

Failed Promises: An Analysis of Post-Apartheid Land Reform

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“It always seems impossible until it’s done.” -Nelson Mandela

Prologue

When I applied for a study abroad program in South Africa, I did not know much about the country's past let alone its political history. In fact, my very reason for visiting South Africa was to learn about a country and region of which I knew nearly nothing. I sought to get outside of my comfort zone and confront my own privilege in an extreme way.

On my first morning in Cape Town, South Africa, the program I was a part of scheduled us for a cable car ride up the famous Table Mountain. The views from the cable car were unlike anything I had ever seen; before me were mountains, ocean, beaches, and a city right in the middle of it all. I could not quite capture the full beauty of Cape Town in pictures, but the landscape was breathtaking to say the least. One of my most vivid memories from the four months I spent in Cape Town was in that cable car with a group of strangers silently entranced by the imagery, when out of nowhere the cable car operator simply said "wow" over the loudspeaker. We all laughed and continued looking outside the windows in admiration. At the time, I was unaware of the battles over this amazing land that had gone on for centuries and continue to go on today.

A couple of weeks after witnessing Cape Town through that cable car, I began an internship at the Legal Resources Centre (hereinafter "LRC"). At the time I had no idea how instrumental this organization was in altering policy across all issues in South Africa and offering legal help to the many individuals who walked through their doors every day. I was thrilled with my position under an attorney who specializes in gender equality and non-discrimination, so when I heard all interns would temporarily be placed on a land and housing case I was not as excited because I had no interest in land or housing. However, that very case became the basis for my interest in South African land policy and now the inspiration for this

thesis. The historical injustices perpetrated by apartheid that I had only been learning about through class and readings took real life meaning when I started working on the case in Imizamo Yethu, also known as IY. I had the opportunity to work closely on the case by taking statements, attending court hearings, and even visiting the IY community. By the time I left Cape Town, the land and housing dilemma in IY remained unresolved and I was not sure what would come of it.

Back on U.S. soil following study abroad, I sought to enrich my academic experience and decided that I would do this through writing a senior honors thesis about land in South Africa. At first, I did not know why this topic jumped out at me; land was not necessarily the largest focus of my studies in Cape Town or my time at the LRC. I did not even extensively study South Africa at UNC, as I concentrate in Latin America as part of Global Studies major. Still, I knew that I would not only be able to write an entire thesis on the issue of land, but that I felt passionately about doing so. Everyone I talked to throughout the thesis process told me that I needed to write about a topic I felt great fervor for and for me this was it. I later realized through discussions with Dr. Weiler that my connection to this subject matter was because of IY.

Accordingly, after discovering my own motivations for researching and writing about South African land, this thesis will engage in the issue of land in South Africa specifically as it relates to post-apartheid reform and its manifestation in the case of IY. I will examine land reform generally and pointedly in my efforts to explain how this unresolved issue still affects South Africans, and will continue to affect the country for years to come.

Chapter 1: Introduction

With the world watching, Nelson Mandela was released from confinement on February 11, 1990 after 27 years of imprisonment. Four years following his release, South Africa saw a transition to democracy and, ever since, a government led by the African National Congress (ANC). These transitions came with a new wave of hope and what could only be described as an optimistic future (Cherry, 2010). One of the most contentious issues on the table following these dramatic shifts was land. In the first year of democracy, 87% of all land was owned by a white¹ minority that comprised less than 9% of South Africa's population (Jeter, 2018). The new government, with activist Nelson Mandela as president, had to address this drastic inequality that they feared would lead to political instability. ANC leaders during apartheid promised to fix the issue of land and now it was time for them to make good on those promises.

I. Colonial history

One cannot understand land reform in contemporary South Africa without understanding the historical context, as briefly detailed in this section and the following section. South Africa had a long history of racial segregation and exploitation long before apartheid officially began. Dutch settlers arrived in the country in the 17th century, marking nearly 400 years since the original occupation and colonization (Secorun, 2018). The Dutch set out to colonize South Africa for purely economic reasons and thus South Africa was first colonized by the Dutch East India Company at Table Bay (Mitchell, 2009). Colonialism in South Africa was always about

¹ The Population Registration Act No. 30 of 1950 created distinct racial classifications in South Africa. People were divided into three main categories: white, black (meaning African, Native, or Bantu), and coloured (those of mixed race). Asian was added as a fourth category later (Union of South Africa, 1950). Although these categories are no longer legally significant, they are still widely used today and therefore I will adopt this categorization throughout this thesis.

resource extraction and exploitation, and this could offer one possible reason for the economic inequality that persists today.

The original inhabitants of the land settled by the Dutch were the Khoikhoi and the San, hunter-gatherer people grouped together as “Khoisan.” The Khoisan fought back against European settlement, but were decimated by war and disease. Interestingly enough, the Khoisan are actually now considered “coloured”² in South Africa’s racial classification system, even though they are the land’s original settlers. Their land was taken by the Dutch hundreds of years ago, but because the land debate in South Africa centers around black South Africans and land expropriation during the 20th century, the Khoisan are often forgotten in the discussion of land reform (Secorun, 2018). While the legal structure may have started with apartheid, clearly white Europeans began taking land from native South Africans long before the 20th century.

The South African War, also known as the Boer War, led to a British takeover of South African land. The war began in 1899 and ended in 1902, with both casualties and costs far higher than anticipated (Donaldson, 2013). This war was fought on the South African landscape largely as a dispute between European colonists. The British exemplified neocolonialism tendencies in their success of conquering already colonized land. Once again, the fate of their own land was out of the hands of indigenous South Africans, like the Khoisan and others. Native South Africans only continued to see the deterioration of their land rights after the British officially took control.

² Since “coloured” was a term utilized by white South Africans to describe mixed race South Africans in a legal context, some groups began to reject the official term after the fall of apartheid and use the phrase “so-called coloured.” However, there was some backlash as many coloured people asserted their identity as coloured and were not offended by the term. Both “so-called coloured” and “coloured” are widely used today. For the purposes of this thesis, I will use the term “coloured.”

II. 20th century land policy

During the 20th century, both before and during apartheid, the government in South Africa put legal structures in place to take land away from native South Africans. In 1913, the South African government passed a key piece of legislation that would lay the foundation for land inequalities still seen today: the Natives Land Act (Beinart & Delius, 2014). Although black South Africans comprised the vast majority of the population, only 7% of arable agricultural land was set aside on reserves for black South Africans (Bell, 2013). This share was later expanded to 13% by the Native Trust and Land Act of 1936 (Schneidman and Signé, 2018). After white South Africans forcibly took land belonging to black South Africans, these black South Africans settled on new reserves against their will. This Act was only the beginning of racial segregation under what would become apartheid and was not repealed until after apartheid's official end in 1991 (Bell, 2013). Under the Act, people were dispossessed from their land and their homes for generations. Interestingly enough, the intent of the Act was not to create vast inequalities in land ownership, but rather maintain land occupation as the norm and undermine black South Africans (Beinart & Delius, 2014). Clearly the result was more far reaching and continues to affect all South Africans, particularly the people and their families who had land taken in wake of the Act.

The following three acts were the most prominent pieces of legislation following the Natives Land Act and before formal apartheid. The Housing Act of 1920 enhanced segregation in public housing by requiring increased funding to build housing for the poor to be racially segregated, even with separate access roads. Later, the Natives (Urban Areas) Act of 1923 segregated urban residential areas and created "influx controls" to reduce access black South Africans had to the city. As a result, many black South Africans were restricted to townships and other informal settlements (Mabin, 1992). Furthermore, the Slums Act of 1934 allowed the

condemnation of buildings and neighborhoods by local authorities, who then could move people to new “housing estates” if funds were available (Mabin, 1992). This meant that local government could continue to segregate races by moving them to these new housing estates. However, the powers of these three acts were more limited than later legislation. Although they contributed to growing inequalities since the original Natives Land Act, they were not considered to be the harshest laws of the time.

With the official beginning of apartheid in 1948 following the election of the National Party, some of the most damaging land policies emerged, further segregating the races to the disadvantage of black and coloured South Africans. Most relevant to land inequalities, particularly in the urban sphere, was the Group Areas Act of 1950 (Bell, 2013). This Act enforced segregation of newly established “race groups” (*see Footnote 1*) in urban areas (Mabin, 1992). Here began mass forced migrations of black and coloured South Africans from urban landscapes into the outskirts of cities in informal settlements, also known as townships. White South Africans were strategic in implementing this segregation by keeping South Africans of other races far away from where they lived, but not too far so they could still exploit their labor. Although townships were not created under the Group Areas Act and existed long before it came into fruition, they were certainly expanded in wake of the Act.

South Africa’s government before apartheid and under apartheid worked to ensure that black South Africans and coloured South Africans would be subject to discrimination under the law. This was not a unique circumstance, as this phenomenon of racial segregation and oppression existed all over the world during this period. The difference in the case of South Africa is how long these legal codes lasted, as apartheid ended in 1990 after more than 40 years as the formal law of the land (Bell, 2013). Of course, no one expected inequalities to be fixed

overnight, particularly in regards to land, but many found comfort in the fact that a political party headed by black South Africans would be their guide. ANC members themselves were very hopeful to solve the “land question.”

III. Post-apartheid land policy

Although the ANC sought to address land inequalities and grant land rights to black and coloured South Africans, the outcome thus far has been disappointing. With the first democratic elections in 1994 and the ANC finally in power, many South Africans were hopeful for their future in general and specifically as it related to land reform (Leyshon, 2009). As previously mentioned, only 13% of land was apportioned to black South Africans under apartheid and thus at the fall of apartheid, this majority group still owned just a fraction of the land. The ANC had a goal of redistributing 30% of South Africa’s land in the first five years after their initial election, but more than 10 years later in 2005 only 3% of this land had actually been redistributed (Gjuvsland, 2009). Even in 2010, less than 5% of South Africa’s land had been effectively redistributed (Richen, 2010). This percentage has not climbed in any serious amount since 2010 either. Many question the effectiveness and efficiency of the land reform process as well as the ANC’s ability to accomplish what they set out to do in terms of land redistribution (Makombe, 2018).

Soon after the ANC’s election in 1994, the party passed the Restitution of Land Rights Act, constituting the first major piece of land legislation. The main purpose of this Act was to restore land to South Africans who had been forcibly removed as a result of the racially discriminatory practices of apartheid. As a caveat to these attempts at land reform, they only applied to those who had their land dispossessed in wake of the Natives Land Act (LARC).

Essentially that means if a person's land was taken before 1913, i.e. during the period of primary colonization, they do not have a right to claim that land under this legislation. Black and coloured South Africans could submit land claims until 1998 (LARC). In 1997, the government released the White Paper containing three pillars of land policy: (1) restitution, (2) redistribution, and (3) tenure reform³ (Arkadiusz, 2017). Unfortunately, as already discussed, very few land claims have been settled as a result of the government's inefficient process for land reform. The South African government gave too few resources to institutions handling land claims and was not forceful enough in persuading white farmers to sell their land. A revision to this Act, the Restitution of Land Rights Amendment Act of 2014, opened up claims again until 2019, with priority given to those who filed before the 1998 deadline; however, this extended deadline was overturned in the courts. With thousands of new claims amassed in wake of the Amendment Act, the ANC is pressed to find a solution to the decades-old controversy.

The central strategy for land reform has been a "willing-buyer, willing-seller" model (Cousins, 2013). This model is predominantly used to handle rural land claims. Black South Africans who claimed their land was taken from them during apartheid had to submit legitimate documentation proving that the land once belonged to them or their families (Richen, 2010). Though this in itself was already a daunting task due to the inadequacy in official documentation for land ownership decades ago, many South Africans managed to gather the appropriate forms and submit their claims. But of course, willing-buyer, willing-seller depends on the consent of white South African farmers to sell their land to the government for the market price (Richen, 2010). This system was meant to be the basis for massive land redistribution. However, those

³ Land tenure refers to the terms surrounding land ownership, and how this ownership is solidified and managed. Tenure reform concerns intentional changes to the conditions of land ownership, meaning a readjustment of the terms of the land. This type of reform is meant to solidify a person's right to their land (Adams et al., 1999).

who implemented this program did not foresee how few white farmers would be willing to sell their land. A main worry of white farmers concerns their lack of faith in the government to follow through on compensation if they do choose to give up their land. The government has consistently under-resourced institutions that handle land reform, so it is reasonable to assume that land transfers and compensation will take years to process. White farmers' unwillingness to sell their land to the government has led to stalemate in the willing-buyer, willing-seller model, and thus a significant contributing factor to the overall ineffectiveness and inefficiency in land reform (Richen, 2010).

