



We Want What's Ours

Learning from South Africa's Land Restitution Program

Part I: Dignity Takings

Chapter 1—Dignity takings: A theoretical framework

Chapter 2—Dignity takings: The South African case

Part II: Dignity Restoration

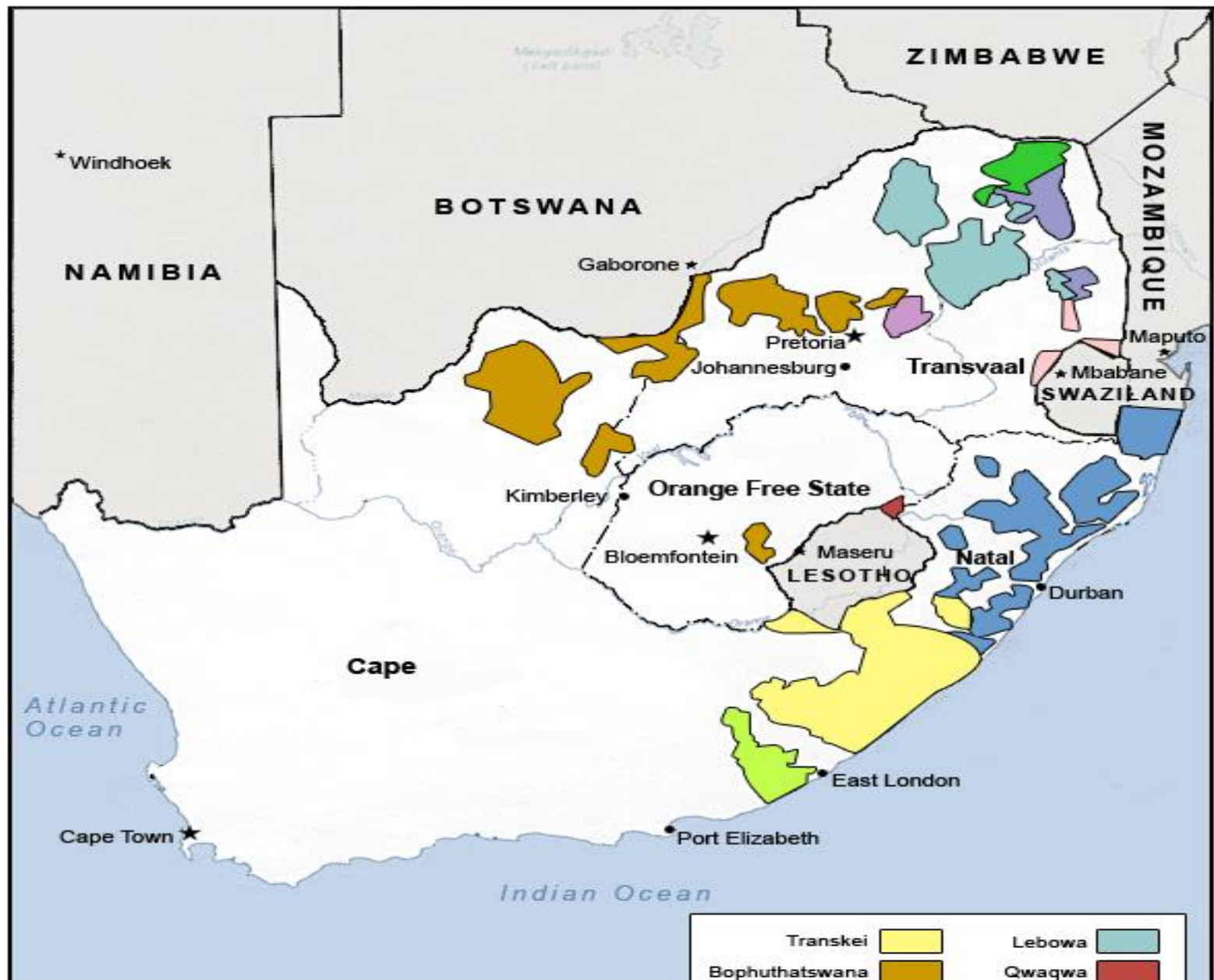
Chapter 3—Dignity Restoration: The importance of process

