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### Paying for the Past: Addressing Past Property Violations in South Africa

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## Paying for the Past: Redressing the Legacy of Land Dispossession in South Africa

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Bernadette Atuahene

The constitution of South Africa mandates equitable redress for individuals and communities evicted from their properties during colonialism and apartheid. The Commission on Restitution of Land Rights' institution-wide assumption is that the financial awards given as equitable redress had no long-term economic impact on recipients because the money is gone and they are still in poverty, whereas if people had received land, the economic impact would have been lasting. Consequently, in recent years, the commission has adopted a policy of using its soft power to force claimants to choose land restitution instead of financial awards. However, the interviews I conducted with financial award recipients show that in 30 percent of the cases, the award did produce a long-term economic benefit because respondents invested in their homes. This empirical evidence suggests that the commission should rethink its recent shift in policy and not totally discount the potential of financial awards to produce a lasting economic benefit.

South Africa has been gradually moving beyond its colonial and apartheid past to build its storied rainbow democracy. One of the most intractable legacies to overcome, however, has been the massive displacement of blacks<sup>1</sup> from their lands by the colonial and apartheid era states (Atuahene 2010a; Miller 2000: 1–44; Thompson 1995). As a consequence of this past land theft, at the end of apartheid 87 percent of the land was owned by whites, who constituted less than 10 percent of the population (van Tooyen & Njobe-Mbuli 1996). Rectifying this legacy of land dispossession was a powerful rallying cry of the South African liberation movement and

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<sup>1</sup> Under the post apartheid regime, the term *blacks* is used to refer to all nonwhites. This is how the term is used in this article.

is also a top priority of the post apartheid government. Nevertheless, the majority of the families whose land rights were eroded under colonialism and apartheid have not yet received a remedy (Commission on Restitution of Land Rights 2010, Atuahene 2010b).

Providing remedies that effectively address the legacy of land dispossession is fair and just, but it is also important for the political stability of South Africa (Atuahene 2007, 2009). In one of the most impressive public opinion studies done on land reform in South Africa to date, James Gibson (2010: 40) surveyed 3,700 South Africans. He reports that 85 percent of black respondents believed that “most land in South Africa was taken unfairly by white settlers, and they therefore have no right to the land today.” Only 8 percent of whites held the same view. Gibson’s most troubling finding is that two of every three blacks agreed that “land must be returned to blacks in South Africa, no matter what the consequences are for the current owners and for political stability in the country,” while 91 percent of whites disagreed with this statement.

The democratic dispensation has tried to address the legacy of land dispossession through a three-prong land reform strategy including land restitution, land redistribution, and land tenure reform programs (Hall 2004a). This study focuses on the land restitution program mandated by section 25.7 of the South African Constitution (1996), which requires equitable redress for individuals and communities who were dispossessed of any right in land after 1913 as a result of racially discriminatory laws and practices. The Restitution of Land Rights Act (1994) is the legislation that gives effect to section 25.7, and the commission is the administrative agency that the act charges with implementation.

The commission has provided redress to qualified claimants—those who filed a restitution claim before the deadline of December 31, 1998—through financial awards and land purchases. As shown in Table 1, as of March 31, 2008, the commission had rejected or authorized compensation for (that is, “settled”) 74,747 claims lodged by dispossessed individuals and communities—a laudable achievement by any measure. Eighty-eight percent of all claims settled were urban, 73 percent of those urban claims were settled with financial awards, and the commission has spent a total of R4.9

**Table 1.** Settled Land Claims

	Land	Financial Award	Alternative Remedy	Total Claims Settled	Beneficiaries
Urban claims settled	15,439	47,726	2,477	65,642	502,454
Rural claims settled	4,423	4,247	435	9,105	912,738
Total	19,862	51,973	2,912	74,747	1,415,192

billion (approximately \$700 million) on financial awards (Commission on Restitution of Land Rights Annual Report 2008).

This study evaluates the economic impact of the restitution program. More specifically, it explores whether the financial awards that the commission gave to claimants evicted from urban areas (urban claimants) changed their long-term economic position. The existing sociolegal literature has not examined how financial awards have been consumed. Several studies do provide in-depth case studies detailing how communities experienced the restitution process, but the bulk of the literature focuses on rural claimants—that is, communities evicted from rural areas (Donaldson & Lochner 2002; Fay & James 2008; Hall 2004b; James 2009; Lahiff et al. 2008; Manenzhe & Lahiff 2007; Mostert 2000; Parker 2004; Rwelamira & Werle 1996; Tilley 2007; Walker 2008).<sup>2</sup> It is important for sociolegal scholars to begin studying the economic, social, psychological, and political impact that financial awards have had on urban claimants in order to determine whether the awards are ameliorating the legacy of land dispossession.

The research question explored in this study is, did the financial awards given to urban claimants change their long-term economic position? This question focuses on one important piece of a larger puzzle—the economic impact of the financial awards—and is not intended to insinuate that there is one right way to spend a financial award. While I embrace the premise that evaluating the economic impact of the awards is not the only (or, necessarily, the most important) lens through which to view the restitution program's outcomes, it is certainly one of many important lenses. In the book manuscript I am presently developing, I will round out the analysis by evaluating the political, psychological, and social impact on urban claimants of both the financial and land awards distributed by the commission.

Although the existing sociolegal literature about consumption of restitution awards is underdeveloped, economists have developed a substantial literature examining how people consume wind-fall (or unexpected) income such as restitution awards. Milton Friedman (1957), the father of consumption theory, suggests in his

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<sup>2</sup> There are several key differences between urban and rural restitution. Rural claims often involve land owned collectively by sometimes upwards of 2,000 individuals and families, while urban claims often involve one family or individual. As of 2008, 49 percent of rural claimants opted for the restitution of large tracts of rural land, which involves negotiations with present owners and the ability to sustain existing agricultural enterprises. In contrast, only 24 percent of urban claimants opted for land restitution, while 73 percent opted for financial compensation. Another important difference is that when urban claimants have opted for land restitution, the commission has given many claimants publicly owned, small plots of land with no existing productive use.

permanent income hypothesis that the marginal propensity to consume windfall income is considerably smaller than the marginal propensity to consume out of permanent income. That is, people are more likely to save windfall income (like financial awards) than they are to save permanent income. Kreinin (1961), in his empirical study using data from 81 Israelis affected by the Holocaust who, like the respondents in this study, received financial awards, provides considerable support for Friedman's hypothesis (Bird & Bodkin 1965; Bodkin 1959; Carroll 2001; Reid 1962). Landsberger (1966) refines Kreinin's study by investigating the effect of the windfall payment's size. When he separated 297 Israelis who received financial compensation from the German government into five groups, Landsberger found that the marginal propensity to consume decreased as the size of the windfall payment increased; this finding validates Friedman's hypothesis (Abdel-Ghany et al. 1983; Bertrand et al. 2006; Carroll 1996; Doenges 1966; Keeler et al. 1985). In other words, people are more likely to save rather than consume larger financial awards.

Since the literature on consumption of restitution awards has been dominated by economists, it consists primarily of quantitative studies designed to determine the marginal propensity to consume windfall income with a high level of statistical certainty. The studies are not designed to offer deep insights into what people consume or the logic behind their consumption decisions. The sociolegal, qualitative analysis this study undertakes uses in-depth interviews to explore how claimants spent their financial awards and to determine whether the awards had an enduring economic impact.

A sociolegal analysis is important because based on the commission's pervasive, institution-wide assumption that many claimants used their financial awards on alcohol, revelry, or other short-sighted pursuits, it has effectively denied the remaining claimants the opportunity to receive financial awards and has instead used its soft power to force claimants to choose land restitution (also called development). The commissioner for the Eastern Cape described how the financial compensation option has been de-emphasized in practice: "The act gives the option of cash, so people don't want development; but, if you minimize the financial and accentuate development, the community goes along."<sup>3</sup> A project officer from the Western Cape shared his personal experience with the commission's post-2007 policy of de-emphasizing the financial-compensation option:

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<sup>3</sup> Interview with Linda Faleni, regional commissioner, Regional Land Claims Commission for Eastern Cape, Cape Town, South Africa, June 17, 2008.

