<u>SUBMISSION BY H.E PRESIDENT JG ZUMA TO OPPOSE EXPROPRIATION BILL B23B-2020</u>

NB: Caveat to this Submission of Opposition:

1.Since my forced resignation as the Fourth President of the Republic of South Africa, I have taken to researching the historical aspects of the interlopers being the Dutch, Afrikaner & British from 1652 to becoming Colonialists in 1910.

2.I believe there is substantial evidence documented as well as legislative evidence to substantiate a claim on behalf of the Indigenous people using international mechanisms.

3.I believe that there is more than enough empirical evidence to support a claim proposed in Paragraph 2.

4.As such we intend to file a "novel" Submission of Claim from the Period 1652 to 1913's using international mechanisms on the following reasons;

a.As the current legislation limits land claims from 1913 despite historical injustices from 1652.

b.Time Period prior is Statute Bound & continues to shackle intergenerational land poverty to the Indigenous Citizens.

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PART A

A.Introduction to our Submission of Opposition to the Proposed-EXPROPRIATION Bill

1.The current Expropriation Bill- B23B-2020 does not address the racially discriminatory laws and practices which were in place for the largest part of the twentieth century, especially those related to land ownership.

The application of these discriminatory laws and practices resulted in extreme inequalities in relation to land ownership and land use.

3.The Current Expropriation Bill- B23B-2020 does not recognize that Post-apartheid South Africa faces a variety of challenges in land restitution to the Indigenous citizens that emanated from the injustices caused by apartheid.

4.The Current Expropriation Bill- B23B-2020continues to deny Indigenous citizens rightful ownership and solutions of how to address the unequal distribution of land in the country.

5.The Current Expropriation Bill- B23B-2020 by The South African government does not show commitment to eradicate the inequalities and injustices of the past.

Failure of three pillars namely: restitution, land redistribution and tenure security.

6.The Current Expropriation Bill- B23B-2020 does not recognize The constitutional basis for the land restitution which is found in section 25(7) of the *Constitution,* which 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.*

7.The Current Expropriation Bill- B23B-2020 does not recognize Similarly, section 25(5) of the *Constitution* which states that:

> *The state is under the constitutional duty to take "reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis".*

8.The Current Expropriation Bill- B23B-2020 does not recognize tenure security is addressed through section 25(6) of the *Constitution* which states that:

> *A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.*

9.In our Submission of Opposition to the Current Expropriation Bill-B23B-2020 in that it does not meet the established norms & legal constitutional obligations to the Indigenous citizens.

10.The Current Expropriation Bill- B23B-2020 does not take into consideration of the historical context of land reform and the rights associated in interpreting land reform within its textual context.

> *This position was supported by judge Yacoob in Government of the Republic of South Africa v Grootboom where it was stated that "rights must be understood in their social and historical context*

11.The Current Expropriation Bill- B23B-2020 is akin to the days of the most prominent instrument used by the apartheid regime to establish and enforce its policy of racial segregation was legislative intervention.

12.The Current Expropriation Bill- B23B-2020highlights legislative measures to limit the black majority's ownership of land, especially agricultural land.

13.The Current Expropriation Bill- B23B-2020 will cause the Indigenous citizens limitation on land ownership, the government will confine intergenerational Indigenous citizens to a life of serfdom to the injustices of land deprivation.

14.The Current Expropriation Bill- B23B-2020 will further enhance skewed land ownership and land use patterns where historically disadvantaged Indigenous South Africans do not own the majority of the productive agricultural land.

15. The Current Expropriation Bill- B23B-2020does not recognize the necessity for further legislative interventions, such as forced expropriations.

PART B

B.*Proposed Solution of fast-tracking legislation which will address historic imbalances & injustices without the need for prolonged Expropriation Bill- B23B-2020 & amending the South African Constitution.*

1.We Embrace the setting up a specialist land tribunal.

2.The South African Educational System is modelled on another British Commonwealth Country – being New Zealand.

3.Then given that both Countries have their roots firmly under the British Empire, then Republic of South Africa need look no further than the Waitangi Tribunal.

-Waitangi Tribunal

4.The key to understanding the nucleus for this is that the we need to look back to 1800s when Sir George Grey was the Colony Administrator for not only New Zealand as a Colony, Australia as a Colony but also Territory of what is defined now as Republic of South Africa.

-Australia
- New Zealand
- South Africa

5.The only difference between these three distinct countries, was there was a treaty of 1840 with the native Indigenous population of New Zealand the Maoris, there was no treaty with the aboriginals of Australia nor with either group of Indigenous people of the Republic of South Africa.

6.We hypothesis that looking into Sir George Grey's view point, his experience at the time, his numerous writings & documented reports, that Governor Sir George Grey did not need a treaty for the Indigenous people of either Australia or Republic of South Africa due to reasons not limited to discussed herein.

B1.*What Court Cases-lend support to the need to establish a South African Tribunal for Land Claims prior to 1913.*

1.*Given the Complexity of historical land injustices, we propose a specialist land tribunal which is headed up of 3 Judicial members which will ensure that the complexities of land claims can be dealt with in a fair & equitable manner.*

2.***Complexities & the need for a Specialist Land Claim Tribunal to take into account the historical injustices of the Indigenous Peoples but not limited to:***

a.In the case of *The Salem Community* v *The Government of the Republic of South Africa and Others* (*Salem case*):

> *the plaintiff community, the Salem Community, brought a restitution claim for a piece of land in terms of the of the Restitution Act before the Regional Land Claims Commission, Eastern Cape (Commission).*

b.The Commission subsequently referred the case to the Land Claims Court (LCC);

the decision was delivered by the LCC sitting at Grahamstown on 2nd May 2014 by Acting Judge, Cassim Sardiwalla.

c.This is an important case which;

on one hand touched a highly emotive issue in a post-apartheid South Africa, given the potential effects of land restitution on prevailing systems of property rights and the economy and on the other.

d.A test of the constitutional commitment:

to redress systemic inequalities and social injustice arising from the past and to speedily eradicate economic and social inequalities produced by racial discrimination.

e. As noted by the LCC;

[t]he claim goes to the very heart of early contact and subsequent conflicts recorded in history books between the early British settlers who came in the 1820s and the native occupants."

f.Section 1 the Restitution Act defines

"restoration of a right in land" to mean "[t]he return of a right in land or a portion of land dispossessed after 19 June 1913 as a result of past racially discriminatory laws or practices."

g.As prescribed by section 2(1) of the Restitution Act, in order to establish entitlement to restitution, members of the plaintiff community had to allege and prove that they were:

(1) a community who themselves or their forebears;
(2) had been dispossessed of their rights in the subject land;
(3) after 19 June 1913;
(4) as a result of past racially discriminatory laws or practices; and,

(5) no just and equitable compensation was received for the dispossession.

3.Issues that the LCC had to decide?

a.The LCC had to decide the following issues in order to adjudicate the Salem Community's restitution claim:

1) whether the plaintiff is a community;
2) whether it was dispossessed of rights in land as a result of racially discriminatory laws or practices;
3) whether the Indigenous community being the forefathers of the claimants acquired a right in the land; and,
4) whether the periodic absence from the land as a consequence of colonial conquest or by a court upholding racially discriminatory practices by subdividing the commonage and evicting the communities from the land, extinguished their rights.

b.Was the plaintiff a community?

1.Section 25(7) of the Constitution read together with section 2(1)(d) of the Restitution Act;

entitle a community dispossessed of a right in land after 19 June 1913 to claim restitution or other equitable redress.

2.It must be noted that the initial cut-off time of 31st December 1998 as the deadline to lodge restitution claims has been extended to 30th June 2019 through the enactment of the Restitution of Land Rights Amendment Act (Amendment Act) which came into force on 1st July 2014.

3.The Amendment Act reopened the lodgement period for restitution claims from the 1st July 2014 until 30th June, 2019.

4.One of the key issues that the LCC had to determine was whether the plaintiff was a "community" in terms of the Restitution Act.

The Restitution Act defines a community as "any group of persons whose rights in land are derived from shared rules

determining access to land held in common by such group, and includes part of any such group"

6.The plaintiff and the Commission argued that a community composed of Indigenous people with historical records to the subject land existed as early as the 1800s.

- In support of this assertion, the Commission led expert historical evidence on the Indigenous communities' existence prior to the arrival of the 1820 European settlers.

7.The Constitutional Court has previously explained that section 2(1)(d) of the Restitution Act requires:

that there must be a community or part of a community that exists at the time the claim is lodged; and that the community must have existed sometime after 19 June 1913 and must have been victim to racial dispossession of rights in land.

8.The Constitutional Court has further endorsed Dodson J's interpretation in the *Kranspoort Community* case that in deciding whether a community exists at the time of the claim there must be:

"a sufficiently cohesive group of persons to show that there is a community or a part of a community, regard being had to the nature and likely impact of the original dispossession on the group; and (b) some element of commonality between the claiming community and the community as it was at the point of dispossession."

9.In that regard, the court relied on the Constitutional Court judgment in *Popela*.

10.In the *Popela* case, the Constitutional Court held that:

"*This generous understanding of what constitutes a community is consistent with the retroactive reach of the restitution process back to 19 June 1913.*

With the passage of time, the composition and cohesion of communities who were victims of dispossession would be compromised in that communities would be displaced and alienated from their original homes at huge human and social expense.

11.Also, that interpretation advances the declared purpose of the operative legislation:

which is to provide restitution and equitable redress to as many victims of racial dispossession of land rights after 1913 as possible.

c.*Right in land?*

1.The land restitution enterprise is predicated on the claimant community having had a right in land and such a community must have been dispossessed of such a right after 19 June 1913 in order to be eligible to claim restitution or other equitable redress.

2.Section 25(7) of the Constitution and section 2(1)(d) of the Act entitle a community dispossessed of a right in land after 19 June 1913, to claim restitution or other equitable redress.

3.The LCC had to decide whether the *Salem Community* had a "right in land" in Salem as one of the prerequisites for the restitution of the subject land. Section 1 of the Restitution Act defines a right in land as:

"any right in land whether registered or unregistered, and may include the interest of a labour tenant and sharecropper, a customary law interest, the interest of a beneficiary under a trust arrangement and beneficial occupation for a continuous period of not less than 10 years prior to the dispossession in question".

4.It is noteworthy that the plaintiff's case thus made reference to the history of occupation before 1913 in line with the principles in *Richtersveld Community and others v Alexkor Ltd and Another* (*Richtersveld Community*)

5.In *Richtersveld Community*, the Constitutional Court held that in adjudicating land restitution claims:

> *it is necessary to look at the history of the land and its people.*

6.Moreover, the plaintiff contended that Indigenous rights continue despite colonial conquest for as long as
the Indigenous people assert them, and exercise them

> - *they are not extinguished*

7.In this case expert testimony was submitted on behalf of the plaintiff that the original Xhosa people and their descendants returned to their land time and time again, up until their dispossession; in particular, over the period 1913 to 1947.

8.The defendants denied that the plaintiff had a right in the subject land as defined in section 1(xi) of the Restitution Act.

9. It was argued that since the Xhosa's holding of the land was not registered in the Office of the Governor in the Cape Colony, or the offices of the Landrost, it did not exist.