Chapter 4—Dignity Restoration: The importance of communication

Chapter 5—Dignity Restoration: The importance of restitution awards



Dignity Takings

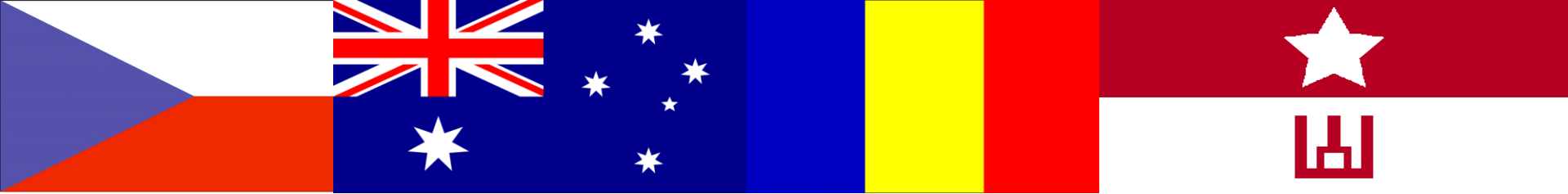


Transkei		Lebowa	
Bophuthatswana		Qwaqwa	
Ciskei		Kwa-Ndebele	
Gazankulu		KaNgwane	
Kwazulu		Venda	

MR. RICHARDSON FROM KLIPTOWN: The point is that during the forced removal, you know, you were treated like nothing. You know, I can still picture this guy in his white (pauses) he used to wear a white dustcoat, that type of thing, standing in front of the house. This Mr. Oliver; I will tell you about Mr. Oliver. When they were demolishing the houses, you see, he stood there and he was most probably a bloody, um sorry, an uneducated man, but he was white and he had all this power. You know, to tell you "now come, move your stuff because the bulldozer must move in there now." **You know, because for you as a child, you know 18 years old and so forth, to see all this, your dreams, your aspirations, your hope is (pauses) is destroyed, was bulldozed.**



Dignity Restoration



South Africa

Kosovo

Hungary

Slovakia



US

Romania

Germany

Canada



Czech
Republic

Baltic
Republics

Guatemala

Colombia



Australia

El Salvador



“The struggle for dignity, equality and a sense of belonging has been the driving force behind our work as the Land Claims Commission . . .”

—Thoko Didiza, Minister of Agriculture and Land Affairs

Land Reform

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graph TD; A[Land Reform] --> B[Land Redistribution]; A --> C[Land Tenure Reform]; A --> D[Land Restitution];
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Land
Redistribution

Land Tenure
Reform

Land Restitution

South African Constitution

25. Property

7. A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

Methodology

- Semi-structured interviews with 150 people dispossessed from urban areas
- 26 semi-structured interviews of commission officials
- Participant observation within the land claims commission for 9 months
- Secondary sources



CHAPTER 3

DIGNITY RESTORATION:

THE IMPORTANCE OF PROCESS

Phase 1: Lodgment

The “Originally Displaced Individual” or descendant started the process by filing a claim by December 31, 1998.



Phase 2: Validation

The commission ensured that the claim satisfied all criteria enumerated in the Act and therefore valid.



Phase 3: Verification

The commission verified the claimant’s connection to the property in question.



Phase 4: Negotiation

The commission gave claimants a choice between financial compensation, land restitution, or other equitable remedies.



Phase 5: Valuation

The commission determined the price paid to settle the claim.

