

**Chicago-Kent College of Law**

---

**From the Selected Works of Bernadette Atuahene**

---

Fall 2014

# The Importance of Conversation in Transitional Justice: A Study of Land Restitution in South Africa

Bernadette Atuahene, *Chicago-Kent College of Law*

# The Importance of Conversation in Transitional Justice: A Study of Land Restitution in South Africa

Bernadette Atuahene

*One of the most replicated findings of the procedural justice literature is that people who receive unfavorable outcomes are more likely to believe that the process was nonetheless legitimate if they thought that it was fair. Using interviews of 150 people compensated through the South African land restitution program, this article examines whether these findings apply in the transitional justice context where it is often unclear who the winners and losers are. The question explored is: When all outcomes are unfavorable or incomplete, how do people make fairness assessments? The central observation was that the ability of respondents and land restitution commission officials to sustain a conversation with each other had the greatest effect on whether respondents believed that the land restitution process was fair. The study also contributes to the existing literature by exploring the institutional arrangements and resources necessary to facilitate communication and to overcome any communication breakdowns encountered.*

## I. INTRODUCTION

In South Africa's efforts to move beyond its past and build its celebrated rainbow democracy, one of the most intractable legacies to overcome has been the massive displacement of blacks<sup>1</sup> from their lands by the colonial and apartheid-era states (Thompson 1995; Miller 2000, 1–44; Atuahene 2010a, 2010b). As a result of the Natives Land Act (1913) and the Natives Trust and Land Act (1936), when apartheid ended in 1994, whites owned 87 percent of the nation's land although they constituted less than 10 percent of the population. To address the legacy of land dispossession, the post-apartheid state has adopted a three-pronged land reform strategy, which includes land tenure reform, land redistribution, and land restitution (Hall 2004b). This study explores why some dispossessed individuals and families who received compensation through the land restitution process believed that the process was fair while others believed that it was unfair. Although there are several studies that have evaluated South Africa's land reform strategy (Rwelamira and Werle 1996; Mostert 2000; Donaldson and Lochner 2002; Hall 2004a; Parker 2004; Manenzhe and Lahiff 2007; Tilley 2007;

---

Note: Figures and tables also published online on the Wiley Online Library as Supporting Information. **Bernadette Atuahene** is a Professor of Law at IIT, Chicago-Kent College of Law and a Faculty Fellow at the American Bar Foundation.

1. In this article, the term blacks includes people classified under apartheid as African, coloured, and Asian.

Fay and James 2008; Lahiff et al. 2008; Walker 2008; James 2009; Atuahene, 2011), there is no empirical study that has evaluated the land restitution process's perceived fairness.

Examining why some respondents thought that the restitution process was fair and others did not is an important research question both retrospectively and prospectively. Looking back, providing remedies that address the legacy of land dispossession in a fair manner is necessary to fulfill the liberation bargain. In the political transition from apartheid to democracy, the incoming political administration, led by the African National Congress (ANC), entered into a bargain with the outgoing apartheid government. This so-called liberation bargain dictated what the new democratic state could do to correct past land theft. Recognizing that whites would not relinquish their property without compensation, the ANC conceded to the apartheid government's demand to provide constitutional protection for existing property rights regardless of how the owners had acquired their property (Atuahene 2010b). Therefore, if, for instance, the apartheid government confiscated land from a black community and transferred it at nominal cost to a white farmer who still owned the land at the end of the apartheid regime, the white farmer's rights to that land were secure under Section 25.1 of the Constitution (South African Constitution 1996). If the post-apartheid state wanted to transfer the land back to the black community, it would have to either purchase the land from the white farmer or initiate a forced sale through its powers of eminent domain.

In exchange for this significant concession, the ANC ensured that blacks dispossessed of their land under white rule were afforded certain constitutional remedies as well. For instance, Section 25.7 of the South African Constitution states that a "person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress" (South African Constitution 1996). Essentially, whites immediately received clean title to the lands they owned, but blacks had to wait for the state to vindicate their land rights. It is important for the post-apartheid state to uphold the other end of the liberation bargain by defending the land rights of blacks in a fair and efficient manner.

Looking forward, if dispossessed communities and individuals systematically view the land restitution process as unfair, then this could have detrimental consequences for the political stability of the post-apartheid state (Atuahene 2007, 2009). In one of the most impressive public opinion studies on land reform in South Africa to date, James Gibson surveyed 3,700 South Africans and found that 85 percent of black respondents believed that "most land in South Africa was taken unfairly by white settlers, and they therefore have no right to the land today" (Gibson 2010, 31). Only 8 percent of whites held the same view. His most troubling finding was that two of every three blacks agreed that "land must be returned to blacks in South Africa, no matter what the consequences are for the current owners and for political stability in the country" (Gibson 2010, 31). Ninety-one percent of whites disagreed with this statement. This level of discontent about land inequality has the potential to lead to instability (Midlarsky 1988; Muller et al. 1989; Lichbach 1990).

While determining whether dispossessed populations felt that the restitution process was fair or not is important, it is just one piece of a larger puzzle and hence must

be placed in the proper context. To a large extent, fairness assessments are based on expectations, and entrenched poverty may have systematically lowered the expectations of dispossessed populations. Therefore, fairness assessments can reflect the endemic poverty in which the restitution process unfolded rather than the process itself. In other work, I argue that since the colonial and apartheid governments deprived blacks of both property and dignity, a comprehensive remedy will address both dimensions of deprivation. While a process that is perceived as fair can contribute to the restoration of dignity, a transfer of assets is necessary to address the economic consequences of property dispossession (Atuahene 2014).

Using the South African case, I first explore whether the dominant procedural justice findings about fairness are relevant in the transitional justice context. Then, I explain the methodology used to understand what led respondents to conclude that the process was fair or unfair. The interview data show that fairness assessments were based primarily on whether respondents were able to sustain a conversation with commission officials. I then examine the communication strategy the commission put in place to sustain a conversation with over 1 million people who stood to benefit from the restitution program. Next, I explore the conditions under which *communication breakdowns* (when something obstructed the conversation causing one party to lose the other's attention) were most likely to occur. Last, I examine the strategies respondents used to overcome communication breakdowns once they had occurred so that they could restore the conversation.

This article's contribution to the procedural justice literature is twofold. First, the article confirms that the fair process effect does indeed apply in the transitional justice context. More specifically, the central observation is that although procedural justice scholarship emphasizes the importance of input, this is not enough in the transitional justice context. Given the complex nature of correcting historical injustices and the need for negotiated outcomes, a sustained conversation is required. The concept of a sustained conversation and the development of its parameters are novel contributions to the literature.

It was difficult for the South African land restitution commission to sustain a conversation with its constituents, just as it is a challenge for numerous other agencies that deliver services to the poor. Quality communication requires resources. Consequently, the article's second contribution to the procedural justice literature is to identify the institutional and individual resources needed to facilitate communication and overcome communication breakdowns.

## II. LITERATURE REVIEW

Studies have repeatedly demonstrated that even when the outcomes are unfavorable, people tend to believe that legal and political institutions, authorities, and processes are fair when they are based on fair procedures (Thibaut and Walker 1975; Tyler 1984, 1989, 1990, 1994; Tyler, Rasinski, and Spodick 1985; Lind, Kanfer, and Earley 1990; Brockner and Wiesenfeld 1996). That is, each process produces winners and losers and the losers often believe that the process is legitimate so long as they believe

that the procedures were fair. This is known as the fair process effect. But does the fair process effect extend to the transitional justice context?

Transitional justice is “the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes” (Teitel 2003, 69). It is difficult to differentiate the winners and losers of transitional justice processes because the remedies available are often partial and unsatisfactory to all beneficiaries. The remedies provided by the South African land restitution program were incomplete in several respects. First, there was no amount of money that could fully address the psychological, economic, political, and social harm that dispossessed populations suffered (Espeland and Stevens 1998). Second, it was not the principal beneficiaries of the land theft who were compensating victims; current taxpayers were footing the bill. Third, due to financial restraints, the financial awards provided did not cover the full market value of the property rights lost and there was no compensation for personal property taken or the improvements made to the properties (Atuahene 2014).

As a result, on one hand, everyone who received compensation was a loser because the state distributed only partial compensation. On the other hand, everyone was a winner because the wrongdoing of predecessor regimes is often completely ignored. For example, compensation was never provided for the atrocities and dispossession that occurred in several nations, including the Congo under Mobutu, North Korea during the reign of Kim Jong-Il, and Burma under General Than Shwe.

An examination of the South African land restitution process suggests that the standard categories of the procedural justice literature are ill fit to the transitional justice context because there are often no clear winners and losers. It is therefore difficult to determine whether those who received unfavorable outcomes will believe that the process was nonetheless fair so long as they thought that the procedures were fair or whether only those who received favorable outcomes will perceive the process as fair. Although the debate about whether process or outcomes matter more is not easily answered in the transitional justice context, the South African case can help us understand what factors most impact fairness assessments in this context.

In his review of three decades of sociolegal research on procedural justice, Robert MacCoun states that “although many aspects of procedure shape [the] fair process effect—lack of bias, thoroughness, clarity—two particularly important dimensions are voice (the ability to tell one’s story) and dignified, respectful treatment” (MacCoun 2005, 172). With regard to voice, one of the most replicated findings in the procedural justice literature is that when people have the opportunity to provide input into a decision-making process, then they perceive the decision to be more fair and react more favorably to the decision, the decision makers, and the institution represented by the decision makers than if they have no opportunity to provide input (Lind and Tyler 1988). Moreover, even when the input does not lead to direct control over the decision itself, the opportunity to be heard makes people more likely to conclude that the decision was fair (Folger 1977; LaTour 1978; Lind et al. 1980; Lind, Lissak, and Conlon 1983; Tyler, Rasinski, and Spodick 1985; Kanfer et al. 1987; Tyler 1987). This article explores whether these findings about voice apply in the transitional justice context.

### III. METHODOLOGY

#### A. Primary Data Source

The primary source of data was 141 semistructured interviews I completed of 151 urban claimants, lasting between thirty and ninety minutes each. The interviews were audiotaped, transcribed, and conducted with the promise of confidentiality (pseudonyms mask the respondents' identities). All interviews were conducted in person and this required me to traverse some of South Africa's most dangerous townships. It was worth the risk, however, because the interviews produced rich data and gave dispossessed, forgotten populations an opportunity to have their voices heard.