10.The defendants further denied that any Indigenous title existed, and if it did, they argued that prior to 1913, any such rights would have been extinguished by colonial conquest.

11.The defendants argued that the 1820 settlers settled on virgin land as a result of the expulsion of the Xhosa in Zuurveld during the Fourth Frontier War of 1811-1812.

12.In that regard, the defendants relied on the above to argue that Colonel John Graham (known for founding Grahamstown in 1814) had expelled the Xhosa from the Zuurveld in the Fourth Frontier War in 1812 (of an eventual nine such wars), prior to which they had occupied the Zuurveld.

13.It was therefore argued that the conquest of the Zuurveld by Colonel Graham is a key factor that extinguished the rights of the Xhosa in the Zuurveld.

14.A key argument advanced by the defendants was that even if any communities existed, their rights were extinguished by colonial conquest arguing that the land had been conquered by the colonial government in 1819 and that effectively destroyed any right any Black could have in the Zuurveld.

15.Although the defendants conceded that Xhosa people occupied the Zuurveld before the 1820 settlers, they contended that such occupation was temporary and sporadic and did not constitute a right of occupation.

16.Relying on Dugard, the defendants argued that conquest was an accepted method of acquiring title until after World War I

17.The application of this international law principle implies that the consequences of colonial annexation of the subject land have to be examined on basis of the law in force at the time of colonial annexation, not at the time of the dispute.

18.The defendants thus argued that intertemporal law demands that the law at the time is applied and as the conquest pre-dates 1928, such conquest was valid at the time and was an acceptable way of acquiring title.

19.Consequently, it was argued that there was no community, as defined in the Restitution Act which had been formed comprising of Blacks in Salem that had rights to land.

d.*Frontier Zone Argument?*

1.It is significant to note that the court accepted the plaintiff's contention that the Zuurveld in which Salem falls under was a frontier zone hence the defendants' argument ignores the concept of a frontier zone which is a zone where different communities resided with no single authority.

2.The court accepted expert testimony from the plaintiff that the Zuurveld was a highly contested area, with expert reports Indicating that the Dutch colonists found it extremely

difficult to settle families to farm due to the raids and attacks from the Xhosa, leading to many families fleeing from the Zuurveld.

3.It was further pointed out by the court that it was evident from the ten frontier wars that there was a continuing claim over the Zuurveld by the Xhosa.

4.Another point noted by the court was the absence of any evidence showing that the settlers at any time managed to have complete authority over the Zuurveld and that the Xhosa relinquished their rights and were completely expelled.

5.The LCC thus rejected the claim by the defendants that the 1820 settlers settled on virgin land.

6.As a result, the LCC ruled that the plaintiff enjoyed a right in land in the subject land after 19 June 1913. Such right stemmed from the Xhosa occupation of the Zuurveld which was never extinguished and extended to the community that occupied the commonage in Salem after 1913.

7.Accordingly, the court ruled that there was no evidence that the settlers at any time managed to have complete authority over the Zuurveld and that the Xhosa relinquished their rights and were completely expelled.

8.The LCC concluded that this right was not extinguished prior to 19 June 1913.

e. Colonial conquest?

1.Conquest and its legal consequences for those involved, especially the claimants, was also considered by the court, in particular whether it extinguished the claimants’ rights, however precarious or tenuous they were.

2. The court agreed with the dictum in *Richtersveld Community* where the Constitutional Court Indicated that Indigenous law ownership can be extinguished in a number of ways, one of which is if the land was taken by force.

3.It was, however, held that there was no evidence to suggest that the *Fourth Frontier War* had amounted to the Xhosa's rights being extinguished.

4.As pointed out by the court, if it has to accept the conquest argument, it would have to be convinced that the land had been taken by force and as a result of such conquest the rights had been extinguished.

5. In the court's view, such argument ignores the fact that there were six more frontier wars in the Zuurveld, and in those wars the Xhosa and the settlers fought to establish authority over the land.

f. Rights should be determined through customary law?

1.The LCC, citing the Constitutional Court decision in the *Richtersveld Community* case;

> *explained that the rights which people enjoyed must be determined by reference to customary or Indigenous law.*

2.Although in the past, Indigenous law was seen through the common-law lens, in the context of our constitutional dispensation, it must be seen as an integral part of our law.

3.The reason is that the Constitution acknowledges the originality and distinctiveness of Indigenous law as an Independent source of norms within the legal system although it has to be interpreted in the light of values enshrined in the Constitution.

4.The LCC further explained that:

> *"[i]ndigenous law could be established by reference to writers on Indigenous law and other authorities and sources, and may include the evidence of witnesses where necessary. In the present case, the historical literature that formed part of the record with the testimonies of witnesses, formed the basis of such customs and norms consequently the sources of customary law observed by the people.*

5.Such an approach is in accordance with the Constitutional Court's assertion that rights acquired under customary law must be determined with reference to that law subject only to the Constitution.

> *Accordingly, in appropriate cases, registered ownership in land will not be held to have extinguished rights in land recognised under customary law.*

6.The court also referred to the *Popela* case in which the Constitutional Court explained that in ascertaining a right in land under the restitution regime:

> *"[t]he threshold set by s 2(1)(d) is well met if the right or interest in land of the group is derived from shared rules determining access to land that is held in common and these rights go well beyond the orthodox common law notions of rights in land. This is because the legislative scheme points to a purpose to make good the ample hurt, Indignity and injustice of racial dispossession of rights or interests in land that continued to take place after 19 June 1913."*

g. As a result of racially discriminatory laws or practices?

1.One of the requirements for restitution of a right in land provided in section 2(1) of the Restitution Act is that the loss of the claimed land must be as a result of past racially discriminatory laws or practices. Section 1 of the Restitution Act explains that "racially discriminatory practices" means:

> *"racially discriminatory practices, acts or omissions, direct or Indirect, by… (a) any department of state or administration in the national, provincial or local sphere of government; (b) any other functionary or institution which exercised a public power or performed a public function in terms of any legislation."*

2.Section 2 of the Restitution Act requires;

> *that only conduct or omissions that are causally connected to discriminatory laws or practices of the State or of a public functionary will entitle a dispossessed claimant to restitution.*

3. The LCC had to make a determination on whether the plaintiff's loss of rights in land was a result of past racially discriminatory laws or practices.

4.This is because in the 1940s, the White community which had, until then, shared the commonage with Blacks was allowed, by virtue of the judgment, to subdivide it and transfer portions of the land into their Individual titles. Accordingly, the judgment thus affected the Blacks on Salem as it resulted in the claimant community losing all rights in the land with no compensation paid.

5.The court referred to the decision of the Constitutional Court in *Popela* which dealt with the use of the phrase

> *"as a result of," explaining that: "the term 'as a result of' in the context of the Restitution Act is intended to be less restrictive and should be interpreted to mean no more than 'as a consequence of' and not 'solely as a consequence of'…For that determination, a context-sensitive appraisal of all relevant factors should be embarked upon."*

6.In *Popela*, the Constitutional Court elaborated on this requirement, holding that the causal connection under section 2 of the Restitution Act should not be interpreted to require that the State or a public entity should itself perpetrate the dispossession of rights in land.

7. According to the Constitutional Court:

> *"it is sufficient if the termination of rights in land is permitted, aided and supported by racially discriminatory laws or practices of the state or other functionaries exercising public power. The question is not whether the dispossession is effected by the state or a public functionary, but rather*

whether the dispossession was as a consequence of laws or practices put in place by the state or other public functionary."

h. Failure to recognise Indigenous title?

1.In matters of this nature, the court emphasised the importance of always bearing in mind the racially discriminatory laws and practices that were in existence or took place before 19 June 1913.

2. According to the court, taking into account such laws or practices is necessary in order to "throw light on the nature of a dispossession that took place thereafter or to show that when it took place it was the result of racially discriminatory laws or practices that were still operative at the time of the dispossession."

3.The LCC accepted that the White community had been allowed to subdivide the shared commonage in the 1940s among themselves effectively dispossessing the claimant community of all their rights in the land.

According to the court, racial discrimination lay in the failure to recognise and accord protection to Indigenous law ownership while according protection to registered title.

4.The LCC explained that:

"[i]ndigenous rights were accorded no protection whilst the registered title to land taken from the Xhosas was recognised and given protection...[t]he inevitable impact of this differential treatment was racial discrimination against the (claimants), which caused it to be dispossessed of its land rights."

5.It was pointed out by the court that the Constitution acknowledges the originality and distinctiveness of Indigenous law as an Independent source of norms within the legal system.

6.Consequently, racial discrimination lay in the failure to recognise and accord protection to Indigenous law ownership

while, on the other hand, according protection to registered title as was the case in Salem.

7.The inevitable impact of this differential treatment was racial discrimination against the plaintiff, which caused it to be dispossessed of its land rights.

8. It is also noteworthy that the Restitution Act expressly included Indirect racial discrimination in the definition of racially discriminatory practices was significant.

> *The inevitable result of this was to deprive the community of its rights in the land based on Indigenous laws,*
> *while recognising rights of White registered landowners.*

9. According to the LCC:

> *this is racially discriminatory and in the case of Indirect discrimination, proof of motive or intention to discriminate on the part of the State was not required.*

10.The LCC's approach is consistent with the Constitutional Court's approach in *Popela* where the court explained that in construing 'as a result of past racially discriminatory laws or practices' under section 2(1) of the Restitution Act,

> *one is obliged to scrutinise the purpose of the legislation and in doing so "promote the spirit, purport and objects of the Bill of Rights."*

11.Consequently, a decision-maker "must prefer a generous construction over a merely textual or legalistic one in order to afford claimants the fullest possible protection of their constitutional guarantees."

12. The Constitutional Court further reminded us in *Popela* that:

> *"[i]n enacting the Restitution Act, the legislature must have been aware that apartheid laws on land were labyrinthine and mutually supportive and in turn spawned racist practices…Therefore, often the cause of historical*

dispossession of land rights will not lie in an isolated moment in time or a single act.”.

13.The LCC’s approach is thus not only to focus on the aim of the dispossession but also the impact of the dispossession.

Such an approach is in accord with the Constitutional Court’s equality jurisprudence in which Indirect discrimination falls within the scope of racially discriminatory practices.

PART C

C.The need for an independent land claim tribunal to be established for the periods from 1652 to 1913.

1.Undoubtedly, the *Salem* decision is significant as it makes an outstanding contribution to the emerging jurisprudence on land restitution claims in the country.

2.Five reasons clearly point to the significance of this decision and these are enumerated below.

Reason 1, Generous interpretation of community and rights in land

a.A major significance of the decision is the LCC’s emphasis on the constitutional imperative to perceive the notion of a community generously in land restitution claims.

b.Such a generous interpretation of what constitutes a community fits well with the wide scope of the “rights in land that are capable of restoration.”

c. It is also important to note that the LCC adopted a generous and purposive approach in its interpretation of a right in land, an approach that is in accordance with the

> “[t]he legislative scheme [which] points to a purpose to make good the ample hurt, Indignity and injustice of racial dispossession of rights.”

d.It is also noteworthy that the LCC also emphasised that the rights which people enjoyed must be determined by reference to customary or Indigenous law, thereby acknowledging the originality and distinctiveness of Indigenous law as an Independent source of norms within the legal system

e.Such an approach is in accordance with the Constitutional Court's assertion that rights acquired under customary law must be determined with reference to that law, subject only to the Constitution rather than seeing customary law through the lens of common law.

f.The LCC's interpretative approach *in case* of affording claimants the fullest possible remedies for the iniquities of the past is in accord with the transformative nature of the Constitution.