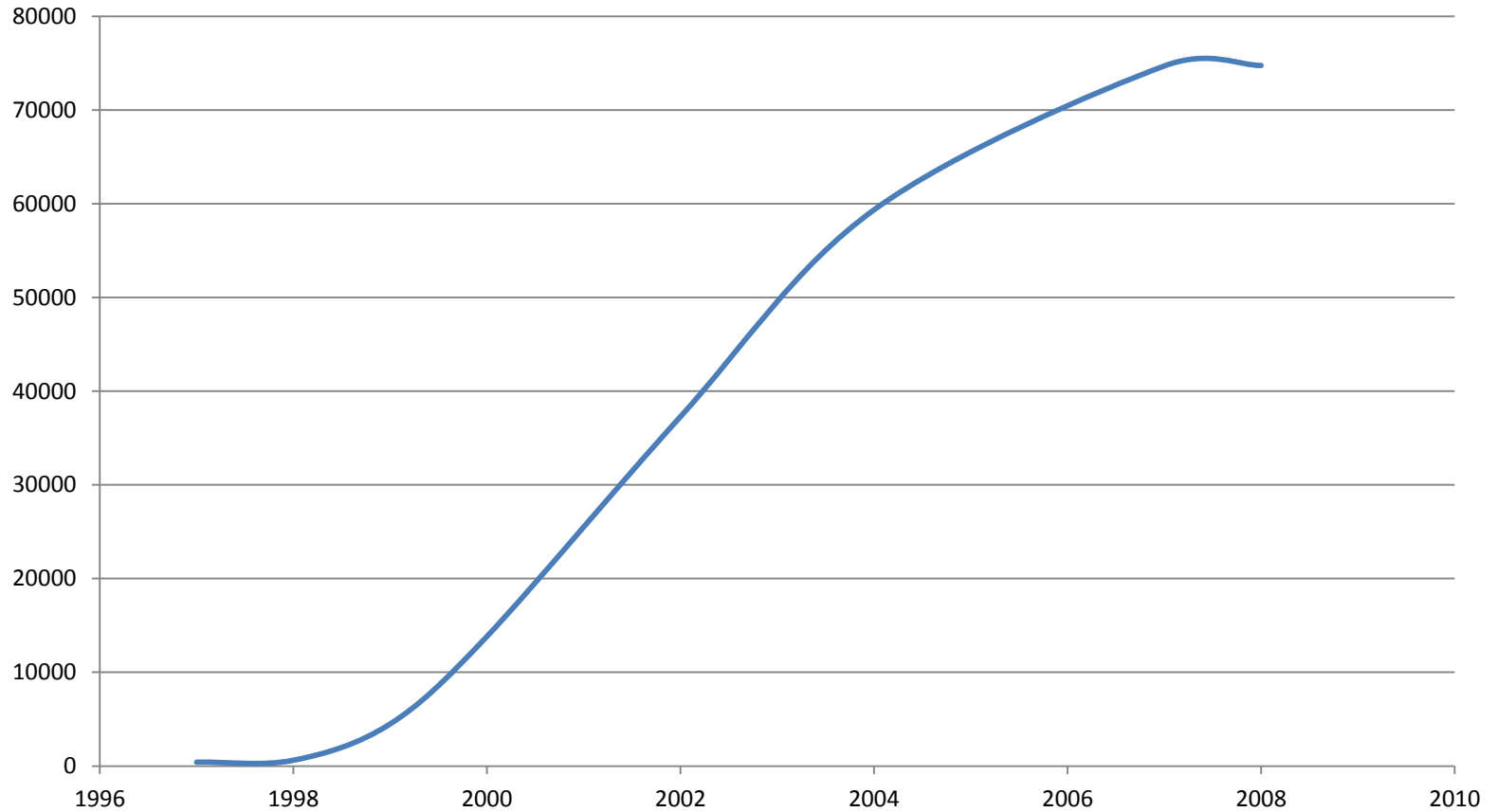
Access

- Used an impressive array of evidence to prove each claimant was dispossessed
- Leaned toward inclusion when the evidence available to validate or verify a claim was suggestive, but not definitive.
- Provided significant support to ensure each claimant completed the process
- Recognized those left out by the deadline by re-opening of the land restitution process.

Accountability

- Each community did not have the capacity to drive the process and to hold the commission accountable due to time pressures
- Accountability was compromised when moved the land claims court from the center of the process to the periphery