##### 1. *Selecting the Interview Sample*

Existing studies of land reform in South Africa have focused primarily on rural areas (Rwelamira and Werle 1996; Donaldson and Lochner 2002; Parker 2004; Manenzhe and Lahiff 2007; Tilley 2007; Fay and James 2008; Lahiff 2008; Walker 2008; James 2009). Nevertheless, restitution in urban areas deserves closer study because urban dispossession affected a significant portion of the South African population. While there are no exact numbers, it is estimated that 3.5 million people were forcibly removed from urban areas as a result of only one of the many laws used—the Group Areas Act (Platzky and Walker 1985; Dawood 1994). Additionally, urban claims accounted for 33 percent of the 1,551,249 people who benefited from restitution awards as of 2008 (*Commission on the Restitution of Land Rights Annual Report 2008*).<sup>2</sup> To examine the impact of urban dispossession and broaden the existing literature's scope, I interviewed people removed from urban areas in the Gauteng province (which encompasses Johannesburg, Soweto, and Pretoria) and the Western Cape province (where Cape Town is located). Figure 1 shows the communities from which I drew respondents.

I selected communities with the intention of capturing the full range of respondent types, including Africans, coloureds, Asians, and whites; former tenants and owners; people who received financial compensation, land, and housing; and people who received financial compensation of varying amounts. After strategically selecting communities, I randomly chose claimants from within these communities. The commission kept a list of people who had received financial compensation, which was organized by community and stated how much money each person received. A separate list of names identified people who had received land or housing and indicated the plot of land or house they received. I chose every fifth person from these lists and requested that the records department in the regional land claims commissions pull their files so that I could secure the claimants' telephone numbers. Then either a translator or I called each randomly chosen claimant to schedule an interview.

---

2. There were 65,642 urban claims settled by 2008, which benefited about 513,232 beneficiaries. There were 75,400 claims settled overall, with 1,551,249 beneficiaries.

|                     | Community Name        | Number of Respondents | Percentage of Total |
|---------------------|-----------------------|-----------------------|---------------------|
| <b>Western Cape</b> | White                 | 7                     | 5%                  |
|                     | District Six          | 9                     | 6%                  |
|                     | Paarl                 | 13                    | 9%                  |
|                     | Luyolo                | 11                    | 8%                  |
|                     | Mossel Bay            | 3                     | 2%                  |
|                     | Steurhof              | 9                     | 6%                  |
|                     | Die Eiland            | 5                     | 4%                  |
|                     | Dysseldorp            | 7                     | 5%                  |
|                     | Other                 | 4                     | 3%                  |
|                     | <i>Regional Total</i> | 68                    | 48%                 |
| <b>Gauteng</b>      | Kliptown              | 10                    | 7%                  |
|                     | Evaton                | 13                    | 9%                  |
|                     | Kilnerton             | 14                    | 10%                 |
|                     | Sophiatown            | 6                     | 4%                  |
|                     | Marabastad            | 15                    | 11%                 |
|                     | Payneville            | 15                    | 11%                 |
|                     | <i>Regional Total</i> | 73                    | 52%                 |

**FIGURE 1.**  
Communities in the Interview Sample

About three-quarters of the claimants had a working phone number on file with the commission's records department and over 90 percent of the respondents I was able to reach agreed to be interviewed. Respondents helped me identify and contact community leaders whom I was unlikely to choose randomly using the various lists, but who had a wealth of information that was extremely valuable to this study. The sample does not include people who missed the deadline and did not file a claim or those who submitted claims that the commission denied. Figure 2 shows the characteristics of the respondent pool.

## 2. Conducting the Interviews

I conducted 80 percent of the interviews entirely in English and used a translator when the respondent was not comfortable speaking in English. The interview consisted of three main segments. After obtaining each respondent's consent to be interviewed, I first asked her or him to describe life before the forced removal. Second, I asked each respondent to remember and describe the methods the colonial and apartheid governments used to forcibly remove him or her. Third, I asked respondents to describe the restitution process from the moment they discovered that they could file a claim to the moment they received their restitution award. Immediately after asking each of these three questions, I sat back, listened, and allowed respondents to tell their stories uninterrupted. After they finished answering each of the three main questions, I asked a series of follow-up questions to fill any gaps in their story, procure additional detail, probe their emotional responses to events, and inquire about related topics.

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

FIGURE 2.

## Description of the Interview Sample

*Note:* There are no reliable estimates for the characteristics of the actual pool of restitution beneficiaries.



### 3. *Data Analysis*

The data collection produced lengthy transcripts full of thick descriptions and rich detail. To analyze all the information systematically, a graduate student and I coded each transcript using qualitative software. This article relies on the coding category that contained all interview excerpts in which respondents discussed how they felt about the restitution process as well as their responses when specifically asked whether the process was fair. The article's arguments are based on the trends I identified in the coding category. I chose each quote presented here because it best communicated an identified trend. I did not edit the quotes extensively because the words respondents used to describe various events and emotions offer the reader unique and valuable perspectives.

### 4. *Limitations of the Interviews*

This study seeks to make a significant contribution to the procedural justice literature; however, it has several limits. First, although there were almost 80,000 total claims filed, of which 65,642 were urban claims, I interviewed 151 urban claimants. Consequently, my findings describe the trends I have identified among my respondents and may not be generalizable to the entire population of urban claimants. Instead, I have used the findings to generate theory about the circumstances under which participants of transitional justice programs (like the land restitution program) feel that the process they underwent was fair or unfair.

Second, this study relied primarily on interview data. The validity and reliability of interview data is undermined when respondents give inaccurate information due to embarrassment, lack of knowledge, nervousness, confusion, or, most importantly for this study, memory loss. I began each interview by asking respondents to describe their lives before the forced removals and then asked them to describe the removals. These events most often took place decades ago, so the accuracy of the stories may have been compromised by foggy memories. Also, as time passes, memories evolve in complicated ways such that a person's description of an event five minutes after it has occurred is different than it would be five days, five years, or five decades later. The main portion of the interview, however, was when respondents and I discussed their experiences in the restitution process. These memories were fresher and more reliable. I mitigated the problem of memory to the extent possible by confirming the interview data with the study's additional data sources.

### B. *Additional Sources of Data*

In addition to the interviews of claimants, I used three other sources of data in this study. First, I conducted twenty-six semi-structured interviews of bureaucrats, whom I refer to as *commission officials*, working in the central land claims commissions in Pretoria as well as in the Gauteng and Western Cape regional land claims commissions. Each interview lasted between thirty and ninety minutes and was audiotaped and transcribed, but was not confidential. Second, I conducted participant observation

within the commission for nine months. The former chief land claims commissioner, Thozì Gwanya, appointed me a researcher within the commission and charged me with completing a study about the impact of the restitution process on beneficiaries. While conducting my research, I occupied an office in the central land claims commission offices in Pretoria. I had daily contact with commission officials, who answered all my questions, took time to explain how things worked, and gave me access to all necessary documents. Most importantly, my official status gave me extensive access to commission records, which allowed significant cross-checking and data verification as well as the presentation of data never before released. Third, I utilized secondary sources such as government reports, legislation, news articles, and academic articles.

#### IV. THE IMPORTANCE OF COMMUNICATION

This study found that 65 percent of respondents believed that the restitution process was unfair, while 35 percent believed that the process was fair. More importantly, the article explores *why* some claimants believed the process was fair and others did not. The central finding was that communication was the variable that most impacted fairness assessments.

As shown in Figure 3, there are different levels of communication. Input is when decision makers listen but do not necessarily change their behavior based on the information presented. Single exchange is when two parties are having a conversation at one point in time and each is considering and incorporating the input received. A sustained conversation is when there are multiple rounds of exchange occurring at different points in time.

As is common in the transitional justice context, it was necessary for commission officials and claimants to exchange multiple rounds of information at different points in time in order to complete the South African land restitution process. That is, input was necessary, but not sufficient. So, while prior studies discuss the importance of opportunities to give input (Folger 1977; LaTour 1978; Lind et al. 1980; Lind, Lissak, and

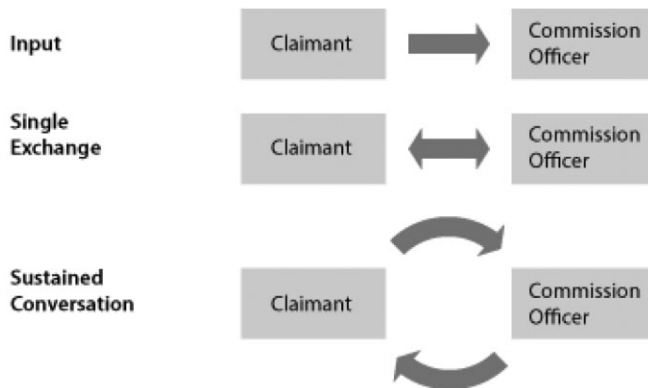


FIGURE 3.  
Levels of Voice

Conlon 1983; Tyler, Rasinski, and Spodick 1985; Kanfer et al. 1987; Tyler 1987; Lind and Tyler 1988), respondents in this study most often believed that the restitution process was fair when there was a sustained conversation. Figure 4 shows that a sustained conversation resulted when commission officials adequately explained the processes involved, responded to claimants' inquiries and requests, and abided by promises they made; and when claimants attended meetings, responded to commission requests, and compiled the necessary documentation in a timely fashion.

In other work, I argue that when an individual or community is dispossessed of property, the appropriate remedy is to return that property or provide compensation for its value. In certain situations, however, the dispossession is part of a larger strategy of dehumanization and infantilization. In these instances, compensation for the property denied is not enough because the harm was more encompassing than this—the dispossessed population was deprived of property and dignity. I call the harm a dignity taking and argue that it requires a comprehensive remedy that I call dignity restoration, which addresses deprivations of property through a process that recognizes an individual's or community's equal human worth and autonomy. As shown in Figure 5, I demonstrate that when commission officials and claimants failed to sustain a conversation with each other, dignity restoration was most often undermined, but when they were able to sustain a conversation, this most often facilitated dignity restoration (Atuahene 2014).

This article takes the analysis one step further by examining the connection between perceptions of fairness, sustained conversation, and dignity restoration. The interview data show that when respondents did not, at the very least, believe that the process was fair, then the process most often had no chance of restoring their dignity. Fairness perceptions were a threshold issue. Although there were several factors

| <b>Role of Commission Officials or Claimant Committees</b>                   | <b>Role of Claimants or Family Members</b>                    |
|--|---|
| Explain the processes involved adequately                                    | Attend meetings   |
| Respond to claimant inquiries and requests                                   | Ask questions and proactively seek out the information needed |
| Abide by promises made   | Base expectations only on information given                   |
| Tell claimant exactly what information is needed to move the process forward | Compile the necessary documentation in a timely fashion       |
| Request assistance from claimants when needed                                | Respond to requests and instructions                          |

**FIGURE 4.**  
The Elements of a Sustained Conversation

determining whether respondents thought that the process was fair or unfair, I found that communication was the variable that did the most explanatory work.