> *It must be noted that like other constitutions adopted during periods of political transition, the Constitution is "simultaneously backward- and forward-looking."*

g.As a transformative document, the Constitution "provides a legal framework within which to redress the injustices of the past as well as to facilitate the creation of a more just society in the future."

h.In its backward-looking aspect, the Constitution deliberately seeks to facilitate:

> *the transformation of society by ameliorating the wrongs of the past as the legacy of apartheid's social and economic policies are still deeply inscribed on the landscape of South African society especially inequitable land ownership.*

Reason 2, Reception of hearsay evidence

a.Another noteworthy contribution of the LCC's decision is that it provided a template on how to handle arguments based on the reception of hearsay testimony in restitution cases.

b.The LCC acknowledged the unique nature of land restitution claims, stating that there were no compelling grounds for the court to reject such evidence, noting that:

> *"the nature of land claims is such that, in many cases those that suffered dispossession are no longer alive. In order to ensure that the Act is meaningful the legislature deemed it necessary to intervene on this point."*

c.In practice, this requires courts to come to terms with the oral histories of Indigenous societies, which, for many such communities, are the only record of their past. Consequently, such oral histories and oral traditions play a significant role in the enforcement of Indigenous rights, particularly in land restitution claims.

d. The LCC thus ably gave effect to section 30(2) of the Restitution Act which provides that:

> *"it shall be competent for any party before the Court to adduce hearsay evidence regarding the circumstances surrounding the dispossession of the land right or rights in question and the rules governing the allocation and occupation of land within the claimant Community concerned at the time of such dispossession."*

e.Such an approach is also consistent with the philosophy which is to make good the ample hurt, Indignity and injustice of racial dispossession of rights or interests in land by according restitution and equitable redress to as many victims of racial dispossession of land rights as possible.

f.The hearsay exception in such claims can be of key importance where there is active opposition to a claim as in the *Salem Community* case.

g.In a land restitution case in *R v Van der Peet*, the Canadian Supreme Court pointed out that with regard to hearsay evidence in land claims, the common law rules of evidence should be adapted to take into account the *sui generis* nature of aboriginal rights.

h.The Canadian Supreme Court proceeded to explain that:

> *"A court should approach the rules of evidence, and interpret the evidence that exists, conscious of the special nature of the aboriginal claims and of the evidential difficulties of proving a right which originates in times where there were no written records of the practices, customs and traditions engaged in. The courts must not undervalue the evidence presented by aboriginal claimants simply because that evidence does not conform precisely with the evidentiary standards applied in other contexts."*

i.Flexibility in the application of rules of evidence is in accordance with the transformative nature of the Constitution which entrenches the values of dignity and equal worth and provides a framework to remedy the failure to respect such values in the past.

j.Such an approach is also in line with the legislative scheme provided under the Restitution Act which attempts:

> *to make good the ample hurt, Indignity and injustice of racial dispossession of land rights suffered mainly by Black people as a result of obnoxious pieces of legislation and racially discriminatory practices.*

Reason 3, Concept of a frontier zone elaborated

a.A third novel feature of the decision is the LCC's acceptance and elaboration of the concept of a frontier zone.

b. It must be recalled that the defendants had contended that any rights the plaintiff may have had in the Salem were extinguished by colonial conquest, particularly the argument that the conquest of the Zuurveld by Colonel Graham was a key factor that extinguished the rights of the Xhosa in the Zuurveld.

c.As discussed above, the LCC accepted expert evidence that the Zuurveld was a frontier zone, a zone where different communities resided with no single authority.
d.Braun has explained that a frontier is a

> *"region of nebulous political control and conflict. "It is "as a place characterised by the relative absence of a single dominant institution… but rather by the presence of multiple institutions and, at times, even an institutional vacuum within a larger region."*

e.The finding by the court that the Zuurveld was a frontier zone worked to the benefit of the plaintiff as it helped dispose of the defendants' assertion that the plaintiff's rights had been extinguished as a result of colonial conquest.

f. The LCC's acceptance of the "frontier zone" argument brings a refreshing perspective to the adjudication of land restitution claims given the temporal limiting nature of 19 June 1913.

Reason 4, International and comparative law as interpretative guides

a.Another key feature of the decision is the LCC's embrace of the interpretative injunctions enshrined in section 39 of the Constitution which:

> *requires courts to be open to considering international and foreign law sources when interpreting the Bill of Rights.*

Reason 5, Loss more than mere economic loss

a.A noteworthy issue pointed out by the LCC was that the rights of the Salem Community were not merely economic rights to graze and cultivate in a particular area.

b.Instead, the court pointed out that there "were rights of families connected by Indigenous forbearers."

c.As noted by Sachs,

> "*land represents the link between the past and the future; ancestors lie buried there, children will be born there. Farming is more than just a productive activity, it is an act of culture, the centre of social existence, and the place where personal identity is forged."*

d.In many situations involving land dispossession, the State has more than just confiscated the victims' land; it has also deprived the dispossessed of their dignity - what Atuahene has described as "dignity takings" to describe such a phenomenon.

e. According to Atuahene:

> *"dignity takings" are when a State "directly or Indirectly destroys or confiscates property rights from owners or occupiers whom it deems to be sub-humans without paying just compensation or without a legitimate public purpose."*

f.Atuahene further explains that "dignity takings" would necessitate what she calls "dignity restoration"

> *- that is compensation that addresses both economic loss and dignity deprivations involved.*

g.In that regard, dignity restoration is based on the principles of restorative justice and thus seeks to rehabilitate the dispossessed and reintegrate them in the fabric of the society

h. Restorative justice is thus focused on "restoring property loss, restoring injury, restoring a sense of security, restoring dignity based on a feeling that justice has been done and restoring social support."

i.The result is that "[w]hen reparations and restorative justice are married; dignity restoration is the offering of this formidable union."

j.Thompson has also pointed out that ancestral lands usually contain sacred sites, the importance of which does not diminish with time.

k.According to Thompson:

> *"People of a nation learn to structure their lives around the activities that their land makes possible. They alter it to suit their purposes; they construct dwellings and monuments; they bury their dead in its soil and establish institutions that take a physical form. They imbue the features of land with meaning; it features in their myths and becomes central to their traditions and spiritual life. The development of their culture is influenced by geography; the landscape plays an essential role in their stories and legends. They read off their history from landmarks and find their symbols in natural features."*

l.According to the court, the loss of land "had a cultural and spiritual dimension that rendered the destruction of the rights more than just economic loss."

> *This is because colonial land dispossession and apartheid not only represented the disenfranchisement of the Black people of South Africa, but also an institutionalized system which maintained White domination and privilege entrenched through a myriad of political, legal, social and cultural institutions.*
> *Black people were cruelly dispossessed and deprived of access to their land, subjected to underdevelopment reserves and "homelands" and systemically discriminated against in their access to a range of social goods services.*

m.It is therefore fitting that the LCC noted that such factors require appropriate consideration when an appropriate remedy is fashioned thereby not only embracing the Constitutional Court's commitment in *Soobramoney v Minister of Health (KwaZulu-Natal);*

> *that a commitment to transform society lies at the heart of our new constitutional order, but also advance the transformative ethos of the Constitution.*

PART D

D.The need for an Independent land claim tribunal to be established for the periods from 1652 to 1914 to Redress the *Failure of the Restitution of Land Rights Act (Restitution Act)*

1.Land restitution in South Africa is explicitly provided for under the South African Constitution (Constitution) and the Restitution of Land Rights Act (Restitution Act).

2. The Restitution Act explicitly defines a set of criteria according to which claimants are entitled to restoration of land or equitable redress. The Restitution Act entitles a community dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices to claim restitution or other equitable redress.

3. In Devenish's view, this remedial legislation was necessary in order to address the disempowerment of the Indigenous people of South Africa as a result of the tragic history of land.

4.Essentially, restitution entails the redistribution of an asset with a view to making a meaningful difference to the living standards of the beneficiaries of land restitution who might have been impoverished by land dispossession.

5.This is in accordance with the constitutional vision which seeks to redress the injustices of the past, especially for
the Indigenous Black people who

> *"suffered under the daily, soul-destroying Indignities of apartheid" but also to create a society based on democratic values, social justice and fundamental human rights.*

6.The need for acknowledgement that the legacy of land dispossession continues to shape the life chances of those affected and their descendants.

7.For the dispossessed in South Africa and elsewhere across the world, land "is both material and symbolic, a factor of production and a site of belonging and identity."

8. As noted by Zirker:

> *"In apartheid South Africa, land was the pillar of the apartheid structure. The apartheid government used land as a means of economically and socially suppressing the African majority. By depriving Africans of property rights the foundation was set for profound poverty and social instability. The deprivation of property rights set the stage for the profound adversity Africans endured under apartheid."*

9.Return of the land was a rallying cry of the anti-apartheid struggles, and in the 1990s, as the transition was made towards a democratic South Africa, hopes were high that stolen lands would be returned.

10. Land restitution was so important as a high priority issue for the transition to democracy in South Africa that
special authorisation for land restitution legislation was built into the interim Constitution, but also that the Restitution Act was one of the first statutes to be passed by the post-apartheid legislature.

11.As noted by the Constitutional Court in the case of *Department of Land Affairs v GoedgelegenTropical Fruits* (*Popela*), land, for the Indigenous people of South Africa,

> "had a cultural and spiritual dimension that rendered the destruction of the rights more than economic loss."

12.The Restitution Act defines a set of criteria according to which claimants are entitled to restoration of the land or equitable redress.

13.The Restitution Act entitles a community dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices to claim restitution or other equitable redress.

14.The LCC further explained that the rights which people enjoyed must be determined by reference to customary or Indigenous law.

15.This is particularly important as the Constitution acknowledges the originality and distinctiveness of Indigenous law as an Independent source of norms within the legal system although it has to be interpreted in the light of values enshrined in the Constitution.

16.Consequently, racial discrimination lay in the failure to recognise and accord protection to Indigenous law ownership while, on the other hand, accorded protection to registered title as was the case in *Salem*.

17.This accords well with the constitutional and the legislative scheme to make good the ample hurt, Indignity and injustice of racial dispossession of land rights suffered mainly by Black people as a result of vile pieces of legislation and racially discriminatory practices.

18.The *Salem* decision is also important for its attempt to provide a template on how to handle arguments based on the reception of hearsay testimony in restitution cases, particularly when it relates to oral histories about a community's land rights.

19.This is important given that with many such land claimants, oral histories are often the only record of their past.

20.Consequently, such oral histories and oral traditions play a significant role in the enforcement of Indigenous rights, particularly in land restitution claims.

