routledge-Cavendish, 2009); Edward Lahiff, *Land Reform in South Africa: A Status Report*, (Cape Town: Programme for Land and Agrarian Studies, 2009); Susan Tilley, *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries* (Cape Town: Programme on Land and Agrarian Studies, 2007).

<sup>68</sup> Welsh, "The Growth of Towns," 172–3, describing the growth of urban centers in South Africa during the early twentieth century; Thompson, *History of South Africa*, 178–9, describing urbanization of South Africa in the early twentieth century.

<sup>69</sup> Paul Maylam, "The Rise and Decline of Urban Apartheid in South Africa," *African Affairs* 89/354 (1990), 59–62, describing the desire of white employers to control their African workers.

<sup>70</sup> Nkuzi Development Association and Social Surveys Africa, *Summary of Key Findings from the National Evictions Survey* (Social Surveys Africa, 2005), 4.

<sup>71</sup> *Land Affairs Department: Annual Report 2008–2009* (2009), 55. There were 65,642 urban claims settled to date which had benefited about 513,232 beneficiaries. There were 75,400 claims settled overall with 1,551,249 beneficiaries. *Land Affairs Department: Annual Report, 2002–2003* (2003), 20. There were 79,694 total claims of which 65,642 were from urban areas.

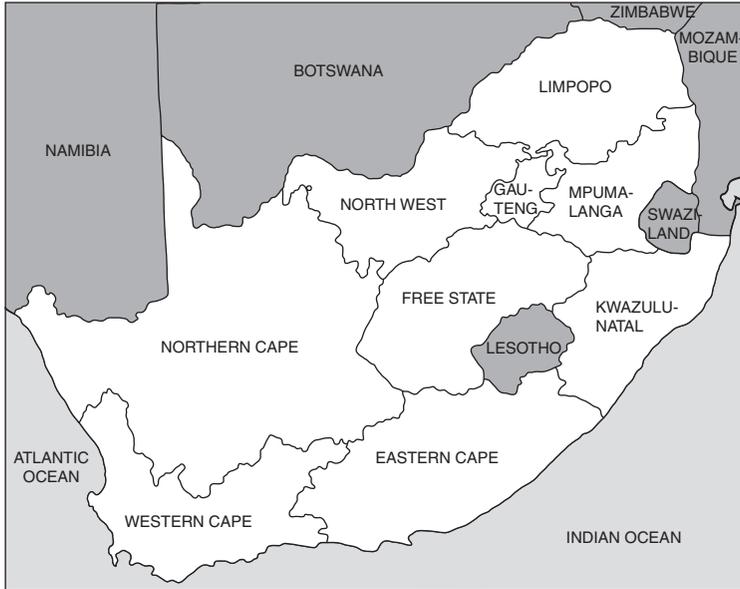


Fig. I.1 South Africa Provincial Map



Fig. I.2 Gauteng Province Map



Fig. I.3 Western Cape Province Map

I then randomly chose claimants from within these communities. The commission kept a list of people who had received financial compensation, which was organized by community and stated how much money each person received. A separate list of names identified people who had received land or housing and indicated the plot of land or house they received. I chose every fifth person from these lists and requested that the records department in the regional land claims commissions pull their files so that I could secure the claimants' telephone numbers. Then either a translator or I called each randomly chosen claimant to schedule an interview. About three-quarters of the claimants had a working phone number on file with the commission's records department; and over 90 percent of these claimants agreed to be interviewed. Respondents identified the leaders within their communities, whom I interviewed and included in the sample as well. Figure I.4 describes the resulting interview sample.

The interviews produced lengthy transcripts full of thick descriptions and rich detail. The process of sorting and synthesizing the interview data resulted in seven categories: 1) nature and consequences of displacement; 2) level of control respondents had in the process; 3) impact of the restitution awards; 4) technical aspects of the process; 5) family dynamics; 6) community dynamics; and 7) views of the current government. Each of the seven categories had several codes into which we placed excerpts of each interview. For instance, the code "use of compensation" fell under the category "impact of the restitution awards." This code contained all

	Description	Number of Respondents	Percentage of Total
<b>Gender</b>	Female	65	46%
	Male	74	52%
	Mixed gender interview	2	1%
<b>Race</b>	African	64	45%
	Coloured	55	39%
	Indian	15	11%
	White	7	5%
<b>Age</b>	60 and under	55	39%
	61–75	68	48%
	76–100	18	13%
<b>Prior Occupancy Status</b>	Owner	56	40%
	Tenant	85	60%
<b>Region</b>	Gauteng	73	52%
	Western Cape	68	48%
<b>Relationship to Owner/Occupier</b>	Originally Dispossessed Individual	28	20%
	Child	86	61%
	Grandchild	26	18%
	Great-Grandchild	1	0.7%
<b>Level of Involvement</b>	Claimant	89	63%
	Community Leader	28	20%
	Direct descendant/beneficiary	21	15%
	Unassigned	3	2%
<b>Employment Status</b>	Working	54	38%
	Pensioner	71	50%
	Unemployed	15	11%
	Unassigned	1	0.7%
<b>Restitution Award</b>	Financial compensation	78	55%
	Land	7	5%
	Housing	20	14%
	Waiting	33	23%
	Other (filed on behalf of relative)	3	2%
<b>Socioeconomic Status</b>	Upper Middle Class	32	23%
	Middle Class	38	27%
	Working Poor	60	43%
	Poor	11	8%

