

**LAND REFORM IN SOUTH AFRICA: AN ANALYSIS OF THE
LAND CLAIM PROCESS**

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ABSTRACT

Our land is a precious resource. We build our homes on it; it feeds us; it sustains animal and plant life and stores our water. Land does not only form the basis of our wealth, but also of our security, pride and history.

Land, its ownership and use, has always played an important role in shaping the political, economic and social processes in the country. Past land policies were a major cause of insecurity, landlessness, homelessness and poverty in South Africa. They also resulted in inefficient urban and rural land use patterns and a fragmented system of land administration. This has severely restricted effective resource utilisation and development.

As a cornerstone for reconstruction and development, a land policy for the country needs to deal effectively with the injustices of racially based land dispossession of the past.

Land policy should ensure accessible means of recording and registering rights in property, establish broad norms and guidelines for land use planning, effectively manage public land and develop a responsive, client-friendly land administration service.

The success of these elements of the programme is dependent in the long run on more than merely access to land. The provision of support services, infrastructural and other development programmes is essential to improve the quality of life and the employment opportunities resulting from land reform. Our vision is of a land policy and land reform programme that contributes to reconciliation, stability, growth and development in an equitable and sustainable way. It presumes an active land market supported by an effective and accessible institutional framework. In an urban context our vision is one where the poor have secure access to well-located land for the provision of shelter. The land reform programmes focus is aimed at achieving a better quality of life for the most disadvantaged.

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CHAPTER 1: INTRODUCTION

LAND REFORM IN SOUTH AFRICA: A DESCRIPTION OF THE LAND CLAIMS PROCESS

1.1 ORIENTATION AND PROBLEM STATEMENT

Restitution, or compensation, was introduced in South Africa in 1994, with the focus of redressing past injustices regarding land occupation. Injustices were caused by racially based legislation or practices where land distribution was unfairly managed. The aim of restitution is to implement compensation to people, for land lost, in such a way that the vital process of reconciliation, reconstruction and development is achieved. This means that a more equal distribution of land between the different races is established.

The Constitution of South Africa (Act 108 of 1996)(Section 121-123) served as the source and embodiment of restitution, whereby the legislature was instructed to put in place guidelines to redress unequal land distribution. The provincial offices of the department of Land Affairs are the key institutions of government in the implementation of the land reform programme (Letsoalo, et al. 1987). This resulted in the enactment of the Restitution of Land Rights (Act 22 of 1994). The main aim of the Restitution of the Land Rights Act of 1994 is to provide for the restitution of rights in land to persons of communities dispossessed of such rights after June 1913 as a result of past racial discriminatory laws or practices.

This Act also established the Commission on Restitution of Land Rights and the Land Claims Court. It is stipulated by the Restitution of Land Rights Act of 1994 that community claims on land will be accepted for investigation if:

- The claimant was unfairly dispossessed of land after 19 June 1913 as a result of past racially discriminatory laws or practices;
- The claimant was not paid just and equitable compensation; and
- The claim was lodged not later than December 31, 1998.

While the restitution elements of land reform have largely been taken care of through the adoption of the Restitution of Land Rights Act of 1994, there was still a need to develop further procedures to facilitate the land redistribution process. These procedures included aspects such as:

- The creation of a single process for land right and administration
- The actual redistribution of land by the state,
- New rules to regulate the tension between ownership rights and illegal use of land,
- The creation of a viable system of land administration at the district level, which may be coupled with the recognition of land rights (Van Zyl, Kirsten & Binswanger, et al., 1996:10).

These procedures act as guidelines to implement the process of land distribution in an efficient manner. According to Cloete (1995:60) a process is a series of actions or steps to perform a specific activity or action. It illustrates the progress of work in a certain or specific direction. It seems that the land distribution process is, to an extent, not without problems.

In many instances land-claim forms have been completed in a haphazard way and important information lacks. This results in incomplete claims, which

hampers the process of restitution. As a result of this, central government is unable to process the claims, which leads in turn to a frustrated public. This may result in illegal land occupations, something which, South Africa cannot afford.

The above problems lead to the following questions:

- What is the history of land reform in South Africa?
- What leads up to the current land restitution activities in the country?
- What information do legislation and other government policies offer regarding land claims?
- What did the process to gather information on claims entail?

1.2 OBJECTIVES OF THE STUDY

The following objectives are relevant to the study:

- To determine the history of land reform in South Africa.
- To determine what led to the current situation regarding land reform in the country.
- To analyse certain relevant legislation on land reform and land claims.
- To determine and describe the process on how land claims are managed.

1.3 CENTRAL THEORETICAL STATEMENTS

- South Africa has a history of unequal distribution of land between the various races.
- The current land reform initiatives have its foundation in the unequal distribution of land in the past.

- The current process of administering land claims has as its basis specific legislation in order to rectify the unequal distribution of land between different races.

1.4 METHOD OF INVESTIGATION

Academic books, legislation, yearbooks and official documentation will play a vital role in the completion of this mini-dissertation. A computer search for relevant information will be conducted.

A preliminary investigation of the materials, government reports and literature has revealed an abundance of information on the land claim process.

1.4.1 Databases

The following databases have been consulted to determine the availability of information:

Internet-search: [http\\land.pwv.gov.za/Restitution\\BLACKGROU.RES.htm](http://land.pwv.gov.za/Restitution/BLACKGROU.RES.htm)

Internet search: [http\\www.sever.law.wits.ac.za/lcc/](http://www.sever.law.wits.ac.za/lcc/)

Internet search: [http\\www.nkuzi.org.za/land.reformsa.htm](http://www.nkuzi.org.za/land.reformsa.htm)

Pretoria National Archives

1.4.2 Design

An analysis of claims will be undertaken and actual claims will be analysed to determine their history and the process followed to table the claims. Specific areas in the North West Province where claims had been presented will be visited to gain on-site information of the process.

Formal and informal interviews with claimants and officials will be conducted to identify any problems with the process.

1.4.3 Respondents

Structured interviews will be conducted with claimants and researchers. The officials responsible for the implementation of the land claim process will be interviewed.

Research will be done in the Library and National Archives

1.4.4 Procedure

A literature study will be undertaken to gather information on the background of the land claim process. An analysis of the land claim process will be undertaken and the role players will be identified and interviewed.

1.5 DEFINITION OF A PROCESS

A process, for the purpose of this mini-dissertation, is a series of actions or phases, which are carried out in order to achieve a particular result or product. In the former sense of the word, "process" means "method" (Van Zyl, Kirsten & Binswanger, *et al.*, 1996:10).

The claims process, as applicable to this study, may be summarised as follows:

Phase 1: Lodgment and registration

The claimant submits a written claim, with supporting historical and other documentation, to the Minister of Land Affairs. The Minister consults with the federal Department of Land Affairs to determine the status of the federal review of the claim.

Phase 2: Screening and categorisation of the claim

Initial screening of the claim is being undertaken and the claim is prioritised according to its importance, after which a preliminary field research is undertaken to validate the claim.

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

Assessment of gazette needs, assessment of notification needs and the gazetting of the interested parties form the basis of this stage.

Phase 4: Preparation for negotiations

In this phase a preliminary analysis of the land claims document submitted by the claimant is undertaken to determine the nature and extent of any additional historical research that should be carried out. Upon completion of the historical research, a legal review is conducted. The secretariat consults with other ministries to determine what interests may be affected by the claim.

The decision to accept the claim is made by the Minister. A letter is sent to the claimant, setting out the general basis upon which they are prepared to enter negotiations.

Phase 5: Negotiations

Throughout negotiations the claimant consults with the stakeholders that might be affected by the claim, to inform them that the claim has been accepted for negotiations and to seek their input. Public consultations are conducted that may need to be considered prior to concluding a settlement.

At the start of negotiations, a negotiation framework agreement is established. This agreement addresses process matters such as cost-sharing arrangements, negotiation timeframes, funding to the claimant during negotiations, the public involvement process and the approval procedures needed for the final agreement. During discussion leading to a negotiation framework agreement, the parties may prepare a work plan and budget to support the claimant's participation in the negotiation phase to seek input from potentially affected stakeholders and to identify issues and concerns that may need to be considered prior to concluding a settlement.

During substantive negotiations the negotiators agree on the general issues and the elements of the settlement. Negotiators for the community obtain the necessary approvals and work to develop the final agreement as well as the implementation of a plan describing how the terms of the final agreement will be carried out.

Phase 6: Settlement and implementation

When the final agreement is approved or ratified by each of the parties, an official signing ceremony involves compensation to the claimant involving the parties to the negotiation is normally held. The settlement laid out in the agreement usually involves compensation to the claimant, which may be in the form of land and/or money or other considerations, such as economic development measures. The implementation of the agreement begins and

the parties monitor its progress. The final agreement may provide for the transfer of land to the federal government so that it can be set apart as reserve land for the community. In such cases, an environmental inspection is carried out to accommodate the needs of the other parties that may be affected by the settlement, such as users of existing access routes, holders of land use permits or leases on land and public utilities such as hydroelectricity. Finally, the land is surveyed and transferred to the federal government, which may set the land apart as reserve land for the community.

1.6 PROVISIONAL DIVISION OF CHAPTERS

The research will be presented in the following chapters:

Chapter 1: Introduction

Chapter 2: The history of land reform in South Africa

Chapter 3: Government policies and legislation on land reform

Chapter 4: The land claims process

Chapter 5: Findings and conclusion

CHAPTER 2

THE HISTORY OF LAND DISTRIBUTION IN SOUTH AFRICA

2.1 INTRODUCTION

One of the current dilemmas for the government of South Africa is implementing the land distribution programme. It is the responsibility of the government to ensure a more equitable distribution of land ownership in order to address past unfair land distribution actions. The provincial offices of the department of land affairs are the key institution in the implementation of the government's land distribution programme. Land distribution involves returning land to its lawful owners or to compensate so-called victims for lost of land, because of previously racially discriminatory laws.

This chapter will explain the land distribution history of South Africa, from the arrival of Jan van Riebeeck in 1652 until the 1994 election, when the country became a democratic society. It will explain the competency around land ownership and the influence of legislation that was promulgated and implemented to explicate land segregation. Emphasis will be placed on the period after 1913, when the Native Land Act of 1913 was implemented. This Act forms the crux of the current land distribution issue.

The history of land distribution in South Africa will also contextualise the rest of the mini-dissertation and will act as a background to later discussions, when the actual process of land distribution will be discussed.

2.2 LAND DISTRIBUTION DURING THE PERIOD 1652 TO 1910

The period from 1652 until 1910 laid the foundation for conflict over land between the various race groups in the country. An understanding of the

dynamics of this period will, to a large extent, make it possible to understand the current situation regarding the land issue.

2.2.1 The early years

On April 6, 1652, Jan van Riebeeck arrived from the Netherlands to establish an outpost for the Verenigde Oos Indiese Companjie (V.O.C.) in Table Bay. At that point in time there was a need for sustainable food and fresh water, as well as a hospital for sailors who traveled around the southern part of Africa on their way to the East. Van Riebeeck was also instructed to build a fort to secure the area against invaders, such as the Khoikhoi, an indigenous group of people already living in the area. The V.O.C. did initially not intend to establish a fully-fledged colony. They, however, committed themselves to such a policy in 1657 and allowed nine company servants the freedom to establish private farms at Rondebosch, below the eastern slopes of Table Mountain (Lowis, 1995:10).

In 1679, when Simon van der Stel arrived as governor in the Cape, a further twenty settlers were granted land beyond the dunes of the Cape Flats, in what became the district of Stellenbosch. At 1689 he brought in 180 Huguenot refugees who had fled from France and who mainly settled in the Stellenbosch district, near what became Franschoek. With this increase in the numbers of white settlers, the small colony grew to a commercial enterprise, which expanded into the interior of the country.

This expansion was, however, not always peaceful and was marred by rising tension and sometimes brutal warfare, between the settlers and the indigenous black population (mainly Xhosas) on the eastern frontier of the colony. At the center of this conflict was the ownership of land and of livestock (Van Aswegen, 1989:118). Black people were to a large extent driven off parts of their land, which was then occupied by white settlers. This led to a situation where a large number of black people began to enter the

employment of the white settlers, because they were in many instances deprived of their land and cattle. Others were simply attracted by the prospects of the material rewards of working on the newly established farms of the white settlers.

These events are an indication of how the relationship between settlers and the indigenous people deteriorated (Boucher, 1991:69-70).

Black people, as farmers in their own right, were naturally well-suited to assist the white farmers in farming activities and they soon became part and parcel of the farming industry, although as workers and not as owners of land. In the process they became even more deprived of their own land. This situation was aggravated when the British took over the Cape colony in 1806 (Omer-Cooper, 1988:22).

2.2.2 Land distribution under British control

In 1806 the British took over the Cape colony, to strengthen their trade with the East. The British took over where the Dutch left off and throughout the 1800s conflict with the Xhosa and other African Nations were at the order of the day. At the same time thousands of blacks were forced to move inland from what is now Natal coast, through the advance of the Zulu nation under the ruling of king Shaka. In the north of the country the Ndebele established a great empire north of Zululand. In 1834 some of the white settlers started their journey to the north, away from British rule. This scenario set the scene for more conflict over land in the country, which became more eminent (Lowis, 1995:11).

The Great Trek started in 1835 and many more white settlers (Trekksers) followed their counterparts into the interior of South Africa. The Great Trek was in many respects an accelerated continuation of the expansion of land, which had already led to the occupation of vast areas of the land. The 'Trekksers' migrated from the north-eastern districts across the Orange River to

settle in Trans-orangia. In its scale and organisation, however, the Great Trek was very different from the continuing process of expansion undertaken by individuals or small groups seeking new land beyond the frontier.

Unlike the continuous expansion of the trek boer, the Great Trek was a conscious political movement. The trek boer were moving across the Orange in search of new lands and maintained contact with the Colony, paid taxes in the Colony and hoped to persuade the colonial authorities to extend the frontiers to cover their area of settlement. In contrast, those who left on the Great Trek deliberately rejected the authority of the British government in the Cape and set out to establish an independent community in the interior, free of the British rule (Omer-Cooper, 1988:70).

As they moved into the interior, the Trekkers were organised in 'trekking' parties. A recognised leader was generally accompanied by family members and neighbors. The trekking parties could involve a hundred or more wagons and huge numbers of cattle and sheep. Though all the trekkers thought of themselves as constituting a single company and aimed to create a united society in the interior, each trekker party was very much an autonomous unit. Each of the larger treks contained, moreover, smaller, potentially separate, trekking parties, which had been attracted to join the leader and his core followers. Even within groups of relatives, each head of the family with his wagon, horses, flocks and herds, headed a small political unit capable of a considerable degree of self-sufficiency. This pattern of organisation and the distribution of power it created, lay behind many of the quarrels between the leaders of the Trekkers and difficulties the Trekkers found in establishing a workable political constitution (Omer-Cooper, 1988:71).