Most recently in South African politics, Cyril Ramaphosa became president of the ANC and therefore the president of the country. His administration announced a planned change to the Constitution which will make expropriation of land without compensation much easier. This is presented as the ANC's fix to the inefficiencies in the current land reform process and the still vastly unequal land ownership in South Africa. Not surprisingly, this proposed amendment has been broadly compared to Zimbabwean land reform, which led to land grabs, destruction of property rights, and devastating decreases in foreign investment that drove Zimbabwe into economic crisis (Monteiro, 2018).⁴ Many attribute the sudden change in attitude of the ANC to electoral concern. In the last few years, the Economic Freedom Fighters has emerged as a far-left political party committed to economic equality, with an emphasis on land equality (Malema, 2018). Fearing that they could lose even more seats in parliament to the EFF, the ANC has ramped up its land reform rhetoric to appeal to the frustrations of many South African voters.

⁴ Most scholars who have written on South African land reform have compared the process to Zimbabwe in one way or another. In 2000, Zimbabwe implemented land reform resulting in immense violence. White farmers were forced off of their land by mobs or evicted, and while many saw this as a victory, Zimbabwe's economy has not recovered from the decreased land productivity and limited foreign investment (Kadirire, 2018). For the most part, Zimbabwe is discussed as a warning sign of what not to do.

The “land question” as many South Africans refer to it, is yet to be fully answered. When the Restitution of Land Rights Amendment Act was passed in 2014, it opened up land claims for five additional years (LARC). This allowed those who were not able to file claims within the first five-year window a chance to claim their land, but also threatens to hinder the efficiency of the land reform process further. Additionally, around 50% of land that has been designated for restitution has not yet been transferred to the beneficiary (LARC).

There are conflicting opinions surrounding the future of land reform and whether it will bring about an actual resolution or destroy South Africa’s economy (Richen, 2010). In the past, the government has tried to keep the peace among South Africans and appease foreign investors by sticking to a willing-buyer, willing-seller model of land reform. The ANC has faced pressure from international institutions and feared that foreign investment would implode if expropriation occurred. At the same time, the ANC has not found a way to instill confidence in its land redistribution program and government institutions continue to be abhorrently slow in settling land claims. The ANC, which has held majority rule in Parliament since the first democratic elections in 1994, has failed to answer to the land question nearly 30 years after the fall of apartheid.

IV. Why does this matter?

After reviewing how South Africa got to where it is, there remains another burning question: why does this all matter? The most important answer to this question comes from the people who lost their land after 1913, principally black South Africans. South Africa continues to be the most unequal nation in the world, with a Gini coefficient of 0.63 in 2015 (The World Bank, 2018). In fact, inequality has only increased since the fall of apartheid, with black South

Africans most at risk for living in poverty (Greenwood, 2018). This inequality is inextricably tied to the issue of land, as the top 1% of South Africans still hold over 70% of the land (Greenwood, 2018). Leaders who sought to correct the harms caused by apartheid have only deepened the grasp inequality has on the country.

The ANC made many promises of swift land reform, but did not devote sufficient resources to accomplish what it set out to do. Inefficient methods for handling land reform have been coupled with political fear. The ANC fears economic crisis and failure of new policy that could lead to devastating electoral losses. Accordingly, the years have dragged on and the norm of ineffective and inefficient land reform has endured. Until the EFF achieved significant political standing, the ANC were not motivated to change its lasting policies. Many South Africans who lost their land during the 20th century have spent years waiting to see if they will ever receive justice for their loss. This failure to handle land reform appropriately reflects in individual circumstances, specifically in the case of Imizamo Yethu (“IY”). Ultimately, this thesis is about the government’s inability to deal equitably with land issues because it fails to understand the needs of the people involved, both nationally and locally. Remedying inequality falls into the hands of the government, and in South Africa this remedy requires an intervention in land reform.

V. Research question

This thesis centers around the following question: How has the South African government handled post-apartheid land reform and how does this compare to their original promises? The “South African government” is meant to be left broad, referring principally to the ANC nationally and, as can be seen through the IY case in later chapters, the City of Cape Town.

My argument uses proof from the creeping pace of the land reform process, as reflected nationwide and in the IY case, and the subsequent disappointing results. Most scholarly research on land in South Africa focuses on rural communities and farmland. This thesis will cover some rural land disputes, but also expand to detail processes of urban land reform in the post-apartheid era.

The Group Areas Act widely impacted urban settings and was a large contributing factor to the racial segregation still seen in South African cities today, particularly in Cape Town. There are parallel stories of rural land expropriation and urban land expropriation that both relate to each other and reveal differences in policy. Disproportionately distributed rural land produces much of the alarming inequality in South Africa, but based on my own experience and interests I have decided to focus on the urban sphere as an underrepresented and vastly important topic in land reform.

This interest in urban settings comes from the IY case directly and my time in Cape Town. South Africa is one of the most urbanized countries in the entirety of Africa; over two-thirds of the population live in urban areas (Mwanza, 2018). Why then, has the government focused on rural land as opposed to aiding the other two-thirds of their population? While some cities like Johannesburg and Pretoria, have become more integrated since the 1990s, Cape Town remains a notorious example of land inequality. Urban land in all of South Africa is still widely possessed by the wealthier, typically white, minority or held by the government, but this reigns particularly true in Cape Town (Mwanza, 2018). Black South Africans only hold 7% of registered, formal property within cities. As I will discuss in chapter four, IY resides within an area where segregation is still inordinately apparent. Urban land involves affordable housing, quality of education, access to healthcare, and so many other intertwined issues (Mwanza, 2018).

Although I will not discuss all of these matters in detail, combined they reveal underlying systemic issues affecting urban-dwelling South Africans, particularly those in Cape Town.

In this thesis, I will argue that land reform has not been handled effectively or efficiently, and that the government continues to place hardships on black South Africans most affected by land inequalities. I have chosen this argument because of the both the indications of my research and the government inefficiencies illustrated through the IY case. As established, South Africa is still the world's most unequal country, and has even become more unequal since the 1990s. Land has not been redistributed in any meaningful amount and that can only be attributed to government failure. The IY case is a vehicle to demonstrate this larger picture. In both situations, the government treats the people involved as issues requiring resolution rather than humanizing the needs of those affected. Although the national government and the local government are separate functioning entities for the most part, their attitudes towards citizens under their authority are very similar. Both have let their constituents down with disappointing results. I recognize that land reform affects South Africans who beyond those who are just black or white, but for the purposes of this thesis I will focus on the relationship between black land ownership and white land ownership because the majority of South Africa's population is black with most of the wealth in the white minority. As I will continue to demonstrate in this thesis, there were many promises made by the government, specifically the ANC, after the fall of apartheid with very discouraging outcomes. I will present ample evidence to this effect.

VI. Methodology

Throughout the course of this thesis, my scope will begin large and then narrow. As discussed in the next section, I will give context for the wider discussion first. The main part of

this thesis analyzes a particular case study in an informal settlement, or township, outside of Cape Town named Imizamo Yethu. IY is a community made up of black South Africans, many of whom live without access to electricity, reliable running water, or a sewage system. They have been plagued with numerous, devastating fires over time and now with eviction notices from the City of Cape Town over the last 18 months. IY represents a prime example of unresolved land issues and how they are dealt with; residents in the township are still suffering disastrous losses from apartheid and its fallout. South Africa continues to top charts with the worst inequality in the world (Beaubien, 2018). As an avenue for building wealth, land, or lack thereof, is a major contributing factor to this inequality.

In short, the primary method this thesis utilizes is case study analysis. The documents in the analysis are court records obtained via the LRC. Every document that I use has been filed in South African civil court and is publicly available. The two parties in the civil suit are the City and the LRC on behalf of IY. The LRC took on this case in the eleventh hour to try to prevent the eviction of approximately 120 families in IY. As I will show in my analysis, the residents who could be potentially evicted are willing to compromise with the City, but the City has ignored their requests for clarity and has routinely demonstrated resistance towards working with residents. Although this case is not a land claim specifically, the way it has been handled speaks to the larger picture of the South African land question.

Before diving into the remainder of my thesis, I want to recognize how I fit into the conversation about South African land reform. I am presenting my findings based on conclusions from my own research and experiences. I am an American university student who spent four months in Cape Town and was inspired by my time there to pursue this as a research topic. I do not represent the residents of IY or the views of the LRC; this thesis is simply my analysis both

of previous land reform research and court documents filed by the LRC on behalf of IY. The research I have done comes from a place of interest, not one of authority or superiority.

VII. Chapter roadmap

Following this introduction, my thesis contains a literature review examining major works around the topics of land reform and restitution. In the literature review, I critically engage with a range of sources from books to scholarly articles to commentaries. I also delve further into the Group Areas Act and its effect on the South African landscape. I address the common themes throughout the literature including the importance of land in South African culture, rhetoric around forced migration, racial polarization around land, and the utilization of law in solving the land issue. I express my own thoughts in comparison to the works of land scholars and highlight which predominant elements are crucial to the contextualization of the IY case study.

After the literature review, the third chapter speaks to the real changes that have occurred in land reform within the political atmosphere, including across changes in national leadership and urban reform specifically. Additionally, I explore statistics and studies on land claims since 1994, and what has resulted from many of those claims. Then, the fourth chapter transitions to a discussion about the IY community and the legal case against them. I give background on the case and establish the ramifications that eviction could mean for this community. I clarify the intentions of the motions on both sides and analyze their meanings. Lastly, my conclusion explains how the IY case fits back into land reform in the larger framework and considers what the future could look like for IY and land reform in South Africa as a whole.

Chapter 2: Literature Review

As a divisive and highly politicized topic, there exists a wide range of sources that analyze land reform. Everyone holds an opinion on land reform, either based on research, personal belief, or both, and many express their thoughts via written platforms. In the chapter that follows, I will analyze major works that I have come across that advance my analysis of land reform and may offer distinct solutions to the land question overall. In my reading, I have found that there are a few major points of both agreement and disagreement among writers. I have narrowed those points down to the following, as reflected in the section headings: the controversy over forced migrations; the importance of land for South Africans; how expectations have had to come to terms with the reality of the situation; the clear racial divide in the dialogue surrounding land reform; and the emphasis from all sides of how the law should be utilized to advance land reform. I will engage with many sources that critically examine the preceding issues and offer explanations for the phenomena seen in today's discussion of South African land reform.

I. Forced migrations

The Group Areas Act of 1950 caused the largest forced migrations of South Africans over the course of apartheid (Surplus People Project, 1983). By the 1980s, 3.5 million South Africans had been forcibly removed from their homes into Bantustans⁵ or other undesirable areas (Kgatla, 2013). While some coloured and Asian South Africans were affected, the vast majority

⁵ Bantustans, also known as "Bantu Homelands," were created by the apartheid government to confine black South Africans to specific ethnic territories, usually only permitted to come into white areas for work. These lands furthered segregationist goals and left black South Africans with very little available land (Phillips, 2018).

of people affected by the Act were black; the Act affected very few white South Africans. Those 3.5 million people forcibly removed from their homes represented over 10% of South Africa's population at the time. These removals sometimes involved violence stemming from extreme action from the government and police brutality (Surplus People Project, 1983). These forced migrations, particularly outside of urban areas, expanded the township system that is still the norm today.

