

TOWARDS EXPEDITING LAND CLAIMS : A CASE STUDY OF
FAIRVIEW , PORT ELIZABETH

BY

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DECLARATION

I, SINDISWA TYALA, do hereby sincerely and solemnly declare that this treatise

Submitted for the fulfilment of the degree

MASTERS IN DEVELOPMENT STUDIES

Is my original and independent work, and has never been presented for degree purposes at any other university.

.....

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JANUARY 2010

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DEDICATION

TO MY TWO BEAUTIFUL GIRLS AMANDA AND YOLANDA FOR YOUR LOVE, PATIENCE , UNDERSTANDING AND SUPPORT IN A VERY SPECIAL WAY DURING MY STUDIES. GIRLS YOU WILL ALWAYS BE MOM'S GIRLS.

TO ALL THE PORT ELIZABETH CLAIMANTS, MAY GOD OF HEAVEN CONTINUE TO GIVE YOU STRENGTH AND COMFORT AND ABOVE ALL, MAY HE HELP YOU TO FIND PLACE IN YOUR HEARTS TO FORGIVE AND FORGET ABOUT THE PAST EXPERIENCES RELATED TO THE LAND CLAIM.

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CHAPTER 1 : RATIONALE

1. INTRODUCTION

In 1994, South Africa's political dispensation changed when the African National Congress (ANC) came into power. For most people, that meant that their aspirations and wishes would be fulfilled. The main objective of the new government was to redress past imbalances. The land question was one item on their agenda.

In South Africa, land ownership has long been a source of conflict. The South African history of dispossession and forced removals and racially-skewed distribution of land resources has left Africans with a complex and difficult legacy (Christopher,1987).The issue of land had been an emotional issue affecting many people in South Africa. The struggle for land and access to land in South African history gave rise to many conflicts and loss of lives.

The restitution of land rights in South Africa has been a highly contentious and emotive issue. The pain, anger and frustration of those affected by the implementation of racially based discriminatory measures of the past, cannot be denied. Confronting and redressing the anguish of the past has proven to be central to the process of reconciliation within a transformed political dispensation in South Africa (South African White Paper on Land, 1991a).

The Constitution of South Africa and The Restitution of Land Rights Act (Act No. 22 of 1994) have firmly established the rights to claim restitution in accordance with the provision of justice and equity for all South Africans. During such a long process, it has been noticed in the suburb of Fairview, Port Elizabeth that some claimants ultimately received their land and compensation, some died before they received absolutely nothing and some old, poor and illiterate claimants are still struggling to claim their land or compensation.

Fairview was formerly known as Baakens River Farm in 1810. It was situated far from the city centre and formed part of the Walmer Municipality. Initially, it was owned by John James Besny. In 1826 the farmer was bought by John Parkin and he later sold half

of it to Robert Newcombe before 1849. Robert Newcombe named his half of the farm Fairview (Harradene, 2000).

In 1933, Fairview became part of the Walmer Municipality. In 1967 Walmer became part of the Port Elizabeth Municipality. Fairview developed as a township of low density and became increasingly heterogeneous in nature. Davies (1971:10) claimed that the largest concentration of properties were owned and occupied by Coloured people, followed by Chinese, Blacks and Indians. The majority of the residents were Coloured. According to Sampson (1994), the plot sizes in Fairview were relatively large, either 0,8 ha or 0,2ha. Sampson also claimed that no business sites were distinguished, but businesses were established by the Chinese on residential plots.

During the apartheid era, Fairview was one of the lands declared as a "Controlled Area". The Group Areas Act also affected Fairview, even though the removal of the people in Fairview was not as pressing as it was to other suburbs due to its location at a relative distance from the city (Davies, 1970). As a result an increase in the Coloured population in Fairview was noticed between 1960 and 1970 as people faced eviction from central city areas such as South End. The people moved to Fairview with the hope that the area would be proclaimed a Coloured area. Unfortunately for those who ran to Fairview, people in Fairview were also removed from 1970s to other areas like New Brighton Location and other areas in Korsten. The last removal of people in Fairview took place in 1984 (Eastern Province Herald, 26 October 1996).

After 1994, the introduction of the Restitution of Land Rights Act made provision for the establishment of a Commission on the Restitution of Land Rights and a Land Claims Court to adjudicate all claims lodged with the Commission as from 1 May 1998 (Land Info., 1996). Disputes with land owners over prices, validity of the claims and resistance to give away land, led to referral of some claims to the Land Claims Court. Although some research has been undertaken on Fairview, there is a vacuum of research into the problems faced by claimants in this area. The problems faced by claimants meant that some died while they were still busy with the process and some are still struggling to make a claim, and recently some were successful.

The focus of this study is to examine the process of the Fairview land claim, and as a recommendation, I wish to come up with suggestions for making the process easier for claimants.

2. RESEARCH QUESTION

The research question has been formulated as follows:

What can be done to streamline the claiming of land in Port Elizabeth (Fairview)?

3. SUB-FOCI / SUB-PROBLEMS

- Why is claiming compensation for land in South Africa such a laborious, expensive and time consuming process?
- What is the claimants' real-life experience of the land restitution process, and how does this compare with the ideal of land restitution as a democratic principle?
- Are delays due to bureaucratic or administrative problems, or is there corruption or self-interest involved?
- How can compensation for land claims be expedited?

4. DEMARCATION OF RESEARCH AREA (SCOPE AND SCALE OF RESEARCH)

Fairview used to have a population of 8304 people in the 1960s, prior to the forced removals. The largest concentration of properties were owned and occupied by Coloureds (7303 people), followed by Chinese, Blacks and lastly Indians.

The claimants in Port Elizabeth formed an association known as the Port Elizabeth Land and Community Restoration Association (PELCRA) on the 28 October 1993. The members of PELCRA are a diverse group from varied backgrounds with very little in common, except a traumatic past. PELCRA became an important stakeholder in the process of land claims in Port Elizabeth. There were about 918 claimants in Fairview.

According to PELCRA documents, a total number of about 280 claims were received by PELCRA from Fairview by the end of December 1998. Due to the extension of the due date of submission of land claims to the 31 January 1999, the number of claims in Fairview increased to 874. By the end of February 1999, there were additions of 44 claimants, which add up to 918 claimants in total (Land Info, 2002). From the data base of the Commission on Restitution of Land Rights (2001) Fairview have lodged claims in different places - about 439 claims were lodged with the Regional Land Claims Commission; 371 claims were lodged with PELCRA and 68 claims were lodged individually.

Against the background of the above information, the researcher set out how the demarcation of the study would be undertaken. It was decided purposefully to include both successful and unsuccessful claimants. As gender would not make a difference to the outcome of the study, interviewees were not purposefully selected according to gender. The researcher envisaged a random sample of 6-8 successful and unsuccessful individual applicants (three of each, if possible) and 2-3 members who formed part of PELCRA.

5. THE SIGNIFICANCE OF THE STUDY

- Various types of stakeholders need this knowledge; a person interested in buying plots or erecting housing, estate agents, and those who were driven from their land in apartheid times.
- I intend to come up with recommendations on how the process can be expedited to the benefit of claimants and developers.
- Knowledge from what worked in one suburb can be beneficial to another.
- The research is driven by the need for sincere and unbiased effort to develop a 'BETTER LIFE FOR ALL'

6. LIMITATIONS OF THE STUDY

This has to do with what could or could not be achieved in research because of a limited scale.

- a. The amount of research done on this problem is limited. This means that the researcher had to do a lot of pioneering work and in some cases 'break new ground.'
- b. The scope of the applicability of the research will be limited, in that the researcher discovered problems experienced specifically in the suburb of Fairview in Port Elizabeth.
- c. It is a politically sensitive topic, and it proved difficult to find respondents in all categories who were prepared to divulge what was causing the delays.

7. ETHICAL ISSUES

As this research contains empirical research which is very sensitive in nature, I took the necessary precautions to set the minds of respondents at rest, by letting them know that anything I was going to write, I would come again to confirm that is what they have said. Also, I let them know that their identities would be anonymous when I documented and

analysed the data beyond the examination phase of the study, and they were not forced to answer any question that I asked if they were not comfortable to do so. I ensured that all my interview questions were carefully planned and I eliminated all the questions which I perceived to be too sensitive in nature. However, it needs to be emphasized that the research topic as a whole is sensitive and therefore I could not avoid all forms of sensitivity. I also ensured them that I will destroy the questionnaire sheets after the examination.

Before conducting an interview, I made an appointment with my interviewees, accepting a convenient time for them. I tried to be as open, honest and transparent as I could to them before starting to interview them, and told them exactly why I wanted to interview them.

CHAPTER 2 : LITERATURE REVIEW

2.1 INTRODUCTION

In this chapter I shall present an historical overview of the legislation regarding land ownership in South Africa and how it specifically impacted on Port Elizabeth in the Fairview area. Such an overview will contribute towards reaching my aim of getting to grips with the background of the central research problem I am investigating in this study. Without such an approach, I shall not be able to construct a clear view of the contemporary challenge faced by past owners of property, whose land was expropriated after the Group Areas Act was proclaimed in 1950.

For the purpose of this research, I conducted a literature study search at NMMU library. I also consulted relevant newspaper articles from *The Eastern Cape Herald* (Port Elizabeth newspaper) archives, from 2001 to the present.

The literature review was undertaken for the following reasons:

- To become knowledgeable about related research.
- To serve as a source for focusing on the topic selected and thus avoiding the chances of selecting outdated or irrelevant information (Delport 2002:128)
- To identify gaps in previous research and how the study will fill the gaps.
- To help in conceptualising the problem, refining it, and reducing it to a feasible size and scope.
- To assist in determining the major variables of importance in the phenomenon of land claims in Fairview.

The review will illustrate the core of the problem this study is trying to answer. The articles which I consulted for the purpose of this research assisted me in reconstructing a representative review of the continuing battle between bureaucracies on the one hand and the original land owners on the other hand. I have consulted the Municipality Library situated in the centre of Port Elizabeth in February 2009; unfortunately I had limited time to retrieve information, as the library

was subsequently closed for a two month period for major restoration and renovation.

I have decided to approach this review chronologically, from the advent of the apartheid era in 1948, up to 2008. The starting date signalled the new political era of ideological segregation in all areas of South African society, including property ownership. 2008 is the cut off date of this study, so as to allow enough time to write up the research report.

2.2 HISTORICAL BACKGROUND

The refinement of racially based segregation in Port Elizabeth began when the National Party came into power in 1948. The first legislation to introduce forced removals in the city was the Group Areas Act of 1950. The ideology and philosophy of apartheid was rigorously implemented and the level of enforcement significantly increased throughout the period 1950 to 1985.

The restructuring took much longer than anticipated, due to the limited restrictions previously placed on ownership and occupation of land by the Coloured, Indians, and Chinese groups (De Klerk, 1991:10).