Fig. I.4 Description of the Interview Sample

interview excerpts in which respondents discussed how they used their restitution awards and the reasons behind their choices. After reading all of the interview excerpts in this code, I was able to identify the full variety of responses, the trends in how respondents used their restitution awards, and atypical cases with explanatory power. To the extent possible, I then verified this information with the study's additional data sources (interviews of commission officials, participant observation, and secondary sources).

The book's arguments are based on the trends I identified in the interview data. I chose each quote presented in the book because it best communicated an identified trend. I did not edit the quotes extensively because the words respondents used to describe various events and emotions offer the reader unique and

valuable perspective. Additionally, I consistently described all the non-verbal cues and the context for each quote used because this also relayed important meaning.

This study was not based on a randomized sample that was representative of the studied population (i.e. urban claimants who received compensation through the land restitution process). Consequently, the findings describe the trends I identified amongst respondents and may not be generalizable to the entire population. Instead, I used the findings to develop the concepts of dignity takings and dignity restoration, which are concepts that are applicable across the globe in several contexts.

Lastly, throughout the book I use the term “black” to refer to people categorized under apartheid as African, coloured (mixed-race people), or Asian (primarily Indians, but also Chinese and at one point Japanese). Since the white supremacist ideologies adopted by colonial and apartheid regimes sought to subjugate all non-whites, the post-apartheid state has adopted the term “black” to emphasize this shared oppression.<sup>72</sup> But, of course, all non-whites did not have the same set of experiences nor did they experience the same magnitude of oppression. I use the terms “African,” “coloured,” “Asian,” or “Indian” when discussing the unique experiences or history of each group. Appendix 1 contains a more comprehensive description of the methods used in this study.

### III. Outline of the book

Part I introduces and defines the book’s first central concept—dignity takings. The first chapter develops the theoretical framework for dignity takings using insights from social contract theory. To demonstrate empirically how dignity takings unfolded in South Africa, the second chapter uses respondents’ accounts of their lives before the forced removals and how the apartheid state displaced them from their homes and property. The central finding is that dignity takings in South Africa involved deprivations of property, human worth, agency, and community.

Part II introduces and defines the book’s second central concept—dignity restoration—and investigates whether or not the South African land restitution process facilitated it. In the third chapter, interviews of commission employees provide their perspective of how the restitution program was supposed to operate in theory and how it actually worked in practice. This perspective is counterpoised with a description of how the process worked based on interviews of respondents, who each went through the land restitution process. Two stories emerge from this double-sided analysis. One story is about how the ever-looming deadline to finalize all the claims impaired the commission’s ability to effectively address the deprivations of property, human worth, agency, and community. The other story is about

<sup>72</sup> Bantu Stephen Biko, “The Definition of Black Consciousness,” *Azanian People’s Organization* (1971), available at <<http://www.sahistory.org.za/archive/definition-black-consciousness-bantu-stephen-biko>>. Biko defines as black “those who are by law or tradition politically, economically and socially discriminated against as a group in the South African society and identifying themselves as a unit in the struggle towards the realization of their aspirations”; *Broad-Based Black Economic Empowerment Act* (2003), §1, defining black people as including “Africans, Coloureds and Indians.”

how dispossessed people were often overwhelmed and unable to smoothly navigate their way through the complicated restitution process because they did not have the financial resources, knowledge, networks, or assistance from civil society organizations necessary to hold the commission accountable when it was not acting in their interest or strictly in accordance with the relevant laws.

The fourth chapter explains why a sustained conversation between commission officials and respondents increased the state's capacity to facilitate dignity restoration. Unfortunately, the communication strategy adopted by the commission was susceptible to communication breakdowns that obstructed these important conversations. Since there were about 80,000 claims filed, respondents who had the power to demand the attention of commission officials had their voices heard while those who could not were silenced.

The fifth chapter explores the ways in which the restitution awards affected respondents' wealth and dignity. More specifically, it describes the circumstances under which the restitution awards increased respondents' net worth. The chapter then shows how dignity was restored when respondents used their awards in ways that honored those who suffered dignity takings, but died before they received justice.

The book concludes by discussing how South Africa can promote dignity restoration in round two of the restitution program. While the current political dispensation in South Africa certainly can learn important lessons from this book, the global community also has a lot to learn. History is filled with moments where communities and individuals were subject to dignity takings as a result of war, political turmoil, dictatorships, or colonial regimes. In the future, international organizations, bureaucrats, policy makers, NGOs, and intellectuals can use the South African experience to shed light on how to facilitate dignity restoration.

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