Selaelo Kgatla describes the racism underlying forced migrations initiated by the apartheid government (2013). Under the Group Areas Act, racial groups were assigned to townships based on their racial classification. The apartheid government promoted the removals under the pretense of peace and prosperity for all South Africans; it wanted to keep South Africa "racially pure" (Kgatla, 2013: 121). According to Kgatla, the forced migrations were strategically oriented by the government under the guise of being beneficial to all groups (2013). The government cited security, ethnic purity, homeland policy, and more in their justification for the removals. In reality, almost no white South Africans were affected by forced migrations. Black South Africans paid the price of relocation. Kgatla sees removals as "one of the most humiliating experiences" black South Africans experienced during apartheid, and one of the most detrimental in the end (2013: 120).

In another piece on forced migrations, Holly Reed relates the past trauma of forced migrations to restrictions in geographical mobility today (2013). The apartheid government was both pointed in how it presented the removals as beneficial to all peoples, and how it relocated black South Africans. In townships, black South Africans could be far enough away to avoid mixing with whites, but not too far to commute to work. The most common type of migration in South Africa today is what Reed refers to as "commuter migrants" who live in compounds at

work so that they do not have to make the daily trek to and from where their families reside, but commute regularly from rural areas or townships (2013: 73). Even after being forced out of urban settings, white South Africans have still managed to exploit the labor of black South Africans from the dawn of forced removals under apartheid to the present. To Reed, forced migrations created ongoing obstacles to freedom to movement (2013). Although much of the post-apartheid migration has led South Africans back to living in cities, not many black South Africans who experienced forced removals are able to return to their former areas of residence. Reed recognizes how the massive forced migrations have had lasting consequences on the informal segregation in contemporary South Africa.

In a book written while South Africa was still experiencing apartheid rule, Laurine Platzky and Cherryl Walker consider how people understood their own forced removals (1985). Most were given excuses like businesses wanted to establish new industries on their land or their current home fell outside a Bantustan. Most people did not know why they had been relocated, only that the apartheid government had the power to take control of their land and did so accordingly (Platzky & Walker, 1985). Many white South Africans pushed for the removal of black or coloured communities from their area, citing reasons such as not wanting to have black people as their neighbors, no longer requiring the services of black workers on their farms, and “good land going to waste” (Platzky & Walker, 1985: 63). While the apartheid government tried to disguise forced removals as good for everyone, this ruse did not fool most South Africans. Black South Africans knew the apartheid government sought to undermine them, while white South Africans saw these forced removals as a way to remove unwanted neighbors in the name of racism.

Clearly, forced migrations are crucial to telling the story of land, especially in urban areas. These migrations led to unequal distribution of land in South Africa that requires post-apartheid land reform. There may never be racial distributions across land and neighborhoods equal to those prior to 1950. The apartheid government carried out force migrations under the facade of benefits to all racial groups. Land remains unevenly distributed across South Africa and this can be partially attributed to the restrictions to freedom of movement for black South Africans. These restrictions are both in the past and very much tangled with the present.

II. The importance of land

Land in South Africa holds significant cultural meaning and is deeply intertwined with identity. Issues regarding land have been at the top of the political agenda in the last two decades (Chigara, 2013). As already established, land has become a political rallying point for South Africans. This has been especially true recently with the rise of the far left in the form of the EFF. In the documentary *Promised Land*, the audience sees first-hand how attached both white and black South Africans are to their land. White landowners talk of how their fathers and their fathers' fathers lived on the land, and how they grew up there alongside the black workers employed by their families (Richen, 2010). In contrast, black land claimants want the land back that their ancestors were forced to give up ownership to as means of reparations. Clearly seen through the film, white and black South Africans feel as though they have an ancestral right to the land and do not want to compromise on giving up even a portion of it (Richen, 2010).

In *Oral History, Community, and Displacement*, Sean Field introduces the expropriation of land and forced migrations under apartheid as “cultural traumas” (2012). Land communicates a sense of belonging and a sense of security (Field, 2012). Many South Africans were stripped of

these comforts, or may have never known them at all as a result of colonization, imperialism, and apartheid. Additionally, Field emphasizes that the few South Africans that have either gained their land back or received compensation still suffer poverty and emotional deprivation (2012). When a South African regains land that was taken from them as a result of apartheid, that does not discount all the hardships they faced up until that point; those harsh memories and the feelings associated with those memories stick with a person throughout their life and may never be resolved. This relates to Ben Chigara's comments on land reform when he introduced the psychological "invisible legacy of apartheid rule" (2013). Post-apartheid South Africa is sometimes referred to as "so-called" post-apartheid South Africa for this very reason. The early 1990s may have brought an official end to apartheid, but it did not bring an end to enduring cultural trauma.

Bernadette Atuahene examines how land reform has happened and how people who have made successful land claims come to decisions in handling their restitution awards (Atuahene, 2014a). As discussed, land reform in South Africa has been a long and exhausting process, with very few people actually receiving redistributed land. Even after long fought battles in land claim cases, Atuahene states that most people actually choose financial compensation in the end, even though land and housing are the more valuable restitution awards (2014a). This may not necessarily have to do with the importance South Africans place on land, but rather signs of an ineffective and inefficient government process. Most people cite poor institutional structure and worry over ever actually receiving the transfer of land as reasons they chose financial compensation (2014a). Many who actually do wait for the transfer of land almost always cite cultural and political reasons, mainly the land as a "delayed reward for a hard-won fight" (Atuahene, 2014a: 158).

South African land has considerable meaning for all racial groups and there are strong opinions on all sides, but some argue that South Africa faces greater issues outside of land. James L. Gibson identifies the three biggest problem he believes South Africa faces today: unemployment, HIV/AIDS, and crime (2009). In the piece by Field, he sees South Africa's greatest failure not as their inability to provide significant land reform, but rather their response to the HIV/AIDS crisis (2012). However, Gibson and Field fail to recognize that poverty, unemployment, crime, and disease are all inextricably linked to one another, and also linked with land reform. These systems of persecution intertwine and work together to impact the already most vulnerable South Africans concurrently.

III. Expectations versus reality

When the ANC came to power in 1994 following South Africa's first democratic elections, everyone expected change. South Africans who had been marginalized since the arrival of the Dutch saw this as a new beginning. However, it is evident that the ANC did not stick to its revolutionary rhetoric once in power. This is especially relevant for land policy. As established, many black South Africans were forcibly removed from their land during the 20th century. Land holds intimate value, as both a way to build wealth over generations and emotional attachment that comes with tradition and culture. After the transition to democracy, the ANC with president Nelson Mandela made it a goal to correct this wrong.

In an article by Ben Cousins, he reviews the complex elements of the land question (2017). He argues that land reform needs to be completely reinvented, rather than simply fixed. Cousins recognizes that land reform as it stands has been slow and unsuccessful (2017). After the

era of Mandela, Thabo Mbeki⁶ expanded expropriation, reconsidered willing-buyer, willing-seller, and created a more proactive role for the state in the land reform process. One of Jacob Zuma's three top priorities was land reform. Still, neither of these leaders was able to successfully accomplish significant progress in land reform (Cousins, 2017). Cousins states that "land reform has barely altered agrarian structure of South Africa" meaning that most land claims have not been implemented in their entirety and have not affected South Africa's inequality to any significant ends (2017: 142).

IV. Racial divide

Land reform is one of the most divisive issues in South Africa, and that division typically falls along racial lines. As land scholar Ben Cousins says "racialized inequalities in land holdings are a ticking time bomb" (2018). The EFF sustains electoral growth in areas where black South Africans are most affected by inefficiency of land reform, while promoting land grabs and violence if necessary (Cousins, 2018). It is reasonable to think the EFF would turn to violence, given South Africa's history and their radical leader Julius Malema. On the issue of race, Malema recently said "we have not called for the killing of white people...at least for now. I can't guarantee the future" (Huffington Post, 2018). Cousins argues that the government's failure has made the deep racial divide on land much worse, an issue that should have been solved long before the now (2018).

The primary controversy over settling land claims between white and black South Africans is the question of who has the rights to the land. Both sides stand their ground in

⁶ Thabo Mbeki was the president of South Africa from 1999 to 2008, immediately following Nelson Mandela. Jacob Zuma succeeded Mbeki as leader of the ANC and South Africa's president from 2009 to 2018. Cyril Ramaphosa is the current president.

believing that the true ownership should reflect their proclaimed right to the land. Ruth Hall considers the government's dilemma in handling claims of historical authority over land from black South Africans and the property rights of white South Africans who currently inhabit the land (2004). During the time this article was written, Hall debates how the government will handle this racial divide in the future, with no clear answer. More than a decade later, the answer has yet to be seen and the stalemate in land redistribution persists. South Africa is no closer to compromising on land reform and bridging the racial divide in understanding land than more than a decade ago.

In Sean Field's analysis of what he terms the "big three" in South Africa (unemployment, HIV/AIDS, and crime), he does state that the racial divide in the land question gives the issue a nuanced meaning outside of simply a political topic (2012). In his research, he found that black South Africans cite advantages held by whites as a result of apartheid and inability to recover from colonialism as the most widely accepted reason for land inequality (Field, 2012). While white privilege is definitely one causal factor, this logic deflects responsibility from the government for its poor approach to land reform post-apartheid. According to Field, no issue in South Africa is more polarizing among racial groups than land. Field states that "political fires fueled by deeply felt senses of injustice are difficult indeed to extinguish," offering an explanation to both the continued racial divide in land and the constant discourse around land in the political sphere (2012: 218).

In adding to the discussion of a racial divide among opinions on land reform, Godswill Makombe provides concrete reasoning for the racial divide with possible solutions. He again reviews how South Africa structured their land reform program and why willing-seller, willing-buyer has been ineffective in the past (Makombe, 2018). Makombe identifies a key missing

element of land reform as a process and not necessarily solely a policy procedure, that element being a “missing conversation.” To Makombe, the absent factor in the land reform program is the “conversation that has not taken place between the previous farm owners and the beneficiaries” (2018: 1416). There continues to be a distinct us versus them mentality from both sides of the issue, eliminating any chance of compromise between groups. He argues that the government should facilitate this conversation as a pillar of the land reform program (Makombe, 2018). The main flaw in Makombe’s piece is his assumption that once these groups come together to talk, they will be able to set aside their differences in a compromise. As proven, land is an issue deeply embedded into both white and black South Africans, and there is no guarantee that compromise could ever happen. Both sides believe they should not have to compromise, and until there is a fundamental shift in the attitudes of South Africans, this “missing conversation” Makombe describes would be hopeless from the start.

As demonstrated, the racial divide dominates discussions around land reform. When the ANC came to power in 1994 after decades as a revolutionary anti-apartheid movement during apartheid, it took a surprisingly gentle approach to land reform. The party catered to both sides of the argument, attempting to carefully avoid any disruptions major changes in land reform might bring to South Africa. The ANC placed great value on individual freedom and the right to property, which was a surprising turn from its former radical rhetoric. To reiterate Cousins’ statement, racial inequalities in land create tensions that have built up decades after apartheid. The ANC is pressed to find a solution sooner rather than later.

V. Rule of law

When considering South African land reform, it is necessary to examine the rule of law and its role in the process. This looks at how the law is used to structure land reform and move the process forward. While the previous section discussed the great racial divide over land reform, interestingly enough the rule of law is a topic where nearly everyone agrees. According to various authors, for the most part South Africans across all races agree that the rule of law is necessary in land reform. This notion reveals great respect for the law and other legal framework in South Africa. Of course, all groups disagree over how exactly the law should be utilized in land reform going forward, but most South Africans see a need to obey the laws set forward by the government. The exception to this would be the EFF and its supporters, who do believe violence and land grabs may be necessary.

James L. Gibson identifies the most significant common support over land reform among South Africans as the rule of law to drive land reconciliation (2009). As Gibson describes, land is an issue of heavy concern, especially to potential beneficiaries of new land policy, and should be guided by comprehensive and informed policy rather than disorder. In a commentary by Derick Fay, he explains the necessity of rule of law in land reform going forward (2018). He emphasizes the need to resolve land claims faster, but not in an arbitrary way. Fay believes the government should be responsible for this process and in the future, legislators should create a more sustainable procedure for handling land claims (2018). While Gibson emphasizes popular agreement over rule of law, Fay necessitates its value for prospective land policy.