Now we don't encourage it [financial compensation]. But before in the options workshop we presented all options comprehensively; but we realized people want quick cash, so we now present development comprehensively. When we talk about financial compensation, we run quickly through it because the same people who have been settled come back to seek land via other programs. This is why we are pushing development.<sup>4</sup>

Another method the commission has used to discourage claimants from choosing financial compensation is making the financial awards small. A deputy director at the commission said, "We need to give low amounts, so people choose land. In Wallmansthal [a rural land claim located near Johannesburg], financial compensation is R20,000, so many are not choosing it. I think we should be able to force claimants to choose land."<sup>5</sup> The director general confirmed that, by official policy, "financial compensation is less in value than land, and this is done to discourage people from taking financial compensation. This is in line with practice in Germany and Estonia."<sup>6</sup>

The problem is that the majority of the people who opted for land restitution in 1994 have yet to receive their land. Tragically, while beneficiaries wait for the commission to produce results, the older generation that was most affected by the evictions is dying; people are losing faith in the process and becoming disillusioned; and land prices are steadily rising, which decreases the amount of land the commission can purchase given its limited budget (Bohlin 2004; Lahiff 2008). Even when communities have received land, many do not have the resources to develop it or to continue existing agricultural operations, and frequently weak governance structures have caused community disputes to proliferate. Consequently, there are several cases in which the land that communities received from the commission is lying fallow or is underused (Lahiff 2008). Since the state has proven it has limited capacity to transfer land effectively, then it must find ways to make the financial awards more effective instead of removing the awards as an option altogether and leaving claimants with no effective remedy at all. This study has great practical importance because it empirically tests the assumption that is driving the commission's decision to systematically discourage the remaining claimants from choosing financial awards.

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<sup>4</sup> Interview with Sincede Masiza, senior project officer, Western Cape Regional Land Claims Commission, Cape Town, South Africa, August 12, 2008.

<sup>5</sup> Interview with Humphrey Mashiyane, deputy director, Regional Land Claims Commission for Gauteng, Pretoria, South Africa, July 8, 2008.

<sup>6</sup> Interview with Tozi Gwanya, director general of land affairs, Pretoria, South Africa, August 27, 2008.

This study finds that only about 30 percent of the respondents' financial awards had a low economic impact, although the dominant view among commission officials is that financial awards have had absolutely no sustained economic effect for the overwhelming majority of claimants. Contrary to the commission's assumptions, about 30 percent of the respondents' financial awards had a substantial economic impact. Award size, net worth, age, home ownership, and economic position of respondents' dependents greatly influenced the financial awards' economic impact.

Rectifying the legacy of land dispossession is a complicated task, but if the compensation given to individuals, families, and communities that were economically disadvantaged by systematic dispossession under colonialism and apartheid can improve their long-term economic position, then this can bring South Africa one step closer to achieving this daunting task.

## **Methodology**

### **Method for Collecting the Data**

From February to August 2008, I conducted 25 semistructured interviews of commission officials. My interviews lasted between 30 and 90 minutes each, were audio taped and transcribed, and were not completely confidential. I also completed 141 semistructured interviews of urban claimants. These also lasted between 30 and 90 minutes, but they were audio taped and transcribed with the promise of confidentiality (pseudonyms mask the respondents' identities). Since the research question I address is whether the financial awards that the commission gave to urban claimants changed their long-term economic position, the sample I use in this study is limited to 80 of the 141 interviews, in which the respondents received financial compensation as opposed to land restitution.

Before conducting any interviews, I obtained human subjects approval from my university. To select interview candidates, I relied heavily upon the commission's financial data lists, which are organized by community, contain the names of all beneficiaries who received financial compensation, and list the amounts that they received. I first selected a community based on certain variables of interest such as race, award size, preeviction occupancy status, available award options, and effectiveness of community leaders. I then randomly selected claimants from the chosen community's financial data list. For about three-quarters of the claimants randomly selected, I was able to find a working phone number from the commission's records department, and over 90 percent of the people I was able to reach agreed to be interviewed. I conducted 80

percent of these interviews entirely in English. In those instances when the respondent was not comfortable speaking in English, I used a translator. I conducted the vast majority of the interviews in the respondents' homes so that I could verify certain facts, such as whether respondents actually used the compensation to renovate their homes.

Although multiple people within a given family were entitled to compensation, I found that the commission generally communicated with (and had contact information for) only one family member, known as the claimant. Therefore, the downside of relying on the commission's records was that active claimants—who were constantly interacting with the commission—accounted for about 81 percent of all respondents interviewed. Consequently, my data have a particular bias because these claimants were likely to have opinions and experiences that differed from those of family members who played more passive roles in the process. I tried to mitigate this bias by asking primary claimants to put me in touch with other family members who had not played significant roles in the claims process, but I was successful in fewer than five instances.

Although locating respondents primarily using the commission's financial data lists and records was imperfect, it was superior to the alternative—the snowballing method—in which referrals from initial respondents generate additional respondents. Snowballing can introduce a more severe bias because the resulting data may reflect the views of a limited network of acquaintances; thus it is best to use snowballing only for people who are difficult to identify. Consequently, I relied on snowballing to identify less than one-quarter of my sample, most of whom were community leaders whom I was unlikely to choose randomly using the financial data list but who had a wealth of information that was extremely valuable to this study.

The methods I employed have certain limitations. First, I did not collect data on the ethnicity of Africans and so cannot discuss the ways in which ethnicity informed how respondents spent their financial awards. Second, the data are not generalizable to the entire population because 47,726 urban claimants received financial awards, but I interviewed only 80; and while I did randomly select respondents in each community, I did not randomly select the communities. Consequently, my findings are best suited to generating theory.

### **Description of the Sample**

Since this study exclusively addresses urban claimants, I limited the sample to claims originating in South Africa's two principal urban centers—Gauteng and Western Cape (see Table 2). Forty-

**Table 2.** Description of Sample

Sample	No. of Respondents	Sample	No. of Respondents
<b>Region</b>		<b>Relation to ODI (Originally Dispossessed Individual)</b>	
Gauteng	36	ODI	11
Western Cape	44	Child	55
		Grandchild	14
<b>Gender</b>		<b>Employment</b>	
Female	39	Working	25
Male	39	Unemployed	5
Mixed Gender Interview	2	Unemployed Pensioner	49
		Unknown	1
<b>Race</b>		<b>Class</b>	
African	30	Working Poor	38
Coloured	39	Middle Class	20
Indian	5	Upper Class	22
White	6		
<b>Level of Involvement</b>		<b>Owner or tenant at time of eviction</b>	
Active Claimant	55	Owner	35
Community Leader	10	Tenant	45
Passive Claimant	13		
Unassigned	2		
<b>Age</b>			
60 and under	21		
61–75	47		
75 and above	12		

**Table 3.** Median Restitution Awards (in rand)

Community Name	Median Individual Payout	Median Award for Family Claim
<b>Western Cape</b>		
White	200,000	360,000
District Six	18,000	38,000
Paarl	25,580	25,580
Luyolo	11,250	22,500
Mossel Bay	12,852	45,600
Stuurhof	14,280	35,400
Die Eiland	11,429	17,500
Dysseldorp	4,893	29,500
Other	3,166	40,000
<b>Gauteng</b>		
Kliptown	50,000	102,020
Evaton	35,910	142,450
Kilnerton	28,335	113,343
Sophiatown	28,000	70,000
Marabastad	46,666	60,000

five percent of respondents were from Gauteng, while 55 percent were from the Western Cape. As seen in Table 3, one main difference between the two provinces is that Gauteng systematically paid higher financial awards than the Western Cape did. With the exception of Gauteng, all regional land claims commissions gave dispossessed tenants lower financial awards than the awards given to dispossessed owners on the principle that ownership rights were more valuable than tenancy rights. In Gauteng, the early regional land claims commissioner, Blessing Mphela, made an executive

decision to pay both groups equally; hence, the average payout in Gauteng was consistently higher.<sup>7</sup>

This study separates claimants into three employment categories—working (31 percent), unemployed pensioners (61 percent), and unemployed (6 percent). The *working* category includes people who were working either part- or full-time, regardless of age. The *unemployed pensioners* category includes respondents aged 60 or older whose primary sources of income were their old-age pensions. The *unemployed* segment covers respondents under 60 who were not working. Only 26 percent of the sample was under 60 at the time of the study, and most of those people were working. The vast majority of respondents (74 percent) were 60 or older and thus eligible for old-age pensions. Many urban evictions were executed under the authority of the Group Areas Act of 1960; so many of the Originally Dispossessed Individuals (ODIs) were deceased, and their children (who were pensioners by the time of the study) were receiving compensation in their place. While 14 percent of respondents in this study were ODIs,<sup>8</sup> 69 percent were their children, and 18 percent were their grandchildren.

The sample was balanced along gender lines (50 percent women and 50 percent men) and, in terms of race, it included Africans (38 percent), Coloureds (49 percent), Asians (6 percent), and whites (8 percent).<sup>9</sup> The majority of African claims originated from Gauteng, while the Coloured claims were principally from the Western Cape. The few whites in the sample all hailed from the Western Cape and were mostly working people under 60. All the Asians in the sample were from a community in Gauteng called Marabastad; they were primarily male due to cultural norms of inheritance.<sup>10</sup>

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<sup>7</sup> Interview with Blessing Mphela, deputy land claims commissioner, Department of Land Affairs, Pretoria, South Africa, June 22, 2008.