To verify this finding, it was necessary to explore alternative hypotheses. Perhaps it was not communication that was driving fairness assessments, but the amount of time it took to settle the claim, for instance. As shown in Figure 5, a sustained conversation served as a gateway to other positive outcomes. In other work, I give a more robust explanation of why a sustained conversation led to better outcomes, faster resolution of claims, increased agency, and, most of all, signaled that commission officials respected respondents and that their place in the polity had changed post-apartheid (Atuahene 2014).

Another hypothesis is that the size of the restitution awards rather than the process respondents experienced is what determined why people thought that the process was fair or unfair. But, the problem of incommensurability makes proving or disproving this hypothesis difficult. Since the amounts respondents received varied, ideally a researcher could examine whether those who received more valuable restitution awards tended to believe that the process was fairer. For instance, if group A received 5,000 rand while group B received 50,000 rand, then one could come to some conclusions about the influence of process versus outcomes, assuming all else equal. In the transitional justice context, however, all else is rarely equal. Individuals and communities had unique experiences. They had ownership or occupancy rights to a unique parcel of land, lost different amounts of personal property, and the subjugation and dispossession affected them all in unique ways. Consequently, although group B received more money, the members of this group are not necessarily better off because they may have also been subjected to more harm than members of group A. In the transitional justice context, measuring the psychological, economic, political, and social harm that dispossessed populations suffered is difficult because it is incommensurable.

|                              | Dignity Resoration Facilitated  | Dignity Restoration Undermined   |
|------------------------------|---|--|
| <b>Property</b>              | Sustained conversation led to higher valued restitution awards                                | No sustained conversation made it difficult to distribute land (the more economically valuable option) |
| <b>Equal human worth</b>     | Sustained conversation demonstrated that claimants had the attention and respect of officials | No sustained conversation left claimants feeling disrespected and ignored                              |
| <b>Autonomy as agency</b>    | Sustained conversation allowed claimants to choose their remedy                               | No sustained conversation left claimants feeling uninformed and without agency in the process          |
| <b>Autonomy as community</b> | Sustained conversation prevented community conflicts based on misinformation                  | No sustained conversation led to misinformation, distrust, and conflict                                |

FIGURE 5.  
The Role of Communication in Dignity Restoration

In sum, communication explains why some respondents believed the restitution process was fair or unfair better than the alternative hypotheses. To better understand the role of communication, the next section explains the commission's communication strategy.

## V. THE COMMISSION'S COMMUNICATION STRATEGY

### A. Restitution Process Explained

The restitution process was not quick because in order to receive the "equitable remedy" promised by Section 25 of the South African Constitution, dispossessed individuals and communities had to complete the five phases outlined in the Restitution of Land Rights Act (1994) (see Figure 6).

The first phase required that an individual or community lodge a claim by December 31, 1998 in order to become eligible for compensation; these people were called claimants. In the second phase, the commission determined if the claims were valid by researching whether they met certain statutory requirements. Each claim had to involve (1) a person, community, or a deceased estate or direct descendant of a person or a community (2) dispossessed of a right in land (3) after June 19, 1913 (4) as a result of



**FIGURE 6.**  
Five Phases of the Restitution Process

past racially discriminatory laws or practices (5) without the receipt of just and equitable compensation (Restitution of Land Rights Act 1994).

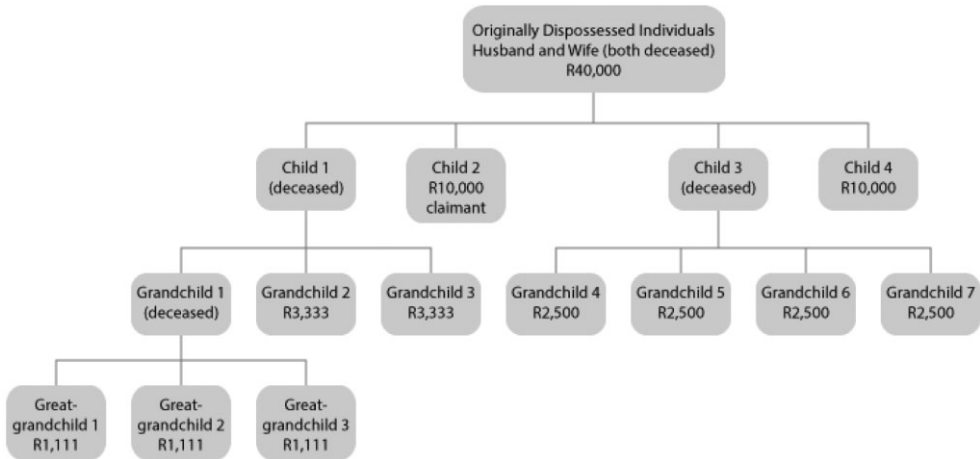
Once the commission determined that a claim fulfilled these statutory requirements, in the third phase, the commission verified that the claimant was either the prior owner or occupant of the property in question or his or her descendant. The commission accepted various forms of evidence to validate and verify claims, including deeds, oral testimony, aerial maps, ruins, tombstones, and baptismal records. During the fourth phase, called the negotiation phase, the commission was supposed to give claimants a choice between a financial award, return of the land in question, alternative land, or some other equitable redress. During the fifth and final phase, called valuation, the commission determined either the price it paid current landowners to purchase land on behalf of claimants or the value of the financial awards it paid to claimants. For claimants to navigate all five phases of the restitution process, they had to be in constant communication with commission officials; otherwise, their claim would become lost in the shuffle or stalled.

## **B. The Commission's Administrative Innovations**

Respectful, consistent, and clear communication with its stakeholders was extremely difficult for the commission and, in fact, is a significant challenge for any agency that provides services to the public. It would have been impossible for the commission to communicate directly with each beneficiary because the commission ultimately validated about 80,000 claims, which entailed an estimated 1,415,192 people entitled to benefit from the restitution awards (Commission on Restitution of Land Rights 2008). Consequently, the commission created three administrative innovations to make communication with the multitudes entitled to receive compensation more manageable.

Since the apartheid and colonial governments most often forcibly removed entire communities, the commission's first innovation was to process individual claims by community to produce economies of scale and save time. This was an effective innovation because the community went through the validation, verification, and valuation phases as a collective. In the validation phase, the same evidence was needed to validate that the respondents of Sophiatown, for instance, were dispossessed on racially discriminatory grounds. During verification, the commission relied heavily on the testimony of community members to verify who lived in the community at the time of dispossession. In the valuation phase, the commission offered all community members the same set of remedies.

The commission's second innovation was to encourage claimants from each community to form a leadership committee. When the committees worked according to plan, they served as intermediaries between the commission and all the claimants in one community, which allowed the commission to pass relevant information to a small group of people who periodically held meetings with the larger claimant group. Committee members were most often either elected by vote at a community meeting or they assumed their role by default based on their willingness to serve.



**FIGURE 7.**  
Direct Descendants Entitled to a Portion of 40K Restitution Award

The commission's third innovation was to communicate only with claimants (the persons who filed the claim) and rely on them to communicate with their family members. This was necessary because the forced removals happened decades ago and many originally dispossessed individuals (ODIs) died before they directly or indirectly filed a claim. Since direct descendants were entitled to the restitution awards of deceased ODIs, as shown in Figure 7, one claim often involved many family members. Without this third innovation, the commission would have had to communicate directly not only with claimants, but also with the throng of family members who stood to benefit from each claim. Since the evidence consistently demonstrated that effectively communicating with claimants was a serious challenge for the commission, direct communication with each beneficiary would have been impossible.

## VI. COMMUNICATION BREAKDOWNS

With about 80,000 claims competing for the attention of commission officials, it took time to provide compensation. During the wait, most respondents were not able to sustain a conversation with the commission because the restitution process was plagued with communication breakdowns—instances when something obstructed the conversation, causing one party to lose the other's attention.

Nevertheless, the commission had a strong legal mandate to communicate with claimants. The Restitution of Land Rights Act (1994) stated that “the Commission shall . . . advise claimants of the progress of their claims at regular intervals and upon reasonable request.” In addition, Section 195 of the South African Constitution (1996)—which describes the principles that apply to administration in every sphere of government—states that “respondent's needs must be responded to, and the public must be encouraged to participate in policy-making; public administration must be accountable; and transparency must be fostered by providing the public with timely,

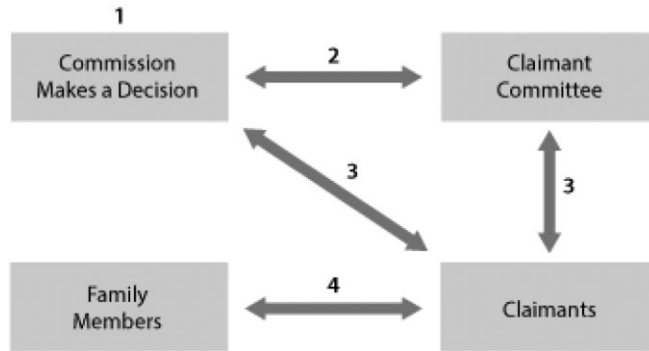


FIGURE 8.  
The Commission's Communication Strategy

accessible and accurate information.” Despite these unequivocal constitutional and statutory mandates, the commission struggled to sustain a conversation with claimants. With a look of deep regret, Thoz Gwanya—the former Director General of the Department of Rural Development and Land Reform—said “communication, we have failed dismally on this issue. We have been very weak on communication” (Interview, Gwanya 2008). The question is: Why did they fail dismally?

The interview data suggest that a sustained conversation most often resulted when each of the following four steps was successfully executed (see Figure 8):

1. The commission created a clear and effective plan of action;
2. The commission communicated the plan to claimant committees;
3. Committees or commission communicated with claimants; and
4. Claimants communicated with family members.

The data show that communication breakdowns were pervasive and occurred at each of these four points in the communication chain. Also, like cascading dominos, a communication breakdown at an earlier point in the chain undermined communication at subsequent points.

### A. The Commission Creates a Clear and Effective Plan of Action

The commission's job was to lead the nation in realizing the Constitution's promise to provide compensation for the racially motivated dispossessions that occurred during colonialism and apartheid. But, like a ship's captain, in order to lead, the commission had to know where it was going and how to get there. All too often the commission's leadership was undermined by its inability to draw a clear map, locate its compass, and navigate the waters. Given that the commission was a newly invented bureaucracy lacking in experience, it is not surprising that it often became lost at sea. Respondents who went through the process generally understood this, but had varying levels of tolerance for the sea sickness that came with being left afloat by a rookie captain.