In an account by Ben Chigara, he discusses the rule of law as both common ground and a complicating factor (2013). He sees the Zimbabwe example as the primary factor behind this line of thought. To Chigara, Zimbabwe is an “extreme and sad example” of how land reform can go

haywire (2013: 89). As a country that was relatively stable until 2000, land seizures in the 21st century caused massive economic and political problems. Chigara even goes so far to say that the land grabs in Zimbabwe mirror similar tactics during the colonial period, with the exception being the racial role reversal. He sees the rule of law as a complicating factor because of how Zimbabwe responded with violence after changes to the law that favored black Zimbabweans. For Chigara, the disregard for rule of law reflects unresolved issues of colonial injustice (2013). While Chigara's analysis of the situation is useful, there may be a way to approach land reform using the law that would not lead to land grabs like the ones seen in Zimbabwe. The rule of law does not necessarily have to be a complex factor in the equation, but rather one that can settle land reform in the future if implemented properly. Clearly, South Africans have respect for rule of law based on research, and the government should take advantage of this in crafting land reform policy.

Although most South Africans agree on the use of the rule of law, the EFF is a notable exception. In the past, the EFF insinuated the use of violence if its demands were not met. In a way, the EFF mirrors the politics of the ANC during apartheid; violence if necessary to advance the interests of native Africans. While this may not be the most politically ideal scenario, their strategy has gained support from the most frustrated South Africans. This could represent a new lack of confidence in the rule of law as a system for helping black South Africans, or a lack of confidence in the ANC as a ruling party. Due to pressure from the EFF, the ANC plans to amend the Constitution to allow for expropriation without compensation (Kumwenda-Mtambo, 2018). Although there are many critiques of this scheduled change, it would most likely be respected by South Africans if formed around following the rule of law and eliminating opportunities for violence.

However, the amendment to the Constitution might perform better in theory than in practice. In theory, many South Africans support the rule of the law, but this may only be true if the rule of law operates in their favor. The same constitutional amendment is precisely what led to the crisis in Zimbabwe, meaning that reform by rule of law can have unintended and less than legal consequences. In the opinion of many land scholars, the most effective way to overcome institutional inefficiency that has plagued land reform for decades would be properly resourced administrative services that deal with land claims and more robust incentives for white landowners to sell their land. In any solution to the land question, the rule of law is a major consideration and can be an advantage to policymakers if applied in the right way.

VI. Conclusion

South African land reform has a few key themes, most notably the importance of land to all groups, the racial divide over the issue of land, and how the rule of law factors into land reform. These themes stem from forced migrations during apartheid and the expectations for land reform set forward by the ANC compared with what the ANC has actually accomplished. Land scholars all offer their unique perspective on how South Africa should handle land reform going forward, whether the government should focus on easing racial tensions, avoiding a similar situation to Zimbabwe, or devoting more resources to the process overall. The next chapter will be an introduction into the legal framework around land reform as well as how the post-apartheid ANC government has specifically dealt with land reform up until this point.

Chapter 3: Legal and Political Overview

In previous chapters, I established the basis for my argument around land reform and reviewed major concepts regarding the discussion of land in South Africa. In the chapter that follows, I first outline the politics of post-apartheid land reform across different ANC administrations. Then, I narrow the focus to urban land and its relation to the rest of my thesis. I give specific statistics and numbers on post-apartheid land claims. Finally, I explain the transition the next chapter makes into the case study that will be the focus of the remainder of this thesis: Imizamo Yethu, or IY. This chapter communicates a more precise picture of the specific legal framework surrounding land reform and sets up precedent for the IY case in the next chapter.

I. Land across politics

When Nelson Mandela became South Africa's first ANC president in 1994, prospects for the country seemed hopeful. After 27 years in prison for his activism under apartheid, Mandela was the leader many South Africans had been awaiting. His new government included land rights in the Constitution, stating in Section 25(5) that "the state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis" (Parliament of South Africa, 2016: 10-11). All legislative and executive actions that have followed this provision are required to adhere to this principle. In his land reform program, Mandela promised to "address the poverty that apartheid created" (Mseteka, 1998). The program involved negotiations between white landowners and South Africans who lost their land during apartheid (Mseteka, 1998). It was formally launched on February 28, 1995. Two years later in 1997, the government published their official White

Paper on Land Policy to guide future land legislation in the country (Parliament of South Africa, 2016).

Even though the ANC criticized capitalism during apartheid, it relied on the World Bank for financial support after coming to power. While the World Bank did seek out South Africa as a partner rather than the other way around, the World Bank was not South Africa's only option (Smith, 2008). With opinions on entering into a relationship with the World Bank sharply divided even amongst the ANC, Mandela's administration re-established ties and pursued a more liberal economic structure (Smith, 2008). At the time, the ANC was in the midst of its own transition from a revolutionary movement to an established political party. The party did not need to bring World Bank regulations to South Africa; the country was stable enough economically to have pursued other avenues for development. Rather, the ANC actively chose to make the World Bank a part of its vision for a post-apartheid South Africa. Under pressure from the World Bank, the Mandela administration established use of the willing-buyer, willing-seller model. This model severely curtailed the ANC's original land reform goals by placing restrictions on land redistribution.

As discussed in chapter one, Mandela and the ANC stated that it would redistribute 30% of South Africa's land within the first five years of their rule. This goal was part of the first land reform program in 1994 and included in the White Paper (Parliament of South Africa, 2016). By the time the deadline rolled around in 1999, only 1% of land had actually been redistributed; 10 years after the program's inception in 2004, only 3% of land had been redistributed (Parliament of South Africa, 2016: 15). In 2013, about 6.5% of land had been redistributed compared to the then almost 20-year-old goal of 30% (Parliament of South Africa, 2016: 15). White landowners held onto their property titles in Mandela's post-apartheid South Africa, with the government

offering market value compensation to purchase their land. While this was considered a concession to white South Africans, black South Africans still believed that the ANC would effectively and efficiently transfer back the land that was taken from them. Now it is evident that white South Africans got what they desired, but black South Africans are still waiting for their end of the deal to become a reality (Atuahene, 2014b).

After Mandela formally stepped down from politics in 1999, Thabo Mbeki took control of the ANC and the country between 1999 and 2008. Although Mbeki had spent 28 years in exile and returned to South Africa only after Mandela's release from prison, ANC leaders did not consider him to be a legitimate revolutionary (CNN Library, 2018). While Mandela was supported on the basis of his popularity as a leader, Mbeki was only supported because he had been put in a leadership position (Gumede, 2013). Mbeki was less of a symbolic leader like Mandela and more of a technocrat. On land reform and other economic policy, Mbeki tended to embrace neoliberal structures that exacerbated South Africa's extreme income inequality. In line with this set of beliefs, Mbeki followed the 1993 World Bank's land reform principles of willing-buyer, willing-seller. He saw value in the World Bank's insistence on the primacy of private property rights (Gumede, 2007). His administration primarily focused on a state-purchase-and-leasing model for land redistribution, which also impeded reliable land tenure (*see Footnote 3*) by granting the state ownership of the land rather than the individual citizen (Parliament of South Africa, 2016). South Africans criticized Mbeki for implementing policies that hurt the black majority, the very people the ANC claimed to be protecting. At the end of his second term, the ANC forced Mbeki's resignation (Gumede, 2007).

Following Mbeki's nine-year period as president and subsequent resignation, Jacob Zuma took over as the country's leader in 2009 until 2018. Zuma focused on socio-economic

development in his term as president, which necessarily meant improving the effectiveness of land reform (Arkadiusz, 2017). He called for an abandonment of the willing-buyer, willing-seller model in favor of “‘expropriation in the public interest’ and with ‘just and equitable’ compensation,” as provided for in Section 25 of the Constitution (Parliament of South Africa, 2016: 12). Although the Zuma administration did not completely abandon the willing-buyer, willing-seller model, it did not prioritize it as much as previous administrations. Since 2011, the only state land redistribution method has been a Proactive Land Acquisition Strategy, or PLAS, originally created in 2006 under Mbeki. Through this plan, the state purchases land and leases it to South Africans rather than transferring the land to beneficiaries, hence the uncertainty of land tenure (Parliament of South Africa, 2016). However, under a newer, revised version of PLAS, these land transfers are only available to tenants after an initial 30-year lease and then optional 20-year renewal, meaning that a tenant must rent from the government for 50 years before being eligible to have the land transferred to them (Parliament of South Africa, 2016). The goal of PLAS is eventual redistribution to private ownership after long term leases, but this portion of PLAS has yet to come to fruition.

Aided by Zuma’s lack of progress on land reform and other similar social welfare issues, the EFF emerged as a direct response to what many South Africans see as a failure of the ANC. Since its formation, the EFF have advocated for radical leftist policies including land redistribution by any means necessary, even if that entails violence (Nieftagodien, 2015). Its leader Julius Malema is an expelled member of the ANC Youth League (Nieftagodien, 2015). Feeling pressure from the left as a result of the EFF’s rising popularity, Zuma later became more populist in his speeches on land reform, trying to appeal to former ANC supporters turned EFF allies (Arkadiusz, 2017). Near the end of his term, Zuma even called for a constitutional change

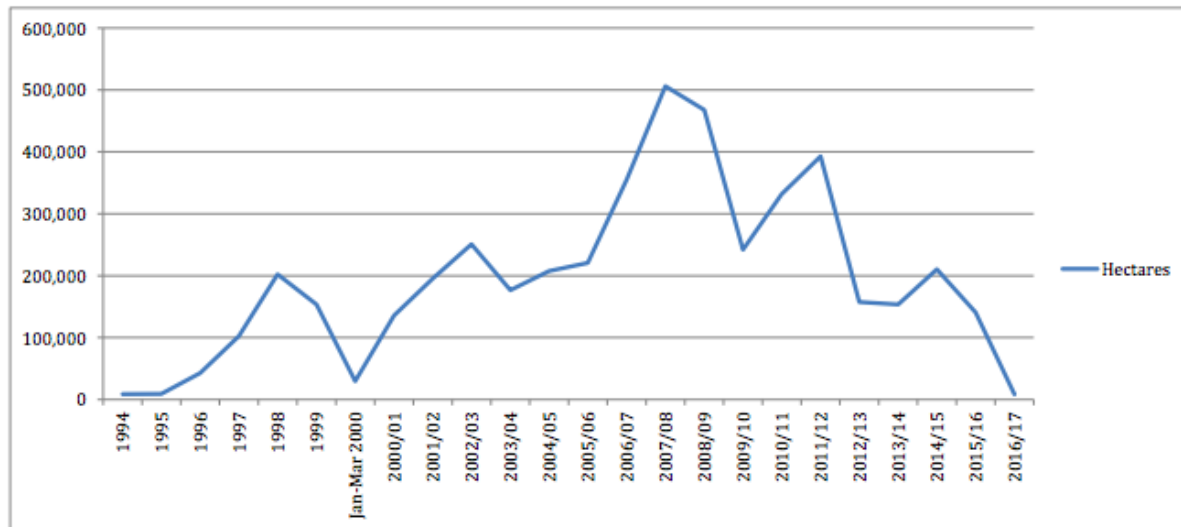
to allow land expropriation without compensation, but did not take any concrete steps towards ensuring this outcome (Graham, 2017). Land redistribution reached its slowest pace since 1995 during Zuma's time as president (Parliament of South Africa, 2016).