<sup>8</sup> Many of the ODIs in the sample were evicted from Simonstown, a seaside town in the Western Cape, and are now living in a community called Luyolo located in the Cape Flats. This is because Simonstown was a densely populated community with several families living on one plot of land, and instead of trying to establish the boundaries of each plot and determine who legitimately resided there, the commission decided that every person who was 18 or older at the time of the eviction would be considered an ODI.

<sup>9</sup> The racial categories created under apartheid, and still commonly used in South Africa today, are African, Coloured, White, and Asian.

<sup>10</sup> One respondent explained that a father and his sons often owned the property at the time of eviction, so Asian women often did not have a right to make a claim:

Respondent: The six boys were the owners of the property, not the girls. The girls didn't get anything.

Interviewer: Why was that?

Respondent: That's just the culture thing, you know, what we do is when the girls are at home, you do everything for them. When they get married you give them everything [a dowry] and you send them off and that's the end of it. That's the culture thing (confidential interview with a former resident of Marabastad, Gauteng region, South Africa, 2008).

Determining each respondent's class status was a challenge since data on annual salaries were not available. However, since I conducted the vast majority of interviews in respondents' homes, I was able to observe their surroundings and possessions. I supplemented these observations with information that was revealed during the interview to assign each respondent a class status. I classified people as *poor* if it appeared they were struggling to pay for the basic necessities of life, such as food and shelter. I classified them as *working poor* if they owned a home and either someone in the household was working or the necessities of life were covered through some other source of income. I applied the term *middle class* if they owned a home, the basic necessities of living were covered, and the respondents enjoyed some amenities such as nice furniture. I reserved the *upper middle class* tag for respondents who owned either homes that were far superior to others in the townships or modest homes in more expensive neighborhoods, and enjoyed amenities such as cars.

### **Economic Impact Measures**

To determine whether the financial awards that the commission gave to urban claimants changed their long-term economic position, I used qualitative data analysis software to code each interview transcript and marked respondents' explanations of what they purchased with their awards. I then assessed the economic impact of their consumption choices and placed them in one of three categories—substantial, moderate, or low economic impact.

#### ***Substantial Economic Impact***

If respondents invested their financial awards in assets that improved their long-term economic position, then I used the classification *substantial economic impact* (also referred to as *enduring, lasting, or long-term economic impact*). Wealth is an intergenerational phenomenon that is accumulated during a person's lifetime and then passed along to kin, just as disadvantage is also accumulated over generations (Oliver & Shapiro 1995). When white minority regimes unjustly and systematically confiscated property from blacks during colonialism and apartheid, the regimes denied multiple generations their right to inherit wealth and replaced it with an inheritance of disadvantage. Since the dispossessions had a long-term, negative impact on the wealth and economic well-being of blacks, to adequately address the legacy of land dispossession the remedy should have a long-term, positive impact on their wealth and economic well-being. To the extent possible, the remedy should countervail the wrong.

I categorized the financial awards as having had a substantial economic impact when respondents used the awards to enhance the

value of their appreciating assets or to purchase income-generating assets. For many respondents, their homes are their primary assets and the next generations' most valuable financial inheritance. While only two respondents in this category were able to purchase a new home with their restitution awards, the majority undertook major home renovations—such as purchasing new roofs or ceilings, extending homes, or plastering—which increased the value of their homes and thus improved respondents' long-term economic position. Also, when respondents used their financial awards to purchase tertiary education, job training, high-yield savings instruments, or taxis, this also improved their long-term economic position because these assets have great potential to generate income over a long time span. Two respondents used the money to send a child to college, and two purchased taxis, which their sons now drive to make a living.

### *Moderate Economic Impact*

When respondents purchased depreciating assets that did not significantly improve their long-term economic position, I assigned the classification *moderate economic impact*. This includes, for instance, cases where respondents reported that they purchased furniture, minor appliances, curtains, or carpeting.<sup>11</sup> This category also includes respondents who paid for cosmetic home services that would not necessarily markedly increase their home value, such as painting, limited tile installation, or building a small fence.

In addition, when it was unclear whether the consumption of the financial award improved respondents' long-term economic position due to limitations of the interview data, then I also applied the classification *moderate economic impact*. For example, most respondents did not report what type of debt they paid off, so it is possible that this debt was acquired to make value-increasing home improvements or to purchase depreciating assets, such as cell phones or cars, which allowed these claimants to secure employment more effectively. It is also possible that respondents used the financial award to pay off debt and as a consequence had money available to complete value-increasing home improvements. Likewise, when respondents reported that they kept the financial award in a low-interest-bearing account, the lack of further information made it impossible to determine whether the financial awards improved their long-term economic position. Consequently, the *moderate economic impact* category reflects both instances where the award did not markedly improve the respondents' economic position and where the award's effect was unclear.

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<sup>11</sup> This includes two respondents who replaced their existing cars, which functioned well, because the purchase did not necessarily improve their situation long-term economic position.

***Low Economic Impact***

When respondents spent their restitution award on items that would not improve their long-term economic position, but would rather just sustain their present economic position, then I classified this as a *low economic impact*. This included three types of expenditures: daily living, luxury goods, and cultural investments. Many respondents used their financial awards for survival, which included basic expenditures on food, clothes, and shelter. Other respondents spent their awards on luxury goods, which included travel and various forms of entertainment. Most significantly, many respondents made cultural investments through the purchase of a tombstone for their kin, which was extremely important but did not improve their economic position.

**Understanding Restitution**

In the political transition from apartheid to democracy, the incoming political administration—led by the African National Congress (ANC)—entered into a bargain with the outgoing apartheid government that dictated what the new democratic state could do to correct past land theft. The ANC conceded to the apartheid government’s demand to constitutionally protect existing property rights regardless of how the owners had acquired their property (Atuahene 2010a; Atuahene 2010b). This meant that even if, for example, the apartheid government had confiscated land from a black community and transferred it at nominal cost to a white farmer, if the farmer still owned the land at the end of the apartheid regime, under section 25.1 of the constitution, his rights to that land were secure.

In exchange for this ample concession, the ANC ensured that individuals and communities dispossessed of their land under white minority rule would be afforded certain constitutional remedies as well. Section 25.7 of the South African Constitution states that a “person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress” (South African Constitution 1996).<sup>12</sup> Section 25 does not provide a remedy for the vast majority of unjust land confiscations that took place prior to

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<sup>12</sup> The South African Constitution’s section 25(1), 25(5), and 25(6) give the state authority to secure land tenure and to redistribute land. Sections 25(2) and 25(4) allow the state to expropriate property for redistribution, and Section 25(3) requires the state to consider the property’s history when calculating just and equitable compensation.

1913 under colonialism; instead, the liberation bargain ensured a remedy only for property violations that occurred after 1913, the year that the South African state (formed in 1910) first used its legislative powers to dispossess Africans through the Natives Land Act (Green Paper 1998).

While 1913 is the key year for determining eligibility for restitution, many urban evictions happened under the Group Areas Act of 1950, which was intended to accelerate the policy of separate development by removing Africans, Asians, and Coloureds from urban areas demarcated for white occupancy (Mabin 1992). According to the best estimates available, between 1960 and 1983 the apartheid government removed approximately 3.5 million people from metropolitan areas to either the cities' peripheries or to remote, rural homelands (Platzky & Walker 1985). Vibrant communities were dismantled, tight-knit families were separated, and valuable property was lost.

One such community destroyed by the Group Areas Act was Marabastad, a bustling, mixed-raced neighborhood in Pretoria's city center. Mrs. Green is the alias I have given to a Coloured woman and former resident of Marabastad who owned a lovely 11-room house there with her husband. She reminisced with affection: "The people of Marabastad, we were like a family. We knew each other." Throughout the 1950s, the apartheid government destroyed these valuable social bonds by evicting Marabastad's residents and relocating them to various townships far from the city center. Africans were essentially dumped in Atteridgeville, Coloureds in Eersterust, and Asians in Laudium. Mrs. Green's home was expropriated without just compensation, and her family was forced to relocate to Eersterust. She is now a senior citizen but still vividly remembers the bitter day when she was essentially discarded:

My second baby Al was two weeks old. Two weeks, and they just come. They never gave us letters to say we must move to this place. They just come, said, "You must out, now, furniture and everything," and just put it on the truck and said, "You going to this place". . . . They lock my husband up. I . . . I really do . . . don't know for what. Ja. My husband was locked up. They couldn't tell me why, and they come after three weeks and told me, "Here's the lorry." They just put the baby's cot first. I said, "But my baby, the milk, and everything." They said, "No, no, no, no, no. Just come." "Where are we going?" "No, you'll see. You'll see for yourself."<sup>13</sup>

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<sup>13</sup> Confidential interview with a former resident of Marabastad, Gauteng region, South Africa, 2008.