Number of Settled Claims





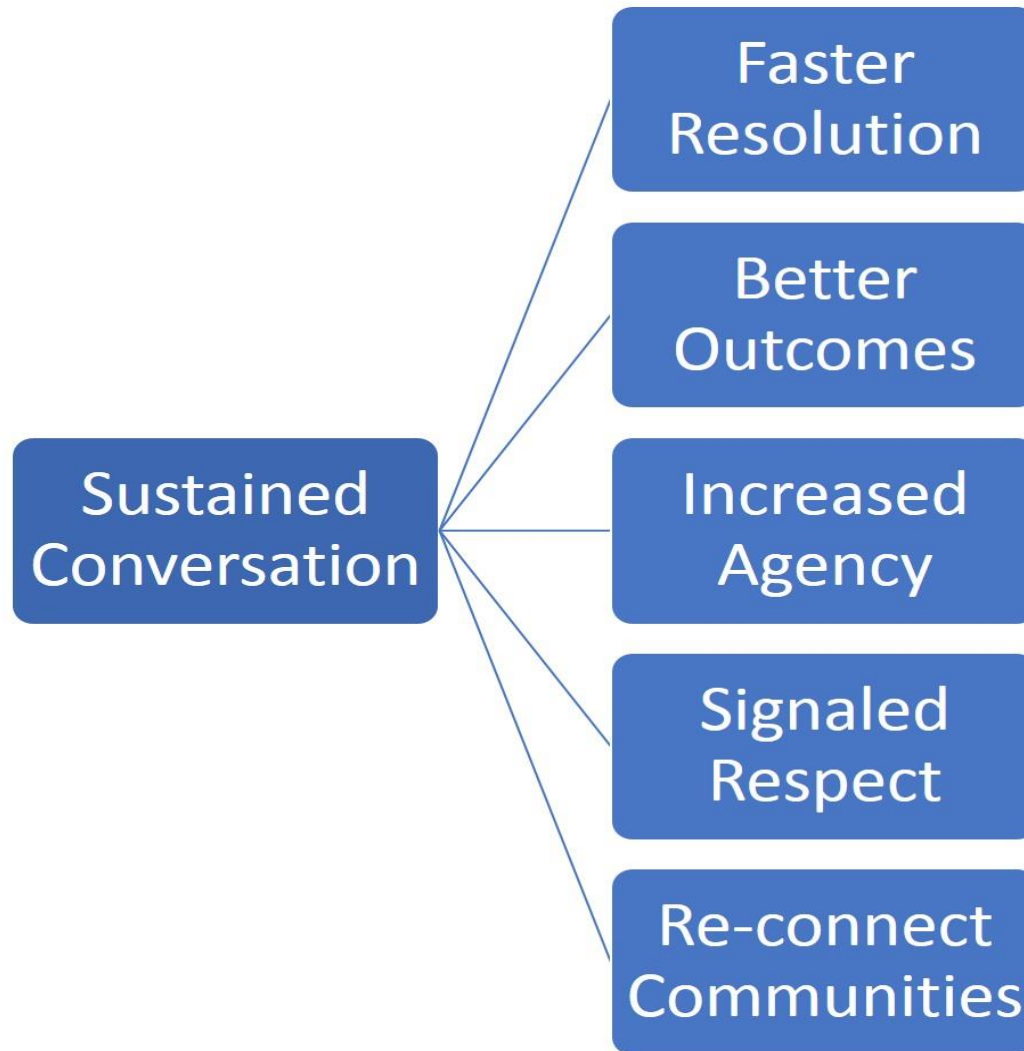
CHAPTER 4

DIGNITY RESTORATION: THE IMPORTANCE OF COMMUNICATION

Elements of a Sustained Conversation

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

Outcomes of a Sustained Conversation





CHAPTER 5

DIGNITY RESTORATION:

THE IMPORTANCE OF RESTITUTION

AWARDS

Fundamental Inequality

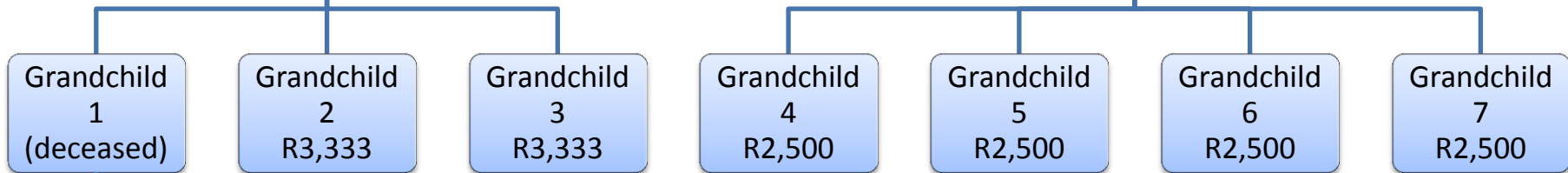
- Past owners
 - Receive modest symbolic compensation not directly tied to the market value of the property rights lost.
- Current owners
 - Receive compensation based on the fair market value of the property rights lost.

Financial compensation



Times Live

Originally Dispossessed Individuals
Husband and Wife (both deceased)
Restitution award: R40,000



Originally Dispossessed Individuals
Husband and Wife (both deceased)
Restitution award: R40,000

Child 1
(deceased)

Child 2
R10,000
claimant

Child 3
(deceased)

Child 4
R10,000

Grandchild
1
(deceased)