At the beginning of 2018, Cyril Ramaphosa, former aid to Mandela and political rival of Mbeki, became the new president. The general public views Ramaphosa as more of a Mandela figure, which fueled hopes that real change is coming. With the EFF gaining electoral ground and siphoning off would-be members of the ANC over time, Ramaphosa has taken action. His administration has announced plans to allow for the expropriation of land without compensation (Kumwenda-Mtambo, 2018). This would be a radical shift in policy from the willing-buyer, willing-seller model that has been in place since the Mandela era. Ramaphosa has reassured South Africans that this change would not cause violent land grabs, but would in fact help expand the economy and address the country's growing unemployment rate (Madia, 2018). However, similar policies that allowed uncompensated land expropriation in Zimbabwe led to economic despair and destruction of property rights (*see Footnote 4*) so Ramaphosa and the ANC will need to design its new plan with care to avoid a similar tragedy. This dramatic legislative adjustment can be attributed to Ramaphosa's fear that the EFF will grow larger, taking more former ANC members with it.

The following graph comes from a report on Land Redistribution in South Africa, commissioned by Parliament. Although the graph in Figure 1 is more relevant to agricultural than urban land, it shows how land redistribution has been measured over time, across different administrations. The Mandela era saw fewer transfers of land than other administrations, contrary to the hopeful notions and goals set by this administration. Actual land redistribution reached its peak near the end of Mbeki's presidency and fell drastically during Zuma's term,

although the report does note that figures for the 2016-2017 period at the time of publishing were incomplete. This graph does not cover land redistribution during Ramaphosa's presidency since his inauguration in February 2018.

Figure 2: Hectares redistributed by year, nationally (1994-2016)



Source: DRDLR 2016: 4 (authors' calculations)

Note: Figures presented here are per calendar year for the period 1994-1999 and then by financial year from 2000/01 onwards. The delivery in the period Jan-Mar 2000 is shown separately between 1999 and 2000/01. Even if Jan-Mar 2000 were amalgamated with 2000/01 to make a 15-month period, it would still show a dip in the rate of delivery. Also note that the 2016/17 is incomplete, and so the degree of the dip for that year is exaggerated, but the dip is correctly reflected for 2015/16 and is projected to continue to decline in 2016/17.

Figure 1 - Taken from a 2016 report commissioned by the Parliament of South Africa on Land Redistribution in South Africa (32)

II. Urban land

While most of the focus on land reform tends to be on rural land redistribution, urban areas are an essential aspect of the issue. While the most significant land inequalities exist in the rural sphere, segregation under apartheid shaped South Africa's cities. Land reform requires not only a shift in how the government currently handles rural land, but also how they view the urban land where the majority of their citizens reside. Instead of redistributing public land in cities to benefit the most amount of people, this land is often sold by the government for profit (Pillay, 2018). Land in urban areas often becomes highly politicized, with opposing parties claiming they will work on new approaches to the urban landscape with no substantial progress

made from any side. Land reform needs to include a specific discussion of how to improve urban areas going forward.

Understanding the complexity of contemporary urban land issues requires some historical context. When the National Party came to power in 1948, they were committed to mandatory urban segregation and instituted the Group Areas Act of 1950, which substantially worsened South Africa's inequalities in the urban sphere (Mabin, 1992). This commitment manifested two years later with comprehensive segregation policies, most notably the Group Areas Act, which proposed retroactive segregation, forcing black and coloured South Africans out of cities where they then resided (Mabin, 1992). These South Africans were forced to live in designated areas on the outskirts of cities commonly referred as townships. Although they had been forcibly relocated and now faced hours long commutes to the city, many black South Africans still had to make the trek into urban centers for work. The Act was calculated in this way; forcing black South Africans to live considerable distances from white South Africans in townships, but still able to work for them. This Act was not repealed until the fall of apartheid.

Since the end of apartheid, South Africa has failed to integrate its urban communities and provide sufficient housing to the populations that suffered discrimination under apartheid. There were more than 1.5 million informal units in urban landscapes when the ANC came to power in 1994 (Newton & Schuermans, 2013: 580). While the ANC tried to provide solid infrastructure for people living in these dwellings through fixed subsidies and construction projects, the subsidies were not adequate to cover the cost of building acceptable homes and actually reinforced residential segregation by attempting to build these new properties on the periphery of cities (Newton & Schuermans, 2013). The government did not give enough attention to the selection of sites or enough funds to cover actual construction of formal housing projects. From a

spatial perspective, developments in the private sphere have reinforced segregationist attitudes. This includes gated communities and barbed wire fences, which perpetuates fear and us versus them mentalities (Newton & Schuermans, 2013). There has been some integration in the urban sphere since 1991, but racial divides remain apparent in South African cities. Still more than 40% of the urban population resides in townships (TTRI, 2007:4). This contributes to the extensive inequality in the country, as many black and coloured South Africans live as tenants on publicly owned land outside of cities in townships and white South Africans retain their own property within city limits.

III. Land claims

This section will discuss how many land claims have been made, how many of those claims have been settled, and what motivates people to choose either land or monetary compensation once they reach settlement. Since 1994, many South Africans have been able to make claims to land that once belonged to them or their families, but was taken by whites during apartheid. To remedy consequences of dispossessed land, the ANC passed the Restitution of Land Rights Act 22 of 1994 very soon after coming to power (Beyers, 2016). This Act aimed to both recognize and compensate, financially or otherwise, individuals who had indeed lost land. As a caveat, this only includes land that was taken after the Natives Land Act of 1913 and not land that was taken during the initial colonial period.

The original Act permitted claims to be filed until December 1998. By this date, South Africans had lodged a total of 63,455 claims. Later, this number jumped to 79,696 after realizing that many of the claims needed to be divided up (PLAAS, 2016: 10). Of these, 88% were based in urban areas, but rural claims involved substantially more people because they were submitted

by large groups. By 2001, the Land Claims Commission had only settled 12,314 of these cases (PLAAS, 2016:10). In 2009, the government claimed to have settled 75,787 of these claims, but most of these settlements involved monetary compensation rather than actual transfers of land (PLAAS, 2016: 11). An amendment to the Restitution of Land Rights Act in 2014 opened up land claims for another five years, which brought fears of an even less efficient settlement process with potentially up to 397,000 new claims surfacing; this amendment was actually struck down by the Constitutional Court, citing the likelihood that any new claims would cause claims made before the initial 1998 deadline to become even further backlogged (PLAAS, 2016: 13). The Court ordered that all of the people who submitted land claims in 1998 or before have priority over those who submitted their claims during the reopening period in 2014. The land reform process has been plagued by slow official processes and poor inter-department coordination (PLAAS, 2016). With the current governmental process and sheer amount of land claims, especially recently with new claims, researchers estimate that it would take at least 178 years to finish the land claim process at its current pace (Magubane, 2018).

When a land claim has reached the settlement stage, it does not necessarily mean that land will be transferred back to the beneficiaries. While it is nearly impossible to restore what was lost in its entirety, the Restitution of Land Rights Act included both remedial justice, or rectifying past historical wrongs, and distributive justice, or instituting equitable distribution of resources. The transfer of land from white South Africans to black South Africans is not merely reparations, but also reforms the physical landscape (Beyers, 2016). But, South Africans have the freedom to choose between land and financial compensation once their claim has reached the settlement stage. Land is actually the more valuable restitution award of the two, as it helps families build and maintain wealth over time (Atuahene, 2014a). However, most people choose

monetary compensation over actual transfer of land, perpetuating inequality and precluding distributive justice.

South Africans eligible to receive land, particularly in urban landscapes, prefer monetary compensation due to lack of faith in state institutions. In *We Want What's Ours: Learning from South Africa's Land Restitution Program*, Bernadette Atuahene displays her results from extensive research and interviews with more than 150 South Africans who have taken part in the nation's land reform program. According to her research, there are seven primary reasons people choose monetary compensation: (1) the long and complicated process that many lack faith in, (2) if the urban land they once owned in an urban area was now undeveloped, they feared development was unlikely to happen, (3) lack of coordination between agencies, (4) the high employee turnover rate in the land commission office, (5) knowledge that project officers would shy away from development projects, (6) not wanting to move from their current location, and (7) money was easier to split between family members than a physical landscape (Atuahene, 2014a: 146-149). Of these seven reasons that Atuahene cites, five include either ineffectiveness (2, 5) or inefficiency (1, 3, 4) in the land reform process.

On the contrary, Atuahene discloses that people who actually took land over housing offered three leading explanations for their actions: (1) they wanted to retrieve what should have never been taken from them, (2) to respect cultural traditions, and the most common response (3) they felt this land was a delayed reward for a "hard-won fight" (Atuahene, 2014a: 158). This reiterates the value South Africans place on land. While many did not take the land they were offered because of government failure, those who did emphasized how important land was for their livelihoods. Many South Africans who have made land claims, particularly since 2014, have not had their claims processed and therefore have not seen an opportunity to choose

between land and financial compensation, but it is rational to assume that many would choose land if their government was both effective and efficient. Even when settling slow land claims, the government, headed by the ANC, cannot seem to fully satisfy beneficiaries, leaving a system of inequality intact.

IV. Transition to the real consequences

Post-apartheid ANC governments have defined land reform based on three principles: (1) land restitution, (2) land redistribution, and (3) land tenure reform. Policy changes have been based around these premises. In the past, advances in land reform have constituted delayed justice, if justice is reached at all. Ineffective and inefficient land reform in South Africa has left many to suffer enduring injustice years after apartheid. The first three chapters have laid out the methods of injustice and how they have impacted the country as a whole. The overall results are clear; land reform in South Africa has not been the grand overhaul of the country's landscape that many thought it would be once Mandela became president. The question now becomes, what does this lack of progress look like for a community or even an individual?

South Africa's government functions at three primary levels: national, provincial, and local. These levels are at the same time distinct and connected, and are not meant to be seen as hierarchical. All divisions of government are also bound by the Constitution and by the national Parliament (ETU). This means that although the ANC is the ultimate authority over actions executed by the local government as the majority party, the local government has a great deal of autonomy in their decision-making. But, this thesis does not contend that the national government and local government are exactly the same in every aspect, just that the situation of land reform nationally is reflected at the local level through the Imizamo Yethu ("IY") case

study. Government ineffectiveness and inefficiency as well as the attitudes of the elites involved in politics towards everyday South African citizens trickles down at every level of leadership.

As I will discuss in the next chapter, IY is one example of a community that awaits justice in land reform, both prior and subsequent to March 2017 when their current trouble began. While their type of issue with land may not be included under the three-principle reform program, it portrays how land justice is delayed by the government. The situation this community finds themselves in can be explained by lasting inequality and failure of the government to ensure its citizens have access to basic needs and services. There has been no restitution, redistribution, or reliable land tenure for residents of IY. In fact, as the court documents will show, the government may think it is providing the community with what they need, but it is actually actively working against them, much like land policy. The urban landscape has notoriously evaded land reform due to how government policies and procedures have played out. The government has focused on rural land reform as a major source of inequality, even as unsuccessful as its policies have been. Urban residents who are able to access land reform programs have primarily chosen compensation over land transfer because they fear more interaction with governmental land processes. In the case of IY, the government has continually put minimal resources towards solving the community's problems and demonstrated an attitude that refuses to respectfully involve community voices, similar to how land reform policy has functioned at the national level.

IY is a township within an otherwise wealthy area on the far side of Cape Town. Their requests for basic services and proper roads have long been ignored by local commissions. When the government decided to move forward with plans to alter the community's landscape, it did so without proper community input or consideration of how this would impact residents living in

the area. When the ANC failed to effectively and efficiently transform the South African landscape, it moved on with other projects and issues to solve without considering the critical consequences this action would continue to have for many South Africans in the future. Many South Africans are tired of the ANC's approach to land reform in the past, much as IY residents are tired of the local government taking advantage of their vulnerable situation. Inequality resulting from continued inadequate land reform holds consequences not only for South Africa generally, but also for people at an individual level, as chapter four will show in the case of IY.