21.It is important that as part of its interpretative work, the LCC made reference to international law:

> *and comparative jurisprudence thereby signifying openness to learning from comparative constitutional law in the interpretation of a national constitution from other constitutional cultures and traditions. Engagement between South African courts with international and comparative jurisdictions can generate new ways of interpreting these rights and thereby support transformative adjudication.*

Nevertheless, it remains unclear whether such international and comparative norms such as aboriginal title are now part of South African law.

PART E

E.The need for an Independent land claim tribunal to be established for the periods from 1652 to 1914 to Comply with the United Nations Declaration on the Rights of Indigenous Peoples.

1.It is important that as part of its interpretative work, the LCC made reference to the United Nations Declaration on the Rights of Indigenous Peoples adopted by the United Nations General Assembly in 2007 (Declaration).

2.Such an approach is consonant with section 39(1)(b) of the Constitution which enjoins that when interpreting the Bill of Rights, a court "must consider international law."

3.There is no doubt that the constitutional requirement to consider international law in land rights adjudication turns international law into a mandatory canon of constitutional interpretation when giving content to a right enshrined in the Bill of Rights

4.The LCC referred to the preamble of the Declaration which poignantly states that:

"[I]ndigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests…[and] [r]ecognising the urgent need to respect and promote the inherent rights of Indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources"

5.The Declaration thus recognises the inherent rights
of Indigenous peoples over their land and territory.

6.The Declaration further provides for the redress when traditional rights have been confiscated, taken, occupied, used or damaged without free prior informed consent.

7.According to the LCC, “[t]he terms used are unambiguous [that] if an Indigenous Community has been dispossessed of land without free, prior and informed consent then such Community is eligible for redress.”

8.The openness of the South African Constitution to international law in the interpretation of the Bill of Rights is in accordance with a dialogic conception of human rights

9.International law provides useful normative insights on which constitutional and human rights adjudication can draw.

10.The LCC should be commended for invoking an international instrument as international law provides important normative standards that may assist in domestic constitutional interpretation in a country like South Africa whose constitutional tradition is fairly young.

11.Critical questions remain to be addressed:

> *for instance, the compatibility of the temporal bar of 19 June 1913 prescribed in the Restitution Act on one hand, and the international law right of Indigenous people to the restoration of their lands recognised in the Declaration and other international law instruments.*

12.It is also significant to note that the LCC also made reference to comparative case law on aboriginal title from foreign jurisdictions such as Australia and Canada.

13.This is sanctioned by section 39(1)(c) of the Constitution which permits the courts to consider foreign law when interpreting the Bill of Rights.

14.The court referred to the watershed *Mabo* v *Queensland* case which enunciated on the concept of “native title” or “aboriginal title.” In the second *Mabo* case, the Australian High Court declared that:

> “*Natives Title has its origin in and is given its content by the traditional laws acknowledged by the traditional customs observed by the Indigenous inhabitants of a territory. The nature and incidents of Natives title must be ascertained as a matter of fact by reference to those laws and customs.”*

15.The LCC also referred to the case of *Western Australia v Commonwealth* where the Australian High Court held that:

> *aboriginal title is enforceable even if a colony had been deemed terra nullius at the time of colonisation; Ward v Western Australia where the Australian High Court held that “the question of use and occupation to establish Natives title must be looked at from the standpoint of the Indigenous community;*

16.The Canadian Supreme court case of *Delgamuukv British Columbia* where the Supreme Court comprehensively defined:

> *the concept of aboriginal title, exposition of the content of aboriginal title and the way in which it can be proven*.

17.References to and openness to learning:

> *from comparative constitutional law in the interpretation of a national constitution from other constitutional cultures and traditions constitutes a major resource for the development and enrichment of our own constitutional jurisprudence.*

18.As noted by Liebenberg, a willingness “to consider alternative interpretations generated by other legal cultures and traditions destabilises the inevitability of the interpretations generated by our own legal culture and tradition” and has the potential to deepen substantive legal reasoning

19.The issue of whether the doctrine of aboriginal title, which has been used by Indigenous groups in Australia and Canada to claim back their ancestral land, might be applicable in the South African context has loomed large over the restitution process for some time.

20. In *case*, as highlighted above, the LCC discussed the concept of aboriginal title as articulated by Canadian and Australian courts.

21.The LCC did not, however, Indicate whether such a principle is applicable under South African law or whether it is similar to the customary law right enunciated by South African courts.

22.It is therefore unclear why the court went out of its way to discuss and enunciate a concept of aboriginal title and the apposite comparative jurisprudence yet did not pronounce itself on whether aboriginal title doctrine is part of South African law.

23.The court's cautious approach may be explicable on the sheer scale of land dispossession, and the proportion of the population that would be able to show a continuing connection to an Indigenous group.

PART F

F.Summary of Submission of Opposition- EXPROPRIATION Bill

I.In our Submission of Opposition-Expropriation Bill- B23B-2020 it takes a narrow prescriptive approach and negates or nullifies the Indigenous peoples of Republic of South Africa;

A.Migration, Republic of South Africa.

1.The term "Migration" is *he process of a person or people travelling to a new place or country*, usually in order to find work and live there temporarily or permanently.

2.The term "Immigration" is *the process by which people come in to a foreign country to live there".*

3.The historical evidence shows that Modern humans have lived at the southern tip of Africa for more than 100 000 years.

4.The historical evidence shows that their ancestors have lived at the southern tip of Africa for some 3,3 million years.

5.Migration & Immigration is two distinct meanings which is at the Root of the Land Complexities.

6.The Indigenous peoples "migrated" to what is modern day Republic of South Africa.

7.The Dutch, The British, The Afrikaner "immigrated" to what is modern day Republic of South Africa.

8.This is two distinct paths which is "Migration" & "Immigration".

II. In our Submission of Opposition-Expropriation Bill- B23B-2020 it takes a narrow prescriptive approach and negates or nullifies the Indigenous peoples of Republic of South Africa;

B.Indigenous Peoples.

1.The World Bank best describes "Indigenous Peoples" as are **distinct social and cultural groups that share collective ancestral ties to the lands and natural resources where they live, occupy or from which they have been displaced**.

2.Given that historical evidence shows that Modern humans have lived at the Southern Tip of Africa for more than 100,0000 years it aptly describes two distinct Racial Groups being the Bantu & Khoi.

3.Today we have two distinct Racial Groups being the Black Majority Population stemming from the Bantu Migration & are Indigenous Peoples.

4.The other Racial Group is the Khoi being the minority population stemming from the Khoi& are Indigenous Peoples.

5.Some 2 000 years ago, the Khoekhoen were pastoralists who had settled mostly along the coast, while the San (the Bushmen) were hunter gatherers spread across the region.

6.At this time, Bantu-speaking agro pastoralists began arriving in southern Africa, spreading from the eastern lowlands to the Highveld. At several archaeological sites there is evidence of sophisticated political and material cultures.

III. In our Submission of Opposition-Expropriation Bill- B23B-2020 it takes a narrow prescriptive approach and negates or nullifies the Indigenous peoples of Republic of South Africa;

C.Immigration of Non-Indigenous Peoples
European contact

1.The first European settlement in southern Africa was established by the Dutch East India Company in Table Bay (Cape Town) in 1652.

2.Created to supply passing ships with fresh produce, the colony grew rapidly as Dutch farmers settled to grow crops. Shortly after the establishment of the colony, slaves were imported from East Africa, Madagascar and the East Indies.

3.The first British Settlers, known as the 1820 Settlers, arrived in Algoa Bay (now Nelson Mandela Bay) on board 21 ships, the first being the Chapman. They numbered about 4 500 and included artisans, tradesmen, religious leaders, merchants, teachers, bookbinders, blacksmiths, discharged sailors and soldiers, professional men and farmers.

IV. In our Submission of Opposition-Expropriation Bill- B23B-2020 it takes a narrow prescriptive approach and negates or nullifies the Indigenous peoples of Republic of South Africa;

Interlopers & Conflict

1.*The term "Interloper" means a person who becomes involved in a place or situation where they are not wanted or are considered not to belong.*
2.These Dutch & British Settlers where Indeed "interlopers' for from the 1770s, colonists came into contact and inevitable conflict with Bantu-speaking chiefdoms some 800 km east of Cape Town

3 A century of intermittent warfare ensued during which the colonists gained ascendancy over the Xhosa-speaking chiefdoms.

4.In 1795, the British occupied the Cape as a strategic base against the French, controlling the sea route to the East.

5.In the 1820s, the celebrated Zulu leader, Shaka, established sway over a vast area of south-east Africa. As splinter Zulu groups conquered and absorbed communities in their path, the region experienced a fundamental disruption. Substantial states, such as Moshoeshoe's Lesotho and other Sotho-Tswana chiefdoms were established.

V.In our Submission of Opposition-Expropriation Bill- B23B-2020 it takes a narrow prescriptive approach and negates or nullifies the Indigenous peoples of Republic of South Africa;

Interlopers illegal & unlawful occupation of land

1.The meaning "unlawful occupation" Unauthorized occupation is **the unlawful occupation of a property without the landlord's permission**. An unauthorized occupier is therefore someone who occupies a property with no lawful right to do so.

VI. In our Submission of Opposition-Expropriation Bill- B23B-2020 it takes a narrow prescriptive approach and negates or nullifies the Indigenous peoples of Republic of South Africa;

Historical Illegal & unlawful occupation of land

1.The Interlopers being the Dutch/Afrikaner & British Settlers have continued since inter-generational first footsteps continued to:

a.*This is a matter of a continuing illegal occupation.*

b.We are now faced with one of the worst cases of illegal occupation in the whole sorry history of the displaced indigenous peoples in the Republic of South Africa.

c.We have allowed the historical illegal & unlawful occupation of land, which later generations are forced to deal with the consequences if this *illegal occupation* is allowed to continue?

d.The Majority & Minority Indigenous Peoples resents the unlawful or *illegal occupation* of land, however it arises.

e.It is not only mistrust that is a problem, but the fact that an *illegal occupation* is going on.

2.This temporary disruption of life on the Highveld served to facilitate the expansion northwards of the original Dutch settlers' descendants, the Boer Voortrekkers, from the 1830s.
3.In 1806, Britain reoccupied the Cape. As the colony prospered, the political rights of the various races were guaranteed, with slavery being abolished in 1838.

4.Throughout the 1800s, the boundaries of European influence spread eastwards. From the port of Durban, Natal settlers pushed northwards, further and further into the land of the Zulu. From the mid-1800s, the Voortrekkers coalesced in two land-locked white-ruled republics, the South African Republic (Transvaal) and the Orange Free State.

5.A decisive era in South Africa's history of migration was the systematic colonization of the present-day Republic of South

Africa by the Dutch starting in 1652 and by the British starting in 1795. In 1652 the Cape of Good Hope was founded as a port for trade and provisions on the way to India and China.

6. For this reason, they introduced slaves they had seized from other parts of Africa as well as Asia. The number of slaves soon exceeded that of European settlers. By 1833, when the British Empire prohibited slavery, the colonial powers had already brought approximately 65,000 slaves to South Africa.

7.Of these, 26 percent were from the mainland of Africa (primarily from East Africa), 26 percent from India, 25 percent from Madagascar and 23 percent from Indonesia. Furthermore, also Indigenous population groups were forced to work on European settlers' farms.