As they moved into the interior, the Trekkers had certain vital advantages over the black African peoples with whom they were to come into contact and even conflict. Their guns gave them the capacity to kill at a distance; their horses a degree of mobility with which none of their African enemies could at first compete. The commando system and the experience of fighting on the

eastern frontier had led to the development of tactics which made the very best of their advantages. When travelling with their wagons and threatened by attack they would form the wagons into a circle or a square, filling the spaces beneath the wheels with branches of thorn trees to create a defensive stronghold known as a laager. When on commando without their wagons or when moving out from such a laager, they made use of the speed of their horses and the range of their guns. These advantages enabled them to win dramatic victories in mass encounters against the blacks. The need for grazing for their flocks and herds made it very difficult for the Trekkers to remain in laagers for longer periods. They could not even remain loosely congregated to each other for very long and they evidently scattered in small groups over a wide area (Omer-Cooper, 1988:72).

As the Trekkers moved into the interior, especially in the Transvaal, there were great opportunities for elephant hunting and ivory trading. Elephants were soon shot out, however, and the ivory frontier receded in advance of the farmers' frontier. While the trekkers were able to win victories and conquer large areas, they consequently had much difficulty in effectively occupying them or maintaining the degree of regular control over the black African population. This control was necessary to ensure adequate labour supplies and to secure their safety. The Trekkers invasion of the interior led to the establishment of two Boer Republics namely the Orange Free State and the Transvaal.

Under British control the blacks still living in the Cape colony were forced to pay certain taxes. That meant that the African people had to pay "cottage tax", although they have lived on the land for centuries. The African people were not able to pay these taxes, because most of them did not have Western money. Consequently, they were forced to work for the white people. The men left their homes to go to work, with the result that people got poorer, because there was no one to take care of farming. It was the cause of the beginning of the South African Trekbour system (Geldenhuys, 1991:285).

2.2.3 Land distribution under the two Boer Republics

In 1881 after a short war, the British was forced to recognise the Transvaal's independence and the Republic would be allowed to enter foreign relations with African peoples to the east and west of its borders. Afrikaner nationalism, which came into being slowly after the Great Trek, grew much stronger in the 1870s and 1880s. It developed a strong anti-British character as Britain's aggressive attempts to extend its influence in South Africa threatened republican power and the independence of the so-called Boer republics (Transvaal and Orange Free State) (Pampallis, 1991:46).

The Anglo-Boer war ended officially on 31 May 1902 when Boer leaders signed the Treaty of Vereeniging. It was agreed that the Transvaal and the Orange River Colonies would become British colonies. They were to be granted responsible government in the near future and financial assistance to restore their economies. The Boers would be allowed to keep their rifles and Dutch could be used in schools and law courts (Pampallis, 1991:46).

British treatment of the defeated Boers at the Treaty of Vereeniging was generous. Britain recognised that for continued domination and exploitation of South Africa. Leading Boer politicians like Louis Botha and Jan Smuts realised that Boer independence was a lost cause and opted for reconciliation with Britain and local English-speaking whites. They would try to gain for their people, and especially the big landowners who had dominated the Boer republics, a "place in the sun" within the British Empire. They would try to promote their economic interests and their culture, language and separate identity within the British Empire, seizing the political opportunity offered by the promise of responsible government. In the years after the war, though, Anglo-Boer relations remained strained, mainly as a result of Lord Milner's policies (Pampallis, 1991:47).

As Governor of Transvaal and the Orange River Colony, and High Commissioner for South Africa, Milner tried to anglicize the Boer communities. He established schools where English was the only medium of instruction and Dutch no more than a separate subject. He also tried to attract large-scale immigration from Britain so that the English-speaking community would form a majority among the whites. Even his attempts to promote economic growth and modernisation and his establishment of a new and efficient public administration were seen as part of the Anglicisation policy by Milner, who considered Boer nationalism to be the result of backwardness and isolation from the rest of the world (Pampallis, 1991:48).

Milner's plan did not turn out to be very successful. Without the support of the Chamber of Mines, which was not keen to change the composition of the labour force, he failed to attract as many immigrants as he had hoped. Although railways were built and aid given to white farmers to promote commercial agriculture, the economy did not recover as strongly as he had expected. Many Boers responded to Milner's education policy by forming their own schools practicing "Christian National Education", which used Dutch as a medium of instruction and fostered a narrow Calvinist, Afrikaner nationalist outlook (Pampillas, 1991:48).

Between October 1908 and February 1909, representatives of the four colonies met in National Convention, first in Durban and then in Cape Town, to discuss the establishment of a union. They produced a constitution in the form of a draft, which was submitted to the British parliament for approval.

2.3 THE PERIOD 1910 TO 1962

In the new Union of South Africa the four colonies would become provinces. Virtually all political power in the new state was to lie with whites. Only whites could be elected as members of parliament and only whites could vote in the Transvaal, the Orange Free State and Natal. In the Cape existing qualified

franchise was to remain, allowing a few property-owning blacks to vote, but only for white candidates. Black voters in the Cape could, however, be elected to the provincial council (Pampillas, 1991:49).

The franchise rights of blacks in the Cape were supposedly entrenched in the proposed constitution: they could only be altered by a two-thirds majority of both Houses of Parliament – the House of Assembly and the Senate – at a joint sitting. The National Convention also decided that Dutch and English would be the official languages with equal status; this too was entrenched. In order to avoid discrimination between the colonies about where the capital of the Union should be, it was decided that Pretoria would be the administrative capital, Cape Town the legislative capital and Bloemfontein the seat of the Appellate Division of the Supreme Court. Pietermaritzburg was given financial compensation (Pampillas, 1991:50).

2.3.1 The future of black people in the union

Despite strong opposition from the blacks to the racist nature of the proposed Constitution, it was ratified by the British parliament as the South African Act came into force (Pampallis, 1991:49). In 1910 the British Colony in Natal and the Cape joined the union with the defeated Boer republics. This union did not recognize the rights of the black people. But in November 1910 Parliament appointed a selected committee with the Minister of Native Affairs, Henry Burton, as chairman to investigate the question of African land settlement with particular reference to the “squatting” problem. The Committee concluded that squatting laws of the Transvaal, Natal and Orange Free State were unsatisfactory. It recommended a uniform policy throughout the Union for regulating the settlement of Africans on private property and, where such settlement existed or was permitted, for ensuring means of power control by the owners of such property as well as by the government (Barker, et al., 1988:511).

2.3.2 The Native Land Act of 1913

The government aimed at the revision of existing legislation with the object of abolishing the "African franchise from the House of Assembly and the "flocking of the surplus Native into urban areas" and to effectively bring about the removal of blacks from these areas. Residential segregation in these areas would be made effective. It was aimed at putting a stop to the present "wholesale buying of land by the state for the Native and to leave the acquiring of land by the Native all to his own initiative and in conformity to his racial needs". A final aim was the logical application of segregation, to all non-Whites "as being in the best interest". To this end legislation would be introduced for:

- Separate residential areas, trade unions and, if practical, separate places of work.
- The restriction of employment in certain directions to white labour only and/or in accordance with a determined, just and equitable quota for whites and non-whites.
- The application of the Immorality Act 1927, to all non-whites, for the prohibition of mixed marriages and the employment of whites by non-whites.

This programme contained one new point of detail, namely the abolition of African representation in the House of Assembly and in the Cape Provincial Council (Tatz, 1961:134).

Already in 1934, the parties of General Hertzog and Smuts had merged but in 1939 Hertzog resigned and Smuts became Prime Minister of the Union. The Second World War had a highly stimulating impact on South Africa's manufacturing industry. The reduction of imposers forced and encouraged South Africa to manufacture goods locally. This resulted in an enormous

growth in industrialisation and urbanisation since job opportunities were created especially for unskilled laborers. The flow of labour was mainly from the mining and agricultural sectors, which again created a labor deficiency in these two sectors (Natrass, 1993:43).

The agricultural sector also experienced a shortage of labourers because of the urbanisation of black people. Farmers had to compete against the higher wages of the industries in the cities and therefore demanded a stricter policy on the reserve system and black urbanisation. While the industrial sector underwent economical growth, the agricultural sector had passed through a difficult phase. It was difficult for the farmers to increase wages as a result more farmers started to mechanise (Platzky & Walker, 1985).

This urbanised African population was settling permanently in the urban areas, rather than migrating temporarily for a working contract. In addition, black people became more aware of their limited political rights, which made the ANC as a political movement more dominant. They began to demand, by means of boycotts and strikes, dominant political rights and an end to economic discrimination. The political situation was further aggravated when the rest of the world criticised the Union on its racial policies. The government was placed under enormous pressure to change these policies. In 1945, all the black urban acts were consolidated into one act, namely the Native Consolidation Act of 1945 (Act 25 of 1994). In the meantime, the National Party had made tremendous gains amongst those whites who felt threatened by the rapid African urbanisation. They criticised the government on their native policies and proposed a policy of separate development (Van Jaarveld, 1976:294).

2.3.3 The beginning of Apartheid formalised

In 1948 the National Party (NP) of Dr D.F Malan came to power with a victory over the Smuts government and with that the era of Apartheid started. Dr

Malan's terms of office began in 1948 and lasted until 1954. During his term, he introduced new acts on separate development, like the Population Registration Act (1950), the Group Areas Act (1950), the Bantu Authorities Act (1951) and the Separate Amenities Act (1953) (Schrire, 1994:300). These acts, among others, formed the legal basis of Apartheid. The Apartheid manifesto of the Nationalists, according to Platzky and Walker (1985:95), consisted of three principles namely white dominance, segregation between different races and the development of one Christian National State. In order to achieve these principles some key elements were identified which are evident in most of the policies and acts of the Apartheid years (Platzky & Walker, 1985:95).

When the National Party took office in 1948, they inherited various problems from the previous political period, of which African urbanisation was one of the biggest. The focus NP of 1948 was squarely on African urbanisation and related dilemmas and dangers (Posal, 1991:61). With its Apartheid policy, the government aimed to develop the reserved areas into separate and independent Homelands. Each racial group was to live in these different reserved areas (Jooste, 1972:375). Each reserved area would be categorised on an ethnic basis and consequently ten homelands would exist for the ten African Groups (Butler et al., 1977:7). In time, a government that was to be incorporated with the national government of South Africa would have managed each of the different homelands. In order to facilitate the policy of separate development for different ethnic groups, the government formalised the necessary acts and policies.

In 1950, in an address to the final meeting of the Native Representation Council which assembled to be informed of its abolition and to listen to a statement of the government's Native policy, Dr H.F. Verwoerd, then Minister of Native Affairs, posed the issue of alternative communities or apartheid. The alternative was to adopt a process of segregated development— that is all the word "apartheid" means (Tatz, 1961:137). Another major act in the launching of Apartheid was the Bantu Authorities Act of 1951, which provided

the legislative basis for the future homelands. This Act provided for the development of local African governments in the different homelands based upon the then already existing traditional systems (Kotze, 1978:117).

In order to deal with black urbanisation, the government announced the Native Law Amendment Act in 1952. This Act restricted the movement of blacks to urban areas, and extended the pass system to black women as well. Blacks were given a limited time to return to their identified areas. If they failed to do that, local authorities were given the power to forcibly remove them (Joyce, 1990:16).

The National Party homeland system had one aim and that was to create individual nations out of various ethnic communities living in South Africa. In order to achieve that, the consolidation of the reserved areas was necessary and consequently resulted in forced removals of many people of all different races. Wherever black spots occurred and wherever white land was in the way of consolidating the fragmented pieces of reserves, those areas had to become the property of the government in return for compensation. Compensation was only paid to those whom the government considered legal residents of an area. The level of compensation also varied. For instance, people who did not own the land they resided on were compensated only for improvements made by them, such as the building of houses and fences, planting of trees etc., while communities that were living in reserved areas under communal conditions were given alternative agricultural land at their relocation site (Platzky & Walker, 1985:137).

2.3.4 The Verwoerd era

In September 1958 Dr Verwoerd took over the Premiership. In January 1958, Dr Verwoerd elaborated on this aim of complete separation. He declared that South Africa was at a crossroad: the decision was to choose between a multiracial community with a common political society or the establishment of total separation in the political sphere. Both the African and the world at large had realised that a new period was dawning, a period in which the white man

would cease to discriminate against Africans in their own areas. The only solution of the "Native Problem" was total separation of the races (Tatz, 1961:148). Underlying the policy of urban segregation was a desire to reduce the power of the black man in the urban areas by making it difficult for him to acquire a stake in town (Davenport, 1977:527).

The process of relocation and dispossession that continued for four decades resulted in people having little economical and social security today. It contributed to poverty, overpopulation and a lack of sufficient facilities such as transport, marketing and finance (Van der Walt & Pienaar, 1997:453).

2.4 THE PERIOD 1989 TO 1994

On 20 September 1989, F.W de Klerk took over presidency from P.W. Botha and announced important political changes in South Africa. He called for the redemption of black political prisoners such of Walter Sisulu and Nelson Mandela and announced that all Apartheid laws would be removed by parliament such as the Group Areas Act and the Land Act of 1913 and 1936 (Geldenhuys, 1994:285).

Following the 2 February 1990 unbannings, there was a flurry of speculation around the world that the release of Mandela himself was imminent. Nine days after the negotiations, Mandela was released from prison. Mandela's release was a moving historical experience for the thousands who gathered outside the Victor Verster Prison on 11 February (Barker, 1995:496). In 1991 the last of the apartheids legislation was scratched. Some international sanctions were cancelled, although black people were still not allowed to vote (Lowis, 1995:26).

An important act was the Abolition of Racial Land Laws Act no 108 of 1991. This Act repealed the Land Acts of 1913 and 1936 and addressed issues concerning the restitution of land tenure. During the creation of the homelands people were deprived of their land, and these people could now

claim those land back or receive some sort of compensation. A Commission that would investigate these land claims was appointed. Another act were established. The act of Informal Town Establishment of 1991 was also promulgated and provided informal procedure for the establishment of black towns. It also led to the acknowledgement of blacks living in white townships (Van der Walt & Pienaar, 1997:457).

2.4.1 From Apartheid to democracy

At the end of 1993 an agreement was reached about an election. On 17 November 1993 the NP and the ANC accepted the new interim Constitution. It was the first time in South African history that legislation reckoned all races as equal (Lowis, 1995:23).

The De Klerk government led South Africa out of Apartheid into a new era of democracy. In 1994, South Africa held the first democratic election and the ANC became the governing party of South Africa. This was officially the end of Apartheid and the beginning of a government of national unity. In 1994 the Government of National Unity formulated a land reform plan. The plan's purpose was to relief the heartache of apartheid. The programme addresses two central issues: the reconstruction of land possession, which means that the owners who lost their land according to the 1913 legislation, are able to claim back their land. The second issue is the dividing of land on a more fair basis between all South Africans. It will be aimed to provide affordable land to the poor and assistance to use land to its full potential.

2.5 CONCLUSION

During centuries of colonialism and apartheid black South Africans were systematically dispossessed of their land. This amounted to theft of their homes, the restriction of economic activities, the tearing apart of communities

and often the denial of people's right to exercise their cultural and religious practices. This land dispossession was a central part of the economic and political subjugation of black South Africans.