The legislation was repeatedly amended and it was only by the mid 1960s and 1970s that the first removal actually occurred. It was during this period that the Land Tenure Advisory Board was replaced by the Community Development Board. The board was given more power over the expropriation of property and forced removal of disqualified individuals. Later in the 1980s, the enforcement of expropriation and removals was significantly relaxed in Port Elizabeth and there was a reflection of changing conditions throughout the country (Frochtling, 1998:84&85).

The implementation of apartheid policies had succeeded in creating racially homogeneous suburbs and alienation of different population groups/multi-racial groups. At the same time migration to the city continued and increased significantly after 1986, resulting in accelerated unemployment, and poor housing conditions

prevailed. The migration to the city contributed to squatting and the erection of shacks where there is a vacant land. The Port Elizabeth Municipality was, however reluctant to demolish these shacks, due to the lack of available accommodation elsewhere. Subsequently vagrancy became a problem in areas such as Fairview and Salisbury (El Fassed, 2001:1 of 4).

When the government of National Unity came into power in 1994, a true democracy was introduced, meaning that new laws on rights were promulgated, including those which made provision for land claims for people who had been forced off their land.

2.3 THE RAMIFICATIONS OF THE GROUP AREAS ACT IN PORT ELIZABETH

The South African city of Port Elizabeth has one of the worst records of forced evictions during the apartheid era. The racially-based dispossession and removal of black people by South Africa's white people has been part of the city's history since the turn of the twentieth century. During the 1950s tens of thousands of people were affected by the slums clearance legislation which was used to implement the aims of racial segregation. Since 1960, people were removed from an estimated 3200 inner city properties in terms of the Group Areas Act. About 70 400 people, constituting more than half of the city's total black population at that time, were affected by racist law and policy in this way (Ambrose, 2003:29).

These evictions brought with them a heavy toll of hardship and suffering. This is not only because of the material loss they involved. The evictions also meant a loss of community. Apartheid had robbed Port Elizabeth's black people not only of land and housing, but also a way of life. The loss was not only a loss for those who live in Port Elizabeth; the forced evictions have also left a deep scar on the body and the psyche of the city. According to Ambrose, (2003: 29) after apartheid rule, the legacy lives on in the city's segregated urban structures which is a series of islands in which communities are separated, not only by income and identity, but also by physical and geographical chasms and buffer zones. He also claimed that apartheid left behind physical scars of the removal, in the form of large patches of prime land, in South

End and Fairview being vacant, where people were forcefully removed from their homes.

Under Proclamation No 71, published on 30 March 1951, the whole of the Cape Province became a Controlled Area. The Municipality of Port Elizabeth and many private housing developers, had by this time already attached a specific condition to the title deeds, namely that, plots in the various municipal townships were reserved for specific groups and that this condition was binding on the original purchaser, as well as all successive purchasers (Ambrose, 2003:43).

When the Group Areas Board began consideration of Port Elizabeth, there were considerable areas of racial homogeneity like Mount Pleasant in the city together with several areas of mixed residence like South End and Fairview. The population distribution of certain areas in Port Elizabeth was totally heterogeneous in nature. Up to the 1960s some areas within the city became more segregated than others. Due to the Group Areas Act, for example, Central and North End exhibited large percentages of the White population (Africa Institute of South Africa, 2002).

A master plan for the proclamation of residential land was released by the Group Areas Board under Proclamation 144 of 1996. All plans and proposals were amended to ensure that the White population was least affected and that no areas of racial intermixing remained. The residential areas of the White group were located in the west, south and north-eastern sector of the city, while the northern sector would provide for the coloured, Indian, Chinese and Black groups.

The areas with a large concentration of non-Whites, such as Fairview, Salisbury and South-End, were surrounded by White areas and were removed. The Central Business District (CBD) was reserved for Whites and the remaining groups' residents in the area were removed to the periphery of the city. The group areas were separated from one another by means of buffer strips of either natural or physical barriers (Draai, 2001:45).

2.4 THE IMPLEMENTATION OF THE GROUP AREAS ACT WITH SPECIFIC REFERENCE TO FAIRVIEW

According to Ambrose (2003: 46), the city of Port Elizabeth has been one of the worst cases of forced removals in South Africa. He also claimed that the extent of forced removals brought with them the heavy toll of hardship and suffering and not only due to material losses but also due to strong loss of community identity. Ambrose also stated that forced removals have left a deep scar on the spatial structure of the city and a legacy of racially segregated suburbs. "David" (12 March 2009, interview) claimed that the racially diverse suburbs that once existed at the heart of the city have been destroyed and large patches of prime land left undeveloped, like Fairview and Salisbury.

2.5 THE RESTITUTION LAND RIGHTS AFTER 1994

The question of the restitution of land rights was given a political platform during the period 1990 to 1994 and issues that affected the redistribution of land were deliberated (African National Congress, 1994). The restitution of land was a central process included in the interim Constitution and in the promulgation of legislation in the form of the Restitution of Land Rights Act. The ultimate goal of land restitution was to provide a remedy to people who were prejudiced through the application of racially based land measures, and to make a significant contribution to the stabilisation of rights in property (Schuster:1999).

The legislation and its prescribed institutional arrangements have been repeatedly revised as lessons learned in the process of implementation, demonstrated that although the legislation appears to be relatively easy, the implementation of its specifications is considerably more problematic (Schuster, 1999). The Interim Constitution did not merely protect fundamental human rights but made express provision for reparation for past violations. People dispossessed of rights in land were granted the right to claim restitution, under the Restitution of Land Rights Act (No. 22 of 1994). The responsibility for restitution of land right was placed on the shoulders of the state. The new Constitution, Act 108 of 1996, replaced the Interim

Constitution and was adopted on May 8, 1996. This act also secured the restitution of land rights (Africa Institute of South Africa, 2002).

2.6 THE RESTITUTION OF LAND RIGHTS ACT OF 1994

The Restitution of Land Rights Act made provision for the establishment of a Commission on Restitution of Land Rights and a Land Claims Court to adjudicate all claims lodged with the commission. The rules of the commissions were published in terms of Government Gazette Notice No. 703 of 1995.

The question of compensation for privately owned land needed for restitution was dealt with in Section 28(3) of the Act (South African 1994). According to the Act, claims would qualify for consideration if any person or community and their direct descendants were dispossessed. Also any person who was prevented from holding or retaining title to land because of unfair discriminatory laws, could lodge a valid claim (Frochtling, 1998:24).

As the Act does not restrict the definition of the right to land to mean only those persons who hold documentary proof; the extended parameters of the Act also include the rights of those who do not hold registered title to land or have documentary evidence of their rights, but perceive themselves as having valid rights to the land. Once the right has been qualified, confirming the form in which the right will be recognised was the following step. The compensation according to this Act was based on each claim being treated on its merits (Draai, 2001:45).

The Restitution of Land Rights Act (Act 22 of 1994) furthermore emphasizes that the rights of all those affected are to be taken into account instead of simply being 'forced removals in reverse'. The Act tries to resolve claims by agreement. In terms of government policy, the Act was meant to be used in a way that promotes reconciliation and heals the wounds of apartheid. Most unfortunately some families are still feeling the pain. Other claimants died while still wishing to be restored to their place of birth.

2.6.1 THE 1991 LAND ACTS AND THE ESTABLISHMENT OF THE ADVISORY COMMISSION ON LAND ALLOCATION (ACLA)

In 1991, the government released its White Paper on Land Reform, in which it made a commitment to go beyond the mere repeal of apartheid legislation by promoting “the accessibility of land to all members of the population”. The government then set up the Advisory Commission on Land Allocation in November 1991 (South African: Constitutional Court Document: 21 September 2006). The Commission was established in terms of The Abolition of Racially Based Land Measures Act of 1991.

It was this same Act which abolished the 1913 Land Act. The Native Lands Act was passed in 1913 and confirmed in 1936. This Act limited the area where black Africans could establish new farming operations to the reserves. It also barred blacks from buying land from whites and prohibited blacks from share-cropping.

The Commission was rejected by many communities, simply because it was purely an advisory board and it could not make orders on land restitution. It could only consider claims to land which belonged to the state and which had not been developed or allocated for something else (PELCRA Documentation). The communities intent on reclaiming their land were disillusioned by the government’s reluctance to disclose the names of the commission members, despite community representatives submitting the names of the possible candidates. When the names of the commission members were announced on 14 November 1991, the land claiming communities were angered, as the commission members were not chosen from any of the names they had put forward. In other words, they were not representatives of the people, but puppets of the government. (Chigara, 2004:42). Furthermore the Commission was only advisory and it could only make recommendations to the government.

2.6.2 LIMITATIONS OF THE ADVISORY COMMISSION ON LAND ALLOCATION

At first, many land claiming communities welcomed the formulation of the Advisory Commission on Land Allocation. However, as has been stated in the previous

section, the communities soon became disillusioned as none of the proposed community candidates were appointed to the Commission. (Land Claims Update, 1993). Furthermore the recommendations to government were not made known to claimants. The latter could not know the result of their claims until the State President chose to make a public announcement, without consulting the claimants first about them (Land Claims Update, 1993).

There was also confusion amongst the commission members over what their terms of reference referred to, in as much Professor Nic Olivier, the deputy chairperson of the commission said:

‘One would be inclined to say that land which, for example, was acquired from blacks by the South African Development Trust and subsequently sold to White farmers, would fall out the scope of the commission activities’ (Land Update, 1993, p. 5)

In the Commission’s first report, released in December 1992, the Advisory Commission refused to make recommendations on certain claims submitted to them. It was then evident that the interpretation of the enabling legislation had caused immense confusion both within the commission, as well as with the land claiming communities. Also, in setting up the Commission, the government ignored the request from community members to establish a Land Claims Court (PELCRA Documentation).

A further stumbling block to the whole set up was that the Commission could report to the State President only once a year. Further grievances from land claiming communities were that, the Commission did not represent the victims of Apartheid’s unjust laws, and that it failed to hold hearings in other languages than English (PELCRA Documentation)

2.7.1 THE ESTABLISHMENT OF THE COMMISSION ON LAND ALLOCATION (CLA) IN 1993.

The pressure from the communities, who were dissatisfied with the Advisory Commission on Land Allocation’s terms of reference as stated above, compelled the

government to amend the commission's powers. The government responded to their dissatisfaction by amending the 1991 Abolition of Racially Based Land Measures Act to upgrade the powers and status of the Advisory Commission on Land Allocation. The Commission on Land Allocation (ACLA) was formed in 1993 and was granted the power to order the restoration of certain State Land (SA Dept. of Land Affairs Report: 2004).

2.7.2 THE LIMITATIONS OF THE COMMISSION ON LAND ALLOCATION.

As there was dissatisfaction with the Advisory Commission on Land Allocation (ACLA), there was much more criticism of the Commission on Land Allocation (CLA). Firstly, the CLA could only consider land that had been declared to be land it could allocate. Secondly, the government would not be able to sell or develop any land already under the commission's consideration.