Mrs. Green's husband was never released, and he died in jail about eight years after this harrowing experience. The commission paid Mrs. Green a financial award of R60,000 (approximately \$8,571) to satisfy its constitutional obligation to provide equitable redress for the property that the apartheid government stole from her family.<sup>14</sup>

In order to receive their equitable remedies, Mrs. Green and other claimants like her had to pass through the five phases outlined in the Restitution of Land Rights Act (1994). In the first of five phases, an individual or community had to lodge a claim by December 31, 1998, in order to become eligible for compensation; these people were called claimants. In the second phase, the commission determined if the claims were valid by researching whether the claims met certain statutory requirements. Each claim had to involve (1) a person, community, or a deceased estate or direct descendant of a person or a community (2) dispossessed of a right in land (3) after June 19, 1913, (4) as a result of past racially discriminatory laws or practices (5) without the receipt of just and equitable compensation. Once the commission determined that a claim fulfilled these statutory requirements, the commission verified in the third phase that the claimant was either the prior owner or the occupant of the property in question or the descendant of the prior owner or occupant. The commission accepted various forms of evidence to validate and verify claims, including deeds, oral testimony, aerial maps, ruins, tombstones, and baptismal records.

During the fourth phase, called the negotiation phase, the commission was supposed to give claimants a choice among a financial award, land restitution, or some other equitable remedy. The White Paper on Land Policy, the government's definitive policy on land matters, states that choice is to be central to the restitution process: "solutions must not be forced on people" (White Paper 1998). But in practice, almost no one had the opportunity to craft his or her own equitable remedy because giving claimants choice and allowing them to craft their own remedies would have involved taking time to consult with claimants and to devise workable arrays of options. The commission had no such time; it had resolved very few claims from 1995 to 1999 and so from 2000 to 2008 was under extreme pressure to settle claims rapidly.

Due to time pressures, the commission not only failed to allow claimants to craft their own equitable remedies, but also heavily encouraged claimants to accept financial awards because this allowed it to settle claims more rapidly. The alternative—land restitution—involves an expensive and lengthy process requiring

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<sup>14</sup> The rand-dollar exchange rate used in this study is R7 = \$1.

the government to identify suitable land, purchase it, transfer it to claimants, and provide various forms of postsettlement support. The commission initially encouraged claimants to choose financial compensation because it was easier and quicker.

During the fifth and final (valuation) phase, the commission determined the values of the financial awards it paid claimants. The commission paid most claimants using a Standard Settlement Offer (SSO) that reflected neither the current market value of the properties in question nor the properties' market value at the time of the evictions.<sup>15</sup> The SSO ranged from R17,000 to R60,000 (approximately \$2,428 to \$8,571) depending upon the SSO amount adopted by each Regional Land Claims Commission (RLCC), which changed over time. In most regions there were different SSO amounts for tenants and owners. The SSOs for tenancy rights started at R17,000, an amount based on the cost of serviced sites in the areas from which the state dispossessed the claimants or the value of the housing grants. This amount increased on an annual basis as the housing subsidy increased. To determine the SSO for owners, each regional office calculated the average municipal value for owners in a sample of areas in that region. In both Gauteng and the Western Cape, the SSO started at R40,000 (approximately \$5,714) and eventually increased to R60,000. In 2003, the minister of agriculture and land affairs approved the sliding scale, which allowed the commission to give increased compensation to dispossessed owners whose land was in excess of 600 square meters.<sup>16</sup>

### **Did the Financial Awards Have an Enduring Economic Impact? The Commission's Top-Down Perspective**

By 2007 the commission settled most of its urban claims and completely switched its focus from providing financial awards to fervently encouraging communities and individuals to choose land restitution. For varying reasons, most officials regret initially giving claimants the option to receive financial awards in the negotiation phase. In interviews, some officials indicated it was a bad idea because they believed people wasted the money. One commission official estimated that only "one out of ten make something out of

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<sup>15</sup> The SSO was a policy decision of the commission and was not required by the Restitution of Land Rights Act (1994).

<sup>16</sup> Claimants received R40,000 for the first 600 square meters (sqm). If the property was between 600 and 1,800 sqm, then they received the prior amount plus an additional R40 per sqm. If the property was between 1801 and 3000 sqm, then claimants received the prior amount plus an additional R20 per sqm. If the property was between 3001 sqm and two hectares, then they received the prior amount plus an additional R10 per sqm. There was no additional compensation for properties in excess of two hectares.

the compensation.”<sup>17</sup> Some officials insisted that claimants used the money on frivolous, counterproductive expenditures. An official in the Western Cape RLCC was convinced that “financial compensation is not having an effect. We will assist with payment in the morning, and in the evening everyone is in the bottle store. They don’t know what to do with the money.”<sup>18</sup> Another official shared a similar sentiment; he felt that “cash is spent over a weekend, and then they have no cash and no land.”<sup>19</sup>

A different, more compassionate view expressed by officials in the commission was that people spent the financial award on daily survival rather than on alcohol or weekend revelry. Tozi Gwanya, the director general of land affairs, succinctly articulated this view when he stated,

The [Land Restitution] Act should not have given the option of financial compensation because the money is consumed and there is no long-term effect. We could have done without financial compensation if there were other options, creative options that could have a transformative impact; but proper thought was not put into it. If we were given another opportunity, things would be different, but it is now too late in the afternoon. Now we are just left with the rural claims, and these will be land restoration. We wrongfully assumed that people are mature and can make their own decisions, which is usually a good assumption. But, once you factor in poverty there is no rational thinking; when you are poor what you eat next informs you.<sup>20</sup>

Mr. Gwanya’s comments were informed by the fact that land restitution is more economically advantageous than financial compensation for this reason: while many individuals and communities lost grazing or usufruct rights to barren land, through the restitution program, they received full ownership rights to land with improvements. In contrast, claimants who chose financial compensation received only paltry financial awards that were often far below the historic or current value of the property rights that were unjustly extinguished by the apartheid and colonial-era governments.

As a result, one commission official emphasized, “I am not encouraging them to opt for financial compensation because, if

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<sup>17</sup> Interview with Andile Shoko, project officer, Western Cape Regional Land Claims Commission, George, South Africa, August 4, 2008.

<sup>18</sup> Interview with Sonya Erasmus, project officer, Western Cape Regional Land Claims Commission, George, South Africa, August 4, 2008.

<sup>19</sup> Interview with Peter Piccolo, senior project officer, Western Cape Regional Land Claims Commission, George, South Africa, August 4, 2008.

<sup>20</sup> Interview with Tozi Gwanya, director general of land affairs, Pretoria, South Africa, August 27, 2008.

removed as a tenant, they get paid R40,000. If they were an owner, then they get R40,000 plus the sliding scale. It is undercompensation only when cash is involved; but with development they get more because many lost barren land, and now they are assisted in getting a top structure.”<sup>21</sup> The commissioner of the Western Cape RLCC, Beverly Jansen, agreed that those who chose financial compensation were undercompensated because “we cannot afford to pay current market price for ownership, so we have the SSO, which is not market related. If we could do it again, then there would be no cash compensation or only in rare cases.”<sup>22</sup>

Part of the conundrum for commission officials was why people chose financial compensation when it was not the most economically beneficial choice. Willem Nero, deputy director of the Western Cape RLCC, concluded, “A lot took financial compensation, and I am disappointed. It makes me sad because it will not change their life, and it is not sustainable. It does not make sense. I ask myself why, and I think people are settled where they are, or people are so poor they see this as a temporary relief because poverty is endemic in the Cape Flats.”<sup>23</sup>

Some commission officials believed that financial compensation was detrimental not only because people were undercompensated but also because it undermined the larger land reform project. At the end of apartheid, 87 percent of the land was owned by whites, who constituted less than 10 percent of the population. Consequently, land reform was imperative. In 1994 the new political dispensation, advised by the World Bank, aimed to redistribute 30 percent of the country’s agricultural land in five years; but less than 1 percent was redistributed by 1999, less than 3 percent by 2003, and less than 5 percent by 2008 (Commission on Restitution of Land Rights Annual Report 2008). Land redistribution, land restitution, and land tenure reform are the three central prongs of the national land reform strategy, and land restitution accounted for 1.5 percent of the 5 percent that had been redistributed as of 2008.<sup>24</sup> But without the financial compensation option, the commission ostensibly could have contributed far more than 1.5 percent to the national goal.