There was much resistance to this taking of the land and the liberation movements in South Africa all had demands relating to the question of land.

The interim Constitution of 1993 and the final Constitution of 1996 recognised and protected existing land ownership, but also created an obligation to ensure land reform. Land reform was identified in the Constitution and was then legislated and made part of the government land reform programme. It consists of three key areas: restitution of land rights taken away due to racist laws or practices after 19 June 1913; tenure reform to give tenure security for people living on land without secure tenure; and redistribution to address the legacy of racial inequalities in access to land and to create opportunities for development.

Against the background of the above discussion as it is necessary to make an analysis of the relevant legislation regarding land distribution. This will be accomplished in chapter 3. An analysis of the legislation will give an indication of how land distribution was governed by previous governments.

CHAPTER 3

LEGISLATION ON LANDREFORM AND RESTITUTION

3.1 INTRODUCTION

The government's new land reform programme consists of three subprograms, namely the land redistribution, land restitution and land tenure reform subprogram's. Land redistribution makes it possible for poor and disadvantage people to buy land with the help of a settlement land acquisition grant. Land restitution involves returning land, or compensating victims for land rights lost because of racially discriminatory laws, passed since June 1913. Land tenure reform aims to bring all people who occupy land under a unitary legally validated system of landholdings and provides for secure forms of land tenure, to help to resolve tenure disputes and to make awards to provide people with secure tenure.

This study concentrates on the second subprograms, namely land restitution and legislation in this regard will be analysed in this chapter. An analysis of the legislation is detrimental to understand the actions of previous governments in their quest to secure land for whites only. The Native Land Act of 1913 (Act 27 of 1913) forms the point of departure of this legislation and was the first formal Act to forcefully take land away from the country's black population.

The Restitution of Land Rights Act of 1994 (Act 22 of 1994) concludes this unhappy period of time in the country's history. Through this Act black people were put in the position to once again own land of their own. Those who are not in the position to retain their land are, according to this Act, now in the position to ask for compensation for lost land. To some extent, the new legislation addresses the problems surrounding the possession of land in this country.

In this chapter this issue will be addressed with reference to the Native Land Act according to (3.2), the Urban Areas Act according to (3.3), the Bantu and Trust and Land Act according to (3.4), the Restitution of Land Rights Act according to (3.5), the Land Reform Act according to (3.6) and the Constitution of South Africa according to (3.7).

3.2 THE NATIVE LAND ACT (Act 27 of 1913)

As pointed out in the previous chapter in 1910 South Africa assumed control over the internal affairs of the country when it became a union. Because the electorate was composed almost entirely of whites, the national philosophy was naturally European in character that is, the Union of South Africa sought to emulate European standards that were to prevent inter-racial competition. In terms of the 1913 Native Land Act (Act 27 of 1913), certain areas that were then in black occupation were “scheduled” for white occupation and segregation.

According to the Native Land Act (Act 27 of 1913):

- A native (black) shall not enter into any agreement or transaction for the purchase, hire, or other acquisition from a person other than a native, of any such land or of any right thereto, interest there in, or servitude there over;
- A person other than a native shall not enter into any agreement or transaction for the purchase, hire, or other acquisition from a native of any such land or of any right thereto, interest therein, or servitude there over.
- No person other than a native shall purchase, hire or in any other manner whatever acquire any land in a scheduled native area into any agreement or transaction for the purchase, hire or other acquisition, direct or indirect, of any such land or of any right thereto or interest therein or servitude there over, except with the approval of the Governor General.

A significant feature of this Act was that of the unequal distribution of land between blacks and whites. The area for the white minority population was ten times larger than that of the black majority population. Two key issues determined the amount of land to be reserved for each group/race, namely (Tatz, 1961:13):

- The “superior” needs of the whites as opposed to the “primitive” needs of the blacks; and
- The need for black labour to work on the mines in white areas, industries and farms due to the lack of white labourers in the white economy.

The Native Land Act 27 of 1913 also stipulate that there must be:

- Separate residential areas, trade unions and, if practical, separate places of work.
- The reservation of employment in certain directions for white labour only and/or in accordance with a determined, just and equitable quota for whites and non-whites.

The Native Land Act of 1913 was designed as an interim measure to maintain the status quo regarding land ownership. It can also be seen by many as being an attempt to reduce competition in white areas by peasant producers. The loss of land by blacks, through this Act, was a severe blow for black peasantry and the black economy. The tribal economy and traditional mode of production could not survive without more land and access to white resources (Tatz: 1962:27).

For most of this century (indeed since the Native Land Act of 1913) right to own, rent or even share land in South Africa depended upon a person's racial classification. The so-called reserves were the only place where Africans could lawfully acquire land, and after the law was promulgated no African was allowed to buy land outside the proclaimed boundaries of the reserves nor were they allowed to rent such land in the future. Those Africans who already

ented white owned land were to be phased out over time as of 1913. The areas identified for African occupation in the Native Land Act of 1913 were basically those areas that had already been reserved as black land in each of the provinces (Platzky and Walker, 1985:83).

Africans were only allowed to live outside the boundaries of the reserves when they lived on white owned land as labour tenants, or fully waged workers. This Act satisfied both the mining industry and the farmers. By restraining black people from living outside the border of the reserves, they were forced to either become permanent farm workers or migrating mine labourers. In addition, the Native Land Act 27 of 1913 boosted the system of migrant labour, which had great sociological effects on the households living in the reserves. This migrant system was the main reason why the reserve areas never developed since black workers, mostly men, migrated to the white areas to earn an income while the people in the Reserve maintained a subsistence economy (Platzky and Walker; 1985:84).

The land identified for black occupation was too small for the number of people that were living there. This led to the deterioration of land under the pressure of overgrazing and intensive farming (Benbo, 1976:20).

3.2.1 The Beaumont Commission

The Beaumont Commission was appointed to deal with the land issue in 1913, but its activities were interrupted by the First World War and the 1914 Rebellion. In June 1915, Parliament had to extend the period laid down for investigation of the problem and the Commission finally submitted its report in 1916. Its function was to enquire into and report on:

- What areas should be set apart as areas within which blacks should not be permitted to acquire or hire land or interests in land; and

- What areas should be set apart within which persons, other than Africans, should not be permitted to acquire or hire land or interests in land (Tatz; 1962:27).

What is significant here is not so much the details of the Commission's delimitations, but the Minute addressed by Beaumont to the Minister of Native Affairs. Beaumont declared that the work of the Commission could be regarded "as supplemental" to the report of South African Native Affairs Commission (Tatz; 1962:27).

In Beaumont's view the principle of territorial or land segregation was not a new one; it was in fact a principle which "consciously or unconsciously, appears to have been aimed at in all the Provinces from their earliest times"(Tatz; 1962:28).

The concept of territorial segregation has been a cornerstone of South African Native policy, but Beaumont's view of separate residential areas in the Native Land Act 27 of 1913 was just the first step in the direction of separate residential areas.

3.3 THE 1923 NATIVE (URBAN AREAS) ACT

The Native (Urban Areas) Act of 1923 provides broad legislation to regulate the presence of blacks in the Urban Areas. It gave local authorities the power to demarcate and establish African locations on the outskirts of white urban and industrial areas, and to determine access to and funding of these areas. Local authorities were expected to provide housing for blacks, or to require employers to provide housing for those of their workers who did not live in the locations. Blacks living in white areas could be forced to move to the locations. Municipalities were also instructed to establish separate blacks revenue accounts based on the income from fines, fees and rents exacted from "natives" in the location. This money was to be used for the upkeep and improvement of the locations. The critical function entrusted to the local

authorities was, however, the administration of tougher pass laws. Blacks deemed surplus to the labour needs of the white households, commerce and industry or those leading “an idle, dissolute or disorderly life”, could be deported to the reserves. In implementing the act, local authorities were careful to consider the needs of the industry (Barker *et al.*, 1988:511).

It was in 1936 that the permanent lines of territorial segregation were laid down through the Bantu Trust and Land Act (18 of 1936). The Native Trust and Land Act of 1936 drew up the final schedule for segregation of land.

3.4 THE BANTU TRUST AND LAND ACT OF 1936 (Act 18 of 1936)

Hertzog proposed to release additional areas where blacks might compete with whites for the purchasing of land. Blacks seconded the idea of a mixed area where both blacks and whites could acquire freehold ownership of land. The government, however, rejected this notion and continued its policy of total separation. These led to the promulgation of the Bantu Trust and Land Act of 1936. This rights of non-whites to own land in reserved areas were however diminished with the establishment of the Bantu Trust Act (Phillips, 1989:37). This Act was in fact part of the series of legal initiatives since 1913, which served to reduce land area occupation by blacks and to control the labor supply in South Africa and to further disfranchise the black population. The 1936 Land Act, in addition to supplementing the 1913 Land Act on the separation of land for whites and blacks, also instituted the South African Native Trust. The purpose of the Trust were to acquire land for settlement of Blacks, to develop such land, and to promote agriculture in native reserves under the 1936 Land Act.

The blacks and the Trust would acquire these released areas. The Trust, however, derived money for the purchase of this land for other functions from taxes paid by blacks under the Native Taxation Act of 1925 (commonly known as “Local Tax”), and fines paid by blacks for various offenses (many of which

lacks were not aware of). Many of these related to pass regulations in terms of which blacks were prohibited from being in certain places without the necessary work permits. It meant that blacks could not work in white areas without a permit. If they were in white areas without the necessary permit or pass, they would be arrested for trespassing.

Finally, the 1936 Land Act "reformed" the land tenure system of the black and white farms. It limited the number of labour tenants that any white farmer might have and made that relationship subject to the Master and Servants laws. It forbade the registration of new squatters, and laid down fees to be paid by the landowners for every registered tenant. These fees were so high that it was an obvious way of abolishing squatting altogether. The black community could not perform this function as independent farmers or landowners.

In many ways the era of Apartheid formed a phase in a long history of dispossession of land. The history of black land rights in South Africa is characterised by insecure ownership and rights under the different bodies. This is the main reason for the implementation of the land reform program in 1994. The Restitution of Land Rights Act 22 of 1994 provides the right to people to acquire land. The Land Rights Act will be discussed next.

3.5 THE RESTITUTION OF LAND RIGHTS ACT OF 1994 (Act 22 OF 1994)

The Restitution of Land Rights Act of 1994 (Act 22 of 1994) provides for the restitution of rights in land in respect of which persons or communities were dispossessed under, or for the purpose of furthering the object of racially based discriminatory legislation. Forced removals in support of racial segregation have caused suffering and hardship. Considering the fact that more than 3.5 million persons and their descendants have been victims of racially based dispossession and forced removals, it is clear that a huge

responsibility rests on the state to give effect to restitution of land rights. The goal of the government's restitution policy is to restore land and to provide for other restitutionary remedies to people dispossessed by racially discriminatory legislation. Restitution is an integral part of the broader land reform program and is closely linked to the redistribution of land and land tenure reform programme to address the need for redistribution of land and land tenure reform (White Paper on land reform).

According to the Restitution of Land Rights Act 22 of 1994, Section 2: Entitlement to restitution, a person shall be entitled to restitution of a right in land if:

- a) He or she is a person dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; or
- b) It is a deceased estate dispossessed of right in land after 19 June 1913 as a result of past racially discriminatory laws or practices, or
- c) He or she is the direct descendants of a person referred to in paragraph (a), who has died without lodging a claim and has no ascendant who is a direct descendant of a person referred to in paragraph (a); and has lodged a claim for the restitution of a right in land;
- d) it is a community or part of a community dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws of practices; and
- e) the claim for such restitution is lodged not later than 31 December 1998.

No person shall be entitled to restitution of a right in land if:

- a) just an equitable compensation as contemplated in section 25(3) of the Constitution; or any other consideration which is just and equitable,

calculated at the time of dispossession of such rights, was received in respect of such dispossession.

If a person dies after lodging a claim but before the claim is finalised and leaves a will by which the rights or equitable redress claimed has been dispossessed of, the executor of the deceased estate, in his or her capacity as the representative of the estate, alone or, failing the executor, the heirs of the deceased alone or if the deceased did not leave a will contemplated in paragraph (a), the direct descendants alone, may be substituted as the claimant of the claimant.

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

Subject to the provisions of this Act a person shall be entitled to claim title in land if such claimant or his, her or its antecedent was prevented from obtaining or retaining title to the claimed land because of a law which would have been inconsistent with the prohibition of racial discrimination contained in section 9 (3) of the Constitution had that subsection been in operation at the relevant time; and proves that the registered owner of the land holds title as a result of a transaction between such registered owner or his, her or its antecedents and the claimant or his, her or its antecedents held the land on behalf of the claimant or his, her or its antecedents.

This Act provides access to acquire land by people who lost the “right to land”. The people who were dispossessed and their descendants that have proof of ownership (e.g. title deeds) in land may lodge a claim to get their land back. This means that there must be proof of ownership of land before the claimant or his/her descendants can lodge a claim.

The Labour Tenants Act provides for security of tenure and mechanisms to acquire land for all labour tenants and their family members.

3.6 LAND REFORM (LABOUR TENANTS) ACT OF 1996 (Act 3 of 1996)

Because of the Labour Tenant Act (Act 3 of 1996), a special programme was lodged to assist the process of the claiming of land and specific procedures were implemented to make it possible to enforce the Act.

The aim of the land redistribution programme is to assist the poor, labour tenants, farm workers, women, and well as emerging farmers. The role of the state is to assist in the purchasing of land, but generally not as buyer or owner. It makes land acquisition grants available and supports and finance the required planning process.

According to the Land Reform (Labour Tenants) Act of 1996 (Act 3 of 1996), people have:

- the right to occupy and use land.
- notwithstanding the provisions of any other law, but subject to the provisions of subsection (2), a person who was a labour tenant on 2 June 1995 shall have the right with his or her family members:
 - to occupy and use that part of the farm in question which he or she or his or her associate was using and occupying on that date; and
 - to occupy and use that part of the farm in question of which right was granted to him or her in terms of this Act or any other law.
- The right of a labour tenant to occupy and to use a part of a farm as contemplated in subsection (1) together with his or her family members may only be terminated in accordance with the provisions of this Act, and shall terminate subject to the provisions of subsection (3) to (7), by the waiver of his or her rights:
 - subject to the provisions of subsection (4) and (5) on his or her death;

- subject to the provisions of subsection 10, on his or her eviction; and
- on acquisition by the labour tenant of ownership or other rights to land or compensation in terms of Chapter 3.

A labour tenant shall be deemed to have waived his or her rights if he or she, with the intention to terminate the labour tenant agreement:

- leaves the farm voluntarily; or
- appoints a person as his or her successor.

If a labour tenant dies, become mentally ill or is unable to manage his or her affairs due to another disability or leaves the farm voluntarily without appointing a successor, his or her family may appoint a person as his or her successor and shall, within 90 day after being called upon in writing to do so by the owner, inform the owner of the person appointed.

A person who is not a family member of a labour tenant, may also be appointed as the successor to such labor tenant if he or she is acceptable to the owner, who may not unreasonably refuse such an appointment.