One of the leaders of the Steurhof community speculated as to why the commission had so much trouble creating an unambiguous plan of action.

Well, I would say that considering the circumstances and also being new in the game, you understand. I mean this was a new thing. . . . We have never handled it before, so what are we going to do? Understand? [Interviewer nods.] So they had no [pause] they didn't know. I mean [pause] and the people who were there didn't have the faintest. Had they gone to somebody who had dealt with this, but where had it been dealt with; in which country? . . . That is why I say they did not have the experience. . . . They just had the bare knowledge and said "we are going to try this out and compensate them. What can we compensate them with?" . . . That I dare say they flummoxed themselves, as far as I can see, unless you have a better explanation? (Confidential Interview, Boden 2008)

There was no better way to explain why the commission had so much trouble laying out a decisive plan of action and executing it—it boils down to inexperience.

Despite its inexperience, the commission had to forge ahead and try to make the land restitution process work. It made tentative plans and communicated them to claimants, which created expectations. As time progressed, the commission often figured things out and had to change course, backtracking on the plan of action it communicated to claimants. Consequently, elevated expectations would crash, causing great disappointment.

The story of Luyolo well illustrated how the commission's uncertainty about its plan of action created frequent communication breakdowns. The community was evicted from the Luyolo location in Simonstown under the Group Areas Act. The commission initially gave claimants the option of returning to their community because it was one of the few instances where the land was uninhabited and publicly owned. Project officers announced the possibility of return to the community, but shortly realized that the land's topographical challenges (i.e., the land's steep incline and sand dunes) made it uninhabitable under current building standards. In short order, the hopes the commission elevated came crashing down.

At this point, many claimants from Luyolo who were not interested in alternative land opted for financial compensation. Eventually, the commission located alternative land to offer claimants still interested in receiving land. While their neighbors who elected financial compensation were cashing their checks, the commission could only offer this greatly diminished and increasingly frustrated group who opted for land a rain check. But these claimants, still caught in the storm, have not received their land. Mr. Ngqonogqo, the project officer in charge of the Luyolo claims, said that the commission has located land owned by the National Department of Public Works and is working closely with the city of Cape Town to deliver land with a top structure to claimants by October 2014 (Phone Interview, Ngqonogqo 2012).

In spite of the constant setbacks it has faced, year after year the commission has promised that it was on the verge of transferring land to claimants. Each year those promises burst leaving behind nothing but hot air. With his hopes repeatedly dashed, Mr. Rabodila became angry.

- Mr. Rabodila: In 2005 there was an announcement on the media to say that Simonstown claimants are going back. The first lot will go in April; the second lot will go in June 2006. . . . We went there innocently and we listened to them, but only to find, no, these people were not with us. I don't know. They keep telling us year after year a rosy picture, "No, no, next year all will be right, come next year." Second year, third year, fourth year.
- Interviewer: So if the commissioner asks, "What are we doing well? Are we doing anything good now?" What will you tell her?
- Mr. Rabodila: A big no! A big no! You are doing an injustice! Yes, it's an injustice! (Confidential Interview, Rabodila 2008)

Although the commission's goal was to uproot past injustice—in the experience of Mr. Rabodila and several others—the commission's inability to create and implement a workable plan of action caused great disappointment and sowed new seeds of injustice. Most importantly, Mr. Rabodila's experience was not unique. At some point in the process, the majority of respondents were frustrated with the commission's botched plans and inability to stand by its word.

In addition, the inadequate plan of action in Luyolo had a domino effect that frustrated subsequent communications. Ill-devised plans led to miscommunication (at Stage 2) between the commission and the committee. Further down the chain—at Stage 3 when the committee held community meetings—the committee had to keep postponing the date they planned to occupy the land. Unfortunately, many claimants viewed the committee as the source of confusion and broken promises, and many committee members were consequently demonized. Even further down the communication chain, at Stage 4, family members who stood to benefit from the restitution award often wondered what was taking so long and suspected that the claimant was holding back information from them. It was very common for an initial break in the communication chain to have ripple effects that greatly undermined the commission's ability to sustain a conversation with claimants and their family members.

## **B. The Commission Communicates the Plan to Claimant Committees**

Once the commission formed a plan of action or had progress updates, it commonly communicated this to the claimant committees and relied on them to pass along the information to the larger group of claimants. Without the help of committees, the commission was often unable to sustain a conversation with claimants.

Committees facilitated communication at various phases of the restitution process, including lodgment, validation, verification, and negotiation. In the lodgment phase, the committees that formed early often gathered their former neighbors and encouraged them to file a claim before the deadline. In the validation phase, committees assisted commission researchers by providing them with documentary and oral evidence of the forced removal needed to validate the claim. During verification, committees were indispensable in the process of verifying the identity of their former neighbors. If the land the community was evicted from was still available then—in the negotiation phase—committees were often instrumental in making a plan to reoccupy the land.

In certain contexts, the commission relied heavily on claimant committees, while in other contexts it did not. The commission was more likely to rely heavily on committees as intercessors when at least two or more of the following variables were present—the claimant community was numerous, highly impoverished, poorly educated, or it was located far from the commission’s offices. For the former residents of Marabastad, who lived relatively close to the commission, were generally well educated, and not impoverished, the restitution process did not fail or succeed based on how effectively the committee guided claimants through the process. As Mr. Ganesh noted, the Marabastad committee did not do the laborious work of guiding each claimant through the restitution process; instead, it functioned as an information warehouse of sorts (Confidential Interview, Ganesh 2008).

In contrast, the Paarl committee was indispensable because Paarl had a large number of claimants who were generally not well educated and they lived about 60 km from the commission’s regional office in Cape Town. Project officers could not maintain a consistent presence in Paarl because the commission received 15,500 claims in the Western Cape alone, so the regional land claims office had an immense and geographically diverse workload (*Commission on the Restitution of Land Rights Annual Report 2008*). In the commission’s long absences, Paarl’s well-organized committees eagerly stepped in to help their neighbors navigate the restitution process.

Mr. Karl was elected to serve on Paarl’s committee for former owners and described the time-consuming hand-holding that was necessary to guide his neighbors through the process.

Mr. Karl: She can explain to you how people came here [looking at his wife beside him]. This room was full. People were sitting there, outside, inside. We never [pause] people used to phone me anytime during the night, during the evening, in the morning, six o’clock in the morning they will phone me to know about the claim. Or, I sit here in this chair and on this table filling forms for people, assisting them, because a lot of people didn’t know how to fill in the forms. Some people just don’t know how to fill in the forms. And that’s how I assisted the people.

Interviewer: Wow, sounds hectic! At the end of the day are you happy that you did it? Do you feel good about it or do you regret that you were involved?

Mr. Karl: No, I don’t regret. It was something that I enjoyed; something that I wanted to do. A lot of people [pause] even today I don’t know all the people that I assisted. But, people will walk past me and say, “hello Mr. Karl,” and I will look at them and I don’t know the person, but I know it’s because of land claims. (Confidential Interview, Karl 2008)

The committees that the commission heavily relied on spent a great deal of their time and resources serving their communities. Most of them did so willingly because of their sense of civic duty and their attachments to their beloved communities destroyed under white rule. The paradox was that these hard-working committee members were doing the job that project officers were paid to do, but committee members were not paid for their time or the expenses they incurred. Mr. Mdontswa, like all the other

members of the Kilnerton committee, did a substantial amount of work shepherding his community through the process at great cost to himself.

We didn't even get a cent for helping those people . . . people from the land affairs didn't see it in that light, you see. They felt it was our job; it was our obligation to do that. Like he said earlier on, we used our phones, we travel around, you move. It's all costs. [Nervous laughter.] Ja, those were the hard times we had to undergo. (Confidential Interview, Mdontswa 2008)

Although in most instances the commission could not sustain a conversation with claimants without the committee's help, the commission's policy was never to compensate committee members for their work or even the costs they incurred. But, if the committee members did not volunteer (i.e., provide free labor), then it is likely that the commission would have had to hire more project officers to get the work done. Some committee members were not troubled by the commission's failure to compensate them; Mrs. Boden, the committee chair for Steurhof, included (Confidential Interview, Boden 2008). She was a devout Christian and understood her indefatigable service on the committee as part of her service to God. Her payment would not be in rand (South Africa's currency), but instead in God's currency—justice (Confidential Interview, Boden 2008).

In contrast, many others, including Mr. Kagiso—the leader of Luyolo's claimant committee for those who chose financial compensation—believed that the proper payment for their strenuous and steadfast work on the committees was hard currency rather than God's currency. The commission relied so heavily on the Luyolo committee that the commission became the committee's *de facto* employer. Like any unpaid employee, Mr. Kagiso was irate.

And the other thing I was not satisfied about is those people who are working for land claim, they were using us! We as a community. They have chosen us to lead and to work for this thing, which is like me I was working for the people. The people were stressing me for their money. They came into my house asking for the money. Wherever I go they stop me. I must, you see, I must answer them. All those things. My own things I'm supposed to do; there was a little chance for me to do my own things. I was almost working for the people for the rest of three years, you see, but I never get paid for that. I only get paid as equal as other people. You understand what I mean? [Interviewer nods.] Yes, they were using us! (Confidential Interview, Kagiso 2008)

Since the commission did not provide committee members with stipends for mailing, faxing, transportation, or the other expenses they incurred, to cover their expenses, committees sometimes resorted to collecting donations at every meeting from community members who were both willing and able to contribute. But when these measures failed and committee members could not secure the resources necessary to communicate effectively with their communities, this often led to communication breakdowns.

Most typically, committee members did not have money to purchase air time on their cell phones to call project officers for updates or to communicate with other community members, they had no cash for transport to visit the commission's regional offices for meetings or to demand updates, and they had no money to mail out notices

to keep community members abreast of new developments. If the commission did provide financial support for these types of activities, many committees would likely have been more effective in ushering their former neighbors through the restitution process and many systematic communication breakdowns could have been curbed.

The commission, however, had several good reasons for not paying community members, including cultivating civic responsibility and ensuring committee members were working for the community rather than the commission. Nevertheless, there were alternatives. Mr. Karl—a member of the Paarl leadership committee—had some sage advice for the commission.