Thirdly, land that was not yet under consideration could be developed or sold by the government and a later claim to it could not be heard by the commission, although the commission could recommend that alternative land should be bought for a community, if it claimed that land taken from it had been sold or developed (SA Dept. of Land Affairs Report, 2004).

2.8 THE ESTABLISHMENT OF THE DEPARTMENT OF LAND AFFAIRS.

The Department of Land Affairs was officially established in November 1994. Its task was to formulate policy on land and to attend to the implementation thereof. The Department of Land Affairs was also established to create an equitable and fair land dispensation and secure and promote the effective use of land as a resource within the context of sustainable rural development. The Department's task was extended to restoring land rights as provided for in the Constitution and to provide an appropriate land policy, legislation framework and mechanism for equitable access to land and security of tenure within an urban and rural context. The development of the land reform policy as a central element and driving force of urban and rural

development strategy has been enhanced by the change in government, as well as its Reconstruction and Development Programme (SA Dept. of Land Affairs Report, 2004).

2.9 THE IMPLEMENTATION OF RESTITUTION IN SOUTH AFRICA

The formation of restitution policy and procedure was a critical step in ensuring that the intentions of the legislation were translated into the mechanisms to give them effect. It was significant to retain the extensive public consultation that had evolved during the formation of the legislation and to establish a balance between two opposing realities. Firstly the restitution had to restore the iniquities that the victims of the past injustices had suffered and secondly, the rights of property owners had to be respected within an environment that secured economic stability of the country (S.A. Dept. of Land Affairs Report, 2004).

The fulfillment of a common understanding of the fundamental principles and challenges are involved in the process which culminated in the finalization of the White Paper on South African Land Policy in 1997 (South Africa, 1997). The claims were to be lodged with the Commission as from 1 May 1995 but the new policy set general time frames, allocating three years for the lodgement of claims from commencement date, a period of five years for the investigation of all claims and ten years for their finalization (SA Dept. of Land Affairs Report: 2004).

Although the provisions of the Act (Act 22 of 1994) were clear in their intention, the actual implementation of the Act proved to be more complicated. The process of resolving claims was slow with no clear guidelines for implementation and settlement of claims. Procedures used proved to be inadequate in addressing the inherent difficulties of the process (Constitutional Court of South African Document: September 2006).

Although policy formation evaded the trap of being prescriptive, and merely acted as a guide to develop a broader policy framework, a clear cut point of reference was lacking. Thus no blueprint existed for restitution in South Africa and diverse

approaches were adopted by implementers. However, a positive spin-off was that trial and error provided the means of enhancing and fine-tuning both legislation and policy. Over time amendments increasingly introduced possible solutions based on experience. The overriding goal remained to cater for those who were dispossessed (*Constitutional Court of South African Document: September 2006*).

A further objective was the implementation of a development oriented policy, enabling beneficiaries to maximise the benefits gained through restitution. The danger that incorrect implementation could result in the entire process grinding to a halt in ceaseless litigation and counter litigation, could not be ignored. (*Constitutional Court of South African Document: September 2006*).

2.10 CONCLUSION

The restitution process by its very nature requires extensive amounts of information for the resolution of claims. One of the best primary sources of this information is the records of the former government, even though information in the records of the apartheid government may by their very nature be biased and their interpretation could be complicated to understand.

Clearer policy guidelines are to be established which undoubtedly will make the task easier. In addition, many cases will have to be approached on a case by case basis, although clearer guidelines are adhered to by implementers of the process. In many cases implementers will still require more flexibility, innovation, and strategy required of decision making in land claim processes. In return, the result will contribute to the claim processing being retained and at least to some extent a patchwork will prevail.

CHAPTER 3: RESEARCH METHODOLOGY

3.1 INTRODUCTION

As the research topic and objective of this study have been clearly set up in chapter one, in this chapter the researcher has to clarify how the required information was obtained, which includes the focus area, selecting the sample size as well determining the instrument which was used to collect the data. The following discussion will then focus on the research design and various techniques that were used to gather data, so as to meet the goal of the study and the specific research question. This chapter also explains how the investigation was undertaken and why certain methods of data collection were selected to investigate the research question.

The researcher decided that a qualitative approach was the most appropriate to achieve the goals of this study. More specifically, the nature of this research design was exploratory-descriptive and qualitative. The research problem being researched provided for an exploratory survey of opinions and perceptions concerning the phenomenon of interest. According to Blanche and Durrheim (1999:123) qualitative methods are 'interpretive' methods because they try to describe and interpret people's feelings and experiences in human terms rather than through quantification and measurement.

3.2 RATIONALE FOR THE USE OF THE QUALITATIVE RESEARCH APPROACH

The researcher had the intension of finding the easiest process to be followed for people when claiming their land. As stated previously, the qualitative research approach was deemed to be the most appropriate. According to Smaling, (1992:174) in a qualitative research approach, the object of study is the world as defined and experienced. Data collection is open, flexible and not strictly regimented. Therefore such an approach allows the researcher to:

- Humanise problems and data as the researcher becomes part of the research rather than just an instrument of measurement.
- Make people, problems , and situations “come alive”
- Portray phenomena in context. The researcher will physically undertake the research in the setting under study as recommended by Kruger (1997: 137)
- Provide a holistic view of phenomena by elucidating claimants’ experiences of land claims.
- Attach emotions and feelings to phenomena because it will give the researcher and the subject of research a platform to be together at close range and thus provide the researcher with an opportunity to study the subject better.
- Give the researcher the opportunity to understand exact meanings of concepts, events, interactions, and relationships with and amongst people in specific situations and specific contexts (Strydom, 1997: 86).
- Provide the researcher with an understanding of eviction and restitution through the eyes of claimants.

The claimants were given an opportunity to voice their opinions through semi-structured interviews, especially their experiences on claiming back the land. The investigation furthermore helped the researcher to understand how the claimants were affected by eviction from their land and properties.

3.3 TRIANGULATION

This study takes on a qualitative approach, involving the usage of different data collecting methods. De Vos (2005: 362) describes the comparison of data collected by means of three methods as *data triangulation*. The purpose for using different methods is to be to illustrate and clarify data collected in order to ensure the trustworthiness of the information/ data collected. De Vos et al. (2005: 314) claim that each data source has its strengths and weaknesses, and by using triangulation, the strengths of one procedure can compensate for the weaknesses of another approach.

The different methods are used co-operatively to enhance, illustrate or clarify and thus give colour, structure and sophisticated rigour to the study and ensure the trustworthiness of data being collected (Krathwol.1998: 619 and Bake, 1999:225). This means the validity of the study is enhanced because various methods were employed. This is in line with Burgess's (1993: 94) definition of triangulation, which is associated with an exercise of confirming a claim to judgement that is done by drawing on evidence from more than one source.

Delport et al. (2002: 342) summarises the merits of triangulation as follows:

Triangulation

- Allows researchers to be more confident about the results of their work.
- Can help to uncover the deviant or off–quadrant dimension of a phenomenon because different viewpoints are likely to produce some elements that do not fit the theory or model leading to an enriched explanation of the research.
- Can lead to synthesis and integration of theories.
- May serve as the critical test, by the virtue of its comprehensiveness for competing theories
- Allows the researcher to strengthen his or her study because methods are to supplement each other and avoid individual flaws
- Lastly, triangulation adds to the accuracy of an estimated size or sample because a problem is approached from different angles.

For this study, methodological triangulation will be applied and this will be achieved through the application of the following data gathering tools and methods:

➤ A LITERATURE REVIEW

Literature review was used to expose fundamental concepts as well as the historical and contemporary content and context related to land claims, particularly in Fairview. For the purpose of this review, I have studied books, journals, articles, annual reports on Land Claims from the Department of Land Affairs, legal documents on the Land Claim and newspaper articles (See 3.4 below for more detail.)

➤ QUALITATIVE DATA COLLECTION METHODS

Semi-structured interviews were used with the claimants. The purpose in selecting this method was to give individuals the opportunity to provide me with answers within a structure, but also with the scope for adding initial responses of their own accord. As I anticipated that it would be difficult to group claimants into focus groups, I decided to rather make use of interviews with individuals.

For the purpose of collecting data on what transpired from the PELCRA interest group, I used *focus group discussions* with PELCRA Executive Board Members. These board members acted as a uniform body with a similar task to execute. Therefore it was more conducive to work with them as a focus group and not as individuals. I anticipated that individual interviews would lead to a lot of repetition of similar responses on issues that were more 'matter of fact' than informative about their individual experiences of similar challenges they faced. In the focus group I was therefore able to get collective responses where the members were in agreement with certain issues, or could furnish me with the same answers that I would have extracted from individuals. Yet, the focus group method

enabled me to capture the diversity of group dynamic responses to the research problem under investigation.

3.4 DOCUMENTARY RESEARCH

In this study, information was obtained through the use of primary and secondary sources. This included dissertations, newspaper articles and legal government documentations. An important source of information was primary documentation from PELCRA, including minutes of meetings and reports. Government documentation, for example reports from the Land Affairs department, were also consulted, as well as legal documentation, such as Constitutional Court judgements.

3.5.1 SEMI - STRUCTURED INTERVIEW

Interviews are considered to be an especially effective method of collecting information during research (Rossouw, 2003: 150). De Vos et al. (2005: 287) also claim that the interview is the predominant mode of data collection in qualitative research. There are various types of interviews. In this study, semi-structured interviewing was preferred, as it allowed the participants to express feelings and experience with greater depth than a fully structured interview schedule could possible allow.

Semi-structured interviewing can be undertaken with a single respondent or take on the format of focus group interviewing, where a group of respondents is interviewed simultaneously. Both these types of interviews were used. The main reason for the researcher for using this type of interview is that a researcher can ask an open ended question, and also the researcher is interested in the participant's opinion about the specific issue, for example, how can the process of land claim be simplified?

It therefore leaves the scope for the respondent to provide more data than when the researcher makes use of a fully structured interview or questionnaire. In the next paragraph, further motivation for this choice of method will be provided.

3.5.2 MOTIVATION FOR CHOOSING SEMI-STRUCTURED INTERVIEWS

The main benefit can be attributed to flexibility, which enhances the data collection in the following ways:

- It allows the researcher to rephrase questions to suit the level of the respondents (Krathwohl, 1998: 379)
- Due to the physical presence of the interviewer, interaction is granted which allows the interviewer to understand the situation even better.
- Interviews guarantee freedom of expression since the respondent can enter into detailed discussion which allows the researcher to develop a clearer understanding of the situation.
- Due to the physical presence of the interviewer, greater completion is achieved because respondents are not likely to abandon some questions, in this regard, it can be viewed as a great time saver (Krathwol, 1998: 379).
- In cases where questions are answered insufficiently, the interviewer can press for more information.

The researcher compiled an agenda of open-ended questions dealing with the land claim (the topic under investigation). According to Rossouw (2003:48) a clearly formulated open-ended question works well in getting the participant to start talking and from then on the interview only has to follow the participants' cues. The greatest advantage of an interview is that, the researcher uses himself or herself as an instrument for collecting data.