Chapter 4: Real Consequences for South Africans

This chapter transitions from the broader picture of South African land reform to the land struggles of a particular South African community. Previous chapters have revealed how the ANC government has failed to meet the needs of its citizens in terms of land reform. Chapter three provided a legal and political framework for discussing land reform. Chapter four shows how this framework affects communities most severely impacted by inequality in South Africa. Cape Town remains one of the most segregated areas of South Africa, surpassing Johannesburg and most, if not all, other urban areas (Mwanza, 2018). This urban landscape has not seen meaningful integration since the 1990s, with most white people residing within city limits and black and coloured South Africans living outside of the main city center in townships. This chapter begins with personal observations and then shifts to historical and legal accounts of IY. Even though the legal case on behalf of IY does not deal with a land claim, there are still prevalent implications in how the government presently handles South Africans' land claims. Although chapter four does not explicitly examine how IY ties into land reform generally, chapter five will include this analysis.

I. Personal accounts of the case

I worked with the IY case personally during my study abroad in Cape Town. To my understanding, the LRC became involved with the case very suddenly, after the City of Cape Town ("the City") had demolished some structures in the IY community with little warning after residents failed to leave the area following an eviction order. Residents were confused and scared, seeking out the LRC for help to see if there was anything it could do to fight the City's eviction order. Although I typically helped with cases that involved gender equality, all of the

LRC's interns were assigned to this urgent land matter. During one of the first days on the case, the lead attorneys asked for candidate attorneys and interns to come with them to IY for a evening meeting with the community about next steps.

I volunteered to go so I could experience the community we were working on behalf of with my own eyes. Almost all the previous work I had done involved clients indirectly, so this was an exciting opportunity for me. The meeting took place outside the home of a prominent community leader, Pamela Sofika. We drove up narrow, crowded roads to get to her home with people staring into our car the entire time, probably wondering what outsiders were doing in their community. Pamela welcomed us into her home, where the attorneys discussed plans for the impending meeting. Shortly after, the LRC attorneys spoke to the community about the situation, what the LRC was going to do to help, and how the community could help the LRC with the case in return. The primary attorney, a white man, spoke in English while another LRC attorney, a black woman, translated in isiXhosa through a megaphone. I could tell how worried the residents were about what could happen to their homes. They did not seem aggressive or unruly as the City would describe them in the case, but I can also understand how they might act differently around a group of lawyers hoping to help them rather than City officials demolishing their homes. At this meeting, the LRC attorneys informed the residents that they should bring a few community members to the LRC the following day to provide statements for the case, which would later become affidavits cited in section VI of this chapter.

With the IY residents coming into the office the following day, interns were also recruited to help take statements and write affidavits. Most of the IY residents who came in did not speak English fluently, so we sought help from native isiXhosa speakers all over our office, including candidate attorneys, the secretary, and the cleaning woman. I helped conduct an

interview with Thembela Liwani, who I will discuss more later. During our time together, he emphasized how he could not continue to support his family out of the structures that the City proposed to relocate him and his family to. He required only two more square meters of space for both his house and his plot so that he could keep selling meat out of the front of his house. I thought a lot that day about what the residents who came into the office were really asking for, which did not seem like much and certainly nothing unreasonable. It caused me to reflect on both their situation and the condition of South Africa as a whole, how people living in townships face repercussions from apartheid every single day and how almost all of it is out of their control. I am not going to say that I truly understand them because I cannot imagine what it is like to be their situation and have to fight for what they were fighting for, but I empathized with them and did my best to represent Thembela in the parts of his affidavit that I wrote.

After those 48 hours between visiting IY and producing affidavits, I had become invested in the case. When asked sometime later if I wanted to come to the IY court hearing, I agreed eagerly. Community leader Pamela Sofika along with another female IY resident sat proudly and anxiously on the LRC's side of the courtroom. I do not remember if any other IY residents came to the court proceedings, but to travel from IY to the High Court of Cape Town would take at least a couple of hours by public transportation so I can assume that not many were able to make the trek. What I remember most prominently from the court hearing was the judge. He was a black man, who patiently heard summaries of both sides of the case and then paused a moment. Then he spoke to Pamela and the other resident in isiXhosa, their native language, for a while, before pressing on with questions for the attorneys in English. Although both Sofika and the other resident spoke English, this seemed to me as a sign of respect for them, that he wanted to make sure they understood what was happening and could have input in the courtroom that day.

Something so simple as speaking to the aggrieved residents in isiXhosa caused me to have a great deal of respect for him. Although nothing was resolved that day, the LRC attorneys ensured everyone that this was not typical behavior from a judge and this was a good sign for the future. Pamela and the other resident appeared to be happier walking out of the courtroom than when they first walked in. My journey with IY while in South Africa may have ended there, but both the case and my interest in South African land have endured over time.

II. Introduction to Imizamo Yethu

Imizamo Yethu, also known simply as IY, is an informal settlement on the outskirts of Cape Town. This informal settlement, or township, spans upward onto the bottom of one of Cape Town's mountains. Many of IY's residents do not have access to basic services such as electricity and running water (Pietersen & Villiers, 2017). According to the 2011 census for the City of Cape Town, the population of IY was 15,538 people with 6,010 households (Western Cape). The population is assumed to have grown since the most recent census. Also in 2011, 91.61% of residents in the township were black and 59.5% spoke isiXhosa as their first language (Western Cape). Only about 10.66% of the population spoke English as their first language, which of course is the language used in the South African judicial branch (Western Cape). The area for this population is only slightly more than half a square kilometer (Western Cape). Figure 2 is a screenshot from the 2011 South African Census that reveals the layout of IY on an aerial map.



Figure 2 - Taken from the 2011 South African Census

IY sits between several mountains on the far side of Cape Town in a region called Hout Bay. This area is strikingly beautiful, but there is a stark division. The majority of Hout Bay contains well-established homes belonging to people who are comfortably wealthy, while IY is an extremely poor township. The land constituting IY is only a small fraction of the total landscape in the Hout Bay valley, yet these two land areas have roughly the same population (Miller, 2018). Traveling through the region, one can see how the wealthy parts of Hout Bay physically look down on IY from their side of the mountain. The land in Hout Bay is both beautiful and troubling, with about half of the population occupying the vast majority of the land. This reflects typical patterns in land ownership throughout the country. Figure 3 shows the contrast between IY and the rest of Hout Bay. It is also worth mentioning that since IY is a township, the land is publicly owned (Van Staden, 2016). IY residents are tenants of the government on the land they live on rather than the property owners. Because of this relationship between IY residents, the government, and the land, the government is free to manipulate the land IY rests on as it sees fit.



Figure 3 - Taken from a photo series by Johnny Miller

As previously mentioned, the IY community holds a dense population on very little land area. This means that the homes are very close together, which causes a wide variety of difficulties. The one that has most affected IY is fires. There is little to no running water in IY and currently no roads sufficient to provide access for emergency vehicles. When a fire starts in IY, it could go on for hours or even days, spreading deeply into the area. While IY has had fires before, none had been more disastrous than those that occurred on March 10 and 11, 2017. A fire that began in the evening hours of March 10 raged until the afternoon of the 11, destroying an estimated 3,500 homes and displacing thousands of residents (Harrison, 2017). After this fire, the City finally decided to act regarding the havoc fires had wreaked in the area by building proper roads. This process is called “super-blocking”⁷ and it requires the destruction of a few homes to build roads for emergency vehicles that will ultimately benefit the entire community. While IY

⁷ As defined by the City in their court case: “a process by which adequate spacing is created between informal structures which allows access for the provision of services such as water, electricity, sanitation as well as vehicular access for fire trucks, ambulances, paramedics, police, etc.” (*The City v. Those Persons [...] and Those Persons [...]*: 6).

residents had been asking for these roads for years, the City went about providing them in almost the worst way possible.



Figure 4 - Photo of the March 2017 fires from HoutBay.org



Figure 5 - Another close up view of the fires in March of 2017 from GroundUp.org

During the court case, the LRC collected surveys from residents who would be affected by the super-blocking project. One hundred six residents completed the questionnaires. The LRC

utilized these results in Pamela Sofika's original affidavit to reveal information about the average person living in the IY community who would have to relocate under the City's plan. The results revealed: the average age was 38; 96% of people owned their shacks⁸; 85% were victims of the March 2017 fires; on average the person had been living in their present shack for 15 years⁹; about 70% were employed; and the average monthly income was R1614 (approximately 120 USD) (8). Additionally, of the 106 residents who completed initial questionnaires, 17 of them claimed to be either elderly, disabled, or special needs. In total, the 106 residents had 58 children (8).

During the first few months of this case, the City compiled a data set to verify information on 178 IY residents that it believed would ultimately be affected by its super-blocking plan. This set of documents revealed some additional facts about the residents in question: 55% indicated that they were single, a little over half (52%) of those who marked their gender put down "male," and on average they had between 3 and 4 dependents living with them.¹⁰ It is assumed that almost all, if not all, of the affected residents were black as IY is a black township.

When compared to statistics for South Africa as a whole, these numbers reveal that the people who would potentially be affected by the City's super-blocking plan are not entirely different from the average black South African, and in some ways the IY residents are more vulnerable than most. According to the 2011 Census, 79.2% of South Africans were black and 8.9% were white, confirming that black South Africans make up the vast majority of the country,

⁸ According to the residents' own terms, in reality the City owns the land.

⁹ Presumably meaning prior to the March 2017 fires if their shack was burnt down and then rebuilt.

¹⁰ I put these responses by the residents into statistical form; the City included the information for a court hearing later in the process but did not use them as I have here.

which is also true for IY residents (17). Furthermore, the median age for black South Africans was 24 as compared to 38 for residents affected by super-blocking (Statistics South Africa, 2012: 22). However, residents who filled out the first and second surveys from the IY case were adults and their average age does not account for children. Moreover, while the average annual income was R103,204 (approximately 7600 USD), the average annual income for black South Africans was R60,613 (approximately 4450 USD) (Statistics South Africa, 2012: 41-42). This is even much higher than the affected IY residents' average annual income of R19,368 (approximately 1425 USD) once calculated from their monthly income. The average national household size was 3.6, compared to between 4 and 5 in IY homes affected by the super-blocking plan (Statistics South Africa, 2012: 56).

In sum, IY residents are poorer and have more dependents than the average South African or even average black South African. These are the same types of communities that have been subjected to issues obtaining land via the land claims process in the post-apartheid era. As discussed in the preceding three chapters, these South Africans, particularly those who have less access to resources, have faced government ineffectiveness and inefficiency for years in efforts to reclaim their land, much like how IY residents involved in this case have faced in their negotiations with the City.

III. Legal proceedings filed by the City¹¹

After the March 2017 fire, the City finally decided to help IY. It identified several structures for demolition in order to move forward with super-blocking. IY residents occupying

¹¹ Because this thesis summarizes and analyzes a legal case, the parts of the case specifically mentioned here will paraphrase and simplify actual text from the case based on my own understanding. Any direct lines or language from the case will be cited using quotations.

these structures became the First Respondents in the case the City brought against the community. Specifically, these people live in the Dontse Yakhe and Shooting Range areas of IY, although those areas were not entirely demarcated for demolition. In its original motions, the City indicated that it would relocate the affected residents, but did not indicate its specific relocation plan. After the City claimed that its actions were met with hostility and pushback from IY residents, it decided to take legal action against the community.