Peter Piccolo, a commission official, insisted, “Land reform’s purpose is to restore lost land rights or reallocate land to those who

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<sup>21</sup> Interview with Sincede Masiza, senior project officer, Western Cape Regional Land Claims Commission, Cape Town, South Africa, August 12, 2008.

<sup>22</sup> Interview with Beverly Jansen, regional commissioner, Western Cape Regional Land Claims Commission, Cape Town, South Africa, August 12, 2008.

<sup>23</sup> Interview with Willem Nero, deputy director, Western Cape Regional Land Claims Commission, Cape Town, South Africa, August 12, 2008.

<sup>24</sup> Interview with Ria de Vos, director of restitution coordination and support, Central Land Claims Commission, Pretoria, South Africa, March 4, 2008.

were formerly disqualified. Land reform is not the success all hoped it would be because financial compensation is a valid and legal option. If this choice was not given, then we may have seen other outcomes.”<sup>25</sup> Angela Conway, the executive director of a land-based NGO, Southern Cape Land Committee (SCLC), emphatically agreed, saying, “I think cash compensation is horrible. It will not transform levels of poverty and land ownership. Claimants are elderly, and it [the evictions] happened long ago, and they are too old to move back. [The financial compensation] gets you out of debt, and it can buy a secondhand television or car, but it does not address skewed land ownership patterns.”<sup>26</sup>

While different reasons were given for why financial compensation was a bad option, the resounding conclusion among commission officials and others working in the land sector was that the financial awards did not have a sustainable economic benefit for claimants. The data I collected confirm that some claimants did spend their financial awards such that they experienced no improvement in their long-term financial position, but evidence also indicates that a significant number of people spent the money such that they have experienced sustainable economic benefits.

Commission officials assumed that compensation had no long-term economic effect if beneficiaries spent their financial awards, but officials failed to consider *how* that money was spent. For instance, Commissioner Mphela put it this way: “They spend it. Once the money is in hand, then poor people cannot postpone consumption. They spend it on tombstones, additions to their house, and school fees.”<sup>27</sup> Commissioner Jansen also remarked, “I know many people are poor and the needs were so great that the money was used up in the first three months. It was for food and clothing, adding on a room in the house, or buying a bed. Financial compensation cannot have a long-term effect on people’s lives, but where they have development [land restitution], the effect can be generational.”<sup>28</sup>

But what Commissioners Mphela and Jansen and other commission officials do not fully acknowledge is that the key factor is not whether the money is gone, but *how it was used*. For example, when people use their financial compensation to extend their homes or to undergo significant home renovations, this increases the value of

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<sup>25</sup> Interview with Peter Piccolo, senior project officer, Western Cape Regional Land Claims Commission, George, South Africa, August 4, 2008.

<sup>26</sup> Interview with Angela Conway, executive director, Southern Cape Land Committee, George, South Africa, August 6, 2008.

<sup>27</sup> Interview with Blessing Mphela, deputy land claims commissioner, Department of Land Affairs, Pretoria, South Africa, June 22, 2008.

<sup>28</sup> Interview with Beverly Jansen, regional commissioner, Western Cape Regional Land Claims Commission, Cape Town, South Africa, August 12, 2008.

**Table 4.** Economic Impact of Restitution Award by Award Amount

	Frequency	%	Median Restitution Award (Rand)	Mean Restitution Award (Rand)
Substantial impact	24	30%	28,335	127,274
Moderate impact	26	33%	20,000	48,761
Low impact	30	38%	15,000	23,399
Total	80	100%	22,669*	66,478

a primary asset, which they can pass on to future generations. There is also a long-term economic benefit when a person uses the money to purchase an asset that can generate capital, such as a taxi, a high-yield investment instrument, or tertiary education. These investments have the potential to benefit future generations just as the restitution of land does.

In the next section, I will move beyond the assumptions of commission officials and use the interview data to explore whether the financial awards improved the long-term economic position of respondents.

### **Did the Financial Awards Have an Enduring Economic Impact? Claimants' Bottom-Up Perspective**

Consumption theory studies have found that larger financial awards are likely to increase recipients' net assets, while smaller awards are likely to be consumed (Abdel-Ghany et al. 1983; Bertrand, Mullainathan, & Shafir 2006; Carroll 1996; Doenges 1966; Keeler, James, & Abdel-Ghany 1985; Landsberger 1966). This study's findings are consistent with this observation. Table 4 shows that the average amount received by respondents in the substantial economic impact category was significantly higher than the average for the moderate economic impact category, which was in turn higher than the average for the low economic impact category. Also, the data show a statistically significant positive correlation between the size of the award and the economic impact.<sup>29</sup> The more interesting story that prior studies about windfall income (such as financial awards) do not develop is what respondents consumed, the logic behind their consumption choices, the economic impact of the financial awards, and the variables that determined the impact financial awards had on respondents' long-term economic position. To explore this, I will contrast respondents whose financial awards

<sup>29</sup> As the size of the award decreases, the restitution award is less likely to have a substantial economic impact. Pearson's  $R = -.233$ , and  $p = .037$ .

had a substantial economic impact with those whose awards had a low economic impact, because the differences are most clear at the extremes.

### **Financial Compensation Had a Substantial Economic Impact**

#### *The General Trend*

A financial award could have a substantial economic impact in several ways, including increasing the value of an existing asset (for example, by completing a home improvement project); increasing an individual's human capital and thus her capacity to earn money in the future (through job training courses, tertiary education, or the like); allowing for investment in a long-term, high-yield savings instrument (such as a three-year certificate of deposit); or funding investment in a small business (such as a street-side vending enterprise). Despite the array of available options, almost all of the respondents whose financial compensation had a substantial economic impact spent the money on renovating their homes, thereby increasing the value of their primary assets.

A representative story was that of Mrs. Moore, who received about R25,000 (approximately \$3,571) from the commission. She proudly reported, "We improved the house; made ourselves more comfortable. We built a carport, so on, you know. We did the bathroom, the toilet, made it more attractive so that when we sold that house we got a very good price to what we bought that house for."<sup>30</sup> Respondents made a wide range of improvements to their homes, but most commonly they purchased new roofs, extended their homes, installed new ceilings, added security features, or plastered the walls.

The amount of compensation people received affected the scale of their renovations and hence the monetary value they added to their homes. People who received smaller sums were able to make only modest renovations that in turn only modestly increased the value of their homes. The experience of Mrs. Majola—a pensioner who was evicted from Paarl, a mixed-raced community in the Western Cape—was representative. She said, "[T]hat R25,000, I spent it trying to extend my father's house. But that house is not complete. It's because the money is too small. I do say I was happy to get R25,000 because my father's house is rebuilt because we had now three rooms there. And they were not done, these houses. It

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<sup>30</sup> Confidential interview with a former resident of Kliptown, Gauteng region, South Africa, 2008.

was only three rooms, but if you can go there now, you'll find it's a little bigger. It's still going up to a great house, but I haven't got any more wings to fly."<sup>31</sup>

In contrast, respondents who received larger sums, and thus had the resources "to fly," were able to remodel their homes and substantially increase the homes' value. Mr. Jones completed significant renovations with the R48,000 (approximately \$6,857) award he received from the commission for a large property that his father had owned in a community called Steurhof. He said, "I renovated my front here, made a little sunroom, you know. And then I built on a workroom for my wife. She does cake decorating and things like that. So it's a little workroom for her, and then I enclosed the back stoop."<sup>32</sup> A brother and sister who each received R28,000 (approximately \$3,500) for the home their family was evicted from in Kilnerton combined their financial awards to significantly remodel the home they both live in, as well as their grandmother's home. When reflecting on how the financial award allowed them to improve their home, the siblings said,

Brother: Just it [the renovation] had enlightened everything. The house looked gloomy. It looked like an old house. So after renovation it looks bright.

Sister: And of course up till today everyone says, "Oh! This house is good" not knowing just this is [*laughing*] a facelift.<sup>33</sup>

Mrs. Mpho, a pensioner who lives in Soweto, received R142,450 (approximately \$20,350) for a large piece of land her father owned in a community called Evaton. With this relatively large sum she was able to make substantial renovations that brought immediate profit. "I used the money to improve the house, pay rent, and buy food," she said. "I'm all right now. I fixed the house outside and built three rooms outside that I am renting. I am in the house and eat well. I buy bread and food until my death approaches. It was hard before I got the compensation, but now as long as I have milk and pap, I am okay."<sup>34</sup>

The evidence is consistent; people in the substantial economic impact category spent their financial awards primarily on home

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<sup>31</sup> Confidential interview with a former resident of Paarl, Western Cape region, South Africa, 2008.