A labour tenant may, subject to subsection (7), waive his or her rights or a part of his or her rights if such waiver is contained in a written agreement signed by both the owner and the labour tenant.

The terms of an agreement under which a labour tenant waives his or her rights or part of his or her rights in terms of subsection (6) shall not come into operation unless:

- the Director-General has certified that he or she is satisfied that the labor tenant had full knowledge of the nature and extent of his or her rights as well as the consequences of the waiver of such rights; or
- such terms are incorporated in an order of the Court or of an arbitrator appointed in terms of section 19.

Subject to the provisions of the Act, a labor tenant or his or her successor may apply for an award of:

- the land which he or she is entitled to occupy or use in terms of section 3;
- the land which he or she or her family occupied or used during a period of five years immediately prior to the commencement of this Act, and of which he or she or her family was deprived contrary to the terms of an agreement between the parties.
- right in land elsewhere on the farm or in the vicinity which may have been proposed by the owner of the farm; and
- such servitudes of rights as access to water, rights of ways or other servitudes as are reasonable necessary or are reasonably consistent with the rights which he or she enjoys or has previously enjoyed as a labor tenant, or such other compensatory land or rights in land and servitudes as he or she may accept in terms of section 18 (5), provided that the right to apply to be awarded such land, rights in land and servitudes shall lapse if no application is lodged with the Director-General in terms of section 17 on or before 31 March 2001.
- The term of an agreement in terms of which a labour tenant waives the rights conferred on him or her by this section shall not come into operation unless:
- the Director-General has certified that he or she is satisfied that the labor tenant had full knowledge of the nature and extent of his or her rights as well as the consequences of the waiver of such rights; or
- such terms are incorporated in an order of the Court or an arbitrator appointed in terms of section 19.

Land tenure reform is a particularly complex process and involves the interests in land and the form that these interests should take. The Constitution guarantees that a person or community whose tenure of land is

legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of parliament, either to tenure which is legally secure, or to comparable redress.

This Act determines that a labour tenant has the right to acquire the use of land, or to reside on the land, and if he himself is not able to act in this manner he can be represented by a family member or an appointed person.

Property rights are addressed in the South African Constitution (1996) under section 25. Section 25(1) of the Constitution stipulates that no person in South Africa can arbitrarily be dispossessed from his or her rights or their right on land, unless an Act or court orders provides for it. Furthermore, each person has a right to secure tenure. Those without such rights need to gain access to land rights and those dispossessed of such rights, need to be compensated. The government therefore has a Constitutional duty to establish the necessary land policies and legislation in order to address the injustices of the past in a manner that will contribute to reconstruction and harmony.

3.7 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA ACT, (108 OF 1996) (SECTION 25-26)

The Constitution will be discussed here because it is the highest law in the country and everyone will be bound by the Constitution. Any law that goes against the Constitution would be changed or set aside.

The section on human rights in the Constitution may be considered as the point of departure of the discussion on land and restitution, and it is therefore necessary to provide an overview of these relevant sections here. This issue of human rights (3.7.1) and constitutional obligations (3.7.2) will be discussed below.

3.7.1 A definition of human rights?

The Bill of Rights in the Constitution of 1996 is the outcome of constitutional negotiations. It contains, inter alia, the human rights that will form the basis of the protection of the individual land rights of the people of South Africa.

The Bill of Rights is manifested in the lack of access to productive land; homelessness; and high levels of insecure tenure. The post-Apartheid government developed a land reform programme, which focused on three important areas:

- land redistribution to address the lack of access to land for productive and residential purposes;
- land restitution to restore land to those who lost land due to previous discriminatory laws; and
- secure tenure to those whose tenure is insecure.

In the two reports submitted to the South African Human Rights Commission (SAHRC), the national Department of Land Affairs, reported that the department had instituted several measures in the three areas of the land reform programme in order to redress past imbalances and create equitable access to land.

Section 25 also deals with land reform. It stipulates that the government must make laws and take steps to help people or communities to get land to live on, and to claim back land, which they had lost after 1913 because of an Apartheids law.

The Constitution will be discussed here because it is the highest law in the country and everyone will be bound by the Constitution. Any laws that go against the Constitution would be changed or set aside.

3.7.2 Constitutional obligations

Section 25 of the Constitution provides for the right of access to land and addresses the above three areas, namely:

Section 25(5) deals with equitable access to land, section 25(6) addresses restitution; 25(7) concerns security of tenure; and 25(8) identifies land, water and related reforms, as purposes that should not be impeded by 25.1. Land rights are found mainly within the context of property rights, although property is not limited to land. Land rights are largely shaped by the tension between protecting existing property rights and the need to achieve justice and equity in access to property.

On the one hand, there is a view that purports to protect the existing rights to property. From this perspective, the state should not interfere in property ownership, but should rather protect the right from interference by the state itself or other entities. On the other hand, there is what is often referred to as the social function of property, such as in the Constitution of the Republic of South Africa, Act 108 of 1996.

The issues of fairness, equity and justice need to be regarded in the access to land. In this line of thinking, there are legitimate grounds for interference with existing property rights in order to serve social functions. Land rights in the South African Constitution are an attempt to find a middle ground between the two perspectives mentioned above. The implementation of these measures continues to highlight the tension involved in protecting existing property rights, while on the other hand attempting to bring about equity and justice in access to land on the other.

The first part of property rights in the Constitution deals with protecting existing rights to property. Section 25(1) states that "no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property". The remaining sections identify circumstances under which interference with property rights may be justifiable. Section 25(2)(a) requires that property only be expropriated in terms of a law of general application for a "public purpose" or in the "public interest." Section 25(4)(a) specifically provides that the "public interest" includes land reform. It is therefore clear from the reading of s 25(2)(a), together with s 25(4)(a), that land reform is considered in the Constitution, to be a justifiable ground for interference with property rights. However, 25(1)(b) requires that where expropriation occurs, there must be compensation. Section 25(3) specifically deals with the nature of compensation, and includes the determination of the value compensation.

A significant development that took place under the tenure reform programme was the securing of land tenure for vulnerable groups. This measure was directed at people in the former homelands and the South African Development Trust (SADT) areas, who did not have access to land. The South African Development Trust was seen as an attempt to promote a better relationship between the indigenous and non-indigenous population and effectively led to an extension of the reserve areas. In the process, the South African Development Trust was established to administer the allocation of land for the agriculture and pastures.

4. CONCLUSION

Property rights are addressed in the South African Constitution (1996) under section 25. Section 25(1) of the Constitution stipulates that no person in South Africa can arbitrarily be dispossessed of his or her rights to land unless an act or court order provides for it. Each person has a right to secure tenure. Those persons dispossessed of rights to land or property because of racially discriminatory laws after 1913, need to be compensated either in secure tenure rights or in an equitable manner. Those without such rights need to gain access to land and those dispossessed of such rights, need to be compensated.

The new Constitution seeks to achieve a balance between the protection of existing property rights on the one hand, and constitutional guarantees of land reform on the other hand. The property clause itself now provides clear constitutional authority for land reform. The equality clause also provides clear authority for a programme aimed at achieving substantive equality.

The government is committed to a land reform programme that will take place on a willing-seller willing-buyer basis where possible. However, where this is not possible, the state must be able to expropriate land required in the public interest.

The new Bill of Rights expressly recognises that the public interest includes the nation's commitment to land reform. Where land is acquired for land reform through purchase or expropriation, the state is obliged by the Constitution to pay "just and equitable" compensation. The term "equitable compensation" makes it clear that it will not permit profiteering or undue capital gains at the expense of the public.

In the next chapter the land claims process will be discussed, as well as the parties who play a role in the process. The procedures claimants can follow to acquire land will also be analysed.

CHAPTER 4

THE LAND CLAIM PROCESS

4.1 INTRODUCTION

Restitution was introduced in South Africa in 1994, with the focus on redressing the mentioned past injustices created as a result of racially based legislation or practices. It is closely linked to the need for the redistribution of land and land tenure reform, thereby forming an integral part of the broader land reform programme currently underway in South Africa. The aim is to implement restitution in such a way as to provide support for the vital process of reconciliation, reconstruction and development.

Land Reform is a national responsibility. It is the responsibility of the national government to ensure a more equitable distribution of land ownership. The provincial office of the Department of Land Affairs is the key institution for the implementation of the land reform program. The process of land reform is a diverse and sensitive matter. After 1994 the rights of people who lost their land have changed drastically. Land reform gained an ethical and political-economic dimension (Van Zyl, *et al.*, 1996:5).

Up to now over ninety percent of the claims settled are urban claims that have been settled through financial compensation. While settling these claims are important, it is doing little to address the massive inequalities in land access in rural areas in South Africa. Many land claiming communities are frustrated with the slow progress on their claims and a number of land re-occupations have taken place as a result of this. It is therefore important to study this process. In this chapter the land claim process will firstly be defined (4.2) and then the land reform process (4.3), its implementation (4.4) and its complexity (4.5) will be discussed.

4.2 DEFINITION OF A PROCESS

A process is a series of actions or phases, which are carried out in order to achieve a particular result or product (Craig, et al,1994:155). In the former sense of the word, "process" means "method" of action. In order to reach a specific goal, specific steps will have to be taken (Van Zyl, Kirsten & Binswanger, 1996:5). With regard to this mini-dissertation concerns the steps that government took over the years to redistribute land and steps that were taken to address the land restitution issue. This process will be defined in more detail below with reference to the context of the land reform process (4.2.1) and the constitution (4.2.2).

4.2.1 Context of the land reform process

As mentioned earlier the newly elected South African government began in 1994 to implement laws to speed up the land reform process. The process consists of three dimensions or phases, namely:

- Redistribution, which aims to provide the disadvantaged and the poor with access to land for residential and productive purposes. It includes not only the urban and rural very poor, labour tenants, farm workers and new entrants to agriculture, also includes claimants for land lost under apartheid measures since 1913. Redistribution takes place at the hand of restoration of holdings or compensation for land lost.
- Land restitution covers cases of forced removals, which also took place after 1913. Land restitution is being dealt with by a Land Claims Court and Commission, established under the Restitution of Land Rights Act, 22 of 1994. The purpose is to transfer white owned commercial farmland to black users.

- Land tenure reform is being addressed through a review of present land policies, administration and legislation to improve the tenure security of all South Africans and to accommodate diverse forms of land tenure, including types of communal tenure.
- The land restitution programme aims therefore to restore land to those dispossessed of their land since 1913, due to racially discriminatory laws and practices. The Restitution of Land Rights Act 22 of 1994 was enacted to guide the implementation of the land restitution programme and to give it a legal basis.

The status of this programme is that once a claim is recognised by the Claims Court, the government is required to compensate the existing owner and/or pay re-compensation to the claimants. Specific budgetary provision or shifts in policy do not limit the commitments under it. This process is a complicated one and a sensitive matter. Land reform needs to be carefully approached, because it has a great effect on the claimants and the current landowners.

Furthermore the process is legitimised by the Constitution of 1996. The Constitution and the restitution of Land Rights Act, 22 (1994) declares inter alia that:

- every person can obtain, hold and dispose of rights in property;
- property rights cannot be taken away other than in accordance with the law; and
- where rights are taken away this can only be for public purposes and on agreed upon compensation.

4.2.2 The Constitution

The section on human rights of the Constitution provides the point of departure for discussion of the land restitution matter.

The Bill of Rights in the Constitution of 1996 is the outcome of constitutional negotiations. It contains, inter alia the human rights that will form the basis of the protection of the individual land rights of the people of South Africa. The Bill of Rights is manifested in the lack of access to productive land; homelessness; and high levels of insecure tenure. The post-Apartheid government developed a land reform program, which, as mentioned, focused on three important areas:

- land redistribution to address the lack of access to land for productive and residential purposes;
- land restitution to restore land to those who lost land due to previous discriminatory laws; and
- secure tenure to those whose tenure is insecure.

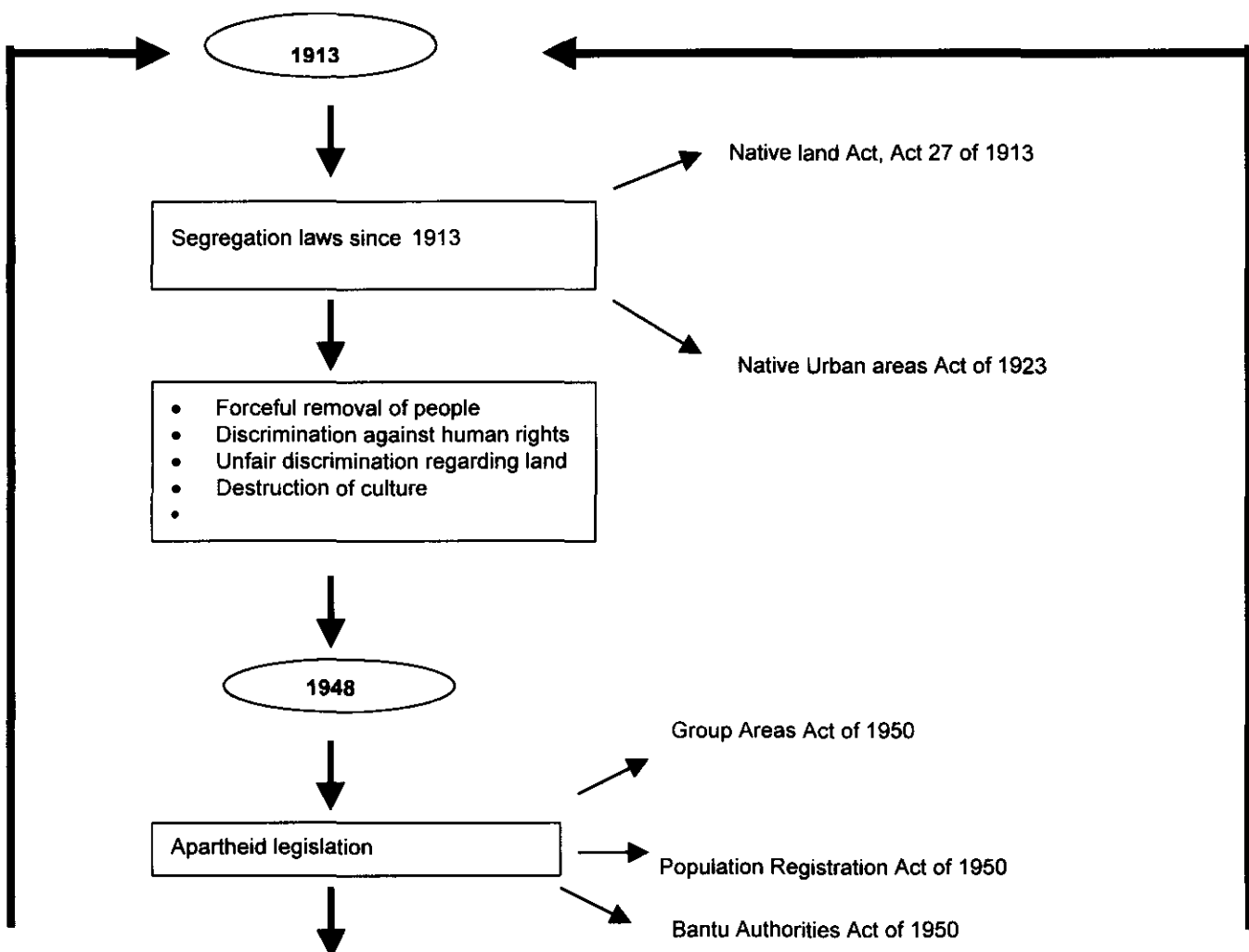
In the two reports submitted to the South African Human Rights Commission (SAHRC), the national Department of Land Affairs, reported that it had instituted several measures in the three areas of the land reform programme in order to redress past imbalances and to create equitable access to land.