They would never give us the power or to tell us, “Here is money. Do this job for us.” They would employ people from Jo’burg and come down here, sleep in the hotel, and do the work here. I would tell them, “This is what you do.” I’ll arrange the meeting, advertise, put the adverts, inform people to come to the meeting, but he’s getting paid. . . . Because there was so many claims in Paarl, we actually suggested set up the office here for six months and you have somebody here on the full-time basis, so people can come to you [instead of people going] from Paarl to Cape Town just to fill in the form. (Confidential Interview, Karl 2008)

Indeed, the commission could have reduced the committees’ workload by setting up satellite offices in the communities for a certain period of time. This would have, among other things, made the commission more accessible, prevented respondents from expending money they did not have on travel to the commission’s regional offices, and facilitated claimants having their questions answered and receiving more frequent status updates. But, instead of placing commission officials on the ground more frequently, the commission relied on committee members to serve as their intermediaries—doing the work of project officers, without the necessary resources and without payment. This led to massive communication breakdowns.

### C. Committees or Commission Communicates with Claimants

While community meetings were the most efficient way to communicate with claimants, alerting claimants of meetings was a challenge. The commission often relied on committees, but they were typically unable to call claimants or send letters because the cost of airtime and stamps put this option out of reach. As a result, committees commonly relied on word of mouth, which was often ineffective, especially in larger more geographically dispersed communities. The majority of respondents did not know about each and every meeting because some meetings were well advertised while others were not. High attendance was a goal rarely attained.

Even for respondents who did receive notice of the meetings, money for transport as well as work and family care obligations most commonly prevented them from attending. Still others who knew about the meetings—like Mr. Madlingozi from an African community called Payneville—did not attend because they became weary from a restitution process they found frustrating, drawn out, and riddled with communication breakdowns.

I'm even now I'm no longer attending the meetings now because of the [pause] how they run the thing. I don't like it! That's why I've decided that I must stay away from these meetings because there are [pause] there is no conclusion. There are questions marks, questions marks every every time! There's no conclusions all the time. I'm, I'm wasting money. I don't work. So now to go to Kwa-Thema to attend the meeting there, I must spend about 40 bucks that I don't have. I don't work, so I must trouble my wife to get the money to attend the meetings that at the end of the day that there are no solutions. I can't, I can't attend those things, those meetings like that. (Confidential Interview, Madlingozi 2008)

There are, however, costs to not attending the meetings. Those—like Mr. Madlingozi—who were unable or unwilling to attend meetings missed out on crucial information. In these cases, communication breakdowns occurred because commission officials lost the attention of claimants.

#### D. Claimants Communicate with Their Families

Claimants' communications with their families introduced additional opportunities for communication breakdowns. If the ODIs were alive, then they alone benefitted from the restitution award. Most commonly, however, the ODIs were deceased and several family members stood to benefit from the restitution award. In rare instances—like that of Mr. Starks and his five siblings from Die Eiland—all family members were active in the restitution process, so there was no need to have family meetings, which eliminated Step 4 of the communication strategy (Confidential Interview, Starks 2008). But, in most cases, the commission relied on claimants to communicate all essential information to their families.

As a protective measure, the commission eventually required all family members entitled to benefit from the restitution award to sign an affidavit giving the claimant legal permission to process and settle the claim. Consequently, claimants became the legal representatives for their families and this was no easy job. Mrs. Gains aptly described the significant amount of work, money, and time required of claimants.

I had to pay. I had to make means to go to Pretoria because they were consulting me. I was the one who had made the claims. If they say "come on such a day," I just have to see that I have money to go to Pretoria. . . . I used to go sign this, collect your ID, your what, your what. Every time there's papers, I have to go to them. My eldest sister stays in Soweto, so from here to Soweto. The one is staying in Klipspruit West. I must go to them so they can fill in all these papers that must be sent otherwise the claims would not have gone through if the papers were not signed. (Confidential Interview, Gains 2008)

The restitution process involved a significant amount of paperwork, which had to be filled out properly and submitted by a deadline. Without a family leader to sustain the conversation with the commission and ensure everything was properly submitted, the claim was likely to languish.

While some respondents had no problems communicating with their families, others had severe challenges. Preexisting family dynamics determined the ease or difficulty of communication. The stories told by Mr. Lesedi and Mrs. Dlamini illustrate this. Mrs. Made and her brother Mr. Lesedi were among those forcibly removed from Sophiatown. When Mrs. Made first learned that the government was going to compensate families unjustly evicted by prior governments, she immediately notified her brother, who filed a claim before the deadline. Since the ODIs (in this case their parents) were already deceased, their heirs stood to benefit from the restitution award—four surviving children and two grandchildren. All the heirs signed an affidavit making Mr. Lesedi the family’s legal representative.

The manner in which Mr. Lesedi handled the claim was ideal. Every step of the way he informed his family about what was occurring and they made all important decisions as a collective. Mr. Lesedi described his family’s collaborative decision-making process:

We held regular meetings. I was giving them feedback and updating them about the process and how far we were; and eventually we got the money. I told them “here’s our money, what do you want us to do with the money?” And then they said “okay fine, the first thing that we have to do is to erect a tombstone for my mother,” which we did. And then the money was shared proportionally between myself and my siblings. (Confidential Interview, Lesedi 2008)

Mr. Lesedi’s family members were part of the conversation with the commission because of his leadership and his family’s preexisting pattern of unity and consensus.

On the other side of the communication spectrum was Mrs. Dlamini and her story of familial deceit. Claimants had significant incentive to submit false testimony and exclude family members because by doing so they would receive a larger share of the compensation. Lying was possible because, to determine which direct descendants were entitled to compensation, the commission relied heavily on family trees generated from the oral testimony of claimants and the commission did not cross-check this testimony with available government records due to time pressures.

Mrs. Dlamini and her sister, Mrs. Mashatile, were two jovial, God-fearing women of humble means who lived together and were extremely close. But both women abhorred their brother, who lived down the road. The family feud began because, in his dying days, their father had lived with their brother. According to the sisters, their brother’s “spiteful” wife had badly mistreated their father. As a result, when their father died, the sisters wanted nothing to do with their “spineless” brother or his “sinister” wife.

Although Mrs. Dlamini and Mrs. Mashatile knew that their family had been forcibly removed from Evaton, they did not file a claim before the 1998 cut-off date. But, when they heard that the commission was providing compensation to their former neighbors, they went to the commission’s regional office in Pretoria to inquire. There, they surprisingly discovered that their estranged brother had indeed lodged a claim for their father’s property and had submitted a false affidavit stating that all his siblings were deceased. Naturally, the sisters were shocked to learn of their own deaths.

Although Mrs. Dlamini’s English was not strong, her condemnation of both her lying brother and the government, which had done nothing to protect her from his lies, came through loud and clear.

What made me painful it's that how can the government do this to us? Not contacting us; sitting with each and every family that your land is like that. Because there at the Land Claims they show us even the thing [affidavit], which he made for the oath. I said, "This is fraud." I told them, I said, "This is fraud. This person can be arrested. I want to see this my brother to be arrested." I wasn't satisfied because he killed us being alive. That's what made me [pause] makes me so angry, you understand? You follow me? [interviewer nods] (Confidential Interview, Dlamini 2008)

Luckily, the sisters received their portion of the compensation because they unearthed their brother's fraudulent activities before the commission paid out, but many other families were not as fortunate. For the Dlaminis and others, family feuds led to communication breakdowns.

Sometimes, a family's communication breakdown was not the claimant's fault. Many family members refused to participate actively in the process because they thought that it was a waste of time or they just did not want to be bothered. As a result, the claimant was often left to do the lion's share of the work. Many claimants were irate because—although they were the people spending their time and money to attend meetings and gather all the necessary documents—they were not entitled to a larger share of the award than their siblings or other family members who did virtually nothing.

Mrs. Ngcobo and her family perfectly illustrated this problem. Although the entire family attended the same church on Sunday, Mrs. Ngcobo refused to take time out of her Sunday afternoons to attend the family meetings after church even though she knew her aunt submitted a claim and that she stood to benefit. Although Mrs. Ngcobo contributed nothing, she still received part of her deceased father's portion of the restitution award.

Mrs. Ngcobo: I do not want to lie; I did not do anything. I was called by my brother and my aunt and they said, "there is compensation; you need to come with your ID."

Interviewer: When was the first time you even heard about your family's claim?

Mrs. Ngcobo: I heard. There were discussions about it and because I was attending the same church. I used to see them sitting in the room and discussing it. But, I did not know. I did not follow it up. (Confidential Interview Ngcobo 2008)

There was a communication breakdown because Mrs. Ngcobo did not bother to attend the family meetings; she could not care less. Despite her nonchalance, Mrs. Ngcobo still got paid. This led her aunt who did all the hard work down a path littered with bitterness.

In sum, after deciding on its course of action, the commission communicated with committees that in turn communicated with claimants who in turn communicated with their families. With almost 80,000 claims to process, the commission was only able to sustain a conversation with some people, while others were left in the dark feeling silenced and disrespected.



## VII. TOWARD A DEEPER UNDERSTANDING OF VOICE

Ensuring people have a voice requires certain institutional arrangements as well as personal resources. To better understand the institutional structures required, this section investigates the circumstances under which communication breakdowns were more likely to occur. To examine the personal resources required, the section then explores the strategies respondents employed to overcome communication breakdowns once they had occurred.

### A. Structural Barriers Preventing a Sustained Conversation

For the restitution process to move forward, commission officials and claimants had to give and receive information constantly, but there were several barriers that prevented this sustained conversation from happening. *First*, the commission had high employee turnover, which negatively affected its ability to maintain consistent communication with claimants. Mr. Richardson and others from Kliptown reported that their communication with the commission was excellent and it is no coincidence that there was one project officer who handled Kliptown's claims from start to finish.

Interviewer: How was the communication between you and the commission? Was it good or bad?

Mr. Richardson: Very good. I could pick up the phone; I mean we had a girlie that worked with our claim the whole time, from start to finish. And I could phone her at any time and she would be able to tell me do this. Or even if I sent in documentation, she would phone me and say to me "Mr. Richardson, I still need this, that." Look, there were many, many forms and things like that, but she would come back to me and say to me "I need this, I need that, I need that. I'm sending, I'm faxing you this or I'm e-mailing that please complete this." So that process, I've got no complaints about. Nonhlanhla, ja man she was a star! (Confidential Interview, Richardson 2008)

Mr. Richardson and Nonhlanhla (the project officer assigned to Kliptown) formed a relationship of trust and cooperation, which facilitated smooth communication. Mr. Richardson and others from Kliptown knew who to call when they had a question or concern. In turn, Nonhlanhla could easily contact Mr. Richardson and others when she needed certain documents required to move the process forward. Nonhlanhla was the captain and Mr. Richardson and his lost community formed part of her crew. At the end of the complicated restitution process, they arrived at their destination unscathed and with no signs of sea sickness because Nonhlanhla was a steady presence navigating them through the waters. Effective communication ensured a smooth ride.