VII. In our Submission of Opposition-Expropriation Bill- B23B-2020vit takes a narrow prescriptive approach and negates or nullifies the Indigenous peoples of Republic of South Africa;

Pillaging & raping of the traditional Tribal Lands by the interlopers.

1.South Africa's diamond mining Industry dates back to 1867, when diamonds were discovered near Kimberley in what is today known as the Northern Cape. The Kimberley diamond fields, and later discoveries in Gauteng, the Free State, and along the Atlantic coast.

2.The discovery of the Witwatersrand goldfields in 1886 was a turning point in South Africa's history. The demand for franchise rights for English-speaking immigrants working on the new goldfields was the pretext Britain used to go to war with the Transvaal and Orange Free State in 1899.

3.The Anglo-Boer/South African War was the bloodiest, longest and most expensive war Britain engaged in between 1815 and 1915. It cost more than 200 million pounds and Britain lost more than 22 000 men. The Boers lost over 34 000 people and more than 15 000 black South Africans were killed.

VIII. In our Submission of Opposition-Expropriation Bill- B23B-2020 it takes a narrow prescriptive approach and negates or nullifies the Indigenous peoples of Republic of South Africa;

Opposition to the Interlopers now called Colonialists.

1.The meaning of “Colonialists” a person who supports the practice of gaining political control over other countries and occupying them with settlers.

Characteristic of or involving the practice of gaining political control over other countries and occupying them with settlers.

2.From the first footsteps of the interlopers in 1652, these interlopers sought to justify & enrich their illegal occupation into status of being a “Colonialists”.

3.In 1910, the Union of South Africa was created out of the Cape, Natal, Transvaal and Free State. It was to be essentially a white union.

4.Black opposition was inevitable, and the African National Congress (ANC) was founded in 1912 to protest the exclusion of black people from power. In 1921, the South African Communist Party was established at a time of heightened militancy. More discriminatory legislation was enacted. Meanwhile, Afrikaner nationalism, fuelled by job losses arising from a worldwide recession, was on the march.

5.May 31, 1910 marked the founding of the South African Union, which then became the Republic of South Africa in 1961.

IX. In our Submission of Opposition-Expropriation Bill- B23B-2020 it takes a narrow prescriptive approach and negates or nullifies the Indigenous peoples of Republic of South Africa;

Effect of the 1910, the Union of South Africa on the Indigenous populations.

1.In order to control the migration movements within the South African Union, the White government instated a central recruiting system for labour migration.

2. Starting in 1901 agents of the Witwatersrand Native Labour Association (WNLA) were sent out to communities throughout southern Africa to recruit mineworkers.

3.In 1912, the Native Recruiting Corporation (NRC) began to recruit also Black Indigenous people to work in the mines. In order to control Black laborers, the government began passing its first migration and immigration laws in 1913.

4.According to this legislation, only male laborers were allowed to enter the country, and they were not allowed to bring their families. They were separated into isolated, barrack-like housing and were only allowed to stay up to one year in the country.

5. Black laborers had no rights, and their residential status did not allow them a path to permanent settlement.

6.Using so-called Passport Laws, the White minority in South Africa increasingly restricted the mobility of the Black population. This applied to the internal migration of native Black people, as well as to Black people from other countries who came to South Africa for work.

X.In our Submission of Opposition-Expropriation Bill- B23B-2020 it takes a narrow prescriptive approach and negates or nullifies the Indigenous peoples of Republic of South Africa;

Forms of Migration during Apartheid

1.The state-organized and legally stipulated racial segregation policy between 1947 and 1994 known as Apartheid influenced all migration movements within and to South Africa.

2. Between 1960 and 1980 alone, the Apartheid government authorized the forced resettlement of more than 3.4 million people, 2.7 million of them were Black people being relocated to their assigned Homelands.

3.The political aim was the eradication of so-called “black spots”, which referred to the land owned by Black people in regions intended only for White people.

4. Since the South African government viewed the Homelands as quasi-Independent countries, the forced resettlement of the Black population led to their denaturalization out of the Republic of South Africa. Black South Africans thus lost all of their residence and civil rights, becoming foreigners in South Africa.

5.With civil wars and humanitarian crises in neighbouring countries, South Africa became an attractive destination for refugees, especially starting in the 1980s.

6.In contrast to Black people, White people were allowed to settle in South Africa. Especially starting in the 1960s, with the end of colonial rule and with the Independence of newly founded states, many people of European descent from Kenya, Zambia, Malawi, Angola, Mozambique, and Zimbabwe migrated to South Africa and were welcomed by the Apartheid regime.

XI.In our Submission of Opposition-Expropriation Bill- B23B-2020 it takes a narrow prescriptive approach and negates or nullifies the Indigenous peoples of Republic of South Africa;

The Stigma of inability to redress Since 1994 with the abolishment of Apartheid Regime.

1.Some 104 years after the interlopers morphed into “Colonialists” South Africa celebrated 20 Years of Freedom in 2014, which was a historic milestone for the country.

2.The Twenty Year Review, which was released in 2013, and the National Planning Commission’s 2011 Diagnostic Report, highlight that poverty, inequality and unemployment continue to negatively affect the lives of many people.

3.Despite progress in reducing rural poverty and increasing access to basic services in rural areas over the past 20 years,

rural areas are still characterised by great poverty and inequality. As stated in the NDP, by 2030, South Africa's rural communities must have better opportunities to participate fully in the economic, social and political life of the country.

4.In 2015, South Africa celebrated the 60th Anniversary of the Freedom Charter.

5.The 40th Anniversary of the 16 June 1976 Soweto Student Uprising was celebrated in 2016, along with the 20th Anniversary of the signing of the Constitution of the Republic of South Africa of 1996.

6.In 2017, South Africa celebrated five years since the launch of the National Development Plan, which outlines the goals to achieve the vision of a prosperous South Africa by tackling the triple challenge of unemployment, poverty and inequality by 2030.

PART G

G.Body of Submission of Objection-EXPROPRIATION Bill

The historical context of land reform in South Africa and early policies

Legislative framework for territorial segregation

1.This section in no way attempts to provide an extensive historical background to the discriminatory laws and practices related to land which gave rise to the need for land reform.

2.A very brief overview will be provided of the main legislative framework for the territorially segregationist policies and the initial policies formulated by the post-1994 government to address the issue of land reform.

3.The then National Party government's strategy of territorial segregation, population resettlement and political exclusion was founded on a history of conquest and dispossession enforced through oppressive land laws.

4.The effect of this racially-based segregation legislation was to force black people to be "perpetual tenants" with very limited rights.

5.The first of these racially based segregation laws was the *Natives Land Act* 27 of 1913, which in the year of this special edition celebrates its centenary.

The* Natives Land Act *27 of 1913

1.The *Natives Land Act* laid the foundation for apartheid and territorial segregation and, for the first
time, formalised limitations on black land ownership.

2.The Act introduced ethnic differentiation based on the mistaken belief that differentiation between dissimilar races was fundamentally desirable. According to section 1(1) of the Act
Except with the approval of the Governor-General -
a native shall not enter into any agreement or transaction for the purchase, hire, or other acquisition from a person other than a native, of any such land or of any right thereto, interest therein, or servitude thereover; and
a person other than a native shall not enter into any agreement or transaction for the purchase, hire, or other acquisition from a native of any such land or of any right thereto, interest therein, or servitude thereover.

3.From the wording of these sections, it is clear that the aim of the Act was to bring about territorial segregation based on race, where natives were prohibited from occupying or acquiring land.

4.According to Davenport the Act "laid down an absolute barrier in law between black and non-black landholding". The aim of the Act was further strengthened by section 1(2) of the Act, which provided:
From and after the commencement of this Act, no person other than a native shall purchase, hire or in any other manner whatever acquire any land in a scheduled native area or enter into any agreement or transaction for the purchase,

hire or other acquisition, direct or Indirect, of any such land or of any right thereto or interest therein or servitude thereover, except with the approval of the Governor-General.

5.Any agreement concluded in contravention of this prohibition was *ab initio* null and void and any contravention of the Act was punishable by the imposition of a fine or imprisonment with or without hard labour, not exceeding six months.

6. The Act further made provision for the establishment of a commission tasked with the identification of areas within which black people would not be permitted to acquire or hire land or any interest in land, as well as areas where persons other than black people would be prohibited from acquiring or hiring land or any interest in land.

7.Through the Act, scheduled areas were designated and in terms of the Act, an estimated 8% of South African land was reserved for black South Africans.

8.The Act effectively prohibited sharecropping contracts between white landowners and black farmers, resulting in many black farmers losing a substantial portion of their income, which in turn resulted in further economic hardship for them.

9. As a law based on racial segregation, it is clear why this piece of legislation was singled out in the redistribution programme as the effective starting point for apartheid.

10.This Act represented the first step in effecting racially based segregation, a system which was furthered through the *Native Trust and Land Act* 18 of 1936.

The* Native Trust and Land Act *18 of 1936

1.The *Native Trust and Land Act* made provision for the establishment of the South African Native Trust, a state agency to administer trust land, and "to be administered for

the settlement, support, benefit, and material welfare of the natives of the Union".

2.The Act abolished Indigenous individual land ownership by black people and introduced trust tenure through the creation of the South African Development Trust, which was a government body responsible for purchasing land in "released areas" for black settlement.

3.In terms of section 2(1) of the Act, certain areas of land (including land identified in the *Natives Land Act)* were transferred to the Native Trust to be administered by the Trust. Vested in the Trust was land reserved for the occupation of natives and land within the scheduled native areas as identified in the *Natives Land Act.*

*4.*The South African Native Trust Fund was created and the funds utilised to acquire and develop land of the Trust, to advance the interest of natives in scheduled native areas, and to generally assist and develop the "material, moral and social well-being of natives" residing on Trust land. The Act further empowered the Trust to acquire land for native settlement, but limited the amount of land that could be acquired in this regard to approximately 13% of the total land.

5.The land which could be acquired by the Trust was further limited to land within the scheduled native areas or within released areas.

6. The Act created "reserves" for black people and increased the 8% of land reserved by the *Natives Land Act* to 13%, confining 80% of the population to this area.

7. In order to achieve the objectives of the Act, section 13 empowered the trustees of the Trust to expropriate land owned by natives outside a scheduled area for reasons of public health or for any other reason which would promote public welfare or be in the public interest.

8.Compensation paid upon expropriation was determined by the fair market value of the land without any improvements,

plus the value of the necessary or useful improvements; plus, the value of luxurious improvements (limited to the actual cost of such improvements) plus a sum compensating for inconvenience.

9.From the above it is clear that the *Native Trust and Land Act* was an important instrument used by the then government to facilitate its policy of racial segregation.

10.The Act stripped black South Africans of their right to own land or even to live outside demarcated areas without proper authorization by the relevant authorities.

11. It is clear that this Act furthered the objective of racial segregation, which eventually necessitated the need for land reform.

***The* Group Areas Act *41 of* 1950**

1.The *Group Areas Act* of 1950, described as the "second wave" of evictions was used by the then National Party government to forcibly remove black, coloured and Indian people from designated "white areas".