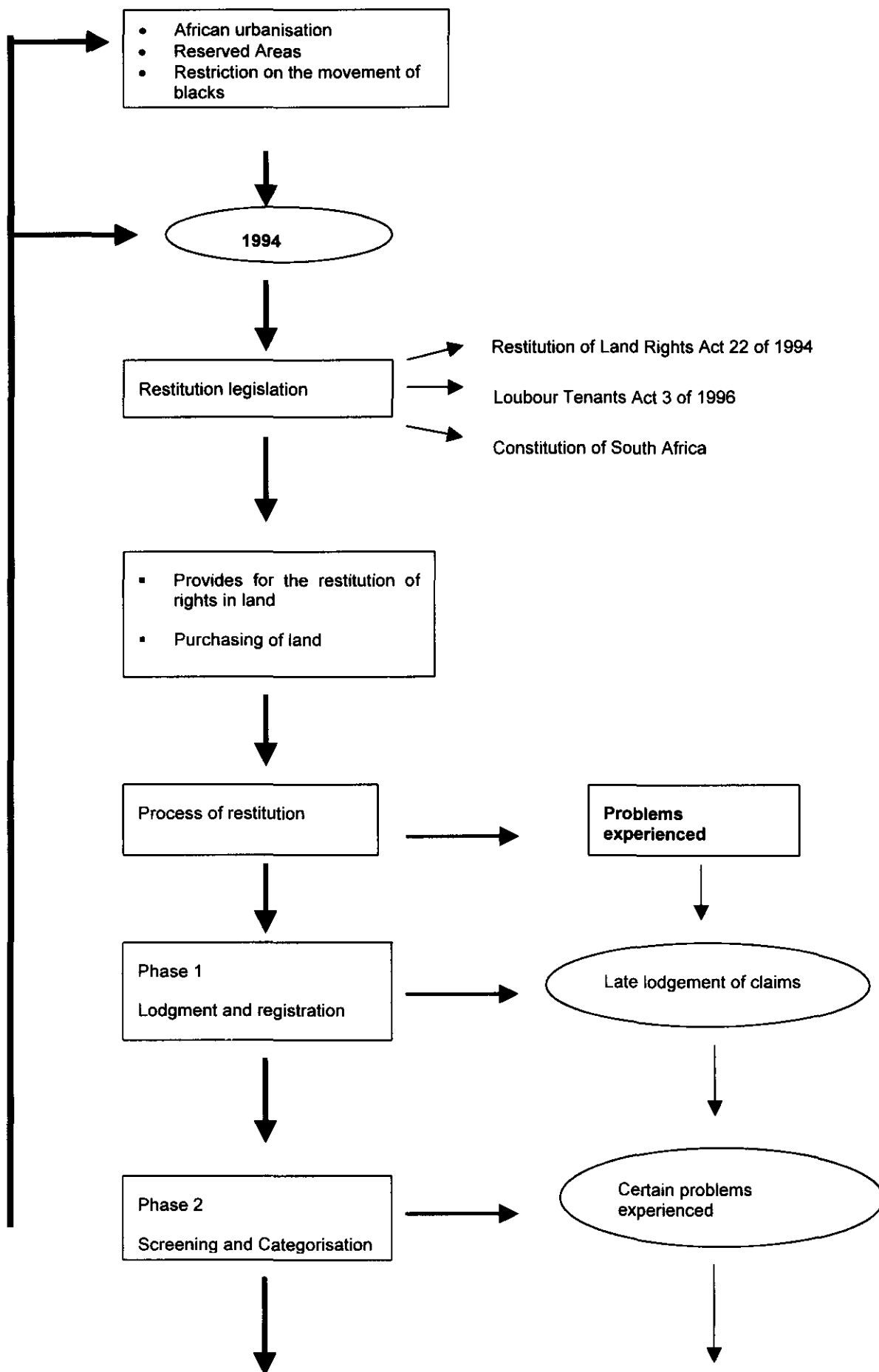
Section 25 also deals with land reform. It stipulated that the government must make laws and take steps to help people or communities to get land to live on, and to claim back land, which they had lost it after 1913 because of Apartheid law.

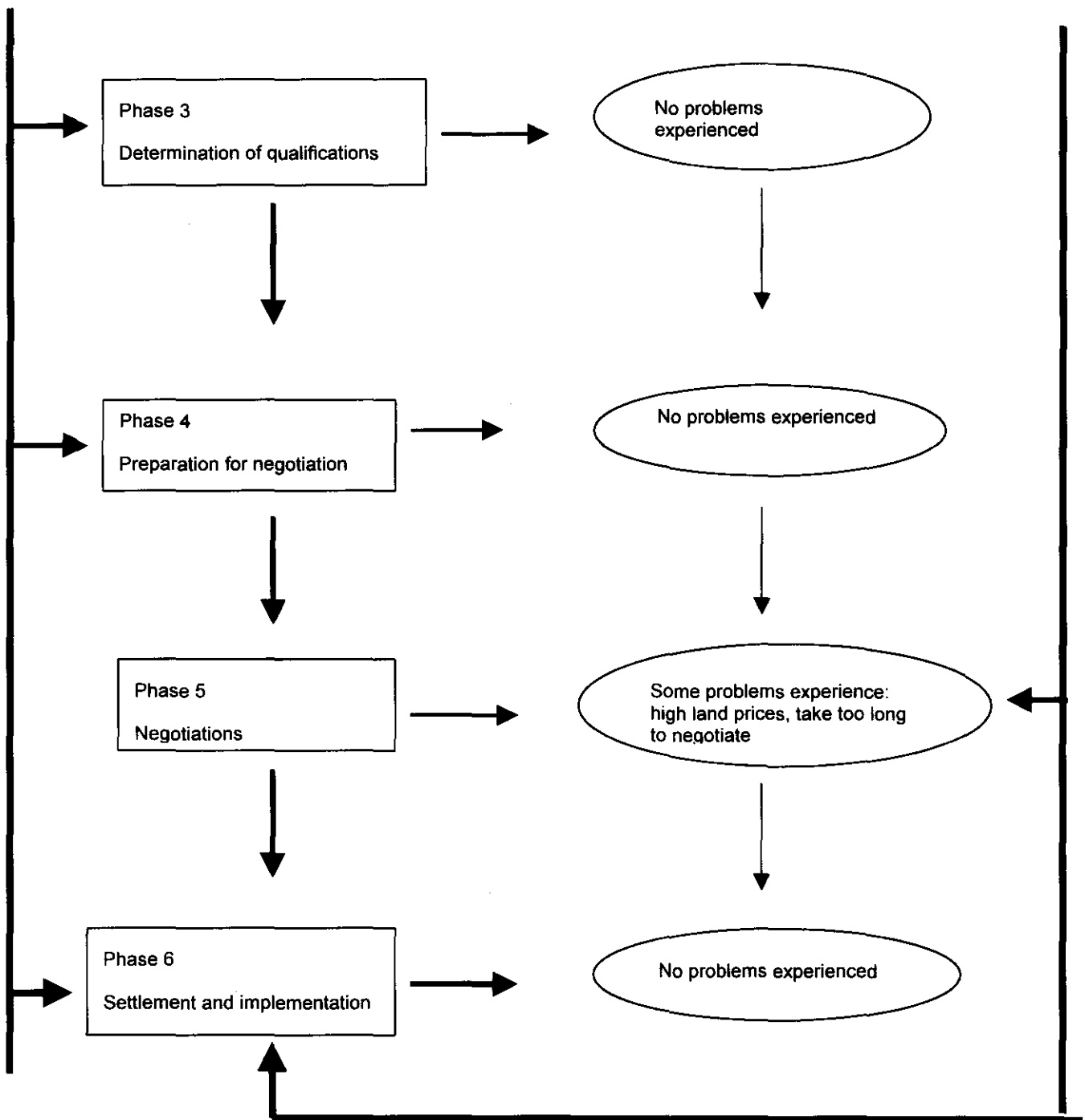
4.3 THE LAND REFORM PROCESS

The land reform process, for the purpose of this mini-dissertation, is a unique process starting in 1913. The eventual process of restitution since 1994 forms the closing stages of the process with the implementation stages currently in process. One should therefore not view the last steps and the implementation of the actual process in isolation. The complete process can be indicated in the following diagram:

Diagram 4.1 The land restitution process since 1913







4.4 IMPLEMENTATION OF THE PROCESS

The process, as indicated above, will be discussed in more detail in the next section. The discussion of legislation up to 1994 will be brief because these acts, as part of the process, has been discussed in depth in chapters two and three.

4.4.1 The Beginning: 1913

In 1913, as mentioned, the Native Land Act (27 of 1913) has been promulgated. This Act's purpose was to get control over the internal affairs of the country when it became a Union. Because the electorate was composed almost entirely of whites, the national philosophy was naturally European in character -that is, the Union of South Africa sought to emulate European standards that were to prevent inter-racial competition. In terms of the 1913 Native Land Act (Act 27 of 1913), certain areas that were then in Black occupation were "scheduled" for white occupation and segregation.

A significant feature of this Act was that of the unequal distribution of land between blacks and whites.

4.4.2 Segregation legislation since 1913

Certain Acts were promulgated since 1913 to enhance the idea of Act 27 of 1913. Some of the more important acts included the following:

The 1923 Native (Urban Areas) Act: was established to regulate the presence of blacks in the urban areas. It gave local authorities the power to demarcate and establish African locations on the outskirts of white urban industrial areas, and to determine access to and funding of these areas. The critical function entrusted to the local authorities was, however, the administration of tougher pass laws.

The Bantu Trust and Land Act of 1936 (Act 18 of 1936): was in fact part of the series of legal initiatives since 1913, which served to reduce land area occupation by blacks and to control the labor supply in South Africa and to further disfranchise the black population. The 1936 Land Act, in addition to supplementing the 1913 Land Act in the separation of land for whites and blacks, also instituted the South African Native Trust. The functions of the Trust were to acquire land for settlement of blacks, to develop such land, and to promote agriculture in native reserves under the 1936 Land Act consisted of White owned farms.

In 1948 the National Party (NP) of Dr. D.F. Malan came to power with a victory over the Smuts government and with that the era of Apartheid started. Dr. Malan's terms of office began in 1948 and lasted until 1954. During his term, he introduced new acts on separate development like the Population Registration Act (1950), the Group Areas Act (1950), the Bantu Authorities Act (1951) and the Separate Amenities Act (1953) (Schrire, 1994:300). These acts, among others, formed the legal basis of Apartheid. The Apartheid manifesto of the Nationalists, according to Platzky and Walker (1985:95), consisted of three principles, namely white dominance, segregation between different races and the development of one Christian National State. In order to achieve these principles some key elements were identified which are evident in most of the policies and acts of the Apartheid years (Platzky & Walker, 1985:95).

When the National Party (NP) took office in 1948, they inherited various problems from the previous political period, of which black urbanization was one of the biggest. The focus of the NP of 1948 was squarely on the black urbanization and related dilemmas and dangers (Posal, 1991:61). With its Apartheid policy the government aimed to develop the reserved areas into separate and independent homelands. Each reserved area would be categorized on an ethnic basis and consequently ten homelands would exist for the ten black groups (Butler et al., 1977:7). In time, a government that was to be incorporated with the national government of South Africa would have

managed each of the different homelands. In order to facilitate the policy of separate development for different ethnic groups, the government formalised the necessary acts and policies.

4.4.3 1994: Recovery Period

The Restitution of Land Rights Act of 1994 (Act 22) was promulgated and it provides for the restitution of rights in land in respect of which persons or communities were dispossessed under, or for the purpose of furthering the object of racially based discriminatory legislation.

According to the Restitution of Land Rights Act 22 of 1994 (section 2) persons are entitled to restitution of a right in land if they were dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices. This was also the case with a community or part of a community which was dispossessed of land after 19 June 1913 as a result of past racially discriminatory laws of practices. The claim for restitution should have been lodged not later than 31 December 1998.

This act provides access to acquire land by people who lost the right in land. The people who were dispossessed and their descendants must, however, provide proof of ownership (e.g. title deeds) of the land before they may lodge a claim to get their land back. This means that there must be proof of ownership of land before the claimant or his/her descendants can lodge a claim.

The Labour Tenants Act (Act 3 of 1996) provides for security of tenure and mechanisms to acquire land for all labour tenants and their family members. A special land redistribution programme was lodged to assist the process of the claiming of land and specific procedures were taken to make it possible to enforce the Act. The aim of the land redistribution program is to assist the poor, labour tenants, farm workers, women, and farmers. The role of the state

is to assist in the purchasing of land, but generally not as buyer or owner. It makes land acquisition grants available and supports and finances the required planning process.

This act also provides the acquisition of land by people who lost the right in land. The people who were dispossessed and their descendants that have proof ownership (e.g. title deeds) in land may lodge a claim to get their land back. This means that there must be proof of ownership of land before the claimant or his/her descendants can lodge a claim.

Of importance was that the 1996 Land Reform (Labour Tenant) Act, (Act 3 of 1996) presented a special programme (the Land Reform process) to assist the process of the claiming of land and specific procedures were taken to make it possible to enforce the act.

The land reform process was implemented against the background sketched above. The process is discussed below.

4.4.4 The land reform process as such

The land reform process consists of a number of phases as, indicated below:

Phase 1: Lodging and registration of claims

The first step in the process is the lodging and registration of a claim by a claimant. A claimant submits a written claim to the Secretarial consultants of the Minister, with supporting historical documentation. It is important to present the history of the claim to prove the illegal removal from land.

The Secretarial consultants consult with the state Department of Land Affairs, to determine the status of the review of the claim.

A specific point of concern is that it appears that there are a large number of people, from all race groups, who did not lodge claims at all. This is probably because they did not believe that this restitution promise would be met. These people are currently putting pressure on the Commission to re-open the lodgment process.

Phase 2: Screening and categorisation of the claim

Initial screening of the claim is undertaken by personnel in the Department of Land Affairs. The claim is evaluated, prioritised and categorised according to its importance. Community claims with the potential of political conflict may be more important than individual claims with less political implications. After the prioritising and categorising of claims a preliminary field research is undertaken to validate each claim. This is done by personnel from the state department and appointed consulting firms, such as universities.

The field researchers visit archives, such as the National Archive in Pretoria, in order to determine the historical relevance and correctness of each claim. Various towns and areas where claimants live are visited to further determine the validity of each claim. Reports are written on each claim, addressing aspects such as the present owner of the land, the size of land and when the claimants are removed from the land. The reports were presented to Department of Land Affairs. A copy of a preliminary report of researchers is attached to this mini-dissertation as Annexure A.