The commission had high employee turnover, so many claimants did not have one captain like Nonhlanhla navigating them through the restitution process. In fact, since the claims took several years to settle, communities often had several project officers assigned to them over the years. Every time project officers stopped working with a community, their replacements not only had to get up to speed, but they also had to

build new relationships of trust and cooperation. Sometimes, it was months before the commission hired a replacement, which often put claims in limbo and left respondents agitated, confused, and without a conversation partner. Also, several respondents reported that when a new project officer came on board, everything started anew, erasing months of hard work. This was because there was no proper hand-off from one project officer to another, the new project officers made different requests of claimants because they had their own particular ways of doing things, or files got lost in the transition.

Thozi Gwanya, the former Director General of the Department of Rural Development and Land Reform, explained that employee turnover was high because employment at the commission was temporary, so employees were constantly searching for more permanent work (Interview, Gwanya 2008). Parliament created the commission as a temporary government department that would terminate when it settled all land claims. Given the temporary nature of the work, it seemed to make sense to give commission staff one-year contracts, but this created an intense climate of job insecurity. Consequently, when the commission recruited young, talented project officers, they were easily lured away by other departments, which could offer them permanent employment. In 1999, the commission tried to address the problem by shifting to three-year contracts. Nevertheless, project officers continued looking for permanent jobs and leaving when they found one.

The climate of job insecurity was worsened by the fact that the commission was initially supposed to terminate in 2005. When parliament realized that the commission's work was far from complete, it extended the commission's tenure to 2008 and then indefinitely. All the uncertainty around the commission's termination date created further job insecurity and lowered morale. It was not until 2009 that the commission definitively addressed the problem by guaranteeing commission officials employment in the Department of Rural Development and Land Reform when the commission terminated. But, by 2009, high turnover had already significantly crippled the commission's work.

Evaton was a community that had cycled through several project officers. Deon Theron, the last in a string of project officers, explained, "Evaton was a chaotic claim with no definite project plan until I came on board. Issues were not spelled out and there was no planning process so I had to start from scratch." Tragically, Mr. Theron started from scratch in 2007—about nine years after the community submitted its claims. The respondents of Evaton were forced to wait a very long time and the revolving door of project officers meant that communication during the wait was extremely poor. It is not surprising that not one respondent from Evaton believed that the process was fair.

*Second*, it was difficult for commission officials to sustain a conversation when claimants were numerous, geographically dispersed, and far from the commission's regional offices. The drastically different experiences of respondents from Kilnerton and Evaton illustrate this larger trend. Before the forced removals, Kilnerton was a small village established by the Methodist Church. The apartheid government ruthlessly destroyed their homes and church, and then relocated the Kilnerton community to an African township called Mamelodi. The strong community ties that defined Kilnerton village were embattled, but not destroyed.

The respondents of Kilnerton managed to remain united by rebuilding their church in Mamelodi and convening on Sundays to worship and socialize. As Mr. Howard explained, having a common church made communication easier.

But seeing that the majority of our claimants were living in Mamelodi and they all attended the Methodist Church, it was easy to communicate dates for meetings through the church. And there, the church played a vital role in announcing on Sunday that people in Kilnerton, who lived there, are called to a very urgent meeting next Saturday. That's how we communicated (Ummh). So, it was very easy for us. (Confidential Interview, Howard 2008)

Communication was easy not only because the Kilnerton community was small and unified, but also because Mamelodi was close to the commission's regional office in Pretoria and the project officer (Amos Serumula) even lived in Mamelodi. More generally, when communities were close to the regional offices, this facilitated in-person meetings between the project officers and claimants and improved communication.

The clear and efficient channels of communication—both among claimants and between claimants and the commission—led to an extraordinary outcome for Kilnerton. It was among the first communities to receive financial compensation, which far exceeded the normal compensation range of R25,000 to R60,000. The commission gave claimants compensation for their dwellings, plowing fields, and grazing lands, which totaled R134,000—one of the largest financial payouts received by an entire community (Confidential Interview, Howard 2008). This remarkable restitution award required the project officer and claimant committee to test the limits of the restitution law and negotiate a unique outcome. If there had been no sustained conversation, the creative and critical engagement necessary to negotiate this outcome would not have been possible. Not surprisingly, every person interviewed from Kilnerton was very happy with the process and outcome. Most importantly, Kilnerton's experience shows how good process led to good outcomes.

On the other side of the communication spectrum were claims originating from Evaton. Unlike Kilnerton, Evaton's claimants were geographically dispersed with no unifying force—like a common church—holding the community together. In addition, most claimants still lived in Evaton, which was about 120 km away from the commission's regional offices in Pretoria. It was not easy for project officers to be present constantly in Evaton or for claimants to travel to the regional offices in Pretoria. As a result, communication suffered immensely.

This study consistently showed that the project officers' ability to be physically present in the community was one essential factor affecting whether claimants and commission officials were able to sustain a conversation. Nevertheless, the commission's leadership decided to hire project officers and then dispatch them to the various communities. When distance impeded project officers from being a constant presence in these communities, there was no sustained conversation. The commission could have solved this problem by hiring people from the communities to do the work, but at high cost to communities like Evaton located far from its regional offices, it chose not to take this route.

*Third*, commission officials often failed at sustaining conversations that involved multiple actors. For example, officials were more effective when distributing financial

compensation (which the commission could do with no outside help) than acquiring land or building homes, which required extensive coordination with city councils, local governments, and other departments. Kilnerton provided the best illustration of this trend. Since there is now a white middle-class community living on their land, the respondents of Kilnerton could not return. Instead, each of the fifty-six claimants agreed to put aside R1,000 from their restitution awards to build a monument in their former neighborhood to commemorate their removal. Mr. Howard described the challenges his community faced when it shifted from securing financial compensation to building its monument.

People in the meetings were talking about putting up something to remember Kilnerton, you know. I just want to show you something. We got the University of Pretoria to get their architectural students to design the monument. [Ruffling through papers]. The monument is a far cry from being erected mainly because the city council wants the plans approved of what we want to put up there. I had meetings with the [current] residents through their political parties, to tell them what we are about to do. There were slight objections to say, “why don’t you build it in Mamelodi or wherever?” But, I said we were removed from this area and the monument has no other place but here. Eventually with political influence people said, “Ja fine, as long as we don’t get busloads of blacks bussed into the area every month to commemorate this.” I said, “We don’t do things like that, you know.” (Confidential Interview, Howard 2008)

Despite Kilnerton’s triumph in securing financial compensation, erecting the monument has proven intractable. Although the money was put aside, the location was identified, and the design was finalized, the monument has not been built because commission officials were having trouble coordinating with the city council and other third parties.

The general trend was that restitution was not a high priority for local government and other agencies because it did not dovetail with existing plans and so they did not dedicate senior staff to it. As a result, when a restitution award required the commission to sustain a conversation with multiple actors, the restitution process was often stalled or undermined due to a lack of commitment and coordination.

## **B. Overcoming Communication Breakdowns**

The interview data repeatedly showed that once there was a communication breakdown and respondents lost the attention of commission officials, respondents needed resources to restart the conversation. As the old adage says, it is the squeaky wheel that gets the oil. In the din of clamoring claimants, the commission could not hear the voices of families and communities that did not have the ability to scream out. Respondents with muzzled voices did not have the power to demand the commission’s attention and thus could not recover from communication breakdowns once they occurred. The stories of Mr. Karl and Mrs. Doe demonstrate the noise-making strategies people used to regain the attention of commission officials and make certain their claim received the attention it deserved.

First, respondents who had political connections were able to recover from communication breakdowns. Although most claimants had a rattle, Mr. Karl and his committee had a bullhorn. The apartheid government forcibly removed Mr. Karl and his family from Paarl, stole their property, and dismembered their community. Mr. Karl volunteered to be part of the claimant committee that led the charge to ensure families in Paarl received redress for the forced removals. Mr. Karl and his committee advocated for their community with great success, in part because the Paarl committee for former owners used its political contacts to recover from communication breakdowns.

At one time the commissioner changed [and] the new commissioner wouldn't come to us. We phoned him to make up an appointment because we wanted to speak to him because Paarl was then forgotten. . . . We had to get a MP [Member of Parliament] to act as a liaison and get him to meet with us. The MP was from Paarl and he knew the commissioner, so he set up the meeting. Until then, it was fine again. (Confidential Interview, Lesedi 2008)

It was extremely rare for any claimant committee to have the ear of the regional commissioner, but through its political connections, Paarl's committee for owners did.

Overall, Paarl was among the first communities to receive compensation in the Western Cape and so was a success story of sorts. Political connections, however, only partly explained Paarl's success. When claimants from nearby communities—who were struggling to get through the restitution process—learned that the commission had finalized Paarl's claim, they asked Mr. Karl for advice. He revealed the second strategy effective advocates used—constant calls and visits.

People will phone me and say . . . “how do you do it? What can we do to get them to settle our claims?” What I tell them is if you don't go there, if you don't set up meetings and you don't speak to them constantly, [you will get nowhere]. . . . I think it's also because there's so many people coming to them, so many claims. . . . If you are not making sure that they look at your claim, they'll just leave it. Those people that are coming forward [they will] make sure that the claim is prioritized; it's those claims that are settled first. (Confidential Interview, Karl 2008)

Committee members consistently made trips to the commission and constantly called officials to ensure their claim remained a priority. Since most respondents did not have political connections, constant contact was the most common strategy respondents used to ensure they sustained a conversation with commission officials.

Mrs. Doe's story shows how respondents used constant phone calls and visits to the commission to resolve communication breakdowns, but at great cost to themselves. Although Mrs. Doe's jet-black hair and wrinkle-free skin suggested youth, she was a grandmother who cautiously walked with a cane. The apartheid government forcibly removed Mrs. Doe's family from Cape Town's city center and moved them to a coloured township on the outskirts of the city. She lodged a claim prior to the deadline and became her family's legal representative in the restitution process. Unlike Mr. Karl's experience, Mrs. Doe's communication with the commission was defined by silence and frustration. She said:

There was no communication. I had to go every time because the only way to make anything happen was to be face to face with the right people. . . . My phone bill was sky high every month and I'm a pensioner. Yes! And on crutches; on crutches to the land claim every time I had to go in. (Confidential Interview, Doe 2008)

As Mrs. Doe noted, maintaining constant contact had significant costs. To visit the commission, claimants had to be physically able, have the extra time, and have the money for transport. Calling the commission constantly was also expensive.

While Mr. Karl and Mrs. Doe eventually got the commission's attention and successfully restarted the conversation, Mr. Rabodila's story exemplified how poor respondents could not recover from communication breakdowns even with great effort. Mr. Rabodila was part of Luyolo's claimant committee. He described how commission officials failed to show up for meetings they scheduled with the committee.