The interviews provided for a more thorough understanding of the respondent's opinions. The reason was that everything had been explained clearly to them, like why they are being interviewed. The interviewees were answering the questions at their own pace. The researcher did however speak on occasion to clarify and to encourage the respondents to provide further examples or explanation of that which was described during the interview.

The researcher believes that the interviewees respond best when they feel at their ease and are less intimidated than they would be with a more interrogatory approach, whereby one question after the other is asked of them. The respondents'

responses sometimes gave rise to more questions being asked. The atmosphere during the interviews was relaxed although protocol was observed at all time. Permission was obtained from each person.

3.6 FOCUS GROUP INTERVIEWS

This is the method in which usually six to twelve members are interviewed collectively. The discussion is more like a guided discussion among participant members, with the researcher acting as the facilitator (Mwiria & Wamahu,1995: 122). The focus group was used in this study as one of the methods for collecting data. The reasons for using this method are as follows:

- To explore a topic in depth through group discussion, about reactions to an experience and understanding common complaints.
- Can be an efficient way to get much range and depth of information in a short time.
- It is perceived that individuals become more motivated to respond to the questions without fear or reservation

Focus group discussion was used in this research as a supplementary source of data that was compared with that obtain by the use of the individual interviews. The use of these methods was limited to six members of the PELCRA executive board which was representing the entire population. The motive of the researcher was to obtain the shared views of the group about the specific procedure which was followed by the claimants to claim their land. In each case, the sessions were semi-formal to allow free expression, so that as much data as possible could be collected to address the research problem as effectively as possible.

3.7 SAMPLING

Population can be defined as a term used for the entire group that the researcher plans to study and about which the researcher wants to make a statement. In this study the population are people who were evicted from their land or their place of

birth in Fairview, Port Elizabeth. As it was impossible to interview the entire population, the researcher made use of sampling.

Sampling is defined by Rossouw (2003: 108) as part of selecting a small group from a population to enable researchers to make reliable inferences about the nature of the population. In other words, sampling is used to generalise views about the object being studied, and thus the sample is a small part of a bigger picture, used to represent the whole.

Stratified sampling has been perceived by the researcher as the best method for this study. The stratified sampling design is often used to ensure greater representativeness, especially where a heterogeneous population contains small minorities and the researcher wants to ensure that these minorities are also represented. The aim of sampling is to select the population which will provide the researcher with representative information about the population. To ensure the best sample, it must reflect the variation in the population. In this case that is why the researcher decided to select both from the successful and unsuccessful claimants.

The total size of the sample in this study will be three successful claimants and three unsuccessful claimants.

3.8 RELIABILITY AND VALIDITY OF THE RESEARCH

To clarify reliability, synonyms such as dependability, repeatability, reproducibility and generalisability are used to advocate that a reliable instrument is one with which similar results can be obtained when it is independently administered or a comparable instrument is used and can produce similar results constantly. Other scholars explain reliability in terms of consistency of results across various settings and used by various researchers (Bell, 1997: 64 and Wellington, 2001: 31). Wellington (2001: 31) further explains that reliability is “the extent to which studies can be replicated ... a researcher using the same method can obtain the same method results as those of a prior study...” This definition is also in line with the views of Delport et al. (2002: 168) and Kulundu (2001: 104). For this study, reliability will be tested through the use of triangulation. (See 3.3 above).

Validity refers to the degree in which a research instrument measures what it is expected to measure (Wellington, 2001: 30) & Kulundu, 2001: 102). For this study, validity was ensured by an exploration of the literature existing about the land claim. This placed the researcher in a better position to understand the problem faced by the claimants. According to Monnapula-Mapesela (2002: 232) a comprehensive literature review is an opportunity to understand what other scholars have already achieved in the particular subject. Monnapula-Mapesela (2002: 232) also believes that a literature review allows researchers to reflect on their work and familiarise themselves with new problems. To further ensure validity of the study, the data from the qualitative investigation was validated by comparing it with the documentary search.

3.9 CONCLUSION

This chapter dealt with methods used in the gathering of data and the rationale behind the choice of the particular methods. This was done through an exploration of the merits of the selected methods. The chapter has also explained how the sampling was selected. This was done because this study aimed to find the easiest and most effective process to be followed by the claimants compared to the one which seem to be complicated, confusing and time consuming to claimants. The highlights of possible limitations, as well as an explanation of attempts at enhancing reliability and validity were undertaken. The research instruments and interviews were further elaborated on and the aims of such instruments were also clarified. The next chapter will focus on the analysis of data qualitatively collected.

CHAPTER 4: THE FAIRVIEW LAND CLAIM PROCESS

4.1 INTRODUCTION

The following discussion will highlight the developments in the restitution process undertaken by claimants in Port Elizabeth. Valuable lessons have been learnt that can be implemented in other centres, as some of the hurdles faced, successes and failures experienced, will serve as guidelines to all seeking to embark on similar initiatives.

The magnitude of possible claims in Port Elizabeth and the limited capacity, both human and financially, within the State, created a daunting task of finding solutions that would not only make sense to the claimants but also to the State. It became evident that speedy resolutions would not be found as the process of the restitution of land rights was embarked upon in Port Elizabeth. The danger, however, existed that extended delays would result in greater social and economic implications, as claimants' expectations increased and current property owners were forced to await finalization of claims to their land (Dept. of Land Affairs Report: 2006).

4.2 THE ESTABLISHMENT OF PELCRA

The contestation around land restitution in Port Elizabeth began during the transition period, in 1993.

The Legal Resources Centre (LRC), acting for PELCRA, lodged an objection with the Municipality to the proposed rezoning and sub-division of ERF 1349, Fairview, with regard to which Wonderwonings (the developers) had made an application to the Free Settlement Board and was intending to use for a townhouse development (09 November 1994) The LRC said that their clients' interests would be adversely affected if the application of Wonderwonings was approved.

In 1993 a protest action was undertaken by land claimants in Port Elizabeth against the municipality. The municipality was forced by the claimants to reassess its

position regarding claims in Port Elizabeth, and adhere to community pressures to have a moratorium placed on the zoning and sale of land subject to claims (Mr. Britton, 17 June 2009, interview). The claimants decided to form an association known as Port Elizabeth Land and Community Restoration Association (PELCRA) in October 1993. A democratically elected executive Committee was established to represent the claimant group.

Various workshops and discussions were held over a period of three years (between 1996 and 1999) between the claimants to reach agreement on a suitable method of resolving their claims. Claimants began to grasp the limitations of the process and to accept the reality. Agreement was reached to accept a group restitution initiative in 1997. The agreement included every claimant in Port Elizabeth, meaning that those from Fairview were also included. The desires to have the original properties returned were abandoned but the members maintained that they would attempt to negotiate the best possible solution with the State.

4.3 ERF 1349: FAIRVIEW

Old Fairview comprises the section of land situated furthest from the city centre of Port Elizabeth compared to other areas where people have been removed. Previously it used to form part of the Walmer Municipality. It developed as a township of low density and became increasingly heterogeneous in nature. The majority of the residents were Coloureds and they occupied the area in the Northern part of the suburb while the area to the South was occupied primarily by the White population group.

Fairview is suburban land that lies now at the geographical centre of the city of Port Elizabeth. It is land which has remained 'frozen' since the mixed-race community was expelled. (*Weekend Post*, 28 July 1984). A total of twenty shops and general dealers were also present in the area. The other portions of the vacant land were used for sports and recreational facilities ("Mavis", 05 May 2009, Interview).

Fairview was declared a “Controlled Area” until the Board completed its investigation and proclamation. According to the S.A. Dept. Land Affairs Report (2004), the population figures increased from 5822 in 1951 to 8304 in 1960. In some instances excavations for new building were halted, which resulted in properties depreciating in value. The government’s intention was to change the entire community into a Coloured community and that did not materialise, as an area for their resettlement was not immediately identified (“Margie”, 05 March 2009, Interview).

The eviction started in 1971 in Fairview and it was only in 1984 that the last removals occurred and that was when the people of the Willowdam Municipal housing Scheme were also removed. They were only 293 people by 1985 (Ambrose, C 2003).

4.4 THE ROLE OF THE STATE

The land claims were lodged against the State as the institution responsible for forced removals. According to the Restitution Act, the State is responsible as the respondent to the claim and no claim is permitted against the current owner. The State also has the responsibility to bring effect to restitution and to account to the taxpayer for the cost-effective utilisation of resources. It therefore has to be confident that the claims are legitimate and that the correct claimants have been identified, as well as that the right price is paid for land in the case of restoration (SA Dept. of Land Affairs: Strategic Plan, 2004).

Furthermore the State is responsible for ensuring that restitution is adequately implemented once an award was made. It was also expected of the State to provide assistance to claimants. Most unfortunately, it was difficult for the PELCRA executive to get hold of the representative of the State by the set date, as most times they failed to honour their appointments, so as to get information on the progress of the process and to provide answers to their questions. The PELCRA claimed that the State was continuously postponing the appointment which contributed to lots of delays (*PELCRA Documentation*).

4.5 THE SEVEN BASIC STAGES OF THE RESTITUTION PROCESS.

The Land Restitution Process in Port Elizabeth started in the early 1990s when a group of claimants decided to formulate an association, the Port Elizabeth Land and Community Restoration Association (PELCRA). The claimants, who had organized themselves as PELCRA, opted for land rather than financial compensation. The main aim was to provide claimants with a valuable asset and heritage. To achieve its aim, PELCRA was assisted by the Legal Resources Centre (LRC) and the Urban Services Group. (Mr. Britton, 26 February 2009, interview).

The following seven stages were being followed by the claimants according to the PELCRA documentation. The researcher decided to look at them so as to show how laborious and difficult the route was that had to be followed by the claimants, especially for the old and illiterate claimants.

The first stage is that claimants were expected to decide whether or not to pursue a claim. Although the responsibility to provide information verifying their claims rest with the claimants, there was assistance from the Commission to acquire such information. At this stage claimants were supplied with the necessary information to decide on two options, to become acquainted with the relevant information, their rights, as well as the procedures to be followed or to formulate a plan of action.

This stage required location, exchange and proper management of information because in the absence of clear and accurate information, the process could end up in an entanglement of confusion. The claimants were expected to decide whether they desired the restitution of their land, or whether they would opt for an alternate form of compensation. Once the acceptance of their claims had been confirmed they could decide to pursue their land rights through other state programmes. The initial phase of this process ends when the claim is formally lodged.

The second stage of the process is when the preliminary investigation begins and it is once the claim has been formally lodged and acknowledged by the Commission. The investigation was fairly limited and focused on information regarding the full title description, legislation under which the property was dispossessed, the current

owner and all other relevant government documentation. The Commission then had to decide if priority access could be given to the claim based on whether it was lodged within the prescribed manner and the time period; whether the individual claiming is the original owner; whether the claim is frivolous or vexatious; and whether it meets all other criteria specified under the Act. The claims were then published in the Government Gazette and the affected parties were then invited to submit comments.

