Property in Transitional Times: The Glaring Absence of Property at the TRC

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Prolusion

Story 1: Linah Shabalala’s story:

It was a terrible time, you know, and bitter: to see your house being demolished in a minute – you feel like cracking yourself. I was then 42. I was already married. I had all my children, five of them. They were at school at the time, 1977. I couldn’t believe it, until the last day. I couldn’t.1 [...] We couldn’t stop them. They were fully armed. It was a forced removal. We were not being asked. The cows – we had to take them somewhere else, trying to save them. I was broken. It was that time. We had nothing to say. It was that time.2 [...] There was another shekanyana where you went to collect some few cents. Cents, not money, for your place. They didn’t ask you how much you paid for your house. They just gave you what they liked.3

Story 2: [Hermanus case paras 3–6]

According to testimony given by the claimant, he was emotionally very attached to the Goodwood properties. [...] He was unwilling to move away from Goodwood, where he had lived happily for eight years. He endured the stress, over several years, of repeated visits by group areas officials. He bore the indignity of being forced to sell his home. He witnessed the negative effect thereof on his unstable wife. All of this predisposed the claimant to unusual emotional distress in reaction to giving up his home and leaving the area. After building a house [the claimant could not] [...] meet the attendant financial obligations. Eventually, he was forced to sell the house, and move with his family to a caravan in Grassy Park. Later the family moved to a shack, also in Grassy Park. The living conditions in Grassy Park were abhorrent. [...] The claimant never adapted to his new

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2 Ibid. 31.
3 Ibid. 31.
living environs. He was deeply embarrassed by his precarious financial circumstances [...]. His first wife, who was prone to attacks of depression, was repeatedly hospitalised for mental illness. [...] The son from his first marriage developed a form of psychotic illness after the family left their Goodwood home. One night, whilst mentally confused, he walked back to their previous neighbourhood in Goodwood, and was killed by a car in an accident. [...] The daughter from his first marriage was gang raped near where the family lived in Grassy Park. This caused her to develop a mental illness, for which she was laid off from her work. [...] While suffering the agony of these tragedies, the claimant himself felt suicidal at times. Eventually, he managed to some extent to pull his life together.

1 Introduction

The memory of the past often requires new governments to make sweeping changes to ensure a commitment to human rights and to ensure transformation in a society. The question is how to find closure, or how to aid individuals to come to terms with the past. The question is often whether a “new institutional order [can] secure the rule of law and human rights without giving a voice to individual stories of past injustices.”

In South Africa the Truth and Reconciliation Commission (hereafter the TRC) focussed on gross human rights violations, and not on economic reparation or the return of land. Looking back 20 years at today’s situation, the question is: should restitution (or other land reform measures) have formed part of the truth and reconciliation process?

This chapter looks at whether the absence of the property question during the TRC process was, perhaps, a mistake. Or rather: would the inclusion of property have led to greater reconciliation? The chapter will start by briefly looking at the purpose of the TRC in terms of legislation and the TRC reports, during which the absence of ‘property’ will be briefly touched on. After a discussion of the absence of the property question as part of the TRC process, a discussion on one of the ways in which the property issue has since been addressed will follow. This will include a theoretical discussion about the property question and the justification of restitution of land (specifically) during times of transition. This is done in order to set the scene for a discussion of the

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5 See par 3.