Interviewer: So how has the communication been between you and the commission?

Mr. Rabodila: Bad, very bad, very bad, unacceptable! I'm telling you, unacceptable! You run rings to get those people. They set up meetings, you go the day of the meeting, and you wait there for hours and then only to be told, "No, that man is out of town." Yes it's full of bureaucrats. . . . You won't win for reasons unknown. . . . I had this date in my diary and you appointed the date, yes. You said, "On this date, we can meet, come." When you check your diary, "Hey, I must go there." You go there, the people they don't even know you were coming. Yes. Then they will form stories to say, "No, that man is out of touch." Meanwhile the guy is here. Yes. There will be red tape all the way. . . . You see, you are driven from pillar to post; nothing come forth. That's how the situation is now. It's like finding a needle in a haystack to get those commission people. (Confidential Interview, Rabodila 2008)

The commission's treatment of Mr. Rabodila and his committee was not only poor, it was unequivocally disrespectful and, unfortunately, it was not uncommon.

Some respondents used constant contact to force commission officials to pay attention to their claim, but poverty put this strategy out of reach for Mr. Rabodila and the Luyolo claimant committee. Mr. Rabodila was an extremely poor pensioner who lived in a dilapidated hostel and others on the committee were also desperately poor. Finding money to take a taxi to the commission's offices in town required a significant financial sacrifice. Traveling from Gugulethu—the township where the apartheid government relocated the respondents of Luyolo—to the commission's offices in Cape Town's city center costs about R20, the same amount as a loaf of bread and carton of milk. Consequently, when commission officials missed a scheduled meeting, Mr. Rabodila and his committee could not afford to return again and again. A fifteen-minute cell phone conversation costs about R45, the same amount as two cartons of milk and three loaves of bread. As a result, Mr. Rabodila and his committee also could

not afford to call constantly. Essentially, very poor respondents did not have the resources necessary to sustain a conversation with commission officials who had hundreds of people jostling for their attention.

The third strategy respondents used to overcome communication breakdowns was to hire a lawyer. Wealthier individuals could afford to hire lawyers to represent them individually, effectively outsourcing the headache of dealing with the restitution process. Lawyers hired by poor communities, however, dealt with all the claims in the community. Of the communities included in this study, only the communities of Steurhof and Evaton worked intensively with a lawyer. The stories told by Mr. Flanders, Mrs. Suwandi, and Mr. Ndebele illustrated when and how lawyers helped respondents to overcome communication breakdowns.

Due to the racialized wealth disparities in South Africa, it is no coincidence that the only families in the sample able to hire a lawyer to deal with their individual claims were white or Indian.<sup>3</sup> For instance, Mr. Flanders and his family hired a lawyer to guide them through the restitution process. They qualified for restitution because, although white, the apartheid government expropriated their family's farmland on the outskirts of Cape Town to create a township for the coloured families it forcibly removed from the city center.

- Interviewer: Oh, so your family had a lawyer handling everything?  
 Mr. Flanders: Yes. And even with that, it still took a long time. I mean you would think that if you had a lawyer he would be able to sort of streamline it. Like these are the papers you need, this goes in, and then it's not a long process. . . . I mean granted we were in a situation where we could afford it, but because of the amount of time it took and the lawyer fees just for this was expensive because we still had to pay for the amount of time taken. (Confidential Interview, Flanders 2008)

While their lawyer could not make the process go faster, he was able to handle the paperwork and get commission officials on the phone to explain the status of the claim.

More importantly, the family's lawyer was instrumental in negotiating the subjective historic valuation process. In this process, the commission hired an appraiser to estimate what the price of the Flanders family's expropriated land would have been if the Group Areas Act had not existed. The commission then subtracted from this sum the compensation the Flanders family actually received. The difference, adjusted for inflation, was the starting point for the negotiation about what the commission would pay the family. Going up against commission officials who were not trained in negotiation, lawyers were able to secure significant sums for their clients. The commission paid about R400,000 (US\$57,000) to the Flanders family—a healthy sum considering the

---

3. The mean annual income in South Africa varies dramatically according to race. White: R365,134, Indian: R251,541, Colored: R112,172, and African R60,613. *South Africa Census 2011* (Pretoria: Statistics South Africa, 2012), 42.

standard settlement offer given to most prior owners was about R60,000 (US\$8,570) per claim. Legally, all prior owners could request a historic valuation, but without a lawyer to bring this to their attention, most former owners in urban areas received the standard settlement offer.

While only very few respondents could afford a lawyer to handle their individual claims, when lawyers were willing to represent all claimants as a group, poor communities like Steurhof were able to pool their resources by donating R50 (US\$7) every meeting and hiring a lawyer. The monthly collection was not sufficient to pay their lawyer his full fee. Nevertheless, the lawyer was willing to take on the case because the committee chairperson, Mrs. Boden, had worked as a domestic servant for his family for decades. Without this relationship, it would have been difficult for the Steurhof community to gain access to quality legal representation.

Also, R50 was no small sum of money for poor respondents, so paying the lawyer's fee was a challenge and the Steurhof committee struggled to get everyone to pay their fair share. They had to tolerate free riders because the work the lawyer did benefitted the entire community—those who contributed monthly and those who either would or could not. If there were a significant number of free riders, the committee would not have been able to pay the lawyer. Fortunately, a substantial number of people paid the monthly dues because they believed this would help them return to the homes that the apartheid government stole from them—and they were right.

Steurhof's lawyer was instrumental. He informed claimants of their rights, forced the commission to be responsive, negotiated with various government departments, and, most importantly, helped claimants imagine the possibilities. The lawyer helped the committee and claimants realize that they were not in the position of begging the commission to do them a favor, but in a position to demand their rights from the commission. Mrs. Boden—the committee chairperson of Steurhof—remembered “our attorney, one day said to us he wish he could print it into our minds what power we had as a valid claimant. We never realized it” (Confidential Interview, Boden 2008). With this new entitlement mindset, the Steurhof claimant committee began to think big.

In many cases, the apartheid government bulldozed respondents' homes after the forced removals, but it left many of the homes in Steurhof standing. The local municipality owned some of these homes and had been renting them to whites since the forced removals. With the assistance of their lawyer, the Steurhof community bypassed the commission and began negotiating directly with the local municipality. After extensive negotiations, the municipality agreed that as the current tenants moved out and the homes became vacant, members of the Steurhof community could move in. Mrs. Boden explained how her community brokered this phenomenal settlement.

They knew, if we want to, we can tell our lawyer and say to our lawyer “look, we want that whites to be removed out of that house because that's my mother's house. I want that house back.” . . . They were very, very, very, very scared of that because they knew now they have to. . . . This is now the new South Africa, we doing things differently now, so they can stay in the house . . . but I want the house



as soon as this house going vacant. And we got the house. (Confidential Interview, Boden 2008)

Having a lawyer was an extremely empowering experience for the Steurhof community. Community members knew their rights and this imbued them with authority. They did not make requests of the local municipality and the commission; they made demands.

While many communities could not get commission officials to return their calls, the majority of reports from Steurhof confirmed that the community had excellent communication with the commission and that the commissioner was sometimes present in their meetings. Why the difference in treatment? The lawyer led the community to think of creative solutions and he engaged the local municipality to implement them, which provided very critical momentum. The commission realized that the claim was moving forward with or without it. In order to be part of the success, when the existing homes owned by the municipality were full, the commission built homes for the remaining claimants. Steurhof became one of the commission's showcase projects in the Western Cape. The commission needed strong partners to create and finalize complex settlements requiring multiple conversation partners. Empowered by their lawyer, the Steurhof community became an extremely strong and capable partner.

But, not all lawyers were equal. When communities had a lawyer who did not transform them into strong partners, the lawyer's presence did not add value. For instance, the Evaton community had a lawyer who met with them and sent the commission letters. The commission easily sidelined the lawyer by ignoring his letters and calls. As discussed, one successful strategy many claimants employed to overcome communication breakdowns was to call and visit the commission consistently. But, the community was not paying the lawyer enough to do this and community members did not have sufficient funds for taxi fares and cell phone minutes to do it themselves.

Mr. Ndebele recounted a story that illustrated how the commission dismissed Evaton's lawyer, rendering him completely ineffective. One day when the commission held a community meeting in Evaton, the committee and the lawyer sat on the stage as a display of leadership. Abruptly, the commission official demanded that they get off the stage. The lawyer and the leaders were humiliated and wrote a letter of protest to the commission, which the commission ignored. Why did the commission official marginalize the lawyer? In an interview after the incident occurred, the commission official explained that he felt that the lawyer was taking money from an impoverished community and not providing any valuable services (Interview, Khama 2008). The lawyer did not create any momentum or add value by, for instance, reaching out to the local municipality to find creative solutions, so the commission had no incentive to communicate with him. Unlike in Steurhof, the lawyer in Evaton was ineffective and thus sidelined.

In sum, the commission had thousands of claims to settle with very limited resources, so it was not possible to give every claimant the attention she or he deserved. Consequently, there were often communication breakdowns, which some respondents overcame through their political contacts, constant calls and visits, or by using a lawyer. The sad reality is that respondents needed a baseline level of resources to sustain a conversation with commission officials, which many did not have. Those unable to

recover from communication breakdowns most often believed that the restitution process was unfair.

## VIII. CONCLUSION

One of the most replicated findings in the procedural justice literature is that people who receive unfavorable outcomes are more likely to believe that the process was nonetheless legitimate if they think that the procedures were fair. This article explores whether these findings apply in the transitional justice context where all outcomes are incomplete and unfavorable. The economic and psychological harm people endure is often unquantifiable and hence the remedies provided can never fully compensate them for what they have lost. The main question examined in this article was: When all outcomes are unfavorable or incomplete, how do people make fairness assessments?

This study finds that communication was the variable that most impacted respondents' fairness assessments. Prior procedural justice studies have repeatedly shown that fairness judgments are higher when people have the opportunity to provide input. This study contributes to the procedural justice literature by suggesting that mere input is not sufficient when dealing with transitional processes like land restitution. I introduce and empirically develop the concept of a sustained conversation. Restitution programs are complex and require multiple rounds of information exchange at different points in time to resolve a claim; and so the ability of commission officials to sustain a conversation with respondents through these multiple rounds was one variable that deeply affected whether they believed that the restitution process was fair.

To better understand what giving people a voice requires in the context of transitional processes, I outlined the institutional arrangements and individual resources that were necessary to sustain a conversation in the South African case. The interview data suggest that there were several structural barriers preventing sustained conversations. It was hard for commission officials to sustain a conversation with large, geographically dispersed communities as well as communities located far from the commission's regional offices. Also, the commission's high employee turnover consistently obstructed conversations. Lastly, tasks requiring a conversation with multiple participants—like the transfer of land—were prone to communication breakdowns. Respondents were able to overcome communication breakdowns and restart the conversation with commission officials if they had certain personal resources such as political connections, financial resources to call or visit the commission consistently, or were able to hire a lawyer.