The Second Respondents in the case were essentially residents who continued to erect structures on the demarcated areas and allegedly communicated threats to City officials regarding implementation of the super-blocking plan. The City claimed that the identities of both the First and Second Respondents were “unknown” to them. However, in spite of this uncertainty, the City’s initial filing sought six basic forms of relief for its efforts, many of which would profoundly affect the “unknown” individuals: (1) eviction of the First Respondents, (2) concrete date for their eviction, (3) enforcement of the eviction order even if residents refuse, (4) authorization for the applicant working with the sheriff to demolish and remove vacated structures, (5) restraint on the actions of the Second Respondents, and (6) authorization for the South African Police Service, better known as SAPS, to carry out the City’s plans as necessary (3). Along with these points, officials also asked that if its petition were granted that it would take effect immediately. Lastly, the City asked that “the costs of this application be paid by those Respondents who oppose the application, and ordering that their liability shall be joint and several, the one paying the others to be absolved” (5).¹²

In their case, the City attached minutes from several community meetings that it conducted within IY, both in the areas where the demolition was to take place and areas where

¹² The information referenced in the preceding two paragraphs is taken from the Notice of Motion in *The City v. Those Persons [...]* and *Those Persons [...]* dated 11 August 2017.

residents were being temporarily housed by the City in wake of the fires. The City concluded from these meetings that the community was behind its plan, but still some residents had been resisting moving forward with super-blocking. The City claimed to have served eviction notices to respondents in the appropriate areas as well as affixed the order to some structures on August 1, 2017 in both English and isiXhosa (101). Officials cited bad weather and terrain as implementation difficulties, but still alleged to have completed their requirements under the law. In handling the City's requests, the Court called on the Respondents to acknowledge the City's motion and for the court order to be delivered in person and read aloud to affected IY residents in both English and isiXhosa.¹³

IV. Response by the Legal Resources Centre on behalf of Imizamo Yethu¹⁴

After increasing tensions between the City and IY residents, the LRC stepped in to defend the IY community in Court, particularly the Respondents. The initial primary evidence for its case came in the form of an affidavit from community leader Pamela Sofika. She claimed that the confrontations and violence described by the City are the result of the City's failure to meaningful engage with IY residents affected by its plans. Her affidavit asserted that the City did not properly introduce its super-blocking plan to the appropriate residents as it alleged in their original motion. City officials did not respond to valid questions at community meetings either. Furthermore, the City indicated that the Respondents in the case are "unknown," but Sofika emphasized that these people are not truly unknown to the City as they have had extended

¹³ The information referenced in the preceding paragraph is taken from the Founding Affidavit in *The City v. Those Persons [...] and Those Persons [...]* dated 11 August 2017 and the Draft Order dated 18 September 2017.

¹⁴ The information referenced in this section is taken from the Answering Affidavit in the Eviction Application and the Founding Affidavit in the Residents Counter-Application in *The City v. Those Persons [...] and Those Persons [...]* dated 27 September 2017.

interactions already at this point in the proceedings. Frustrations with both the City and the March 2017 fire led residents to the hostility seen by city officials. While threats of violence from the residents are troubling, the City could have avoided a combative situation if it had tried to involve IY residents earlier on in the process without an order from the Court.

In her statement, Sofika continued to cite problems with the City's relocation plan. First, she made sure to clarify that they have been given no details about relocation, which aligned with the lack of details in the City's motion. Sofika also stated that there would be over 100 households affected as opposed to the 96 estimated by the City. The LRC estimated that closer to 120 households will need to be relocated, which is a substantially higher proportion (26). Additionally, the City hinted towards housing for residents in temporary relocation areas operating in wake of the March 2017 fires, but these areas were only meant to house residents for three months after March 2017 and construction of the City's proposed road would take approximately six to nine months if not more (24). Sofika argued that the potential longevity of the resident's relocation did not justify immediate eviction, especially without more serious communication by the City with IY residents.

Reflected in Sofika's affidavit, the overarching motivation behind all of this and the IY residents' reluctance to work with the City stemmed from a history of neglect from the government in their community coupled with unnecessary interdicts and evictions in IY. Many IY residents have not benefited from service delivery¹⁵, which had been previously promised by the government. IY residents are wary to trust the City because of its indifference towards the community in the past. Then, the City proposed to come in and alter many IY residents' way of

¹⁵ Service delivery describes "the distribution of basic resources citizens depend on like water, electricity, sanitation, infrastructure, land, and housing" (Campbell, 2014). The South African government has an unreliable record of providing these services to communities in need, which have led to significant unrest in the past (Campbell, 2014).

life without proper explanation. At the starting point of the case, residents of IY had shown the same willingness to work with city officials as these officials had shown them.

V. Analysis of motions filed

At first glance, the City did not appear to be taking any extreme action. In their filings, the City asserted its actions as reasonable and inclusive of community members. Officials placed blame on residents for refusing to work with them, or going back on their word once agreeing to their plans. However, after reading motions filed by the LRC, it is clear that the City had not been as cooperative with the community as it claimed to be. In fact, the City's language revealed how removed officials are from the community. This came through specifically in the description of the Respondents in the case as "unknown." As noted by the LRC and Pamela Sofika, the residents were not actually unknown to the City. If the City was truly prepared to work effectively with the community, then it would have appropriately documented information on the people impacted by their plans. Clearly, the City had not tried to get to know the residents in the area demarcated for demolition or the challenges these residents may face in relocation to an unspecified location.

Other evidence of the City's attitude towards IY residents came with its inaccurate account of the number of households that would need to be relocated under the City's plan. While the City claimed only 96 structures would be affected in its plan, in actuality approximately 120 structures would require location. While this number may seem frivolous at first glance, it indicates the extent to which the City had had contact with the community and included community members in their discussions. Twenty more structures imply at least 20 more families, which potentially entails a substantial number of additional residents. The City's

inaccurate count of affected structures, in addition to the City identifying the Respondents as “unknown” in its case, proves the points made by Sofika in her affidavit: the City’s efforts to include the IY community in its super-blocking plan had been insufficient.

Sofika highlighted another important point towards the end of her affidavit. She stated clearly that “the housing situation in Imizamo Yethu had been neglected by the City for a number of years...” and went on to cite service delivery and relocation as burdens the City had placed on IY residents recently and over the years (25).¹⁶ As Sofika said, residents of IY should not be subjected to an unfair resettlement process simply because they are poor and do not have the same access to resources as other communities may have. This specific phrasing revealed the City’s neglect of IY residents not only recently, but for years. The City even asked the Court to have the IY residents who opposed its motion, already some of the most financially disadvantaged people in the region, to pay the cost of the application, revealing just how out of touch the City is with the reality of the residents’ situation. According to Sofika, the City had continually failed the IY community and acted unreasonably in their efforts to solve the housing dilemma due to their own super-blocking plan. In short, why should the IY community have trusted that the City had their best interests at heart when the City had been so apathetic in the past? This sentiment is at the center of both the IY community’s struggle against the City and at the national level in land reform generally.

There has been significant back and forth in this case since its formal beginning back in August 2017. After the LRC filed its initial response to the City’s motion, the City disputed Pamela Sofika’s affidavit with an additional affidavit from Gisela Noelle Kaiser, the Executive

¹⁶ Quote taken from the Answering Affidavit in the Eviction Application and the Founding Affidavit in the Residents Counter-Application in *The City v. Those Persons [...] and Those Persons [...]* dated 27 September 2017.

Director of Informal Settlements Water and Waste Directorate for the City. She refuted many of the claims made by Sofika and also questioned Sofika's standing as a respondent in this case, as she will not be directly impacted by the proposed road. Specifically, Kaiser questioned the accuracy of the numbers from the LRC's surveys, asserted that the City had indeed had meaningful engagement with IY residents, and claimed that the City's plans for relocation are valid, including a provision for 3 x 3 meter structures on 4 x 4 meter plots.¹⁷

In response to the City's filing on 14 October 2017, the LRC filed the affidavit of Antoinette Markram, a Principal Legal Adviser at the LRC. She explained then-recent communications between the City and IY residents, alluding to the fact that the primary cause of discourse between these parties is the physical size of the structures the City planned to build and that most of these structures had not actually been built yet. The City proposed a 3 x 3 meter structures on a 4 x 4 meter plot and the affected IY residents requested 5 x 5 meter structures on 6 x 6 plots. She concluded by stating that everyone agrees that the roads are necessary and urgent, however, the parties did not agree on the solution for the road's construction.¹⁸

After Markram's affidavit, there continued to be a lot of affidavits filed on one side or another that mostly served to argue against what the other side had said in their previous motion. Both the City and the IY residents stood firm in their beliefs about the appropriate size for structures in the areas the City will relocate the residents to. The LRC cited problems with how the City is handling relocation and how its current plans would not be suitable for residents, while the City claimed exactly the opposite. There are email exchanges, more affidavits from affected IY residents from the LRC, PowerPoints, and meeting notes all annexed in the case file.

¹⁷ The information referenced in this paragraph is taken from the Replying Affidavit in *The City v. Those Persons [...]* and *Those Persons [...]* dated 14 October 2017.

¹⁸ This information is taken from the Supplementary Affidavit in *The City v. Those Persons [...]* and *Those Persons [...]* dated 26 October 2017.

There were multiple orders from the judge and postponements of the case. The LRC also mentioned accounts of armed officers present at meetings between the City and the IY residents, which the IY residents were notably uncomfortable with, leading to both further delays in the process and controversy between the two groups. The presence of police officers elevated the level of distrust between the two parties, and appeared to be an attempt by the City to reaffirm its power over the residents. This also speaks to whom the police serve; the primary responsibility of the police is the protection of the people, but when citizens feel more uncomfortable when the police are around than when they are absent, this speaks to a larger narrative of distrust between black South Africans and the police. The City is aware of this troubled relationship and chose to bring police officers to the meeting anyway, signaling further refusal to engage with the needs of the community.

Another prominent impediment in the case was the City's verification process for residents who would need to be relocated, so the City would have accurate information regarding the affected residents and would not be ill-informed in completing the relocation process. The LRC did not receive this information from the City until March 2018, more than four months after the City originally planned to begin the verification process in October 2017 and more than six months after the case began. Over the initial few months of this case, the City moved ahead with what it thought residents needed, while the LRC asserted that what the residents needed did not align with what the City was willing to provide. Overall, the proceedings in this case have been slow, contentious, and reluctant.

VI. What eviction could mean¹⁹

Those who would be affected by evictions for super-blocking are validated in their claims that the plan the City offered originally could lead to devastating results for them and their families. In the City's original plan, officials were firm in the fact that the structures for relocation would have to be 3 x 3 meter structures. The areas City officials marked for relocation were Disa, Depot, and Triangle,²⁰ but only a fraction of the structures for relocation on these sites had been constructed.²¹ The City offered to build permanent structures for the residents and grant them access to basic services in the new location after relocation.

The LRC offered six affidavits from various community members supporting its case in the suit. The affidavits mentioned here are all dated September 26, 2017. Five out of six residents in these affidavits were victims of the March 2017 fire and their newly rebuilt structures had been designated for demolition under the proposed super-blocking plan. Furthermore, many of them noted that at the time of the affidavit the City had not restored access to basic services²² since the fires occurred in March 2017. Many of the residents mentioned a relocation of residents on Molokwane Street²³ as reason for their apprehension to go through with the City's plan. Approximately ten years prior, the City placed residents from Molokwane Street in temporary structures with promises to provide them with proper housing that were never fulfilled. Thelela

¹⁹ The information referenced in this section is taken from the Affidavits of Thelela Sifuba, Wiseman Duma, Thembela Liwani, Nomangaliso Fumbana, James Nkhoma, and Mfana Calydon Kwatshube in *The City v. Those Persons [...]* and *Those Persons [...]* dated 26 September 2017.

²⁰ It is unclear if this area is still within Imizamo Yethu.

²¹ This information is taken from the Supplementary Affidavit in *The City v. Those Persons [...]* and *Those Persons [...]* dated 26 October 2017.

²² Five community members who submitted affidavits had access to water and plumbing prior to the March 2017 fires, and three of those residents had access to electricity as well. One resident did not have access to any basic services. Additionally, it is unknown to me whether or not access to these services has been restored since the affidavits were filed in September 2017.

²³ Presumably still within Imizamo Yethu, but not explicitly stated.

Sifuba's main opposition to the proposed super-blocking project stemmed from her distrust of City officials, specifically in regards to Molokwane Street; Sifuba wanted the land designated for relocation to be made "livable" before they moved there, and be equipped with basic services. Another resident named Wiseman Duma discussed frustrations that he had had no individual engagement with City officials carrying out the project and his questions were not addressed in a way that he could understand. Duma lives in a house with four adults and three children, and the 3 x 3 meter structures the City intended to move residents to would not be sufficient for his family.