2.According to Schoombee [g]roup areas legislation functions essentially through the control of ownership of immovable property, and of the occupation and "use" of land and premises, on the basis of race.

3.The aim of the Act was to provide for the establishment of group areas and for the control of the acquisition of immoveable property and the occupation of land and premises.

4. The Act established three groups of people - a white group, a native group and a coloured group.

5.Based on the creation of these groups, the Act made provision for the establishment of group areas designated for the exclusive use and ownership of members of a particular group.

6. Disqualified persons - persons who were not of the same group as the group area - were not permitted to occupy any land or premises in a group area except under the authority of a permit,[41] nor were they permitted to own immoveable property in an area from which they were disqualified.

***The* Group Areas Act *36 of* 1966**

1.The final of the four Land Acts to be discussed in this section is the *Group Areas Act* of 1966, which complemented the *Group Areas Act* of 1950.

2.The aim of the Act was to consolidate the law related to the establishment of group areas and to regulate the control of the acquisition of immoveable property and the occupation of land and premises.

3.The Act shows numerous similarities with the *Group Areas Act* of 1950 and also established three groups for the purposes of the Act: white, Bantu and coloured groups.

4. Section 13 of the Act prohibits the acquisition of immovable property in a controlled area, while section 20 placed restrictions on the occupation of land in a controlled area. These sections reflect sections 4 and 5 of the *Group Areas Act* of 1950.

5.The Act also stated that no person who is a member of any group shall occupy and no person shall allow any such person to occupy any land or premises in a specified area which was not lawfully occupied ... except under the authority of a permit.

6.However, the Act did provide for exceptions where it would not be unlawful for a person to occupy land or premises if the person is a *bona fide* servant or employee of the state; or is a *bona fide* visitor for a total of not more than ninety days in any calendar year of any person lawfully residing on the land or premises; or is a *bona fide* scholar attending a school controlled or aided by the state.

7.In furtherance of its policy of racial segregation, section 23 of the Act empowered the then State President to proclaim though the *Government Gazette* an area for the exclusive occupation by or ownership of members of a specified group. In conjunction with section 23, sections 26 and 27 prohibited the occupation or acquisition of property by disqualified persons in group areas. Regarding the enforcement of the Act, the then South African Police Force were given extensive powers. As an example of these powers, section 43(1)(a) empowered the Police, when investigating a suspected offence in terms of the Act, to enter without a warrant any premises and make any examination as might be necessary.

8.It was estimated that between 1960 and 1983 approximately 3.5 million people were forcibly removed as a result of the Acts.

Government Policy to redress between 1991-1997

1.It is evident that the effects of these Acts are morally and practically unacceptable and that the Acts had to be repealed in order to achieve a more equal distribution of land ownership.

2.The Government post-apartheid in 1997 had taken measures which were aimed at addressing the inequalities brought about by the Land Acts.

3.We believe that in 29 years:

> *the wholesale of addressing inequalities has not been addressed at their root causes, in which our Submission of Opposition offers a well-balanced & structured Solution in line with other Countries in the British Commonwealth.*

Government measures introduced between 1991 and 1997

The Abolition of Racially Based Land Measures Act 108 of 1991

1.The *Abolition of Racially Based Land Measures Act* was promulgated in order to bring an end to the Land Acts, and came into operation on 30 June 1991.

2.According to the long title of the Act, it was promulgated to repeal or amend certain laws so as to abolish certain restrictions based on race or membership of a specific population group on the acquisition and utilization of rights to land; to provide for the rationalization or phasing out of certain racially based institutions and statutory and regulatory systems repealed the majority of discriminatory land laws ...

3.In order to achieve this aim, section 1 of the Act repealed the *Natives Land Act* and related laws, while section 11 repealed the *Natives Trust and Land Act.* Section 12 of the Act contained transitional measures regarding the phasing out of the South African Development Trust.

4.Since the Trust owned the majority of "native" land, transitional measures had to be put in place to facilitate the transfer of the land out of the Trust to other state departments or institutions established to take transfer of the land.

5.Section 48 of the Act dealt with the repeal of the *Group Areas Act* of 1966. In terms of this section, the *Group Areas Act* of 1966 and all amendments thereto were abolished with immediate effect enabling all South Africans, regardless of race, to occupy and own land in any part of the country without fear of prosecution.

6.For the first time in almost 80 years non-white South Africans were no longer precluded from owning land.

The Reconstruction and Development Programme (RDP)

1.The first democratically elected government inherited a country ravaged by extreme levels of poverty, a worsening unemployment problem and unacceptable inequalities in levels of income.

2. In 1994 the Reconstruction and
Development Programme (RDP) introduced an integrated socio-economic policy framework aimed at eradicating the legacies of the past through the redress of inequalities and building a vibrant and democratic South Africa.

3.The reasons for introducing the RDP included the fact that South Africa was identified as a country with one of the highest income distribution inequalities and consequently an extremely high incidence of poverty.

4.The RDP recognised that poverty was the single worst burden on the country and that poverty affected millions of people, especially those living in rural areas.

5. In order to address poverty and extreme deprivation,
the programme identified various aspects that needed to be addressed. These included the provision of land and housing, as well as access to safe water and sanitation.

6.The programme recognised that the basic needs of people had to be met and that human resource development should take place. In order to eradicate poverty and ensure that the basic needs of the poor were met, the programme identified a strategy resting on four pillars.

7.The programme acknowledged that land represented the most basic need for the rural population, a need that resulted from the discriminatory practices of the past regime.

8.In order to effectively address the issues of inequality, poverty and landlessness caused by the "injustices of forced removals and the historical denial of access to
land" the programme identified the need for the establishment of a comprehensive national land
reform programme.

9.The RDP envisaged a dramatic land reform programme to transfer land from the inefficient, debt-ridden, ecologically-damaging and white-dominated large farm sector to all those

who wish to produce incomes through farming in a more sustainable agricultural system.

10.The land reform programme (as envisaged by the RDP) is aimed at encouraging the use of land for agricultural purposes and providing productive land in order to raise income and productivity.

11.The reform programme is based on the redistribution of land to those who need it, but cannot afford it and on restitution for those who were deprived of their land due to the system of apartheid.

12. In the light of these inequalities, the RDP identified the main elements of land reform: land redistribution, restitution, and tenure reform

13.The aim of the land redistribution programme was to strengthen the property rights of communities already occupying the land and to provide access to land for those previously deprived of the right to be the owners of land.

14. Within the context of redistribution, the RDP set the ambitious target of transferring 30% of all white-owned agricultural land to black South Africans by 2001.

15.The aim of land restitution was to restore land to South Africans dispossessed by discriminatory legislation and practices since 1913.

16.As a result of the discriminatory practices of the past, the majority of South Africans had been dispossessed of their land and in instances forcibly removed and relocated. The RDP recognised this and Indicated that the need existed to restore land to the dispossessed through implementing a system of land restitution.

17.In order to eradicate poverty the basic needs of those disadvantaged by apartheid needed to be addressed. These needs were to be addressed *inter alia* through programmes of

land reform and land redistribution, as well as the development of human resources.

18. In order to further address the issue of land reform, the *White Paper on Land Policy,* 1997was released with the specific vision of establishing a land policy which is "just, builds on reconciliation and stability, contributes to economic growth and bolsters household welfare".

The White Paper on Land Policy, 1997

1.The *White Paper* was responsible for establishing the overall land reform policy and it addressed *inter alia* the injustices caused by racially-based land dispossessions, unequal land ownership, and the need for the sustainable use of land.

2.In this regard the *White Paper* acknowledged:

> *Forced removals in support of racial segregation have caused enormous suffering and hardship in South Africa and no settlement of land issues can be reached without addressing such historical injustices.*

3.Based on this reality, the aim of the *White Paper* was meant to provide an overall platform for land reform consisting of three principal components: restitution, redistribution and tenure reform

4.Unfortunately, the issue of the economic and social viability of the intended land use has been largely neglected in both the redistribution and restitution pillars.

5.The *White Paper* reaffirms the fact that the policy and procedure for land claims are based on the provisions of section 25(4) of the *Constitution* and the *Restitution of Land Rights Act* and details four of its elements: qualification criteria, forms of restitution, compensation, and urban claims.

6.Ms Nomfundo Gobodo, Chief Land Claims Commissioner, noted the South African land restitution programme was initiated in 1994 when the Restitution Act was passed. Lodgement of the 1994 to

1998 claims took place not only at CRLR but also at various departments, police stations, post offices and municipal offices.

7.The Chairperson remarked the Committee had embarked on public hearings on the amendment of section 25 of the Constitution on expropriation of land without compensation.

8.One of the key issues that came up was that of 1913. Various communities have called for 1913 to be removed as it was a great impediment.

9.In the District Six matter, the land was given back to 994 beneficiaries. He read out a narrative of the contestation of land between the Dutch and the Khoi between 1652 and 1655.

10. He was battling with this issue and wondered if the country had not embarked on a fraudulent process of land claim upon land claim, rather than looking at the real issue at hand.

11.He hoped the expropriation of land without compensation could be fast-tracked and realised so we can deal with redress with real sincerity because we are sitting with claims speaking to District Six.

12.On expropriation without compensation, CRLR would be able to assist when the Commission has a representation on the matter to provide the necessary support. Section 42(e) of the Restitution Act allows CRLR to expropriate land if the claim is valid and parties agree to the settlement.

13.By the end of 2019 CRLR had expropriated 27 properties, the first one being in the Northern Cape in 2003 in terms of section 42(e) of the Act.

14.The Chairperson noted it would not be possible to move forward without taking note of the parallel process to amend section 25 of the Constitution for expropriation of land without compensation. He wondered how ready the Department and CRLC were should the dreams of the majority be realised on expropriation of land without compensation. What was coming out

of the public hearings included the request for the substitution of 1913 by 1652.

15.People said 1913 must be done away with and replaced by 1652. This would necessitate a scrutiny of the historical documents of land dispossession.

Land Claims Court

1.The Land Claims Court was established in 1996.The Land Claims Court specialises in dealing with disputes that arise out of laws that underpin South Africa's land reform initiative.

These include the Restitution of Land Rights Act, 1994, the Land Reform (Labour Tenants) Act, 1996 and the Extension of Security of Tenure Act, 1997.

2.The Land Claims Court has the same status as any High Court. Any appeal against a decision of the Land Claims Court lies with the Supreme Court of Appeal, and if appropriate, to the Constitutional Court.
3.The Land Claims Court can hold hearings in any part of the country if it thinks this will make it more accessible and it can conduct its proceedings in an informal way if this is appropriate, although its main seat is in Ransburg, Johannesburg, South Africa.

4.The main task of the court in this regard is therefore to adjudicate whatever legal issues contained in the cases and ensure that land is awarded to those who satisfy the statutory requirements.

5.Restitution Land Claims were initially lodged by way of completion of a land claim form before 31 Dec 1998.

Legislative framework

1.The Constitution of the Republic of South Africa provides a framework for land reform protection of property rights and expropriation if it is in the public interest.

2.To address the consequences of the legacy of apartheid with respect to land, the South African Constitution included the following three clauses:

> *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.*
>
> *The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.*
>
> *A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure, or to comparable redress.*

3.The Expropriation Act (Act 63 of 1975) provides for the expropriation of land and other property for public and certain other purposes as defined.