<sup>32</sup> Confidential interview with former resident of Steurhof, Cape Town, South Africa, 2008.

<sup>33</sup> Confidential interview with former residents of Kilnerton, Gauteng region, South Africa, 2008.

<sup>34</sup> Confidential interview with a former resident of Evaton, Gauteng region, South Africa, 2008.

improvements. But the more interesting question is why they made this choice. For many people, the economic benefit of renovating their homes was not what motivated them to do it. Instead, the home improvements served as a memorial to their parents and other family members who were devastated by the evictions but did not live long enough to receive compensation from the post apartheid government. Mr. Kagiso, a young, passionate man, was only two years old when his family was brutally evicted from Simonstown, a seaside community of Africans in the Western Cape. He said, "I did nothing for myself. Nothing at all for myself. I didn't even buy a car for myself. You see, I was just trying, according to my pride, I was just trying to change the shape of my mother's house."<sup>35</sup>

Mrs. Reed, like Mr. Kagiso and many other respondents in the substantial economic impact category, was determined to use the money in a way that honored her family: "I thought of my grandparents, and my father was also hardworking. And he, each time three o'clock he must get up, me and my other sister then go to the market selling greens. He was hardworking, and my grandfather also. So I say I can't go roam with this money. I can't go buy material things for the house or something like a couch. I needed something like a business."<sup>36</sup> Mrs. Reed used her financial award to make home improvements and to purchase a taxi because she wanted to memorialize her father and grandfather who lost so much but did not live long enough to experience the sweet taste of justice.

### *Exceptions to the General Trend*

Although the general pattern is that larger awards lead to an increase in net assets, there are a few cases in my sample in which small financial awards led to increases in net assets. More specifically, only 16 percent of the people who received awards amounting to less than R20,000 (approximately \$2,857) experienced a substantial economic impact, but we can learn from these anomalous cases. Mr. Wilson and Mr. Farley, for example, received small financial awards of R2,000 (approximately \$285) and R3,000 (approximately \$428), respectively. They both used the money to upgrade their homes and to increase their net assets. One is a school principal, and the other is a successful businessman, so they both had the financial resources to supplement their financial awards to complete their home improvements. Mr. Farley said, "I used my

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<sup>35</sup> Confidential interview with a former resident of Simonstown, Western Cape region, South Africa, 2008.

<sup>36</sup> Confidential interview with a former resident of Kliptown, Gauteng region, South Africa, 2008.

money to fix something at my home. I didn't want to spend it on a party and so on, and when I'm looking at my roof I can say to myself that is part of the money I received from that time."<sup>37</sup> Despite his determination to spend his money to memorialize his family's loss, without additional financing, Mr. Farley would not have been able to upgrade his roof.

Mrs. Mzi was also able to increase her net assets significantly with the R11,000 (approximately \$1,571) she received; but, unlike Mr. Farley and Mr. Wilson, she is a pensioner of limited means.

Mrs Mzi: I used the money for extending. . . . It was still a small house. I made some two rooms in the back, and I finished the inside. We did the walls, we painted down here, added the tiles. I changed the light.

Interviewer: And was it [the financial award] enough to do all that? Was it enough to put in those two rooms and the ceiling, tiles, and the walls?

Mrs Mzi: No, not at all, but it gave me a start. . . .<sup>38</sup>

For those of limited means, undertaking a renovation was a piecemeal affair that stretched out over several years. The renovations started at times of high liquidity and stopped when the money ran dry.

Others, who were people of humble means, were able to use their meager financial awards to increase their net assets modestly by completing very limited renovations over short periods of time. Mr. Moseneke, for example, used his R10,000 (approximately \$1,428) to tile his ceiling and to plaster his walls, while Mr. Kagiso used his R11,000 to make a minor extension to his house. Mr. Kagiso said, "I just put some garage and extended a little bit, not too much, from here to that window. Yes, that's all, and the money get finished. It was a little money."<sup>39</sup>

In sum, when financial awards had a substantial economic impact, it was primarily because the awards were large enough to allow each recipient to complete some type of home-remodeling project. But there were also cases in which smaller financial awards increased net assets because those respondents had the financial wherewithal to combine the awards with their own money to complete major renovations, because they completed only minor

<sup>37</sup> Confidential interview with a former resident of Paarl, Western Cape region, South Africa, 2008.

<sup>38</sup> Confidential interview with a former resident of Luyolo, Western Cape region, South Africa, 2008.

<sup>39</sup> Confidential interview with a former resident of Luyolo, Western Cape region, South Africa, 2008.

renovations, or because they completed substantial renovations in a piecemeal fashion over longer spans of time. Respondents' most common motivation for renovating their homes was to honor those family members who were most affected by the dispossession but died before the post apartheid government provided compensation. Small financial awards given to claimants who were cash-strapped or did not own homes had little chance of having a substantial economic impact because respondents did not use the awards to, for instance, enroll in job-training classes that would improve their human capital or invest in high-yield, long-term savings instruments.

### **Financial Compensation Had a Low Economic Impact**

Generally, the findings in this study are consistent with the conclusions of prior studies: those in the low economic impact category received smaller financial awards that were consumed with no long-term economic benefit. The average amount received by respondents in this category was R23,399 (approximately \$3,343), about one-fifth of the average amount received by those whose financial awards led to a substantial economic impact (see Table 4).<sup>40</sup>

The awards received by respondents in the low economic impact category were systematically lower primarily because the ODIs were dead and the commission's policy was to split these financial awards among all descendants of each deceased ODI according to the laws of intestate succession (Bennett 2004). Mr. Yusef expressed a common frustration with the commission's decision to provide only symbolic (rather than market-related) compensation and then to divide these small awards among descendants:

If they had given us, like, say, "Okay, this is prime [land] then we will give you R400,000." Then you can divide it. "Okay, like, if you are just a single person, then we will come down with that amount." But don't give nine people R36,000, and the other one is just one particular, he gets the same as you, R36,000. I mean, look, it doesn't make sense. At least with R36,000 you can do something with it. You can buy yourself a nice car. But with R4,000 what can you do?<sup>41</sup>

Mrs. Doe, who received R5,000 (approximately \$714), agreed with Mr. Yusef and perfectly articulated the frustration of others

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<sup>40</sup> Seventy-five percent of the respondents in the low economic impact category received a restitution award of R40,000 (approximately \$5,714) or less.

<sup>41</sup> Confidential interview with a former resident of District Six, Cape Town, South Africa, 2008.

who also received small awards. When she was asked if the money had changed her life in any way, she jokingly responded with great ire, "It was too little to change my mind. This little bit of money, oh my goodness. R5,000—*eish!* It's so little."<sup>42</sup>

### *The General Trend*

Three distinct patterns emerged in the way respondents in the low economic impact category spent their financial awards. They consistently spent it on the needs of everyday living, on nonessentials (or luxury goods), or on cultural investments such as tombstones.

The first trend that the interview data reveal is that people in the low economic impact category spent their awards on daily survival, which most commonly included expenditures on food and other basic household items. Mr. Colbert's experience was representative. He received R16,000 (approximately \$2,285) and said, "I just spent it [the financial award] in the house whenever I run short, you know. I'm a pensioner, and, you know, sometimes, sometimes I run short, you go fetch a little bit of that money and use it in the house."<sup>43</sup> Like many others, with her small award of R2,000 (approximately \$285), Mrs. Jameson bought "just the household stuff, food [*laughs*] and something I want to, stuff that I couldn't afford to use. I couldn't afford to use my pension on that, so that something extra helped me to buy something."<sup>44</sup> The Ntombena sisters, who were so close that they frequently finished each other's sentences during the interview, each received about R22,000 (approximately \$3,142) and spent it on food and other household items as well: "We bought curtaining [*said in unison*]. I bought curtaining [*laughs*], and a few bedding things, that's all. And food. Most of it went on food because food is so expensive nowadays. You go into a shop now and spend more than R4,000 for groceries."<sup>45</sup> This first trend shows that people used their financial awards to create an economic buffer that ensured they were living comfortably above their survival point rather than below it.

The second trend the study reveals is that people in the low economic impact category often spent their financial awards on nonessentials. Mr. Smidt's story was representative. His deceased grandfather was evicted under the Group Areas Act, and Mr. Smidt

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<sup>42</sup> Confidential interview with a former resident of Green Point, Cape Town, South Africa, 2008.

<sup>43</sup> Confidential interview with a former resident of District Six, Cape Town, South Africa, 2008.

<sup>44</sup> Confidential interview with former resident of Dysselsdorp, Western Cape region, South Africa, 2008.