Specific problems were experienced during this phase, namely:

- Many claims were incomplete, with only the minimum information filled in.
- There was not adequate information available to verify claims.
- Researchers had to spend many hours to verify claims.
- Limited amount of funding were available to conduct research.

Phase 3: Determination of qualifications in terms of section 2 of the Restitution Act 22 of 1994

With the information presented by the field research teams the Department of Native Affairs is put into the position to evaluate each claim. Assessment of gazette needs, assessment of notification needs and the gazetting of the interested parties forms the basis of this stage. The title deeds and registration of land make it easier to determine the ownership of land. A copy of title deeds and land registration is attached as Annexure B.

Phase 4: Preparation for negotiations

In this phase a preliminary analysis of the land claims document submitted by the claimant is undertaken to determine the nature and extent of any additional historical research that should be carried out. Upon completion of the historical research, a legal review is conducted. The secretariat consults with other ministries to determine what interests may be affected by the claim.

The decision to accept the claim is made by the Minister. A letter is sent to the claimant setting out the general basis upon which they are prepared to enter negotiations.

Phase 5: Negotiations

Throughout the negotiations the claimant consults with the stakeholders that might be affected by the claim to inform him/her that the claim has been accepted for negotiations and to seek their input. Public consultations are conducted on issues that may need to be considered prior to concluding a settlement.

At the start of negotiations a framework agreement is established. This agreement addresses process matters such as cost-sharing arrangements, negotiation timeframes, funding to the claimant during negotiations, the public involvement process and the approval procedures needed for the final agreement. During discussions leading to a negotiation framework agreement, the parties may prepare a work plan and budget to support the claimant's participation in the negotiation phase to seek input from potentially affected interests and to identify issues and concerns that may need to be considered prior to concluding a settlement.

During substantive negotiations the negotiators agree on the general issues and the elements of the settlement. Negotiators for the community obtain the necessary approvals and work towards developing the final agreement as well as an implementation plan describing how the terms of the final agreement will be carried out. This phase presents certain problems particularly regarding the price of the land, agreement on the beneficiaries, validity of the claim, the rightful claimants, the extent of land (property description) and land use.

Phase 6: Settlement and implementation

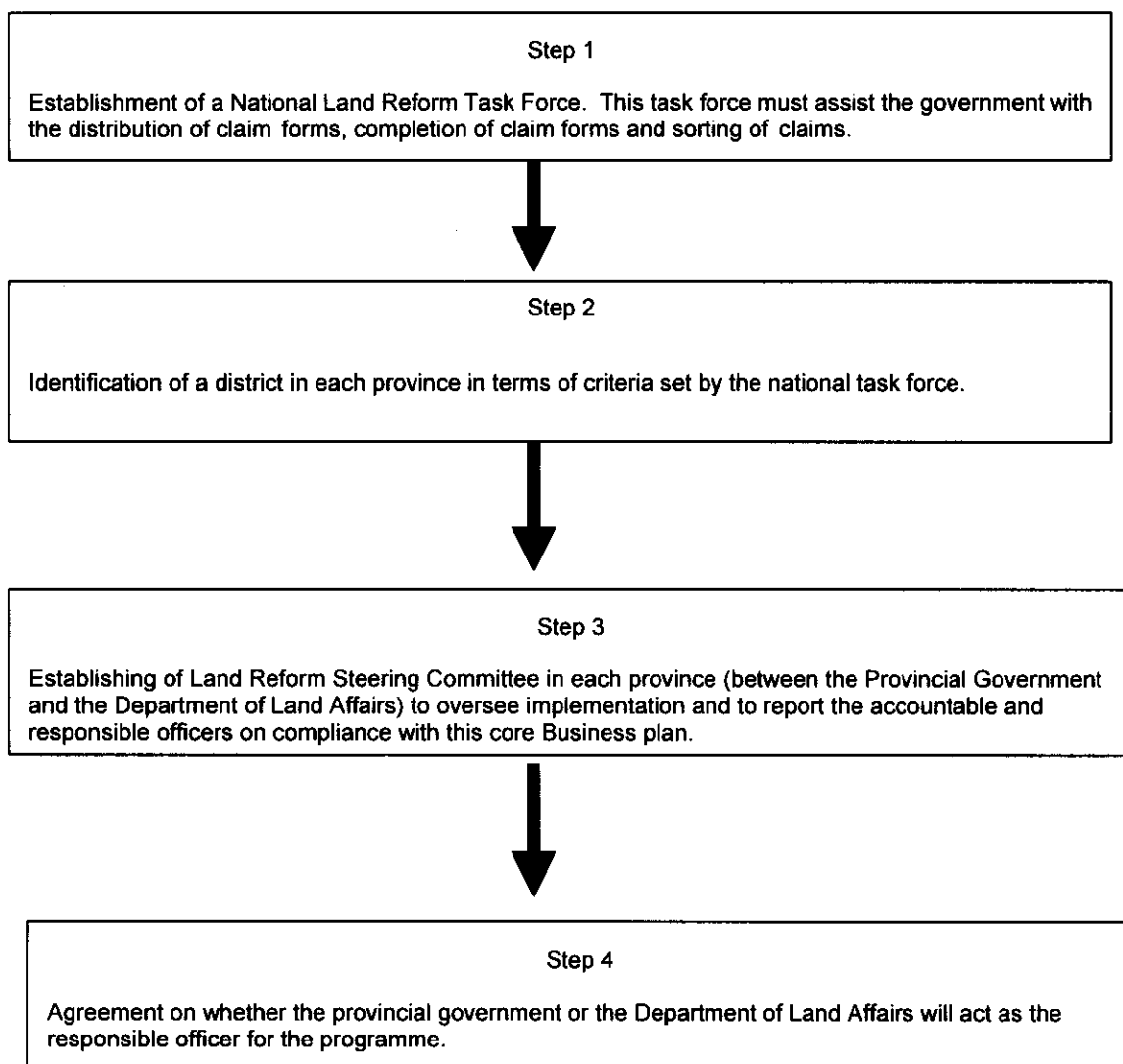
When the final agreement is approved or ratified by each of the parties, an official signing ceremony involving compensation to the claimant, is normally held. The settlement laid out in the agreement usually involves compensation to the claimant, which may be in the form of land and/or money or other forms such as economic development measures. The implementation of the agreement begins and the parties monitor its progress. The final agreement may provide for the transfer of land to the federal government so that it can be set apart as reserve land for the community. In such cases, an environmental inspection is carried out to accommodate the needs of the other parties that may be affected by the settlement, such as users of existing access routes, holders of land use permits or leases on land and public utilities such as

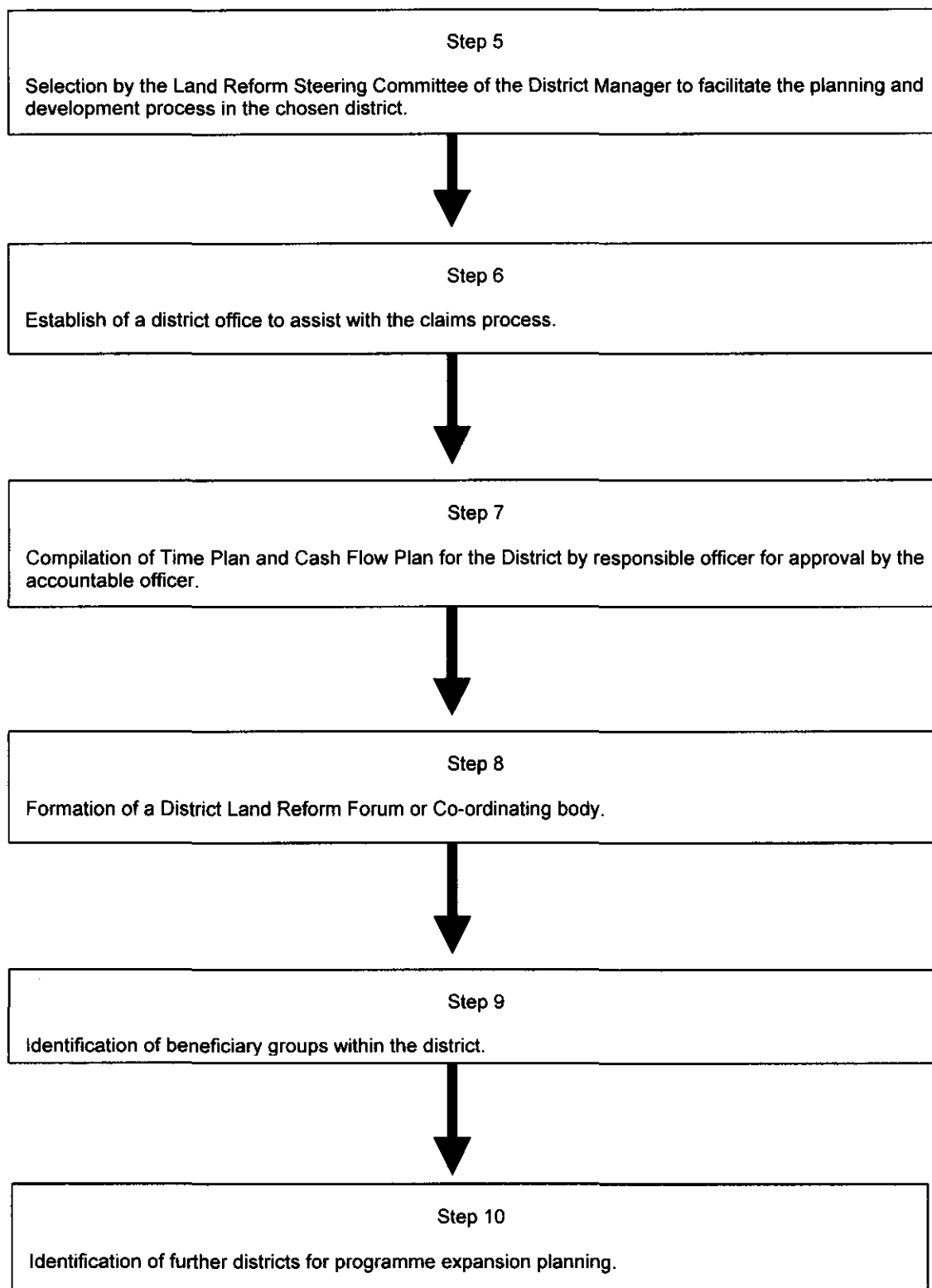
hydroelectricity. Finally, the land is surveyed and transferred to the federal government, which may set the land apart as reserve land for the community.

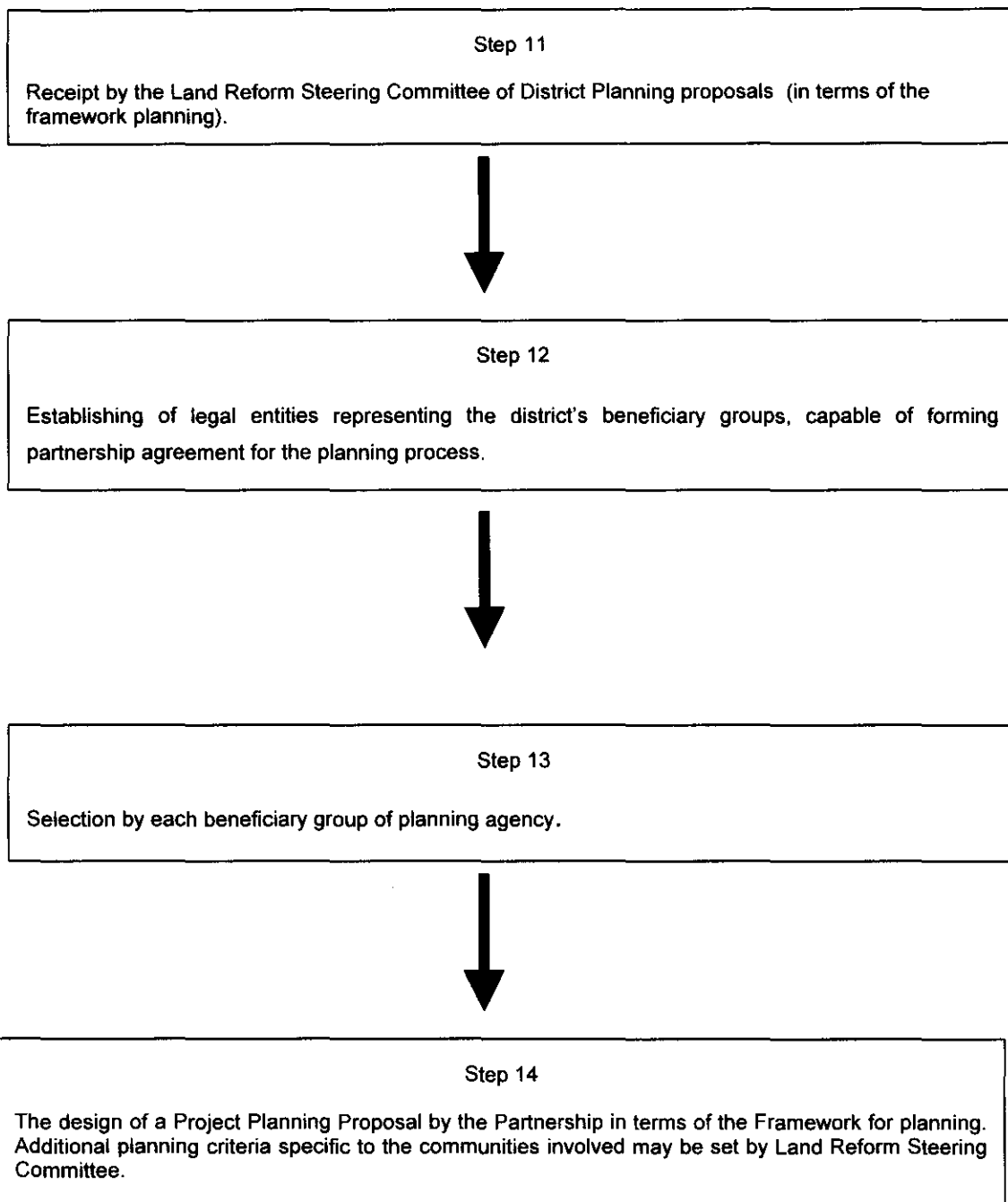
4.4.5 Implementation of the Land Claims structure/process:

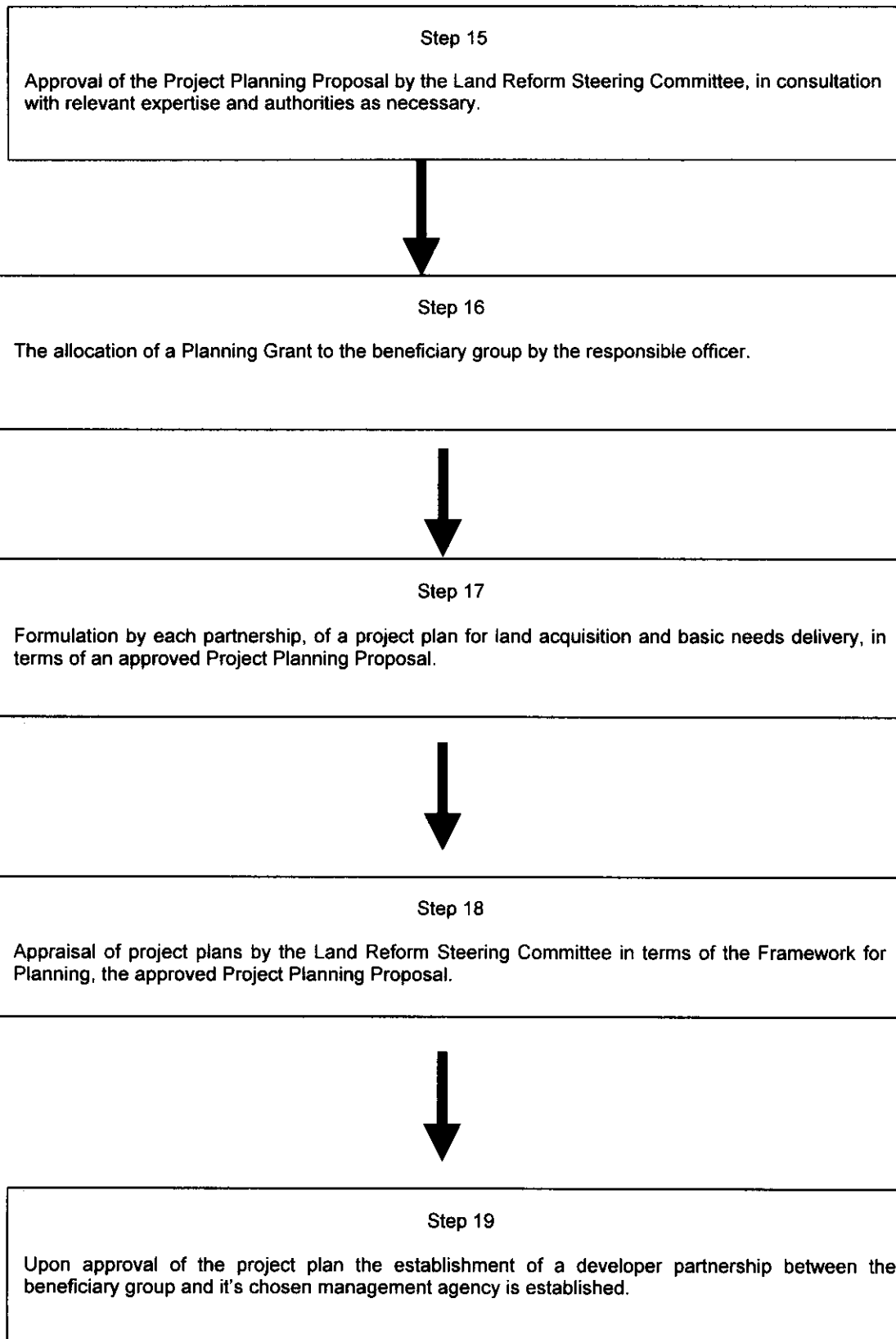
As indicated in paragraph 4.3 the process has to be implemented in order to finalise the land claims process. The implementation takes place in the following steps:

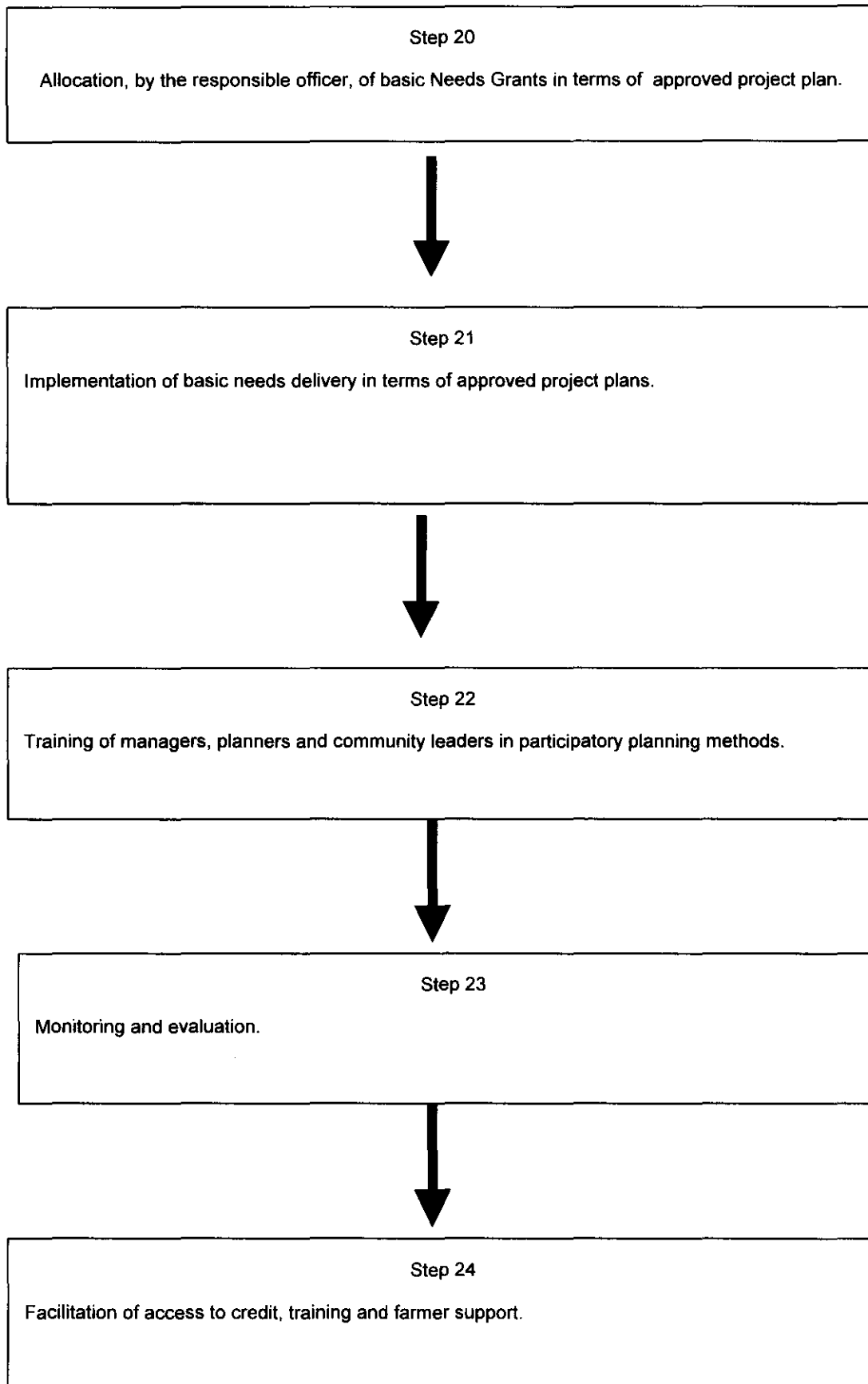
Diagram 4.2 Implementation steps of the land claims process











5. THE COMPLEXITY OF THE PROCESS

It is estimated that a total of 67 531 claims have been lodged with the commission on Restitution of Land Rights. It is therefore clear that an enormous responsibility rests on the shoulders of the Commission on Restitution of Land Rights and the Department of Land Affairs to give effect to the huge and complex task of the restitution of land rights.

Various aspects have furthermore played a role in adding to the complexity of the restitution process as a whole. The following issues have been identified by the Ministerial Review of 1998 as contributing to the slow pace of delivery:

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

- Each of the departments referred to above has a specific role in this process and all these roles are important to ensure that the process of restitution is successful.

6. CONCLUSION

Because annual appropriation cannot possibly be guaranteed, enlarging the scope of the judicial restitution process is a risky and adverse strategy at the legislative stage, since clear rules for judicial restitution will eventually compel the state to pay. The risk in this strategy is that the legal proceedings may drag on for many years. The risk may be minimised by careful attention to the design of the rules and court procedures. The clarity of the rules indeed appears to be more important than the mode of compensation.

For general compensatory land reform, the issue is more complex. If the beneficiaries and assorted legal and agricultural experts are powerfully organised, they may be able to push a land law based primarily on expropriation through the constitutional or legislative assembly, even if they propose compensation at below market price.

Accepting compensation at market price may cost some pride and sense of justice, but substantially improves the sustainability of annual appropriation and counterpart funding. An incentive-compatible coalition may become possible between the beneficiaries and the potential sellers, and opposition of other interest groups will be confined to the compensation for government's funds, rather than the fighting over principles and disability of reform.

The lack of government commitment can play a major role and can pose some risks. Often governments did not provide the counterpart funding required for the implementation of the programmes, for the entire programme or for vital components thereof despite assurance given in negotiation. Careful planning and the regular provision of information will help to minimise the problem.

Financial support can be a great risk as well, because the government must use finance according to its budget. More information is necessary about the cost of the project to prevent overspending.

With the discussion of land reform and the land claims process being complete, the next and final chapter of this dissertation will summarise the findings and conclusion of this research.

CHAPTER 5

FINDINGS AND CONCLUSIONS

5.1 INTRODUCTION

Land reform was one of the main promises made by the African National Congress when it came into power in South Africa in 1994. It has proved to be a complex and slow moving process, and nearly a decade after the first democratic elections, the government has finds itself defending its record on service delivery, also with regard to land claims. The restitution of land claims needs drastic attention in order for the process to be completed.

The land reform programme that emerged as a result of the constitutional negotiations and policy debates of the early 1990s had three main components: restitution for those who had lost land rights as a result of the racially discriminatory policies of the past; redistribution of land to poor and landless or land-hungry black people; and tenure security for black people living on commercial farms and under attenuated forms of communal tenure in the former native reserves or Bantustans. The policies that were formulated attempted to combine a strong commitment to the goals of social justice (including gender equity), redress and poverty alleviation with acceptance of the protection of property rights and the principles of a market-led programme of land redistribution that had been mandated by the compromises of the constitutional negotiations.

The achievements of the land reform programme were very modest in relation to both popular expectations and its own, stated goals. Implementation had proved far more complex and resource demanding than anticipated. While poor people were targeted, very little land had been redistributed, and where land had been transferred, evidence of economic development was minimal.

This made the programme and its advocates politically vulnerable. Implementers had also struggled to turn high-level commitments to the principle of gender equity into workable project interventions. The findings of this research into the process of land claims will be presented below, with reference to general implications (5.2), realisation of the study (5.3), the conclusion of the study (5.4) and the testing of the hypothesis (5.5).

5.2 GENERAL IMPLICATIONS

In chapter 1 an orientation of the study has been given and the problem has been analysed. Research questions have been formulated and a central theoretical statement has been formulated. The methodology of the study has also been addressed.

Chapter 2 revealed that economic and political pressure to own land may be traced back as far as the arrival of Jan van Riebeeck in 1652. The colony's growth into a commercial center led to the expansion of the colony into the interior. The expansion was marred by rising tension and sometimes brutal war between the settlers and the black population. After the Anglo-Boer War, British formed a with the defeated Boer Republics. The union did not recognise the rights of black people. The history show that colonial dispossession and racial patterns of land ownership was enforced by successive white minority governments after 1910, and the demand for land continues to be fuelled by severe property in the rural areas as well as high unemployment in the formal economy.

Chapter 3 discussed the promulgation of the 1913 Native Land Act which stipulated separated residential areas, trade unions and, if practical, separate places of work. According to the Native Land Act (Act 27 of 1913) black people could not enter into any agreement or transaction for the purchase, hire, or other acquisition from a person other than a native, of any such land or of any right thereto, interest therein, or servitude thereover.

The land identified for black occupation was insufficient for the number of people that were living there. This led to the deterioration of land under the pressure of overgrazing and intensive farming.

The 1994 legislation were discussed regarding the restitution of rights in land. The goal of the government's restitution policy is to restore land and to provide for other restitutionary remedies to people dispossessed by racially discriminatory legislation. The legislation seeks to achieve a balance between the protection of existing property rights on the one hand, and constitutional guarantees of land reform on the other hand.

Where land is acquired for reform through purchase or expropriation, the state is obliged by the Constitution to pay just and equitable compensation. "Equitable compensation" will not permit profiteering or undue capital gains at the expenses of the public.

In chapter 4 it was explained how the newly elected South African government began in 1994 to implement laws to speed up the land reform process. The process consists of three dimensions or phases, namely:

- Redistribution, which aims to provide the disadvantaged and the poor with access to land for residential and productive purposes. It includes not only the urban and rural very poor, labour tenants, farm workers and new entrants to agriculture, but also claimants for land lost under apartheid measures since 1913. Redistribution takes place at the hand of restoration of holdings or compensation for land lost.
- Land restitution covers cases of forced removals which took place after 1913. Land restitution is dealt with by a Land Claims Court and Commission, established under the Restitution of Land Rights Act, 22 of 1994. The purpose is to transfer white owned commercial farmland to black users.

- Land tenure reform is addressed through a review of present land policies, administration and legislation to improve the tenure security of all South Africans and to accommodate diverse forms of land tenure, including different types of communal tenure.

The land restitution process aims therefore to restore land to those dispossessed of their land since 1913, due to racially discriminatory laws and practices. The Restitution of Land Rights Act 22 of 1994 was enacted to guide the implementation of the land restitution process and to give it a legal basis.

The status of this process is that once a claim is recognized by the Claims Court, the government is required to compensate the existing owner and/or pay compensation to the claimants. Specific budgetary provision or shifts in policy do not limit its commitments. This process is a complicated one and a sensitive matter. Land reform needs to be carefully approached, because it has a great effect on the claimants and the current landowners.

5.3 REALISATION OF THE OBJECTIVES OF THE STUDY

The following objectives have been set in this study

To determine the history of land reform in South Africa.

- To determine what led to the current situation regarding land reform in the country.
- To analyse certain relevant legislation on land reform and land claims.
- To determine and describe the process on how land claims are managed.
- The first objective has been reached with the completion of chapter 2 of the study.
- The second objective has been reached with the analysis of the land reform situation in South Africa in chapter 2.

- The third objective has been reached when the relevant legislation regarding the land process has been discussed in Chapter 3.
- The fourth objective namely to describe the process of land claims from 1913 onwards, has also been reached with the discussion in chapter 4.

The central theoretical statement that was set in chapter 1 was the following:

South Africa has a history of unequal distribution of land between the various races. It was indicated in chapter 2, that this statement was correct, and this study determined that distribution of land was unequally distributed between various race groups.

The current land reform initiatives are the result of unequal distribution of land in the past. This was also shown to be true, and that the 1913 Native Land Act, (Act 27 of 1913) laid the foundation for the unequal distribution of land in South Africa.