Stage three of the process commenced after the gazetting of the claim. The process began with an in-depth investigation aimed at acquiring and checking all the relevant information and identifying issues that may need to be addressed during the negotiations, or upon which Court might have to make an order, should the case be disputed. The relevant documentary evidence was also obtained to allow for the preparation of the negotiating position presented by the State.

In preparing its negotiating position, the State has to consider the validity of the claim, the basis of representation of all interested parties and the feasibility of the options that may be considered.

The fourth stage commences with the initiation of formal negotiations. The end product of this stage was expected to be a just, equitable, and formal agreement between the affected parties. The agreement depends on the approval of the Commission. When two parties agree to a settlement option, it is then formalised by the signing of a Deed of Settlement, and that is the most crucial, complex and fluid aspect of the restitution process.

Negotiations had formed part of the process of finding a common ground. The essential aspect of this stage was the question of feasibility, which includes whether the best option had been identified and whether the land had been transformed to such an extent that restoration was no longer practical.

Stage five of the process was indicated by the Court process. In cases where severe conflict is imminent, the Commission may direct the parties to settle their dispute via mediation, of which going to a court was a last resort. In case of both mediation and

negotiations failing, the Commission may refer the claim to court adjudication. The court's contribution in cases of conflict is limited; as it is able to resolve the issue by defining legal rights but cannot address the underlying social conflict inherent in resolving land issues. The claimants have the final recourse of appealing the decision of court and it is the most difficult aspect in the process and it is to be avoided where possible.

Stage six of the process is about addressing the issue of implementation planning. The stage involves decisions taken by the claimants on the utilization of the land rights or compensation received from a successful claim. The need for this planning is most evident where claimants wish to settle for financial compensation on the land or opt for alternate land.

Stage seven focuses on the finalization of the claim. This involved that the commission had to transfer land, or pay compensation stemming from the agreement reached between the parties or orders made by the court. The claimants are expected to return to their land where restoration of the land is the agreed solution. The Commission has a responsibility of monitoring and evaluating the process so as to ensure that the implementation runs smoothly.

Processes for administering claims were established, but by its very nature certain steps were easily traversed while others slowed down or even undermined the process. These procedures have offered only the most basic framework. Some phases were sometimes overlapping or even running simultaneously, and required the co-operation of a number of different role players at different stages. It was of importance that these limitations were taken into consideration and continue to inform the ongoing process of restitution planning.

The development option for settlement was refined over a period of three years with the claimants before it was presented to the Regional Land Claims Commissioner in April 1997. In February 2000, an agreement was reached amongst the Minister of Land Affairs, PELCRA, the Eastern Cape MEC for Housing and Local Government and the Nelson Mandela Metropolitan Municipality to implement the settlement. After nine years, a claim of 40 million Rand was awarded for the establishment of serviced

land in two new suburbs within the Port Elizabeth urban area, one of which was the Fairview site. (Mr Britton, 26 February 2009, interview) The Port Elizabeth Land Restitution and Housing Association (PELRHA) was established in May 2000 as the agency to implement the settlement of land claims. Although the formal agreement creates the impression that matters would run smoothly from that point on, this was not the case.

The frustration, anger and bitterness of claimants, summarized by Schuster (1999: 46) in her book as unacceptable for humankind, also bears true for the period 2000 – 2008. She claims that the land lawyer was of the opinion that the state should have contributed to the expense of the process, so as to assist the claimants. Bold and controversial reasons are provided by Draai (2001) and Schuster (1999) when they state that ignorance of the original owners, as well as the length of the process, were being used in an effort by property tycoons, who saw their way to making huge profits, to get hold of the land. Over and above these reasons, the time to implement the agreement and obtain the final transfer of the land, further aggravated the claimants.

4.6 PROCESS OF IMPLEMENTATION

In February 2000, the agreement was reached amongst the Minister of Land Affairs, PELCRA, the Eastern Cape MEC for Housing, Local Government and the Nelson Mandela Metropolitan Municipality to implement the settlement. The Minister of Land Affairs, through her department, provided the funding and the NMMM was appointed to administer the funds. PELCRA was also responsible to serve with the Department of Land Affairs (DLA) as an agency to be established to implement the settlement.

The Port Elizabeth Land Restitution and Housing Association (PELRHA), is the implementation body which was established in a fiduciary relationship with PELCRA and the Land Affairs Department to executive the settlement. They are the developers of the project which has been funded to the amount of R42m by the Department of Land Affairs (*The Eastern Cape Herald*, 4 August 2001).

Amongst the first tasks that PELRHA did as part of their responsibility to implement the settlement on behalf of the DLA, was to enter a Land Development and Transfer Agreement with the Provincial Department of Housing and Local Government through its Provincial Housing Board, who were owners of the Land in Fairview and Salisbury Park.

PELRHA invited parties to register their interests and to indicate the extent and purpose of the land required, the time frame for the release of the land and the expected completion date of the envisaged development. The development on the land was subject to municipality approval of the overall development plan for the business corridor.

According to the PELCRA documents, tenders were invited for construction of civil engineering services and the contracts were awarded in September 2001, allowing the construction part of the development process to commence. Fairview was the first developmental oriented restitution project in the country (10 June 2003) and Metroplan assisted in the formulation of the broad and detailed planning concept.

4.7 PROBLEMS ENCOUNTERED BY THE CLAIMANTS IN TERMS OF LAND CLAIMS

The Minister of Land Affairs up until the election in April 2009, Mrs Thoko Didiza, at the meeting for the people who lost their land during the apartheid era, said that:

‘THE TIME HAD ARRIVED FOR THE DISPOSSESSED TO GET THEIR LAND BACK’ (*The Eastern Province Herald*, 29 Oct. 2001)

The PELCRA settlement comprised 843 claimants who had 1200 land claims collectively. 969 properties had been developed in Fairview and 231 in Salisbury Park to settle the 1200 claims. (PELCRA Documentation, 09 September, 2009) The agreement was signed by the Minister on February 6, 2000. According to Mr Uren (*Weekend Post*, 07 December, 2002) claimants would be provided with serviced sites of 400 square meters, 600 square meters and 800 square meters, based on claim values of R20 000, R30 000 and R40 000.

The Fairview claimants were shocked to find out that the large plots they had had previously would be cut into smaller plots, so as to accommodate a business zone and also to accommodate the people who never lived there. The latter were claimants from former areas like Korsten and South End, who could not get land in their original areas, as these areas were already built up, and the Government tried to accommodate them on the open land available in Fairview. To the claimants, that was unfair as they felt they were not even consulted or approached beforehand or had a meeting about such a decision (*The Eastern Cape Herald*, 29 October 2001).

Those who were unhappy with the land settlement agreement formed a breakaway group called the Concerned Land Claimant's Organization (CLCO), from PELCRA, the voluntary organisation who originally represented all claimants. (*The Eastern Cape Herald*, 01 May, 2003). The Concerned Land Claimant's Organization (CLCO) decided to apply to the Court to restrain the Port Elizabeth Land and Community Restoration Association (PELCRA) from proceeding with the transfer of land and to review Land Affairs Minister Thoko Didiza's decision to sign an agreement setting out how to settle land claims (*The Eastern Province Herald*, 29 October 2001).

CLCO members claimed that they had made vociferous objections to the agreements on numerous occasions, and that, out of frustration, they engaged senior political figures to intervene, but PELCRA failed to attend any meeting. The CLCO described the allocation of sites as signed by PELCRA as 'Devious and Inhumane' (*The Eastern Province Herald*, 26 July 2003). They also claimed that they experienced this signed agreement "like being once again dispossessed by a devious, inhumane solution to restitution", and expressed that they are "again being deprived of their birthright."

The CLCO claimed that they were misled by PELCRA into believing that they would be getting back their original sites. They claimed that PELCRA had entered into a framework agreement without a mandate from them with other state parties on how the land should be developed and distributed to respective claimants. The CLCO group planned some form of protest at the Fairview sites if the planned allocation of sites by PELCRA was to proceed by 27 July 2003. They also asked the police to

monitor the allocation of the sites if the process proceeded (*The Eastern Province Herald*, 26 July 2003).

Mr Witbooi of the CLCO claimed that the process in which PELCRA was engaged was flawed, as claimants were being allocated new sites and not their original ones. He also claimed that the whole process was undemocratic and unfair and that people were disillusioned with PELCRA. The CLCO group felt that the first priority was being given to business development at the expense of prospective home owners (*The Eastern Province Herald*, 02 October 2004).

The attorney, Keith Dietrich, who represented 124 unhappy claimants (the CLCO group), said that the people felt the proposed development was another attempt to “rob the people of their land.” He also said the claimants did not need to be guided by a developer. The claimants were also emotionally and spiritually attached to the land and they wanted it back just the way it was. Most Fairview people were robbed in that they had received R1000 for the one morgen (8570 square meters) plots they owned (*The Eastern Province Herald*, 09 April, 1995).

The case of Mr Willie Dietrich in particular, serves as an illustration of the extent of certain claimants’ losses. He claimed that he lost two 2142 square metre Fairview plots in about 1970. He also claimed that having had to move was a terrible blow to him, as he was coming out of his apprenticeship in the building trade, after saving hard to buy the properties while staying with his in-laws, only to be forced to sell them for nothing and move out (*The Eastern Province Herald*, April 09, 1995).

The beneficiaries also queried the allocation of another stretch of land adjacent to William Moffett Expressway for mixed business usage, which they claimed is where they were moved from, and questioned why it was now to be given to business (*The Eastern Province Herald*, August 09, 2001). One of the women, who declined to be named, said her family was moved from Fairview to Springfield in 1972. She also said they used to stay on a 1000 square meter plot but were only given 400 square meters (*The Eastern Province Herald*, 09 August, 2001).

Some individual claimants or beneficiaries (mostly women) also felt that the agreement signed by PELCRA and Government was unfair in that it does not take

into account the interests of those who submitted independent claims, in particular, those of Fairview and Salisbury. They decided to visit *The Herald* newspaper office, claiming that they would have preferred the original plots from where they were removed. They also claimed that the proposed area for development is 155 hectares but only 67 hectares were earmarked for residential purposes. They also wanted to know what would happen to the remainder of the land.

According to the *Eastern Province Herald*, 27 January 2005, the CLCO members refused to accept plots, although they had submitted the claims, saying that the plots were too small, compared to those they were forcibly removed from under the old Group Areas Act. An attorney, who used to represent the CLCO group, had left the case and declined to be named, claimed that PELRHA was acting illegally (*The Eastern Province Herald*, 07 January 2005).

The CLCO was unhappy with the sites of the land registered to its members, and decided to take its case to the Constitutional Court in 2005 (*The Eastern Province Herald*, 22 September, 2006). The applicant (CLCO) argued that the framework agreement was invalid in that it did not cater for the restoration of the original dispossessed land in the earmarked area, although the land was available and had not been developed when the agreement took effect.