<sup>45</sup> Confidential interview with former residents of Kilnerton, Gauteng region, South Africa, 2008.

**Table 5.** Economic Impact of Restitution Award by Class

	Upper-Middle Class	Middle Class	Working Poor	Total
Substantial impact (frequency)	5	7	12	24
Moderate impact (frequency)	7	7	11	25
Low impact (frequency)	8	6	14	28
Unassigned (frequency)	0	2	1	3
Total	20	22	38	80
Median restitution award (rand)	40,000	24,352	16,750	23,334
Mean restitution award (rand)	147,768	31,024	30,342	62,804

and his three brothers had to share his deceased father's portion of the award. He stressed that his share was so small that there was no chance that it could have an enduring financial benefit. He continued, "But when I got the R800 and to me it was a waste of time. I had it in my pocket, and within a second it was gone. I thought I would give it to my mum, but when I got the money it was all gone [*laughing*]. Actually, that little I got, I couldn't do something with it."<sup>46</sup> Mrs. Valley is a thirty-something legal secretary who received about R3,200 (approximately \$457), which was her deceased mother's share of a financial award.<sup>47</sup> Mrs. Valley spent her R3,200 on CDs and a new refrigerator: "So I enjoyed that [financial award]. I spent it on nonsense actually [*laughing*]. It [the fridge] was just very old, and it was, like, making noises at night [*laughing*]."<sup>48</sup> Mr. Rathod, a retired entrepreneur, took his wife on a trip to the casino with his R7,500 (approximately \$1,071).<sup>49</sup> Respondents who received small awards consistently spent them on luxury goods primarily because there was very little else respondents could imagine doing with such small sums. Investments in home improvements, long-term financial instruments, or small businesses required more money than they had, while investments in job training and other self-improvement ventures required more imagination than they had.

As shown in Table 5, the commission distributed larger financial awards to people in the upper middle class, but these people often still spent the awards on luxury goods because the awards constituted a small percentage of their overall income. The experience of Mr. and Mrs. Lerato provides insight into this observation. The Leratos were a sweet old African couple who, after over 60 years of marriage, endearingly referred to each other as "my old lady" and

<sup>46</sup> Confidential interview with former residents of Paarl, Western Cape region, South Africa, 2008.

<sup>47</sup> Unfortunately, Mrs. Valley's cousins had to divide her deceased aunt's share by four, which left them with about R750 each.

<sup>48</sup> Confidential interview with a former residents of Paarl, Western Cape region, South Africa, 2008.

<sup>49</sup> Confidential interview with a former resident of Marabastad, Gauteng region, South Africa, 2008.

“my man.”<sup>50</sup> They were retired teachers who had built an impressively furnished home with custom ceilings in a Pretoria township called Mamelodi. Since their home was already upgraded and they were living comfortably, they used the R57,000 (approximately \$8,142) they received on “this and that.”<sup>51</sup> They explained to me that the money did not change anything for them, but it might have made a difference for people who were struggling. Similarly, Mr. Kane was a retired insurance salesman with a comfortable lifestyle. He received R25,580 (approximately \$3,654) and emphasized that he “used the money to enjoy life.”<sup>52</sup>

Other financially well-positioned respondents combined their own money with the financial awards to take trips. Mr. Budlender went to Australia with his financial award of R26,800 (approximately \$3,828): “I had money already; I mean it’s saving and working hard and knowing how to turn around your money. I saved it and then I went on a trip to Australia, but I didn’t take all the [restitution] money. I took from my own money also. . . . We are going to Australia again and New Zealand, and there’s no restitution money.”<sup>53</sup> Mr. Jain, a successful entrepreneur, used his financial award of R30,000 (approximately \$4,285) to take one of his several trips to Mecca.<sup>54</sup> Likewise, Mrs. Smith—a well-off Coloured woman whose family emigrated to Australia during the apartheid years—received an award of R85,000 (approximately \$12,142) and used the money to finance a vacation back to South Africa.<sup>55</sup> In sum, people who received small financial awards often spent them on luxury goods because there was little else they could imagine doing with the money. Upper middle-class people who received larger awards also spent them on luxury goods because the awards were small in relation to their overall wealth and thus were viewed as extra money to play with.

The third trend my analysis shows is that making an economic investment was often not a priority for respondents in the low economic impact category. Instead, they were more concerned with making cultural investments through the purchase of tombstones. Interestingly, people in all categories—substantial, moderate, and

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<sup>50</sup> Confidential interview with former residents of Kilnerton, Gauteng region, South Africa, 2008.

<sup>51</sup> Confidential interview with former residents of Kilnerton, Gauteng region, South Africa, 2008.

<sup>52</sup> Confidential interview with a former resident of Paarl, Western Cape region, South Africa, 2008.

<sup>53</sup> Confidential interview with a former resident of Steurhof, Western Cape region, South Africa, 2008.

<sup>54</sup> Confidential interview with former resident of Marabastad, Gauteng region, South Africa, 2008.

<sup>55</sup> Confidential interview in the Western Cape region, South Africa, 2008.

low economic impact—purchased tombstones. But, while respondents in the substantial economic impact category usually used their financial awards to make home improvements *and* to purchase tombstones, respondents in the low economic impact category often had only enough financing to buy the tombstones, so they forewent home improvements and the like.<sup>56</sup>

Mrs. and Mr. Sibanda, the brother-sister duo, explained the importance of a tombstone. Mr Sibanda said that its purpose was “to be remembered by all.”<sup>57</sup> The sister chimed in and added that “it’s for us to get our great-great-great-grandchildren to know where their great-great-great-grandfather or grandmother is. That’s the meaning for a tombstone for us.”<sup>58</sup> Mr. Lesedi offered another view of the importance of tombstones: “You know, you never really live comfortably in your life after your parents have died and there’s no remembrance. A tombstone is a . . . it’s a symbolic gesture to say we thank you for having brought us into this world, number one. And secondly we cannot afford to forget you, and thirdly that each time obviously when there’s no tombstone the grave perpetually becomes . . . it’s neglected.”<sup>59</sup>

Many of the owners and occupants who were evicted during apartheid died before they were able to see the day when the new, democratically elected government would provide compensation for the atrocious injustices executed by previous governments. Mrs. Ngcobo insisted that erecting tombstones was a way to replace the houses that the deceased lost by building them homes in their final resting places. She said, “I think all of us here in South Africa, putting a tombstone on your mother’s or in your sister’s grave, it is something very big. It is like you paying your respects; you are saying, ‘I am building a house for you as I am staying in the house.’”<sup>60</sup> Mrs. Nthabi echoed a similar sentiment when she said, “I even told my sister that if they gave me this money I’m gonna make a tombstone for my parents. I won’t enjoy it and I don’t want to enjoy it because it’s for my parents, I must do it for my parents so that they can sleep well.”<sup>61</sup>

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<sup>56</sup> Four of 29 respondents purchased tombstones in the low economic impact category, and six of 24 purchased tombstones in the substantial economic impact category.

<sup>57</sup> Confidential interview with former residents of Kilnerton, Western Cape region, South Africa, 2008.

<sup>58</sup> Confidential interview with former residents of Kilnerton, Western Cape region, South Africa, 2008.

<sup>59</sup> Confidential interview with a former resident of Sophiatown, Gauteng region, South Africa, 2008.

<sup>60</sup> Confidential interview with a former resident of Kliptown, Gauteng region, South Africa, 2008.

<sup>61</sup> Confidential interview with a former resident of Evaton, Gauteng region, South Africa, 2008.

In sum, the dominant patterns are that respondents in the low economic impact category spent their financial awards on the needs of everyday living, on nonessentials, or on tombstones. In addition to these three patterns, the data also reveal a fourth trend, an interesting correlation between a respondent's age and how she or he spent the money. Since older people have larger portions of their lives behind them than ahead of them, one might hypothesize that this group would *not* be so concerned with the long-term economic benefit of their financial awards. The data support this hypothesis, and the experience of the Maru family is illustrative.

Mr. Maru submitted a claim on behalf of his aged, ailing mother, who used the money for her immediate medical needs. He said, "My mother was still alive at that time. So we, we decided whatever the money, when the R40,000 came, it went straight to her. She did, *ish*, she, it did help her because she had a medical problem. She had a stroke, and then it helped to pay for her medical. She was here [at home] for two and a half years, bedridden, so we had to get the specialized beds and things."<sup>62</sup> Like many other older claimants, Mrs. Maru's priority was not to make a long-term economic investment; because she was approaching the end of her life, satisfying her immediate needs was paramount.<sup>63</sup> Of the twelve people in the sample aged 76 to 100, only two financial awards resulted in a substantial economic impact, six had a moderate economic impact, and four had a low economic impact. The awards that the commission gave to respondents in this age group ranged from R2,000 to R210,000 (approximately \$285 to \$30,000).