The current process of administering land claims has as its basis specific legislation in order to rectify the unequal distribution of land between different races. Legislation such as the Restitution of Land Rights Act, (Act 22 of 1994) and the Land Reform (Labour Tenants) Act, (Act 3 of 1996), laid the foundation for the rectifying of past injustices regarding the distribution of land and it also determined the process according to which these injustices was rectified.

The overall objective of this study has thus been achieved.

5.4 CONCLUSION

The process of restituting land rights requires careful navigation, as it is uncharted territory for South Africa as a whole. Settlement plans and development strategies are considered as a prerequisite for the finalisation of restitution claims where land is restored to the claimants. The aim with this approach is to ensure delivery, and not only the qualitative finalisation of

claims through the restitution process. The achievement of both aims requires the involvement of all relevant role players, i.e. the provincial and local government structure.

The importance of a successful restitution process is emphasised by the fact that forced removals, as the product of racial segregation, have brought about enormous suffering and hardship for many South Africans. It will be impossible to achieve a settlement of land issues without addressing these historical injustices. Furthermore, the process of achieving national reconciliation is also dependent on finding appropriate ways of healing the wounds of the past.

5.5 Testing the hypothesis

This study has proven that after the 1994 election the land claims process has started to take its course. The newly elected government started to implement legislation to help disadvantage people to get their land back. However, the restitution process has not been without challenges. There are problems with impossible claimants, current landowners, disputes, development changes, administrative bottlenecks, capacity issues, public expectations, and the sheer size of the task. The process that was implemented was very slow and the settlement was difficult. In addition it appears that there are many people who did not lodge their claims, probably because they did not believe that this restitution promise would be met.

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ANNEXURE A: PRELIMINARY LAND CLAIMS REPORT

Claimant: HP OTTO

REPORT FOR PRELIMINARY INVESTIGATION OF RESTITUTION LAND CLAIMS

1. CLAIMANT PROFILE

1.1 Claim form completed and submitted: Yes.

1.2 Name of signatory on the claim form: (Attach a screen report which must be done in a MS Excel Program): Details are attached.

Ref no	Prop desc	Claim ant	Owner	Co Claim ant	ID	Relati on-ship	Addre ss	☎ no

2. HISTORY OF LAND

2.1 Property address or farm at the time of dispossession

Lot no 543

G-street

Makweteng

Lichtenburg

2.2 Erf, farm number or boundary description:

Lot No 543

G-Street

Makweteng

Lichtenburg

2.3 Size or property:

The size of the property is 303 square metres

2.4 Description of the land and improvements claimed:

No improvements were mentioned .

3. DESCRIPTION OF THE LAND RIGHTS CLAIMED

3.1 When did the dispossessed start residing there? (year)

It is uncertain when the dispossessed started residing on the property

3.2 How long did the original dispossessed live there?

The claimant in the claim form does not indicate the date from when the dispossessed started residing on the property, but the right to the land was lost in 1980's

3.3 What land right did the original dispossessed have?

TYPE OF RIGHT	NUMBER
Tenant with a permission to occupy	
Sub-tenant with permission to occupy	
Labour tenant	
Trading rights	
Commercial rights	
Share cropper	
Beneficially occupying	
Customary law interest	
Beneficiary under a trust arrangement	
Title deed (ownership)	
Freehold	
Lease/rental	
99 year lease	X
Quitrent	
Any other (please specify)	

3.4 For what purpose was the land used?

PURPOSE	NUMBER
Residential	X
Arable	
Grazing	
Teza	
Beneficial occupation	
Other (please specify)	

4. CIRCUMSTANCES OF REMOVAL

4.1 In what year was the land right lost/claimant dispossessed?

The right of land was lost in 1980's

4.2 Was legislation used to dispossess the claimant?

Not certain if legislation was used. The claimant did not mention legislation in the claim form, but legislation might have been used. Legislation that might have been used is the Black Communities Development Act no 4 of 1984

4.3 If Yes, please indicate which type:

YES	N O	TYPE OF LEGISLATION
		Black Land Act no 27, 1913
		Black Administration Act no 38, 1927
		Black (Urban Areas) Consolidation Act no 25, 1945
		Black Authorities Act no 68, 1951
		Black Resettlement Act, 1954
		Black Affairs Act no 55, 1959
		Better Administration of Designated Areas Act no 51, 1963
		Black Affairs Administration Act no 45, 1971
		Black Local Authorities Act no 102, 1982
		Black Communities Development Act no 4, 1984
		Conversion of Certain Rights into Leasehold or Ownership Act no 81, 1988
		Development Trust and Land Act no 18, 1936
		Defence Act
		Expropriation Act no 63, 1975
		Expropriation number ACT 55 of 1965
		Forestry Act
		Group areas Act no.
		National Parks Act
		Prevention of Illegal Squatting Act no 52, 1951
		Promotion of self-government Act no 46, 1959
		Proclamation number:
		Self-governing Territories Constitution Act no 21, 1971
		Slums Act
		Water Act
		Resettlement in Coloured Areas

If no, describe the racial practise and state department of official involved in the dispossessions.

N/A

**4.3 When claimants were dispossessed did they move:
Voluntary/forcibly?
(Attach proof or motivate)**

Uncertain, no information given by the claimant with regard to the moving of the dispossessed

5. COMPENSATION AND LOSSES

5.1 To which area did claimants move?

N/A

**5.2 What compensation, if any, did claimants receive at the time of
dispossession?**

(Indicate the nature of compensation received)

FORM OF COMPENSATION	YES	NO
Financial compensation received		
Alternative land		
Housing received		
Any other form of compensation		

(Please attach a list of amount of compensation received if not a single case)

According to the claimant no compensation was received

**5.3 Were the dispossessed or representatives of the community given
an opportunity to negotiate compensation?**

Uncertain if the claimant had the opportunity to negotiate any compensation. The claimant did not mention if the dispossessed had the opportunity to negotiate compensation

**5.3 What losses and hardships did the claimants as a result of the
dispossession incur?**

The claimant provides no definite physical, logistical and emotional hardships as examples.

6. DESCRIPTION OF THE CLAIMANT ENTITY

6.1 Is the claimant:

TYPE OF CLAIMANT	YES	NO
The original dispossessed		
Spouse of the original dispossessed person		
Direct descendants of the original dispossessed		
Any other family member of the original dispossessed		
Representative of the original dispossessed person		
Beneficiary in terms of the will		
An estate		
Community representative		
Claiming as legal representative of dispossessed		
Claiming as elected representative of dispossessed		
Claiming on behalf of the church or other entity as chairperson of a committee		
Any other (please specify) family representative	X	

7. POST DISPOSSESSION PROFILE

7.1 After the claimants were removed from the land, what happened to it?

POSSIBILITIES	YES	NO
Transferred to the state Lichtenburg Municipality	✓	
Transferred to a homeland		
Sold to a private owner		
Transferred to another community/village		
Dwellings were demolished		
Dam was built		
Declared as a game or nature reserve		
Other (please specify)		

7.2 Who is the current owner of the land?

The current owner of the land is SS Koreng

7.3 What is the current use of the land

It is not certain what the use of the land is, but the assumption could be made that it is for residential purpose

8. BIBLIOGRAPHY

Original claim form

9. REPORT

9.1 The name of the principal claimant and all the other co-claimants,

HP Otto is the principal claimant as representative of the family

9.2 Past and current property description for portion of land as per deeds information and/or any other forms of description which may be applicable to the area in question (including natural boundaries);

Lot no 543
G-street
Makweteng
Lichtenburg

9.3 The names and contact details of the current owner and may include any other person who may have rights which will be affected by the claim in respect of the property in question

The current owner of the land is SS Koreng, but the contact details is unknown

9.4 the compensation paid and/or land allocated at the time of dispossession (if land was allocated, the rights of the claimant/s to such land);

According to the claimant no compensation was received. It was not possible to verify this from archival documents as none was available as possible prove.

9.5 The details of land use at the time of dispossession and at present:

At the time of dispossession it was used for residential purpose. It is uncertain for what the land is used at present.

9.7 Directions for further research

If the need arises for a further and much more in depth research for a longer period of time as was the position with the time-bounded handling of this claim, much more can perhaps be obtained for further clearance and evidence of the size of the property, the time the claimant started resending there and the legislation that was used to disposed the claimant

9.8 Further information

Section 2 of Act 112 of 1991 applicable

ANNEXURE B: EXAMPLE OF A TITLE DEED

EN die genoemde Komparant het verdaar dat sy genoemde Prinsipaal waarlik en wettiglik verkoop het op 28 SEPTEMBER 1982, en dat hy die genoemde Komparant in sy voornoemde hoedanigheid onder hierdie Akte sodeer en transporteer, in volle en vrye eiendom, aan en ten behoeve van:

CORNELIUS JOHANNES HAMMAN
IDENTITEITSNOMMER 501210 5085 00 5
GETROUD BUITE GEMEENSAP VAN GOED

sy erfgename, ekskuteurs, administrateurs of regverkygendes

1. **RESTERENDE GEDEELTE** van die plaas WITPAN 20, Registrasie Afdeling LP., TRANSVAAL;

GROOT: 442,7842 (VIERHONDERD TWEE EN VEERTIG komma SEWE AGT VIER TWEE) HEKTAAR:

AANYANKLIK OORGEDRA kragtens Goewernmentstransport gedateer 23 Oktober 1983 met Kaart wat daarop betrekking het en gehou kragtens Akte van Transport T32137/1983.

- A. "ONDERHEVIG" aan die volgende reserwaties en kondities met betrekking daarop, 1/3de aandeel waarvan ten faveure van die Transvaal Estates and Development Company Limited en 2/3de aandeel ten faveure van die Transvaal Consolidated Land and Exploration Company Limited (beiden hierinlater genoemd "de Maatschappijen" - blykens Certifikaten van Minerale Rechten Nos. 20/1913 S en 21/1913 S respektievelik:

- (a) De Maatschappijen reserveren en behouden het volle vrye en uitsluitend recht en belang in en op alle mineralen, minerale stoffen en metalen, edelgesteenten en steenkool, op in of onder gezegd eiendom zonder enige uitzondering, tezamen met het uitsluitend recht, naar goedgevonden daarmede te handelen, hetzelfde te vervreemden of daarover te beskikken.
- (b) De Maatschappijen reserveren en behouden het enig en uitsluitend recht tot prospekteren voor, exploiteren van en mijnen voor zodanige mineralen, minerale stoffen en metalen, edelgesteenten en steenkool, ter eniger tijd op het land aangetroffen en met zodanige

GROOT: 77,1050 (SEWE EN SEWENTIG komma EEN NUL VYF NUL)

Hektaar;

AANVANKLIK OORGEDRA kragtens Akte van Transport 3261/1919 met
aangehegte kaart en gehou kragtens Akte van Transport 32137/1969

A. ONDERHEWIG aan die reservasies en kondities met betrekking daarop, 1/3de aandeel
waarvan ten faveure van die Transvaal Estates and Development Company Limited en
2/3de aandeel ten faveure van die Transvaal Consolidated Land and Exploration
Company Limited, (beiden hierinaar genoemd "de Maatschappijen") blykens
Certifikaten van Mineralen Rechten Nos. 20/1913 S en 21/1913 S, respektievelik, meer
ten volle uiteengesit onder (a), (b), (c), (d), (e), (f) and (g), paragraaf 1 van hierdie akte.

B. Verder onderhewig aan voorwaarde B onder paragraaf 1 hiervan.

EN VERDER onderhewig aan sodanige voorwaardes as in genoemde aktes vermeld staan of na
verwys word.

WESHALWE die Komparant afstand doen van al die regte en titel wat die transportgewer
voorheen op genoemde eiendom gehad het en gevolglik ook erken dat hy geheel en al van die
besit daarvan onthel en nie meer daartoe geregtig is nie en dat, kragtens hierdie akte,
bogenoemde

TRANSPORTNEMER

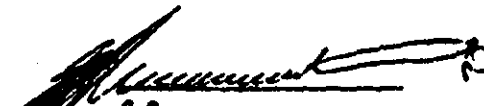
sy erigename, eksekuteurs, administrateurs of regverkrygendes tans en voorheen daartoe
geregtig is, ooreenkomstig plaaslike gebruik, behoudens die regte van die Staat en ten slotte
erken hy dat die koopprijs die bedrag van R245 000,00 (TWEEHONDERD VYF EN
VEERTIGDUISEND RAND) beloop.

Ten bewyse waarvan ek, genoemde Registrateur, tesame met die Komparant hierdie Akte
ondersaken en dit met die ampseel bekragtig het.

ALDUS gedoen en verly op die kantoor van die Registrateur van Aktes vir TRANSVAAL te
PRETORIA op 29 07/93

In my teenwoordigheid:


REGISTRATEUR VAN AKTES


G.O.

onderlinge ooreenstemming door arbitrage te worden vastgesteld
zoals hierin voorziening voor is gemaakt.

- (f) Het recht op mineralen, minerale stoffen en metalen, edelgesteenten en steenkool, waarnaar hierin verwezen, betekent en sluit in alle zodanige rechten op mineralen, minerale stoffen en metalen, edelgesteenten, steenkool en andere rechten daaraan verbonden of bijkomend zoals tans toebehoren of later mogen toebehoren aan de eigeenaar van een plaats krachtens enige wet van tijd tot tijd van kracht zijnde.

Deze sluiten in de eigeenaarsrechten op een mijnrecht op een werf
en op andere claims en vergoedingen, op
andere rechten en andere ooreenstemming, welke
uitsluitende enige aandeel van de opbrengst van de verkoop van
standplaatsen in enig standplaatsdorp of van de standplaats
licenties daarin onder de bestaande wet, en zullen alle zodanige
andere rechten insluiten als door eigeenaren onder enige
toekomstige wet in plaats daarvan mogen verkregen worden.

- (g) In het geval dat de Maatschappijen, exploiteren, prospekteren of
mijnen voor mineralen, minerale stoffen, metalen, edelgesteenten en
steenkool, zoals in klousule 2 hiervan uiteengezet, zullen zij: recht
van weg hebben en het recht enige weg vanaf de plek van zodanig
exploiteren, prospekteren, of mijnen tot aan de naaste
Goevernements of publieke weg te gebruiken."

- B. Krachtens Notariële Akte 854/73 S is die reg aan ESKOM verleen om elektrisiteit oor die
hierinvermelde eiendom te vervoer, tesame met bykomende regte, en onderworpe aan
voorwaardes, soos meer volledig sal blyk uit gesegde Akte.

EN VERDER ONDERHEWIG aan eodanige voorwaardes as in genoemde aktes vermeld staan of
na verwys word.

2. GEDEELTE 7 (n gedeelte van gedeelte 3) van die plaas WITPAN 20,
Registrase Afdeling I.P., TRANSVAAL;

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757925/93

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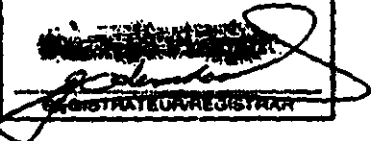
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1995

5/11/95

DIE IDENTITEITSNUMMER VAN DIE	THE IDENTITY NUMBER OF THE
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 REGISTRANT	

5/11/95

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van 7-11-97 tot
7-11-97