There was also a missing draft transfer document which contributed to the delay of the process and when it was found, it had many errors and it then became evident the property to be transferred to PELCRA, had been incorrectly identified and described, thus rendering the agreement to be invalid. The claimants reacted with anger to such delays. Due to that the original agreement of 2000 was declared invalid. Subsequently, the missing evidence was found, corrected and resubmitted to the Constitutional Court in 2005, which found the agreement to be valid this time. (*The Eastern Province Herald*, 26 September, 2006)

With regard to the implementation of the agreement, additional delays were caused by the confusion which arose in October 2006 (PELCRA Documentation and *The Eastern Province Herald*, 11 October 2006). It revolved around the ownership of six roads in the two settlements in Fairview. The state attorney's office said four of these

roads are still owned by the Nelson Mandela Bay Municipality and the other two are owned privately by George Newton. According to the Deeds Act, one of the requirements for a piece of land to be transferred from one owner to another is that the entire piece of land must belong to one owner. The fact that the Municipality is said to own roads on this land stalled the transfer. Although the municipality bought the roads owned by Newton, their claims were nevertheless still unsuccessful and the case was dismissed by the court. Subsequently they had to accept the original settlement of 2000.

According to Mr Felix (the secretary of PELCRA executive), by mid 2008, about 800 claims had been settled in Fairview. The majority had signed up, and some sites had been allocated; according to him the only remaining issue was taking transfer. (Mr Felix, 28 July 2008, Interview).

4.8 LIMITATIONS OF THE RESTITUTION PROCESS

The restitution process has suffered from a lack of exposure with many potential claimants not being informed of the right to lodge a claim. The idea of having a national awareness campaign started in 1996, but was only officially implemented in the latter half of 1998, that is 01 May 1998. 31 December 1998 was the last date of lodging a claim. By the 31 December 1998, more than 60 000 claims were lodged with the Commission. The launch of this campaign at a late point in the process was due to a lack of State funding. The launch was fruitful since it helped the public to become familiar with and develop a greater application of the restitution programme (PELCRA Documentation).

A lack of knowledge about the Act appeared to be the source of considerable opposition to, and conflict within the restitution processes. The campaign also appealed to current land owners and private developers to take note of the stipulations of the Act and to liaise with the Commission before developing land subject to restitution claims (SA Dept of Land Affairs Report:2004). The Port Elizabeth Municipality had taken a passive approach towards land claims, although it originally committed itself to placing a moratorium on the sale and rezoning of land within its boundaries, subject to claims. Also its commitment to developing and

planning workable solution for land claims has been limited (PELCRA Documentation).

The restitution process has been solely the responsibility of the national government and the Commission. The Commission was forced to co-opt local authorities during negotiations. The task was made more difficult as neither the Constitution nor the Act make provision for a Provincial or Local Government to pay compensation or make land available for restitution. Local government in Port Elizabeth had not responded imaginatively to the challenge and it has failed in its duty to the Constitution, the Restitution of Land Rights Act and the dispossessed community in the city (PELCRA Documentation).

Accessing the dispossession records has been problematic as many records were in forgotten locations while those that were deposited into formal archival facilities were very seldom in any particular order. Disorganised State records and the complete absence of records has delayed the rate at which the investigation was to be conducted and the verification of claims, meaning that the basic information on claims for planning institutional design and resourcing processes has been lacking (*Constitutional Court of South Africa: September 2006*).

4.9 CONCLUSION

The Government characterised the land restitution process as requiring “a culture of urgency” at the onset. On the contrary, through continuous neglect of careful planning and systems design, “the culture of urgency” developed into a long, drawn out process. Hindsight reflection from PELCRA Documentation states that delivery for its own sake, has often been at the expense of reflective and strategic action that later saves much effort, time and resources. Cases that appeared to be fairly simple were prioritised while the overall planning required for programme implementation was neglected (PELCRA Documentation).

The current status of the implementation of the 2000 agreement as at 2008, the end of the period I had demarcated for this research, is as follows :

700 people had signed the settlement agreement with the Government. More than 900 sites had been allocated but have not yet been transferred. Clive Felix gave the assurance that PELRHA would continue with the process until it was completed. However, their task was made difficult by some claimants who had not attended to their matters and therefore delayed their own transfers. According to him bureaucratic bungling by the Eastern Cape Government had delayed the final step in the transfer of title deeds in Fairview (24 August 2009, Interview). In addition, the new landowners have to face up to the problem of removing rubble and illegal dumping, which had taken place over many years, at their own cost. (*The Weekend Post*, 07 June 2008)

From the PELCRA documentation it transpired that, the Fairview transfers are progressing reasonably well and up to the 9th of September 2009, 414 transfers have been lodged at the Deeds Office. From the 414 transfers, 384 have been registered and 260 title deeds have been issued. PELCRA also claims that there have been delays with issuing of title deeds by the Deeds Office. (According to Mr Clive Felix, the Fairview transfer was registered in October 2008 and the claimants' transfer is still in process (*The Eastern Cape Herald*, 12 October 2008). He also claimed that (*The Eastern Cape Herald*, 23 December 2008) some Port Elizabeth claimants had received their title deeds at the PELRHA offices. Mr. Clive Felix also claimed that they had received 99 title deeds of the 198 registered at the deeds office to date (23 December 2008)

CHAPTER 5: ANALYSIS OF RESEARCH DATA

5.1 INTRODUCTION

According to Gat and Airsain (2003: 228), data analysis in qualitative research is an integrative part of the entire process, beginning from the initial interaction with participants. In an attempt to determine the easiest process which can be followed by claimants when claiming their land, relevant data was collected through different types of interviews. This chapter will therefore focus on an analysis of data as collected from the respondents, as described in the previous chapters in some organized manner through identification of topics, categories and patterns that emerged from the data. The purpose of this activity is to derive meaning from the data collected in view of the study topic.

The main aim of this study is to understand the delays in the process of land claim settlements, so as to make recommendations on how the process could be improved. The purpose of this chapter is to establish what emerges if the data that has been presented in a descriptive format is analyzed. The researcher will endeavour to categorize the data under common themes, so as to structure this phase of the research. Once this stage of the research has been completed, suggestions and recommendations can be made on how the process researched in this study can possibly be improved.

5.2 CONTENT ANALYSIS

Content analysis is a research technique that comprises the objective and systematic description of the manifest content of communication (Gat and Airsain, 2003:220). Most content analyses in education aim at answering questions directly related to the material analyzed. Content analyses can also be viewed as a valuable tool for obtaining certain types of information useful for identifying or solving problems (Gat and Airsain 2003:220).

The main source of data/raw material for the research worker, using the content analysis technique, in this study, is the data that emerged from the interviews she conducted. In addition, other sources are printed documentation/written material. She also made use of articles that she has referred to from newspapers and a speech from the former minister of Land Affairs, Ms Thoko Didiza.

5.3 FINDINGS

5.3.1 INTRODUCTION

The researcher based her findings on interviews conducted and focus group discussions held, using the documentation as a means of corroboration/validation.

5.3.2 THE AGREEMENT

A settlement was reached by PELCRA and Government that would provide claimants with serviced sites of 400m², 600m² and 800m² in extent based on the revised claim values of R20 000, R30 000 and R40 000. The PELCRA executive board accepted the government's offer on behalf of all Port Elizabeth claimants. The government granted the sum of R41.9 million to all the claimants for the establishment of serviced land of Fairview and Salisbury. These values were based on the equity principle established earlier. The land for the development, land from where some of the claimants were dispossessed and in the possession of the State, was acquired for a nominal amount. It includes additional land with commercial potential that will be used to leverage funds to provide social infrastructure in the area. The agreement to proceed on this basis was signed on 6 February, 2000.

The agreement required that a legal entity, comprising representatives of the DLA, PELCRA, Nelson Mandela Metropolitan Municipality and individuals with expertise, be established to implement the settlement. The Port Elizabeth Land Restitution and Housing Association (PELRHA) was established in May 2000 as the agency to implement the settlement. The funds for the development were placed with the NMMM who would administer it on behalf of the project.

5.3.3 FINDINGS ABOUT THE AGREEMENT

The whole of the PELCRA executive and some members of PELCRA were very happy with the agreement and they were looking forward to the implementation of the settlement.

Judge Fikile Bam claimed that he was satisfied with the signing of the agreement. He also stated that the agreement was a clearly progressive step in combining the restitution process with overall communal development. He then gave the go ahead for the servicing and redistribution of land (The Annual Land Report, 2003)

5.3.4 PROCESS BEFORE AGREEMENT

A group of claimants from Port Elizabeth formed an organization known as Port Elizabeth Land and Community Restoration Association (PELCRA) to develop a practical way of resolving the legacy of forced removals. Most of the claimants had been removed from four neighbourhoods in the city, namely South End, Korsten, Salisbury Park and Fairview. According to PELCRA documentation, PELCRA developed a vision for the possible resolution of claims, and the group pursued the restoration of land rights in the form of serviced land to claimants, so that the claim would be used to facilitate a development process that would contribute to the growth of Port Elizabeth as a whole and would also be an investment for future generations.

The first two years of the process were spent informing claimants about the limitations of the land restitution programme, explaining the Act, and sharing information around the land claim. All that contributed to PELCRA establishing the value of their claim and how much their proposed resolution would cost. As a result PELCRA came up with a proposal to the government (PELCRA minutes documentation).

From the newspaper articles (*The Eastern Cape Herald, Weekend Post and The Sunday Times*), the former residents of Fairview had mixed feelings when they received the outcome of the restitution claim. Some felt that time had closed and they had forgotten what had happened to their families and moved on with their lives,

even though what had happened was so painful. Others felt that they had been waiting for this time to come, even though they did not know what they would do. Some felt that as much it was so painful, they did not want to be part of the process, as their parents had long been deceased already. See section 5.3.6 how the researcher's informants felt about the agreement.

The executive board of PELCRA also claimed that, during 1995 the claimants were in a position to commit themselves to work together as a group towards a development-directed solution on alternate land which would settle all claims on a common basis, regardless of the area which people were dispossessed from. Various workshops and discussions were held over a period of three years (between 1996 - 1999).

5.3.5 BENEFITS OF THE PROCESS TO PEOPLE/CLAIMANTS

Although seeking a fair settlement for its members was the main objective for PELCRA, it realized early in the process that the development option could attain this objective as well as a number of secondary objectives.

From *The Eastern Province Herald*, 23 December 2008 Port Elizabeth land claimants were overjoyed when they received their title deeds. The PELRHA secretary claimed that they received the first 99 title deeds of the 198 registered at the deeds office. He also claimed that the Fairview transfer was registered in October 2008 and as an organisation they are continuing with the claimant transfers until they are concluded.