Qualitative studies such as the one I have conducted are best suited for generating rather than confirming hypotheses. The hypothesis generated by this study is that for the beneficiaries of transitional processes to perceive them as fair, officials must sustain a conversation with beneficiaries. As a consequence, investments in communication are crucial. Also, those in charge of creating transitional processes must consider the structural barriers that may prevent a sustained conversation and assess the personal resources beneficiaries may or may not have to overcome these barriers. In the end, it is crucial for people to feel that they are citizens with voices capable of commanding the state's attention and respect.

## REFERENCES

- Atuahene, Bernadette. 2007. From Reparation to Restoration: Moving Beyond Restoring Property Rights to Restoring Political and Economic Visibility. *Southern Methodist University Law Review* 60:1419–70.
- . 2009. Things Fall Apart: The Illegitimacy of Property Rights in the Context of Past Theft. *Arizona Law Review* 51:829–66.
- . 2010a. Property and Transitional Justice. *UCLA Law Review Discourse* 58:65–93.
- . 2010b. Property Rights and the Demands of Transformation. *Michigan Journal of International Law* 31:765–819.
- . 2011. Paying for the Past: Addressing Past Property Violations in South Africa. *Law & Society Review* 45 (4): 955–90.
- . 2014. *We Want What's Ours: Learning from South Africa's Land Restitution Process*. Oxford: Oxford University Press.
- Brockner, J., and B. M. Wiesenfeld. 1996. An Integrative Framework for Explaining Reactions to Decisions: The Interactive Effects of Outcomes and Procedures. *Psychological Bulletin* 120:189–208.
- Commission on Restitution of Land Rights. 2008. *Commission on Restitution of Land Rights Annual Report, 1 April 2007–31 March 2008*. Pretoria: Commission on Restitution of Land Rights.
- Dawood, Zohra. 1994. *Race and Space: Dispossession Through the Group Areas Act*. Cape Town: Surplus Respondents Project.
- Donaldson, Ronnie, and Marais Lochner, eds. 2002. *Transforming Rural and Urban Spaces in South Africa During the 1990s: Reform, Restitution, Restructuring*. Pretoria, South Africa: Africa Institute of South Africa.
- Espeland, Wendy, and Mitchell Stevens. 1998. Commensuration as a Social Process. *Annual Review of Sociology* 24:313–43.
- Fay, Derick, and Deborah James. 2008. *The Rights and Wrongs of Land Restitution: "Restoring What Was Ours."* Abingdon: Routledge-Cavendish.
- Folger, R. 1977. Distributive and Procedural Justice: Combined Impact of "Voice" and Improvement on Experienced Inequity. *Journal of Personality and Social Psychology* 35 (2): 108–19.
- Gibson, James. 2010. *Overcoming Historical Injustices: Land Reconciliation in South Africa*. New York: Cambridge University Press.
- Hall, Ruth. 2004a. Land Restitution in South Africa: Rights, Development, and the Restrained State. *Canadian Journal of African Studies* 38:654–71.
- . 2004b. A Political Economy of Land Reform in South Africa. *Review of African Political Economy* 31:213–27.
- James, Deborah. 2009. *Gaining Ground?: Rights and Property in South African Land Reform*. Abingdon: Routledge-Cavendish.
- Kanfer, R., J. Sawyer, P. C. Early, and E. A. Lind. 1987. Fairness and Participation in Evaluation Procedures: Effects on Task Attitudes and Performance. *Social Justice Research* 1 (2): 235–49.
- Lahiff, Edward. (2008) *Land Reform in South Africa: A Status Report Programme for Land and Agrarian Studies*. Research Report No. 38. Bellville, South Africa: Programme on Land Agrarian Studies.
- Lahiff, Edward, Themba Maluleke, Tshililo Manenzhe, and Marc Wegerif. 2008. *Land Redistribution and Poverty Reduction in South Africa: The Livelihood Impacts of Smallholder Agriculture Under Land Reform*. Bellville, South Africa: Programme on Land and Agrarian Studies.
- LaTour, Stephen. 1978. Determinants of Participant and Observer Satisfaction with Adversary and Inquisitorial Modes of Adjudication. *Journal of Personality and Social Psychology* 36 (12): 1531–45.
- Lichbach, Mark. 1990. Will Rational People Rebel Against Inequality?: Samson's Choice. *American Journal of Political Science* 34:1049–76.
- Lind, E. Allan, R. Kanfer, and P. C. Earley. 1990. Voice, Control, and Procedural Justice: Instrumental and Noninstrumental Concerns in Fairness Judgments. *Journal of Personality and Social Psychology* 59:952–59.

- Lind, E. Allan, Robin I. Lissak, and Donald E. Conlon. 1983. Decision Control and Process Control Effects on Procedural Fairness Judgments. *Journal of Applied Social Psychology* 13 (4): 338–50.
- Lind, E. Allan, and Thomas R. Tyler. 1988. *The Social Psychology of Procedural Justice*. New York: Plenum.
- Lind, E. Allan, Laurens Walker, Susan Kurtz, Linda Musante, and John W. Thibaut. 1980. Procedure and Outcome Effects on Reactions to Adjudicated Resolution of Conflicts of Interest. *Journal of Personality and Social Psychology* 39 (4): 643–53.
- MacCoun, Robert J. 2005. Voice, Control, and Belonging: The Double-Edged Sword of Procedural Fairness. *Annual Review of Law and Social Science* 1:171–201.
- Manenze, Tshilio, and Edward Lahiff. 2007. *Restitution and Post-Settlement Support: Three Case Studies from Limpopo*. Bellville, South Africa: Programme on Land and Agrarian Studies. Published by Oxford University Press on behalf of the Royal African Society.
- Midlarsky, Manus. 1988. Rulers and the Ruled: Patterned Inequality and the Onset of Mass Political Violence. *American Political Science Review* 82:491–509.
- Miller, D. L. Carey. 2000. *Land Title in South Africa*. Kenwyn, South Africa: Juta & Company.
- Mostert, Hanri. 2000. Land Restitution, Social Justice and Development in South Africa. *South African Law Journal* 119:400–28.
- Muller, Edward, Mitchell Seligson, and Hung-der Fu. 1989. Land Inequality and Political Violence. *American Political Science Review* 83:577–96.
- Parker, Gail. 2004. *The Challenge of Sustainable Land-Based Local Economic Development in Poor Communities of South Africa: The Case of Groblershoop, Northern Cape*. Bellville, South Africa: Programme on Land and Agrarian Studies.
- Platzky, L., and Cherryl Walker. 1985. *The Surplus People: Forced Removals in South Africa*. Johannesburg: Ravan Press.
- Rwelamira, Medard, and Gerhard Werle, eds. 1996. *Confronting Past Injustices: Approaches to Amnesty, Punishment, Reparation and Restitution in South Africa and Germany*. Durban, South Africa: Butterworths.
- Teitel, Ruti. 2003. Transitional Justice Genealogy. *Harvard Human Rights Journal* 6:69–94.
- Thibaut, John, and Laurens Walker. 1975. *Procedural Justice: A Psychological Analysis*. Hillsdale, NJ: Lawrence Erlbaum Associates.
- Thompson, Leonard. 1995. *A History of South Africa*. New Haven, CT: Yale University Press.
- Tilley, Susan. 2007. *International Comparative Study of Strategies for Settlement Support Provision to Land Reform Beneficiaries*. Bellville, South Africa: Programme on Land and Agrarian Studies.
- Tyler, Tom R. 1984. The Role of Perceived Injustice in Defendants' Evaluations of Their Courtroom Experience. *Law & Society Review* 18:51–74.
- . 1987. Conditions Leading to Value Expressive Effects in Judgments of Procedural Justice: A Test of Four Models. *Journal of Personality and Social Psychology* 52 (2): 333–44.
- . 1989. The Psychology of Procedural Justice: A Test of the Group Value Model. *Journal of Personality and Social Psychology* 57 (5): 830–38.
- . 1990. *Why Respondents Obey the Law: Procedural Justice, Legitimacy, and Compliance*. New Haven, CT: Yale University Press.
- . 1994. Governing Amid Diversity: The Effect of Fair Decision-Making Procedures on the Legitimacy of Government. *Law & Society Review* 28:809–32.
- Tyler, Tom R., Kenneth A. Rasinski, and Nancy Spodick. 1985. The Influence of Voice on Satisfaction with Leaders: Exploring the Meaning of Process Control. *Journal of Personality and Social Psychology* 48 (1): 72–81.
- Walker, Cherryl. 2008. *Landmarked: Land Claims and Restitution in South Africa*. Athens, OH: Ohio University Press.

## INTERVIEWS

- Confidential Interview, Boden. 2008. Western Cape, South Africa.
- Confidential Interview, Dlamini. 2008. Gauteng, South Africa.

- Confidential Interview, Doe. 2008. Western Cape, South Africa.  
Confidential Interview, Flanders. 2008. Western Cape, South Africa.  
Confidential Interview, Gains. 2008. Gauteng, South Africa.  
Confidential Interview, Ganesh. 2008. Gauteng, South Africa.  
Confidential Interview, Howard. 2008. Gauteng, South Africa.  
Confidential Interview, Kagiso. 2008. Western Cape, South Africa.  
Confidential Interview, Karl. 2008. Western Cape, South Africa.  
Confidential Interview, Lesedi. 2008. Gauteng, South Africa.  
Confidential Interview, Madlingozi. 2008. Gauteng, South Africa.  
Confidential Interview, Mdontswa. 2008. Gauteng, South Africa.  
Confidential Interview, Ngcobo. 2008. Gauteng, South Africa.  
Confidential Interview, Rabodila. 2008. Western Cape, South Africa.  
Confidential Interview, Richardson. 2008. Gauteng, South Africa.  
Confidential Interview, Starks. 2008. Western Cape, South Africa.  
Interview, Thozì Gwanya. 2008. Pretoria, South Africa.  
Interview, Elias Khama. 2008. Pretoria, South Africa.  
Phone Interview, Lusapho Ngqonogqo, Project Officer, Land Restitution Commission. 2012. Chicago, IL.

## STATUTES CITED

- Natives Land Act No. 27 (1913), South Africa.  
Native Trust and Land Act No. 18 (1936), South Africa.  
Restitution of Land Rights Act 22 of 1994, as amended by Act 48 of 2003.  
South African Constitution (1996).