4.The three key elements of South Africa's comprehensive land reform programme contained in the White Paper on Land Reform include:

> *Restitution, redistribution and tenure reform which address the constitutional imperatives*.

Government position on the parliamentary process

1.Land reform in South Africa is a moral, social and economic imperative.

2.Government will continue to accelerate the pace of land reform within the framework of the Constitution of the Republic of South

Africa, respective legislation and according to the rule of law. Government will at all times act in the best interest of our nation.

3.Government’s intention is to unlock the economic potential of land.

4.Government supports a land restitution and redistribution process which supports agricultural production and investment in the land.

29 years of democracy

1.It is nearly 29 years since SA became a democracy, yet the promise of that historic achievement has not yet been fully realized by the millions of people who are unemployed and live in poverty.

2.The dispossession of land continues to determine the prospects of millions of South Africans, and it holds back the country’s economic development.

3.The greatest obstacles to growth is the severe inequality between black and white South Africans.

4.South Africa’s historical, highly skewed distribution of land and productive assets is a source of inequality and social fragility (World Bank)

5.For decades, the country’s assets — its land, its minerals, its human resources, its enterprises — have been owned, controlled and managed in a way that has prevented the extraction of their full value.

PART H

H.The need for an Independent Land Claim Tribunal for the Acceleration of Fundamental Change for the period 1652 -1913

1.Since 1913, the “land question” in South Africa has revolved around the major inequalities in access to and rights over land between the black majority and the white minority of the

population, and how these disparities should best be understood and overcome.

2.The roots of this inequality are commonly traced back to the promulgation of the Natives Land Act in June 1913, which provided the legal framework for the subsequent division of the country into a relatively prosperous white heartland and a cluster of increasingly impoverished black reserves on the periphery.

3.Historians have cautioned against according this legislation undue weight within the much longer history of colonization, capitalist penetration, and agrarian change that has shaped modern South Africa.

4.Beginning in the 1950s, the apartheid government attempted to maintain white hegemony, drive an urban–Industrial economy, and deflect political resistance by turning these reserves into the ethnic "homelands" of African people. This involved increasingly repressive policies of urban influx control, population relocation, and the tribalization of local administration in the reserves.

5.Since the transition to democracy in 1994, the post-apartheid state has struggled to develop an effective land reform program that can address the crosscutting demands for land redistribution.

6. For many analysts, these ongoing challenges mean that "the land question" remains unresolved; for others it means that the question is itself in need of reformulation.

7.Land distribution and people's access to land have always been high on the political agenda in South Africa.

8.Colonisation and land dispossession have been a strong feature of the country's history, even more so during apartheid when land ownership became firmly concentrated in the hands of the white minority.

9.Land is much more than a resource. It also has a strong symbolic value.

People develop bonds to land, known as place attachment. A person's life experiences happen in a particular place. These

experiences – the type of event, the people that were there, the meaning of it to the person - shape the connection with a place.

PART I

I.The need for an Independent Land Claim Tribunal for the redress of the Cultural oppression caused by the continued Afrikaner celebrating their mythological Great Trek in the periods 1652-1913.

1.The Great Trek was a movement of Dutch-speaking colonists up into the interior of southern Africa in search of land where they could establish their own homeland, Independent of British rule.

2.The determination and courage of these pioneers has become the single most important element in the folk memory of Afrikaner Nationalism.

3.However, far from being the peaceful and God-fearing process which many would like to believe it was, the Great Trek caused a tremendous upheaval in the interior for at least half a century.

4.The Great Trek was a landmark in an era of expansionism and bloodshed, of land seizure and labour coercion. Taking the form of a mass migration into the interior of southern Africa, this was a search by dissatisfied Dutch-speaking colonists for a promised land where they would be 'free and Independent people' in a 'free and Independent state'.

5.However, far from being the peaceful and God-fearing process which many would like to believe it was, the Great Trek caused a tremendous social upheaval in the interior of southern Africa, rupturing the lives of hundreds of thousands of Indigenous people.

6.The Empty or Vacant Land Theory is a theory was propagated by European settlers in nineteenth century South Africa to support their claims to land.

7.Today this theory is described as a myth, the Empty Land Myth, because there is no historical or archaeological evidence to support this theory.

8.Despite evidence to the contrary a number of parties in South Africa, particularly right-wing nationalists of European descent, maintain that the theory still holds true in order to support their claims to land-ownership in the country.

9.This kind of historical inaccuracy strengthens the trekkers' claim that the land which they occupied was 'uninhabited and belonged to no-one', that the survivors of the Mfecane were conveniently spread out in a horseshoe shape around empty land.

10.The distinction between hunting and raiding parties was often blurred in trekker society. Killing and looting were their business, land and labour their spoils. When the trekkers arrived in the Transvaal, they experienced an acute labour shortage. They did not work their own fields themselves and instead used Pedi who sold their labour mainly to buy arms and ammunition.

11.During commando onslaughts, particularly in the eastern Transvaal, thousands of young children were captured to become *inboekselings* ('Indigenous entured people'). These children were Indigenous entured to their masters until adulthood (the age of 21 in the case of women and 25 in the case of men), but many remained bound to their masters for much longer. This system was akin to child slavery, and a more vicious application of the apprenticeship laws promulgated at the Cape in 1775 and 1812.

12.Child slavery was even more prevalent in the northern Soutpansberg area of the Transvaal. It has been suggested that when these northern Boers could no longer secure white ivory for trade at Delagoa Bay, 'black ivory' (a euphemism widely used for African children) began to replace it as a lucrative item of trade. Children were more amenable to new ways of life, and it was hoped that the *inboekselings* would assimilate Boer cultural patterns and create a 'buffer class’s against increasing African resistance.

13.Land seizure and dispossession were also prevalent in the eastern Transvaal where Potgieter had founded the towns of Andries-Ohrigstad in 1845 and Soutpansberg (which was later renamed Schoemansdal) in 1848. A power struggle erupted between Potgieter and Pretorius, who had arrived with a new trekker party from Natal and seemed to have a better understanding of the political dynamics of southern Africa. Potgieter, still anxious to legitimise his settlement, concluded a *vredenstraktaat* (peace treaty) in 1845 with Sekwati, chief of the Pedi, who he claimed had ceded all rights to an undefined stretch of land. The precise terms of the treaty are

unknown, but it seems certain that Sekwati never actually sold land to the Boers.

14.Often in order to ensure their own safety, chiefs would sign arbitrary treaties giving away sections of land to which they in fact had no right. Such was the case with Mswati, chief of the Swazi, who, intent on seeking support against the Zulu, in July 1846 granted all the land bounded by the Oliphants, Crocodile and Elands rivers to the Boers. This angered the Pedi, who pointed out that the land had not even been his to hand over.

15.There was no uniform legal system or concept of ownership to which all parties interested in the land subscribed. Private land ownership did not exist in these African societies, and for the most part the land which chiefs ceded to the Boers was communally owned. Any document 'signed' by the chiefs, and its implications, could not have been fully understood by them. Misunderstandings worked in the favour of the Boers.

16.Large tracts of land were purchased for next to nothing. For example, the northern half of Transorangia went
to Andries Potgieter in early 1836 for a few cattle and a promise to protect the Taung chief, Makwana, from the Ndebele. The area between the Vet and Vaal rivers extended about 60 000
square kilometres. This means that Potgieter got 2000
square kilometres per head of livestock! Also, the 'right of conquest' was extended over areas much larger than those that chiefs actually had authority over. After Mzilikazi 's flight north in November 1837, the trekkers immediately took over all the land between the Vet and Limpopo rivers - although Mzilikazi's area of control covered only the western Transvaal.

17.But it was only after the Sand River Convention (1852) and the Bloemfontein Convention (1854)
that Indigenous independent Boer republics were formally established north of the Vaal and Orange rivers respectively.

PART J

J.The Indigenous Black People have never been conquered, The Treaty of Sand River Convention (1852).

PART K

K.The need for an Independent Land Claim Tribunal for the redress of the injustices at the hands of the British Empire and the Dutch from the Periods 1652 -1961.

1.Sir George Grey, KCB (14 April 1812 – 19 September 1898) was a British soldier, explorer, colonial administrator and writer. He served in a succession of governing positions: Governor of South Australia, twice Governor of New Zealand, Governor of Cape Colony, and the 11th premier of New Zealand.

2.Grey became Governor of South Australia in 1841. He oversaw the colony during a difficult formative period

3.In 1854, Grey was appointed Governor of Cape Colony in South Africa, where his resolution of hostilities between Indigenous South Africans and European settlers was

4.Grey was the third Governor of South Australia, from May 1841 to October 1845. Secretary of State for the Colonies, Lord John Russell, was impressed by Grey's report on governing Indigenous people. This led to Grey's appointment as governor.

5.Grey was governor during another mass murder: the Rufus River Massacre, of at least 30 Aboriginals, by Europeans, on 27 August 1841.

6.In 1844, Grey enacted a series ordinances and amendments first entitled the Aborigines' Evidence Act and later known as the Aboriginal Witnesses Act.

> *The act, which was created to "facilitate the admission of the unsworn testimony of Aboriginal inhabitants of South Australia and parts adjacent", stipulated that* unsworn testimony *given by* Aboriginals would *be inadmissible in court. A major consequence of the act in the following decades in Australian history was the frequent dismissal of evidence given by Indigenous Australians in massacres perpetrated against them by European settlers.*

7.Grey served as Governor of New Zealand twice: from 1845 to 1853, and from 1861 to 1868.

8.During this time, European settlement accelerated, and in 1859 the number of Pākehā came to equal the number of Māori, at around 60,000 each. Settlers were keen to obtain land and some

Māori were willing to sell, but there were also strong pressures to retain land – in particular from the Māori King Movement. Grey had to manage the demand for land for the settlers to farm and the commitments in the Treaty of Waitangi that the Māori chiefs retained full "exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties

9.Grey was Governor of Cape Colony from 5 December 1854 to 15 August 1861

10.During his term as governor, Grey faced a growing rivalry between the eastern and western halves of the Cape Colony, as well as a small, but also growing, movement for local democracy and greater independence from British rule. "There were moves for responsible government in the Cape Parliament in 1855 and 1856 but they were defeated by a combination of Western conservatives and Easterners anxious about the defence of the frontier under a responsible system.

11.In South Africa Grey dealt firmly with the natives, endeavouring to "protect" them from white settlement while simultaneously using reservations to coercively demilitarize them, using natives, in his own words, "as real though unavowed hostages for the tranquillity of their kindred and connections."

12.On more than one occasion, Grey acted as arbitrator between the government of the Orange Free State and the natives.

The Pivotal Role in all three distinct Separate Colonies being Australia, New Zealand & Republic of South Africa.

1.Putting this into perspective in the 1800s, Sir George Grey was Governor of three Separate Colonies of the British Empire.

2. Sir George Grey's government and policy in Australia, New Zealand, and South Africa.

3.Grey genuinely desired civic rights and equality for non-white and Indigenous peoples.

That future however would occur at the cost of Indigenous self-determination and economic self-sufficiency.