Grandchild
2
R3,333

Grandchild
3
R3,333

Grandchild
4
R2,500

Grandchild
5
R2,500

Grandchild
6
R2,500

Grandchild
7
R2,500

Great-
grandchild 1
R1,111

Great-
grandchild 2
R1,111

Great-
grandchild 3
R1,111

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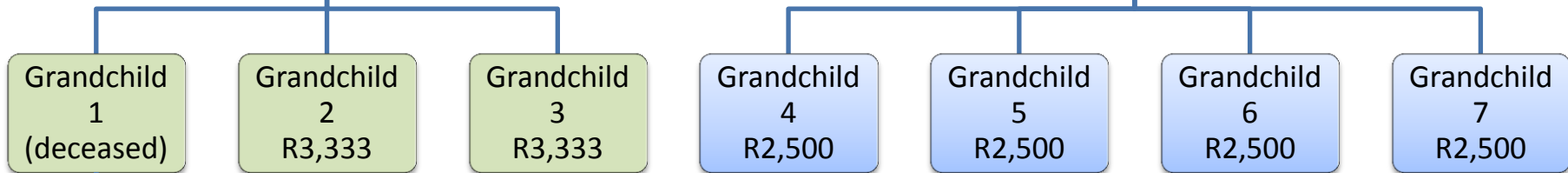
Grandchild
7
R2,500

Great-
grandchild 1
R1,111

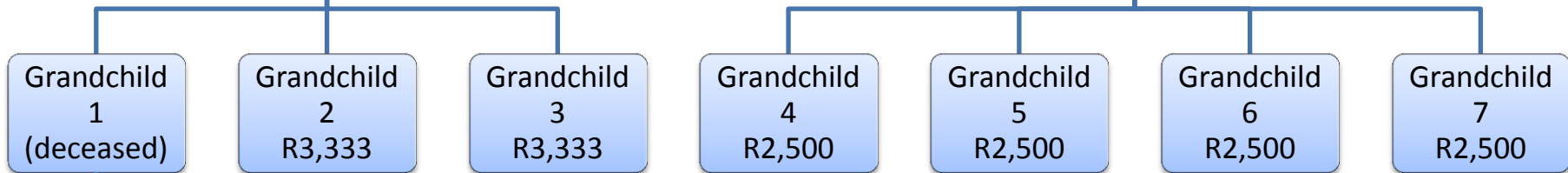
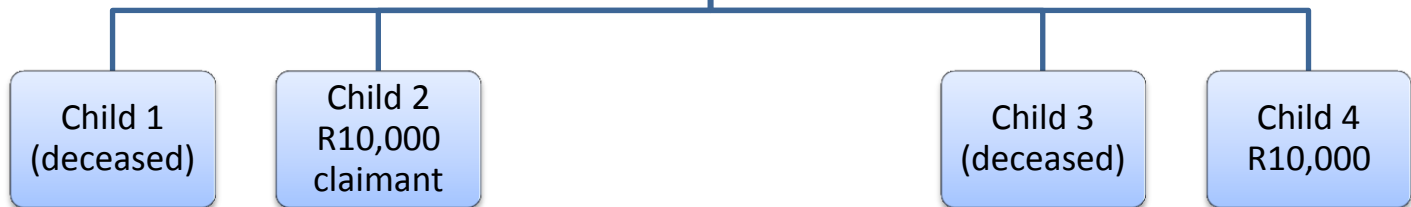
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Land



Empower Magazine



New York Times

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Dignity Takings

“When a state directly or indirectly destroys or confiscates property rights from owners or occupiers whom it deems to be sub persons without paying just compensation or without a legitimate public purpose”



Dignity Restoration

“The process of giving people compensation for things taken or destroyed through a process that affirms their humanity and includes them as full and equal members of the polity”

Dignity Takings Around the Globe

NAME	INSTITUTION	DISCIPLINE	CASE STUDY
Dirk Hartog	Princeton	Legal History	Coverture
Carol Rose	Arizona/Yale	Legal History	Racially restrictive covenants
Justin Richland	Chicago	Anthropology	Native Americans
Alfred Brophy	UNC, Chapel Hill	Legal History	Tulsa race riots
Daniel Hulsebosch	NYU	Legal History	American Revolution
Sandy Kedar	Haifa	Law	Arabs in Israel
Wouter Veraart	VU University Amsterdam	Law	Jews in Netherlands and France during and after WWII
Eva Pils	Chinese University of Hong Kong	Law	China
Craig Douglas Albert	Georgia Regents University	Political science	Kurds in Iraq

OXFORD

WE WANT WHAT'S OURS

LEARNING FROM SOUTH AFRICA'S
LAND RESTITUTION PROGRAM



BERNADETTE ATUAHENE

THE END