Additionally, Thembele Liwani insisted that City officials had not communicated with him about their plans specifically and reiterated that the City did not seem open to discuss other options with residents other than its proposed plan. At the time of his affidavit, Liwani lived in a 6 x 6 meter plot structure where he was able to operate a meat business out of his front yard before the March 2017 fires. His inability to continue operations had already put a financial strain on his family, and any plot less than 6 x 6 meters would further hinder their financial situation. Nomangaliso Fumbana's structure was not affected by the March 2017 fires, but her structure had been designated for demolition. She stated that when her house was being marked for demolition, she asked City officials why they were marking her structure and officials stated that they only communicate with community leaders on these matters. Similarly to Liwani, Fumbana ran a business out of her home. As her business and primary source of income, Fumbana provided childcare for neighbors. She would need at least a 5 x 5 meter structure to continue to operate her business. James Nkhoma also supported his family out of a home-operated business selling fish and chips, fruits, and vegetables. The City came to Nkhoma asking him to sign papers consenting to his eviction and when he refused, the City official stated that he

would be evicted in eight days anyway. Nkhoma, like Fumbana and Liwani, cannot operate his business out of a structure that is 3 x 3 meters. Mfana Claydon Kwatshube made and sold shoes out of a table outside his home. Not only would a structure that is less than 5 x 5 meters be insufficient to hold his family of five and operate his business, but Kwatshube needs to be in a well-populated area so people walking by can see his business. No one from the City has communicated with him regarding the eviction and relocation.

Of the six community members who filed affidavits, four would have not only their livelihoods affected by relocation to an unspecified area with only 3 x 3 meter structures, but also their family's incomes. Only two directly communicated with City officials, and both seemed to have their concerns ignored. Many live with large families, who would not be able to live adequately in a structure that is only 3 x 3 meters, as all of them lived in structures that were at least 5 x 5 meters at the time. Again, residents were not refusing to move, rather they needed the City to compromise with them on the circumstances of their relocation. In addition to their grievances with City officials handling the IY super-blocking project, these affidavits showed how eviction would impact residents on an individual level. This took a step back from the bigger picture to examine how the City would be altering the lives of each person who lived in one of the 120 structures designated for demolition, and what was at risk for these people, whether that be a business selling shoes or being able to care for neighborhood children.

The information I have on this case only includes what was filed up until May 2018, which is all that I have described here. To my understanding, the case is still ongoing and a final compromise has not yet been reached. The two sides are working together more over time, but there are also some aspects neither may be willing to compromise on. In the chapter that follows, the conclusion, I will discuss how this case mirrors wider land reform and governmental attitudes

towards land in South Africa, and what the future may look like for residents of IY and South Africans everywhere.

Chapter 5: Conclusion

The IY case is not extraordinary; evictions occur all over South Africa because many people are not the legal owners of the property on which they live. However, IY residents have been able to fight back through the same legal systems that deny them rights to their property. The first three chapters contextualized South African land and showed how land reform has functioned since the end of apartheid, or more accurately, not functioned. Chapter four demonstrated that the City has not effectively engaged IY residents in their super-blocking process and is more concerned with implementing their plan than ensuring residents' needs are met. This chapter connects those two pieces together, describing how government ineffectiveness and inefficiency in IY mirrors the national conversation around land. I argue, as I have throughout this thesis, that land reform has been both ineffective and inefficient, creating the worst problems for the most vulnerable South Africans most impacted by extreme inequality. Furthermore, this chapter also discusses the future of land-related justice for both IY and South Africa.

I. Relating to the broader perspective

The IY case speaks to land reform nationally in several distinct ways. The first of these involves the affected individuals. While claiming to represent the interests of all South Africans who suffered under apartheid, the ANC constantly fails to help citizens who could benefit most from land reform. As discussed in chapter four, in most significant demographic categories IY residents are either similar to the average South African or more disadvantaged. IY residents have drastically lower incomes and more dependents than a typical citizen, coupled with a greater need for access to basic services. Clearly, IY residents constitute one of the more

vulnerable populations amongst South Africans. By attempting to do what is best for IY (i.e. super-blocking), the City is actually taking advantage of this community. This situation reflects the shortcomings of land reform nationally and how it has failed to help those who are most in need.

IY residents find themselves in a position comparable to many who have been affected by dysfunctional land reform. The land inequality in Hout Bay, the area in which IY resides, is extreme, but not unique. South Africa is the most unequal nation in the world (World Bank, 2018). Living under the shadows of the Hout Bay mansions that physically look down on their community is a daily reminder of this inequality to IY residents in their everyday lives. Having been mistreated by the City not only recently, but also in the past, IY residents have lost faith in the City as an entity prepared to help them rather than harm them. IY residents no longer depend on the City as a resource, just as South Africans do not count on their government to function in their favor. As I will discuss later in this chapter, South Africans are turning away from the ANC for assistance and toward more radical political parties like the EFF.

The ANC-led government has been both ineffective and inefficient in implementing post-apartheid land reform, exacerbating the substantial inequality in the country. Their ineffectiveness is illustrated by the negligible amount of land that has actually been redistributed since 1994, an amount that does not nearly approach their initial goal of redistributing 30% of land within the first five years of their rule. Additionally, even of the South Africans who have endured the land claims process in its entirety, many have chosen financial compensation over actual land transfer because they are not confident in the government's ability to transfer the land back to them within a reasonable time frame. In essence, the government's ineffectiveness has caused widespread distrust.

This sense of distrust is not unlike IY residents' attitude towards the City. The City has promised them time and again that it would give all residents access to basic services, but none have materialized. Everyone accepts that the roads proposed by the super-blocking plan are necessary, but the two conflicting sides remain unable to reach an agreement. While not opposed to the idea of relocation, IY residents are at odds with the City over the conditions of their displacement. Residents require an adequate plot of land with a structure already built for them upon arrival, not promises that the structure will be built eventually. They suspect that the City will not follow through on this agreement, which has been a major factor in their ongoing legal battle. This distrust speaks to land reform at a national level, principally how distrust between citizens and the government has led many South Africans towards choosing financial compensation, the less valuable restitution award. If the government functioned effectively, this compromise would not be necessary. Tension between the people and the government, both nationally and locally, is a direct result of the government's ineffectiveness. The government cannot protect the best interests of the people if there exists no certainty behind its actions.

Besides showing itself ineffective, the ANC government has proved inefficient. It has yet to achieve its goals in land reform, and will not anytime soon unless the party drastically changes its approach. Some people who filed land claims before the 1998 deadline are still awaiting justice. Citizens have admitted that they are hesitant to continue with the land claims process because of the sluggish government processes surrounding land. For similar reasons regarding inefficiency, the IY case remains unsolved today. In the case, the City continually postponed the verification process, exacerbating delays. IY residents remain uncertain of their future, just as many South Africans do not see an end to their struggles in obtaining redistributed land.

Inefficiencies have added to reservations citizens hold toward their elected officials and caused IY residents and South Africans to be wary when interacting with the government.

Although the national government holds the ultimate authority all levels of government, the City and the national government are separate entities that are not fully intertwined with one another. However, their attitudes towards residents under their jurisdiction, particularly in regards to land justice, conveys a common sentiment reflected throughout South African politics; disconnect with the people and inability or unwillingness to give the people what they need. In addition to the ineffectiveness and inefficiency shown by both the government and the City, inequality is an overarching theme in IY locally and the City nationally. This inequality is apparent through data and statistics as well as plainly on the South African landscape. Unequal land distribution is a problem nearly everywhere in South Africa, whether in Hout Bay where IY is located, in other parts of Cape Town, across the country in Johannesburg, in rural farmland, or elsewhere. The solutions to this problem must involve significant advances in land reform, not simply promises or goals. In IY, the City needs to guarantee that relocated residents will have access to basic services and sufficient housing, not just promises that this will happen. IY is not a community seeking reparations for a land claim, but they are searching for help from their government. So far, they have been dismissed rather than helped, like South Africans who have turned to their government for help for years with little to no avail. At both the national and local level, the government has worked against the people who are most in need rather than working with them. An elitist attitude apparent throughout all levels of government since the fall of apartheid has allowed the land questions to remain unresolved. The government, whether national or local, must be held responsible for correcting extensive inequality, and in South Africa this starts with an examination into land reform.

II. What does the future look like?

In considering the future for IY residents and South Africans in general, it is important to consider factors that fell beyond the scope of this thesis. First, there are far more issues within the South African government besides its inability to produce effective land policy. For example, Zuma's administration was plagued by corruption scandals that eventually forced him to leave office. The country is still recovering from Zuma's presidency and trying to move forward. Also, some South Africans awaiting changes in land reform policy are more disadvantaged than others. Gender and other identities add complexities and new levels to the land discussion. This thesis did not include a comprehensive history of IY or of townships in general. Particularly for IY, there are certain circumstances beyond the current eviction case that have caused tension between the City and residents in the past, primarily protests that have gone on for years over insufficient access to basic services and government neglect of their situation. I did not include these protests in this thesis because they were related to service delivery rather than evictions, but they are still somewhat relevant to the IY community's relationship with the local government. While these topics are relevant for South Africans in what is to come, what I have already discussed will be the most significant determinations for the future of land.

The IY case is ongoing and the final solution that will bring sufficient roadways to the community and satisfy relocated residents is not yet clear. Over the course of the case, both sides have had to come to terms with the reality of the situation; IY needs proper roads, but not everyone agrees how to go about building those roads. IY and the LRC have placed pressure on the City to devise a reasonable plan that would gain approval from all sides. The prospects for IY residents are more hopeful than they would have been without intervention from the LRC, but it

is still uncertain whether the City will be required to follow through on its promises and provide residents with an appropriate living situation.

At the height of their issues with the City, residents turned to the LRC as a possible solution, or at least better alternative, for their problems. Likewise, South Africans frustrated with the ANC's land reform program are turning to the EFF as their solution. The LRC and the EFF do not share the same mission; the LRC is a legal firm that intervenes where it sees fit, and the EFF is a political party pursuing power to implement its policies. However, despite their dissimilarity, the LRC and the EFF represent the same idea to IY residents and black South Africans everywhere: hope. Both the LRC and the EFF will be crucial actors in determining the future of IY residents and South African citizens everywhere.

South Africa is at a crossroads. ANC policies have produced ineffective and inefficient land reform, and the country remains vastly unequal. The citizens will have to choose between keeping with this status quo, a moderate party that willingly adhered to World Bank regulations and failed to reach their goals, but promises to improve the country's situation in the future, or make a radical switch to an opposing party that advocates far-left policies and is not afraid to take drastic action. Whatever the country chooses to do will have a lasting impact, which could be as devastating as the results in Zimbabwe or could finally obtain success and move the country in the right direction. Overall, the future depends on the people of South Africa and how they see what is best for their country moving forward.

IV. Final thoughts

“As long as poverty, injustice, and gross inequality persist in our world, none of us can truly rest.” -Nelson Mandela

Before I started this thesis, I did not realize the extent to which the ANC had failed South Africans over the last few decades. Even a great and heroic leader like Nelson Mandela was unable to make change in land policy that would correct past wrongdoings of apartheid. He was a great man with powerful ideas that inspired people all over the world, but still South Africans suffered injustice under his rule. No one expected over 40 years of apartheid, not to mention the centuries long colonialism prior, to be completely rectified within one president's terms, but no one anticipated the disarray the country's political and economic system would come to under the ANC either.

Simply put, South Africa is not the country that ANC revolutionaries of anti-apartheid activism imagined. South Africa needed time to heal after as devastating a regime as apartheid, and now the governments' time is up. All in all, land is a complex and contested topic both in IY and South Africa. In South Africa, land and politics are invariably intertwined with the broader problems of land and justice. The lasting effects of apartheid are apparent throughout the country's landscape and without serious change in the future, these effects will continue on for years, decades, and generations to come. Without reform, the legacy of inequality will live on, evading justice for the most vulnerable South Africans. I have seen firsthand how all of these issues exist in unison through the IY case. There is no obvious solution as to what should be done, but one thing is clear: as long as these problems persist, South Africans must keep fighting to redress modern day apartheid.

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