4.Non-white and Indigenous peoples were to be absorbed into the settler colony.

> *That led to appalling suffering and betrayal of trust, to the abuse of power, and to the dislocation of peoples over generations.*

5.His career brings out the inherent unity to the Southern Hemisphere British settler states of southern Africa, and Australasia.

6.Just as the Jurassic Southern Hemisphere landmass of Gondwanaland broke up from 130 million years ago onwards leaving geology, fauna and flora in common among the southern lands, so did Great Britain 200 years ago bring South Africa, Australia and then New Zealand within its ambit.

7.These nations may have since drifted apart, developing their own identities, but they still share many generic features and problems and opportunities.

8.Grey was the only governor to actively rule in all three settler colonial systems as a Crown colony governor.

9.In all its history from the 16th to the 20th centuries, the British Empire systematized just three policies of racial administration- in so far as anything was systematized.

10. It tried to segregate, and supposedly protect, Indigenous peoples, from the settler community and economy.

11.Then it tried to assimilate Indigenous into the settler community.

12.Then it resorted to “Indirect rule”, exploiting Indigenous communities as labour pools for plantations and for mines

13.The Report in 1837 of the Select Committee of the House of Commons on Aboriginal Affairs reaffirmed the segregationist native protection model.

14.The Report referred to the Charles II's Letter of 1670 to the Council of Foreign Plantations as the source of its own policy, as the origin of the British policy tradition towards Indigenes.

15.This model had been the policy of Sir William Johnson's Appalachian Protectorate inn America, where the regime was one of native protection by segregation from settlers and exclusion from British law.

16.The Appalachian Proclamation of 17632 and the Appalachian Protectorate over Six Nations Indians exemplified this policy.

17. Segregationist native protection remained the model for the Eastern Cape after the British resumed government of the Cape Colony in 1806,

18.Grey's policy however was one of "legal integration", of "strict application" 6of British law upon protected Indigenes, of the dissolution of frontiers, and of the amalgamation of Indigenes into the settler workforce and markets so that they would qualify for civil rights in a colony.

19.Grey's policy apparently answered requirements for the management of the frontiers, as well as accounted for how both land and labour would be procured from Indigenes by settler colonies growing out of the bridgeheads and beachheads.

20.It possessed considerable power of explanation for a Great Britain
that was expanding globally whether its government wanted to or not.
21.Her Majesty's Government blew hot and cold on colonial acquisitions. In the age of Lord Palmerston- it did little to encourage settler colonies. Yet there was nothing it could do to prevent their foundation, short of hoping for the demonstrable failure of a colony.

22.The radical feature of Jominian theory for colonial policy was the dissolution of frontiers that were not themselves difficult natural obstacles and upon the dispersal of bodies of Indigenes.

23. Instead of insisting that frontiers be held on which Indigenes could congregate and through which transits were supposedly concentrated and controlled.

24.Grey argued in his Port Louis Memorandum of 1840 for the collapse of frontiers, for the dispersal of Indigenes within the settler colony and for their absorption within the settler economy, and then supposedly into the settler polity.

25.This policy of racial amalgamation was in fact the American settler policy espoused by Thomas Jefferson against Crown policy after the Seven Years War and then practised by him during his presidency.
26.Grey's achievement was to forge these disciplines and policy traditions into a programme for Crown agents in the Colonial Service.

27.He had achieved this by 1840 with his Port Louis Memorandum dissent against the Report of the Select Committee on Aboriginal Affairs that recommended the revival of the Appalachian Protectorate policy from the Appalachian Proclamation of 1763, and of the Eastern Cape policy after 1808.

28.Borders, Grey demonstrated, produced concentrations of Indigenes on the very limits that were supposed to separate settlers and Indigenes from one another. Mission stations concentrated them in borderlands.

29.As land-hungry settlers would always be moving into marcher-lands, and as settlers and Indigenes would always compete for resources and test each other's mettle.

30.Grey argued for the dissolution of the border, he strict application of British Law and the Induction of Indigenes into the settler colony and for management of the ethnic melee that would inevitably occur.

31.Grey’s strategic theory and ethnographical researches informed his native policy and his constitutional design for 19th century settler colonies.

32.Between such poles of Ideology and Utopia hang the history and public policy of South Africa, Australia and New Zealand.

33.If a frontier persisted, in his view, between settlers and Indigenous peoples, it would in itself become the perennial source of settler-aboriginal conflict: -
34.In considering the kinds of labour in which it would be most advisable to engage natives, it should be borne in mind that, in remote districts where the European population is small, it would be imprudent to Induce many natives to congregate at any one point, and all the kinds s of labour in which they should be engaged ought to be of such a nature as to have a tendency to scatter them over the country, and to distribute them amongst the separate establishments.

35.Indigenous peoples were to be dissolved as “hordes” or tribal associations, denied the opportunity to engage in nation-building and state-formation as far as was practicable, and reconstituted over generations as citizens of the new colonial polities under a liberalism of capacity, that placed greater tests upon them than upon the settlers, and made of them second-class citizens where they were even citizens at all. This policy entirely coheres to the Jominian analysis of frontiers

36.In other words Grey intended a euthanasia, an extermination of human
cultures, though not of the greater part of the Individuals who belonged to such societies. “

37.Peoples” were to survive yet be changed. Grey expressed the Jominian strategy to the situation thus: -

> *“Whilst in the well-peopled districts, where a force sufficient both to protect and control the aborigines exists, they should be Induced to assemble in large numbers, for they work much more readily when employed in masses, and thus by assembling them on one point, their numbers are diminished*

in those portions of the colony which have a small European population."

38.1837 Select Committee Report.

The Select Committee recognized frontiers as a basic governance tool, whereby their recommendations might preserve Indigenous peoples from infectious disease, pernicious commerce, violence and irregular transfers of land or outright squatting "beyond the pale": -

39."Again in the cases of offences committed beyond the borders, British subjects are amenable to colonial courts, the Aborigines are not... It would therefore on every account be desirable to Induce the tribes in our vicinity to concur in devising some simple and effectual method of bringing to justice such as of our own people as might be guilty of offences against the Queen's subjects.

40. For that purpose, treaties might be made with the chiefs of Independent tribes, defining with all practicable simplicity, what acts should be considered as penal, by what penalties they should be visited, and in what form of procedure those penalties should be enforced

41.Frontiers such as the Select Committee insisted upon in 1837 between settlers and Indigenous peoples were of various kinds. They could be boundaries of sovereignty and suzerainty as in South Africa, they could be implicit borders within a British possession such the Australian colonies at that time, or it could just mean the penumbra of a settler colony, or even of a ranch.

42. Orders in Council and proclamations could shift them by degrees, minutes and seconds.

43. Grey did not just propose the dissolution of Indigenous nations. To accomplish that, he proposed the dissolution of the frontiers themselves.

44. The Select Committee had resorted to the segregationist native protection model. That at least was the classic English model.

PART L

L.CONCLUSION OF OUR SUBMISSION OF OPPOSITION TO THE PROPOSED EXPROPRIATION BILL-

1.We strongly oppose the proposed Expropriation Bill- B23B-2020 as it fails on all accounts, both domestically & internationally.

2.We strongly oppose the proposed Expropriation Bill- B23B-2020 as it further provides safeguards for the continued looting of State Resources under the guise of Public works by corrupt co-conspirators within the State Party.

3.We strongly oppose the proposed Expropriation Bill- B23B-2020 in our entire Submission is that if fails to address the injustices of land inequalities.

4.We strongly oppose the proposed Expropriation Bill- B23B-2020 in that it does not provide for the periods of 1652 to 1913.

5.We strongly oppose the proposed Expropriation Bill- B23B-2020 as it is a limited means to address colonial injustices from 1913.

6.We strongly oppose the proposed Expropriation Bill- B23B-2020 as it does not redress for reparations for historic injustices suffered by the indigenous peoples.

7.We strongly oppose the proposed Expropriation Bill- B23B-2020 as it does not facilitate the restoration of ancestral lands confiscated from Indigenous communities during the colonial and apartheid period.

8.We strongly oppose the proposed Expropriation Bill- B23B-2020 as On the other side, the South African government has adopted a rather patronizing and know-it-all approach to the reparation's debacle.

9.We strongly oppose the proposed Expropriation Bill- B23B-2020 as it as it will become an obstacle to reparations, in a law unto itself.

10.The only way is for an Independent Land Claim Tribunal which needs to have the mandate to look at the issue of land from 1652 to 1913, which can be modelled on the Waitangi Tribunal (New

Zealand) so that efforts to redress colonial injustices can be resolved for future intergeneration's of indigenous peoples.

11.We have allowed for 29 years the State Party to resolve the issue of land from 1913 and this cannot be resolved on relying on the proposed Expropriation Bill- B23B-2020 as by relying on the very laws that have enforced such injustices.

12.We strongly oppose the proposed Expropriation Bill- B23B-2020 as it does not go far enough for exploring and investing in restorative justice processes as a way to achieve reconciliatory justice for colonial injustices in for indigenous peoples in the Republic of South Africa.

PART M

M.Proposed formation of an independent Land Claim Tribunal to address historical Land injustices suffered by the indigenous peoples from period 1652 to 1913.

1.The New Zealand Model is legislated on the following Statute and terms of reference included herein

Treaty of Waitangi Act 1975

Public Act 1975 No 114
Date of assent 10 October 1975

4 Waitangi Tribunal

(1)

There is hereby established a tribunal to be known as the Waitangi Tribunal.

(2)

The Tribunal shall consist of—

(a)

a Judge or retired Judge of the High Court or the Chief Judge of the Maori Land Court; and the Judge is both a member of the Tribunal and its Chairperson, and is appointed by the Governor-General on the recommendation of the Minister of Maori Affairs made after consultation with the Minister of Justice:

(b)
not less than 2 other members and not more than 20 other members to be appointed by the Governor-General on the recommendation of the Minister of Maori Affairs made after consultation with the Minister of Justice.

5 Functions of Tribunal
(1)
The functions of the Tribunal shall be—
(a)
to inquire into and make recommendations upon, in accordance with this Act, any claim submitted to the Tribunal under section 6:
6 Jurisdiction of Tribunal to consider claims
(1)
Where any Maori claims that he or she, or any group of Maoris of which he or she is a member, is or is likely to be prejudicially affected—
(a)
by any ordinance of the General Legislative Council of New Zealand, or any ordinance of the Provincial Legislative Council of New Munster, or any provincial ordinance, or any Act (whether or not still in force), passed at any time on or after 6 February 1840; or
(b)
by any regulations, order, proclamation, notice, or other statutory instrument made, issued, or given at any time on or after 6 February 1840 under any ordinance or Act referred to in paragraph (a); or
(c)
by any policy or practice (whether or not still in force) adopted by or on behalf of the Crown, or by any policy or practice proposed to be adopted by or on behalf of the Crown; or
(d)
by any act done or omitted at any time on or after 6 February 1840, or proposed to be done or omitted, by or on behalf of the Crown, —
and that the ordinance or Act, or the regulations, order, proclamation, notice, or other statutory instrument, or the policy or practice, or the act or omission, was or is inconsistent with the principles of the Treaty, he or she may submit that claim to the Tribunal under this section.

END