### *Exceptions to the General Trend*

As revealed in prior studies, those in the low economic impact category received smaller financial awards that were consumed with no long-term impact. There were four cases in the study in which respondents received larger awards but nevertheless experienced a low economic impact. In three of these cases, the respondents received sizable awards but decided to make hefty cultural investments through the purchase of several tombstones. Mrs. Madala received a large award of about R113,000 (approximately \$16,142) as compensation for the eviction of her husband's parents, and her priority was to build tombstones for her husband and in-laws. "I just said, 'This is my husband's parent's money.' And

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<sup>62</sup> Confidential interview with a former resident of Sophiatown, Gauteng region, South Africa, 2008.

<sup>63</sup> Of the 12 people in the sample aged 76 to 100, only two financial awards resulted in a substantial economic impact, six had a moderate economic impact, and four had a low economic impact. The awards that the commission gave to respondents in this age group ranged from R2,000 to R210,000 (approximately \$285 to \$30,000).

I took that money and, I'm telling my true story, I took that money and made tombstones for them. Yes, because it was their money."<sup>64</sup> Mrs. Madala is a pensioner in the township of Mamelodi with a beautiful home that had already been extended and upgraded. She lives comfortably, and her children are grown and successful, and also have their own houses. Usually a person in her situation is likely to spend the restitution award on luxury goods, but since she deeply believed that the money rightfully belonged to her in-laws and husband, she spent the money to benefit them.

The last case involved the Goodes, a Coloured family from Kliptown, a small town near Soweto, Johannesburg. The apartheid government stole 14 properties from Wayne Goode, and as part of the land restitution process, the commission made an attempt to "wipe their tears" by giving the family R840,000 (approximately \$120,000) in compensation. Mr. Goode's daughter talked about how a humble Coloured chauffeur was able to acquire 14 properties during apartheid:

When he used to come home weekends then he'll start building, improving himself. I suppose he wanted to leave work; he was a chauffeur where he worked, and Saturdays and Sundays he used to be busy building, and then when one room is finished he would hire it out. He had nobody else to help; he was also earning a small wage. That is how he built from room to room and then have enough and buy another place and then go on building. He was a very hard worker. He never drank or smoked; he was just a hard worker.<sup>65</sup>

The apartheid government ruthlessly took away everything Mr. Goode had worked tirelessly to acquire and paid him a farthing. Inexplicably, one year after Kliptown was declared a white area and Mr. Goode and all other Coloureds were callously removed, the apartheid government reclassified it a Coloured area; but, in a particularly cruel move, the apartheid government did not return the expropriated houses to their original owners. After this heart-breaking experience, Mr. Goode and his wife moved to Lesotho because he could not countenance being evicted once again. He died in Lesotho a bitter man. The government moved the rest of his family to Protea, another township just outside of Johannesburg, and after they had once again established themselves, the apartheid government again evicted them and forced them to move to Eldorado Park, where they lived at the time of the study. I

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<sup>64</sup> Confidential interview with former residents of Kilnerton, Western Cape region, South Africa, 2008.

<sup>65</sup> Confidential interview with a former resident of Kliptown, Gauteng region, South Africa, 2008.

interviewed Mr. Goode's granddaughters, Mrs. Reed and Mrs. Douglass, who each received a financial award of R65,000 (approximately \$9,285) and his daughter, Mrs. Gains, who received R210,000 (approximately \$30,000).

In accordance with evidence in prior studies, the relatively large financial award increased Mrs. Reed's net assets; she used the money to upgrade her home and to purchase a taxi. In contrast, the sizable financial award did not significantly improve the long-term economic position of either Mrs. Douglass or Mrs. Gains. All three women were from the same family, were not educated beyond standard five, and were either divorced or widowed and so did not have husbands to rely on. Given their similarities, why the different outcomes? Their stories bring to light an important observation: the financial needs of those economically dependent on the respondent played a large role in how the compensation was used.

Mrs. Douglass and Mrs. Gains used the bulk of their money on their financially dependent adult children. Mrs. Douglass's only daughter had been ill for some time (and was deceased at the time of the interview); Mrs. Douglass used part of her money to pay for her grandson's private secondary school tuition and to pay for the upkeep of the home where they were residing. She said, "Isn't it, I was feeling sorry because at the time she wasn't feeling well. I had to help her with the child to keep in school. If I didn't pop out money, the child wouldn't make it to school. I don't know if what is gonna happen to the child."<sup>66</sup> Likewise, Mrs. Gains explained that she used her money to support her unemployed children and grandchildren:

Here I'm sitting with nothing. Maybe it is my fault. Maybe I was too lenient with the children, feeling sorry for them because your children you borrow them, you never get it back. A person you must not concentrate on the children because your children can sometimes be your enemies. I've got grandchildren, big children, the one says, "Mommy, borrow me this," so you give there and you end up with nothing. I can't say the one son borrows, "Mommy, I'll give you," and the other son also borrows, and the children don't give you back what they take from you. So now I'm really living on my pension. What can I do if they don't give? And besides they're not working.<sup>67</sup>

In contrast, Mrs. Reed's three daughters were economically self-sufficient individuals who were waitressing in the United States

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<sup>66</sup> Confidential interview with a former resident of Kliptown, Gauteng region, South Africa, 2008.

<sup>67</sup> Confidential interview with a former resident of Kliptown, Gauteng region, South Africa, 2008.

and London to make money. Mrs. Reed combined her financial award with her daughters' earnings and purchased their first taxi. After continually reinvesting their profits, they built a thriving enterprise of five taxis. The lesson is that, despite the size of the financial award, if the recipient is unemployed and the sole breadwinner for a large group of destitute and dependent people, then the award is unlikely to improve her long-term economic position because the pressure to immediately consume the award is too great.

## **Conclusion**

South Africa's Land Restitution Program is one of the boldest attempts made by a transitional nation to address past property violations. By settling the majority of urban claims, the commission has completed a herculean task and accomplished what many thought was impossible. If, in its early days, the commission had not focused on distributing financial awards instead of land restitution, then it would have accomplished much less because of the difficulties involved in land restitution. Based on anecdotal information, however, commission officials have assumed that financial compensation did not have any long-term economic benefits and has failed to contribute to the nation's goal of economic transformation. Consequently, the commission has effectively removed the financial compensation option for the remaining claimants. Using data from 80 semistructured interviews of claimants who received financial compensation, this study's findings contradict the commission's operating assumption because financial compensation had a substantial economic impact for 30 percent of respondents.

Prior empirical studies that have explored the effects of financial awards and other windfall payments have concluded that larger payments result in an increase of net assets, while smaller awards are consumed with no long-term economic impact. The results of this study are generally consistent with this conclusion, but there are several important additional observations.

First, respondents who received larger financial awards were generally able to improve their long-term economic positions through investments in their homes. People who received smaller awards had to combine the awards with their own finances to complete substantial home improvements, to complete less ambitious renovations in a piecemeal fashion when funds were available, or to undergo limited renovations that in turn only modestly increased the value of their homes. The majority of respondents who renovated their homes were not motivated by the economic benefits, but rather they were trying to honor their family members

who died before the state compensated them. It was unlikely that poor claimants who received small financial awards or who did not own homes would experience an enduring economic benefit because the commission did not create opportunities for people to use the awards to improve their human capital by, for instance, taking classes.

Second, the majority of respondents whose financial awards did not produce a long-term economic benefit either received small awards or awards that constituted small percentages of their overall net worth. In these cases, respondents often spent the money on daily survival or luxury goods. Third, many people were interested in making cultural rather than economic investments. People who received larger financial awards were usually able to purchase tombstones and renovate their homes, whereas those who received smaller awards had enough financing only to purchase tombstones. Fourth, given their limited remaining life spans, older people had less interest in spending their financial awards in ways that would produce a long-term economic impact. Last, the financial capacity of the respondents' children played a large role in how respondents used their compensation. If the recipient was the sole breadwinner for a large group of unemployed and economically dependent family members, then the financial award was not likely to increase her net assets because the pressure to immediately consume the money in support of family members was too great.

The racially motivated evictions carried out under colonial and apartheid-era regimes severely violated the human rights of millions of South African citizens. Families were economically hobbled, and invaluable social bonds were destroyed. The tears of these families have wet the pages of history and made them heavy with despair, and to its credit, the South African government has used financial awards as one mechanism to try to wipe away these tears. Since the state has proven it has limited capacity to reconstitute land effectively, then it must find ways to make financial compensation more effective, instead of removing it as an option altogether.

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