One of the claimants, Ms Heynsen, claimed that she was elated when she heard that she was getting the title deed. She also claimed that she recalled how sad her late father was when they had to leave Fairview (*The Eastern Province Herald*, 28 December 2008). She also stated that she had made a promise to her dad before he died that she would never sell any property she inherited and she is looking forward to building a retirement home in Fairview for her family.

PELCRA actively encouraged its members to pursue the land development option and persuaded those who wanted to opt for financial compensation, to remain with the process, as they would be better served by opting for the land. Today all

claimants have enhanced their claim values at least five fold. Those who have not opted to sell have prime land that can only grow in value over time, especially once the area is developed.

The initial award received by the Dept. of Land Affairs amounted to a R41.9 million settlement to those claimants who opted to go this route. Further investment will be made to provide social infrastructure in both Fairview and Salisbury Park once the business land is sold.

Without taking the employment opportunities into account, the initial investment by government will be a catalyst for an over R500 million rand injection into the local economy of the NMMM in the short to medium term; almost 12 times the initial amount. (*The Eastern Province Herald*, 26 May, 2008)

5.3.6 PROCESS AFTER THE AGREEMENT

5.3.6.1 SUCCESSFUL CLAIMANTS

“MATTHEW”

In spite of his claim being successful, as he managed to provide the documentation that was required, he still had some valuable further comments, as summarised below:

The stages of the process appeared to be fairly straightforward but implementation proved to be more problematic. According to the claimants and implementers, due to the absence of clear policy guidelines, there were limited successes and many policy questions remained unanswered

The implementers of the process felt that the process was originally intended to create co-operation and close liaison between the parties, but to their surprise it culminated in ill feelings of distrust and conflict over time (28 April 2009, Interview).

“ELIZABETH”

Even though she managed to lodge a successful claim, the offer she agreed to was not satisfactory, for various reasons, as explained below.

The main problem boiled down to the process that was followed. By this she meant that from the onset the claimants were of the opinion that the Government had a clear cut policy, plan and means to implement it. Yet, as the process dragged out, they realised that indeed the opposite was true. Examples were that the claimants were called back many times to provide additional information before the validity of claims were considered. Furthermore she perceived that both claimants and implementers were faced with inadequacies of the solutions that offered. More clearly worded : the size of the plot that she got, was far smaller than what she originally had. Others had to settle for a monetary offer much smaller than the real value.

The predicament of the implementers was that they had a limited amount of money and ground “to divide equally between all the claimants”. She also felt that claimants’ personal feelings were not professionally taken into account, because the implementers often failed to deal sensitively with claimant’s demands while reconciling them with the compromises that they would have to make. (16 May 2009, Interview).

“MARGARET”

This elderly widow, who claimed on behalf of her deceased parents, felt relieved when she was informed that her claim, spanning many years, had finally been successful. She was just very sad that her parents and husband had not lived long enough to share this final victory with her. She herself did not have the energy to really enjoy the fruits of her struggle, yet she was glad that a form of justice, albeit not sufficient compensation for the original size of her family ground, had prevailed. (5 March 2009, Interview)

5.3.6.2 NON SUCCESSFUL CLAIMANTS

These three claimants complied with the government stipulations to lodge their claims in time but because of the reasons provided under the individual headings, were not successful in their claims.

“MAVIS”

The reason for her claim being not successful, was that she was under the impression that she had a right to a land claim, but in fact she was staying at the back of a property which had been successfully claimed by the main resident of the property. She unfortunately could not furnish the required documentation to claim the land.

She believes that safeguards have to be built into the process to ensure that the objectives as outlined in the constitution are achieved. By this she meant that persons who could not provide the correct written documentation, should have been supported to establish the origin of their claims, by other means than merely valid written documentation, as stated by the Land Restitution Act (05 May 2009, Interview).

“DAVID”

In the case of this interviewee, he was unsuccessful because it was established that his parents had sold the land to the government a long time ago and he had been unaware of it. What made him feel very frustrated was that he went through the laborious process of attending meetings over a lengthy period of time before he was given this answer. Furthermore, he never got a proper answer on when exactly the ground was sold and what amount his parents had been paid. He as an individual, was unable to confront the Government mechanisms and finally had to resort to simply accepting what he was told. (5 March 2009, Interview)

“SONJA”

According to an interview I conducted with “Sonja”, a member of the CLCO group, (representing all the claimants from Salisbury Park and Fairview, who broke away from PELCRA) she claimed that the framework agreement was invalid because it did not make provision for the restoration of the original dispossessed land in the earmarked area. Her claim was unsuccessful because, after having gone back numerous times to provide extra support documentation, she finally lost heart with and faith in the process and then simply gave up (30 June 2009, Interview).

5.4 PELCRA EXECUTIVE BOARD

Due to the absence of clear guidelines as to how to implement it, the process of land claims has contributed to more problems than solutions. It also affected the relationships of the claimants during the course of the process. There was limited success and many policy questions remained unanswered.

It has been perceived that the process was very slow since its inception in 1995. The claimants suggested that mechanisms had to be found to accelerate the rate at which claims were and are being resolved without compromising the integrity of the restitution programme (PELCRA Board members, 29 June 2009).

It has been perceived by the claimants that the process was very slow since its inception in 1995. They believe that mechanisms had to be found to accelerate the rate at which claims are being resolved, without compromising the integrity of the restitution programme (Mr Britton, 16 March 2009). The claimants also claimed that the stages of the process appeared to be fairly straightforward but the implementation proves to be more problematic. My exposition of the steps in the previous section illustrates that this is indeed the case.

In 2002, the Minister of Land Affairs Mrs Thoko Didiza signed an agreement to set out the process of land claims in Port Elizabeth. The PELCRA, representing the affected Salisbury Park and Fairview claimants, was a party to the agreement and gave notice of its intentions to forge ahead with development of the land.

From the government point of view, the disputes had dragged out the process a lot, in that the disputes took nearly five years and the government also felt that those applicants had not shown a need to resolve the dispute urgently. To the government, the agreement was fair to everyone, in that every one, whose claim was successful, was to be given land (*S.A. Dept. of Land Affairs Report, 2004*)

The PELCRA executive board claimed that in the process there were unnecessary delays, such as government's officials not honouring appointments for meetings, and also arriving very late at meetings, resulting in that most claimants had left already by the time they arrived. Most delays were as a result of struggling to get the officials to sign a certain document so as to go to the next step of the process. The group claimed that the signing part of the document used to be frustrating part to them as leaders of the claimants in that, only one signature from one person could take almost a month and it delayed the whole process (PELCRA documentation).

The PELCRA executive board also felt that the disputes which led to court of law had contributed to unnecessary delays to the process. Although the agreement was signed to accept smaller plots than they anticipated they would get, the group believed that there were sacrifices made that should have been taken into account, as well as making an attempt to shorten the process, as it was tiring. Furthermore, the executive was expected to always come with positive answers to those whom they lead, even if at times they felt extremely dismayed. All these mitigating factors were ignored when the agreement was formulated and they had no other options but to accept it.

5.5 CONCLUSION

In this chapter the researcher undertook an analysis of the data collected for the purpose of devising means of simplifying the process demarcated for the purpose of this study. A general overall content analysis was undertaken; the purpose of the analysis was to validate to what extent the data collected from published, formal, scientific sources correlate with the data collected from popular printed data such as

newspaper articles, document review, as well as the case study of Fairview compiled through the method of interviews.

From the analysis of the data in this chapter, it becomes evident that the claimants perceived that claiming of one's land had been a time-consuming, laborious, highly stressful and frustrating exercise. Furthermore it became evident that the absence of clear guidelines as to how to implement the process of land claim had contributed to more problems than solutions and it has affected the relationships of the claimants during the course of the process.

In the following chapter, recommendations will be made based on the findings of this section.

CHAPTER 6 : FINDINGS AND RECOMMENDATIONS

6.1 INTRODUCTION

The aim of this study was to understand the delays in the process of land claim settlements, so as to make recommendations on how the process could be improved when embarking on a land claim. For this aim to be achieved, a documentary study was undertaken. The documentary study was followed by a qualitative investigation, using various methods to gain information from both successful and unsuccessful claimants.

The focus of this chapter will be a summative presentation of the findings of the investigation in an attempt to come to a conclusion and to offer recommendations that may be able to assist in improving the current process which is regarded as so strenuous by land claimers.

6.2 SUMMARY OF FINDINGS

In this research the researcher has endeavoured to find out what could be done to streamline the claiming of land in Port Elizabeth (Fairview).

6.2.1 GOVERNMENT

- Even though the government initiated the process and had the desire of returning the land to the people who have been dispossessed, the government did not have the strategic plan on how to do this or put their idea into practice.
- The researcher has discovered that the government was not well organized for the whole process, as the government was trying to solve the Port Elizabeth issue of land, but it had no offices in Port Elizabeth where people could go and enquire. The only offices they had for land claims for Port Elizabeth cases were in Bhisho and in Cape Town, which complicated the whole process for them as well as for the claimants.

- Some of the land which was repossessed had been sold by the former government for business purposes and is now owned by private individuals. The government did not have any provision for such cases before it started with the process, which was another point of conflict between government officials and claimants during the process.
- The government had difficulties in solving other problems raised by the claimants during the process. As a result, some cases were resolved by a court of law, which contributed to lots of delays and lots of money being wasted.
- Another thing which became a problem was the unavailability of the government officials during the set dates for the meetings, which added to lots of frustration and conflicts amongst the government, claimants and the PELCRA group which was representing some claimants.
- Another factor negatively affecting the claimants can be attributed to the ineffectiveness of government to deal with the issue administratively. The claimants filled in the required forms but became increasingly frustrated and stressed out each time they were informed that there were yet further forms that had to be completed. The officials conveying the change in written requirements were merely the messengers of the Government, who kept on changing what they wanted to see in writing before claims could be considered. From this it can be derived that there had not been enough time to draft the necessary, proper forms which would extract the required information from the claimants from the onset.
- The most important thing the researcher felt that the government has failed to do was to undertake research concerning the process of land claims before putting everything into practice. They lacked a blueprint in the form of a firm regulation document that they could refer to when they had to take difficult decisions. Everything was new to them; no one knew anything whatsoever,

they had only the good intention of giving back land to those who were dispossessed unjustly.

Even though there were lots of unnecessary delays, as stated by the claimants, caused by the government, the researcher believes that the government officials were avoiding making hasty decisions at times because of the pressure, and at the end such decisions affect the lives of the claimants again.

The researcher also believes that even though the process was strenuous, painful and difficult, the parties were able to reach an agreement as to how to share the available land amongst the successful claimants.

6.2.2 CLAIMANTS BOTH SUCCESSFUL AND UNSUCCESSFUL

The introduction of land restitution had come as a great surprise to the claimants. For some claimants, they never thought or dreamt that the day will ever come, and they had moved on with their lives and had accepted whatever had happened in the past. Others claimed that it had been a dream come true, in that they have been looking forward to the day as they had never been content with what had happened in their lives. To those who never dreamt of the day, they did not even believe it when they were called by fellow claimants, and when they finally started to realize it was true, they failed to meet the cut-off date which was 31 December 1998 to lodge a claim. Strictly speaking, they cannot be categorized as unsuccessful claimants (since they did not even lodge a claim) but rather as the 'failed to lodge a claim party'.

To both categories of claimants, the process had opened closed wounds which had been healed completely, and as a result some became more traumatized by the process, as they had high expectations of getting back what was belonging to them. To their surprise that they felt that they were being robbed again officially in that they got smaller plots compared to what they owned before.

The thing that most adversely affected the claimants was that the process had taken such a long time that even their parents (the original owners of the land) had died whilst they were looking forward to return to their place of birth.

The former residents of Fairview were very disappointed with the whole process of restitution. To them the introduction of land restoration, which they took at face value, meant that they would just go back to their places where they were removed from, as nothing had been erected on the land yet.

To their surprise they had to share their own land with other claimants who were removed from other areas. They also felt cheated because according to them, they did not get the real value of the land they had lost. To them real value meant that the size of their original land was a 1000 square metres and larger but now they had to settle for plots of 200, 400 and 600 square metres.

The government's view was that land had to be forfeited to build roads and other infrastructure; their view was that larger areas should have been made available, once roads and other infrastructure had been developed, so that they could get the exact size of ground they had lost previously.

Even though it was difficult to understand and accept the viewpoint of the government, with time they were able to understand and accept why that was supposed to be so. The rationale which brought them to acceptance was that the equity settlement was based on the **value** of the property at the time of disposition and not on the **size** of the property relationship. This was the only fair, common denominator on which to develop the proposal for settlement on a group basis.

However, it needs to be mentioned that the Fairview area was the last area to be dispossessed as all other areas had already been dealt with according to the common denominator; therefore they could not be treated differently. What aggravated their position further, was that Fairview had very little infrastructure; was far from town and had a low market value at the time of dispossession.

6.2.3 PELCRA GROUP

PELCRA is an association which was initially formulated by all Port Elizabeth claimants from different areas. As the people saw that they were being sent from pillar to post by the government officials when looking for information about this restitution, they decided to form such an association, so as to look after their interests and voice their collective concerns. They believe that when people speak together, they stand and if they spoke divided, they would fall. With one word or voice they felt that they can 'make it'. This is how this association came into existence.

The intention of the PELCRA executive committee, which was elected by the members, was to help people to get what belongs to them, and to be their mouthpiece to the government, nothing more. The association worked very hard to mediate between the government and the claimants. They were able to open an office where people could go to when they had some queries or needed advice around the land claim. PELCRA is and has been an organized association with respectful and energetic people involved in the process who know what they are doing.

They have been of good help to Port Elizabeth claimants, even though at times people will never get satisfied or appreciate things done for them at no price; they will always think they should have done better.

My findings, as documented above, clearly illustrate that I answered the questions which I raised at the onset of this study, namely:

Why is claiming compensation on land in South Africa such a laborious, expensive and time consuming process?

A brief, summative answer is:

- Insufficient research had been done on what to put into position from the state's side before claims were dealt with.

- There was not a clear document to guide the process
- Government officials were not properly trained to deal effectively with the challenges that came their way.

What is the claimants' real – life experience of the land restitution process, and how does this compare with the ideal of land restitution as a democratic principle?

Collectively, the answer can be summarized as:

- They had an ideal that land restitution would be a quick process, returning what was dispossessed, as the land was still not developed.
- The reality was a rude awakening, inter alia, because of the answer given in the previous section.
- They were in effect the “underdogs”, as they did not have money to hire professionals to fight their case, or they had lost heart and lost the will to keep on fighting against mighty state machinery.
- They had to settle for smaller plots, so that everyone could get something (in the name of “fairness”)

Are delays due to bureaucratic or administrative problems, or is there corruption or self-interest involved?

- The crux of the answer, as substantiated by this specific research focus and its research methodology, is a multitude of bureaucratic and administrative stumbling blocks and ill-preparedness to deal with land restitution.
- Although corruption or self-interest could have played a role, the research did not investigate this, and therefore these factors are left out of the answer.

6.3 RECOMMENDATIONS

The following recommendations, based on the findings of the research, are made in an attempt to address the current process of land claims which is being followed by the claimants.

The claimants should be made aware of the objectives as well as the limitations of the land restitution programme at the onset.

As the implementation of the Group Areas Act was actively driven by government, the government officials should have been sent out in the field to those affected areas to determine who was living where or which race group has been placed where. All such information should have been recorded and can be recorded because such information still exists. However, logistically, the Land Claims Commission/DLA simply did not have enough capacity to conduct this research, and this contributed greatly to the delays in many land claims.

With the land restitution process, people were invited to claim. The investigator believes that this was not the best strategy and that it was the reason that contributed to the long process of the claim. Furthermore the researcher believes that the process was badly advertised and many people did not believe in its credibility. A better way to do it could have been as follows:

- Gather the records of the then Department of Community Development who was responsible for the removals.
- Develop a community profile of all the affected families.
- Establish the claiming programme or procedure.
- Establish the infrastructure.
- Then, through a concerted publicity campaign, let the families know that they are entitled to a claim.

If the above recommended process had been implemented, it would have been quite a simple exercise to follow and would have given the programme much more credibility. Of course there might be those who will not appear on the list. Such persons will then be also be considered in a more respectful and acceptable manner. A document, in the form of a clearly tabulated list of the requirements expected from one in order to qualify to lodge a claim, would have ironed out unnecessary frustrations and time delays, as all information would have been collected in one round.

- The restitution process by its very nature requires an extensive amount of information for the resolution of claims. Clearer policy guidelines have to be established which will undoubtedly make the task easier. The primary objective of the government should be to restore land instead of financial compensation, so as to satisfy the accusation of the claimants that they had been robbed their place of birth and their dignity. The financial compensation should have been an option of last resort, particularly given government's broader objectives of land restitution.
- The local authorities should play a more supportive role, particularly with respect to the provision of bulk services, planning services and administration services. Better co-ordination at the different tiers of government is essential so as to eliminate some unnecessary delays.

To reduce unnecessary time and money and to avoid unnecessary conflicts between the claimants and government, the following can be recommended, so as to simplify the process of land claims:

- The government should promote a programme to sensitize law enforcers and the courts on the issue of land claims.
- Government should organize training sessions and workshops for the officials to equip them on land claims and how to handle the cases of land claims.
- A free helpline / call centre should be created, especially when there are such cases, where claimants could be able to call for help so as to find out about the necessary documents required or steps to be followed when lodging a claim.
- Support structures such as PELCRA in our communities should be established, where people in their communities can go to for necessary advice.

- Professional training and workshops should be offered by the government to such structures, so as to be able to provide effective assistance to the community.
- Above all, the principles of *Batho Pele*, which have been initiated by the former President Nelson Mandela, should be practiced in cases, where people are in dire need of help.
- According to PELCRA executive committee members, the process was undeniably slow and in many instances it reflects the shortcomings within the entire restitution process. They felt that the restitution process in South Africa requires a comprehensive amendment before a detailed administrative process.

6.4 TOPICS FOR FURTHER STUDY

Because of the limited and focused scope of this investigation, as it was mostly focused on Fairview land in Port Elizabeth under the Eastern Cape region, a number of issues around land claims can be further explored, such as:

- Investigating problems contributing to land restitution in other areas in South Africa.
- Comparing the land claim process used in other areas in South Africa/ countries to that which has been used in Port Elizabeth, for example the Bethany Land claims in the Free State.

6.5 CONCLUSION

Even though the Fairview land claim was a successful claim made in the Port Elizabeth area, there have been many other unsuccessful claims. It was not the intention of the researcher to subjectively highlight the successful claims made in Fairview as being more important than those of other areas in Port Elizabeth. The

treatise rather illustrated the extremely tedious process of a land claim in Port Elizabeth.

By using the Fairview land claim as a case study, it is made clear that the larger problems surrounding South Africa's land reform programme will not be easily resolved, even with a huge budget from the government, as many of the fundamentals of the administrative framework are ill-suited to achieve the goal.

In this study it was established that the process of land claims was really a problem and it was a strenuous and difficult experience, not only to those who were claiming their land but also to all stakeholders of the process. They all feel that it was not a pleasant experience to repeat again in their life time, as it is very sensitive and painful. Even though it was difficult, they felt it was a necessary route that they could not escape but to take it, with or without experience.

They also claim that forgiveness is a long process, but due to time, they have been healed as they hold no hard feelings towards white people. Out of the strenuous exercise of the process, they also felt it worth its while, because they have gained experience and whoever or whatever country will need advice around land claims, they can render them good help, stemming from their experience.

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INTERVIEWS

KEY INFORMANTS

1. Mr Dicky Britton (28 February, 8 April & 17 June 2009, PELCRA executive board member)
2. Mr. Clive Felix (15 May, 23 June, 16 and 24 August 2009. PELCRA secretary)
3. PELCRA EXECUTIVE BOARD (13 May and 29 June 2009)

SUCCESSFUL CLAIMANTS

1. “Margie” (05 March 2009)
2. “Matthew” (28 April 2009)
3. “Elizabeth” (16 May 2009)

NON – SUCCESSFUL CLAIMANTS

1. “David” (05 March 2009)
2. “Mavis” (05 May 2009)
3. “Sonja” (30 June 2009)

NEWSPAPER ARTICLES.

1. *The Eastern Cape Weekend Post*, 28 July 1984
2. *The Eastern Province Herald*, 28 June 1989
3. *The Eastern Province Herald*, 09 December 1993
4. *The Eastern Province Herald*, 17 June 1995
5. *The Eastern Province Herald*, 23 October 1996.
6. *The Eastern Province Herald*, 09 August 2001
7. *The Eastern Province Herald*, 29 October 2001
8. *The Eastern Cape Weekend Post*, 01 December 2001
9. *The Eastern Province Herald*, 26 July 2003
10. *The Eastern Province Herald*, 12 November 2003
11. *The Eastern Province Herald*, 27 May 2004
12. *The Eastern Province Herald*, 13 November 2004
13. *The Eastern Province Herald*, 27 January 2005
14. *The Eastern Province Herald*, 22 September 2006

ANNEXURE A

SCHEDULE FOR SEMI-STRUCTURED INTERVIEW

After having introduced herself as a researcher and providing further information, namely who she is, what she is doing and reasons why is she interested in conducting the interview, and what she is going to do with the information which arises from the research, the following questions were asked:

1. I believe you are one of the claimants in Fairview?
2. How did you get to know that you have to claim?
3. What was required from you to establish if you had a legitimate claim?
4. Were you able to gather all the information which was expected?
5. What problems did you experience?
6. Was your claim successful?
7. How do you perceive the process or the procedure of claiming for the land?
8. What can you recommend so as to improve the process? What advice can you give to improve the process?