



G R Ü T T E R &  
G R O B B E L A A R

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ONS VERW/ OUR REF: GB0003

U VERW/ YOUR REF:

6 May 2005

The Regional Land Claims Commissioner  
North West and Gauteng Province  
9 Old Bailey Road  
Arcadia

FOR ATTENTION: Japhtaline Sebati  
Amos Serumula  
Peter Mhangwani

By Hand

**RE: LAND CLAIM LODGED ON FARMS BROEDERSTROOM 481 JQ;  
HARTEBEESTHOEK 498 JQ; LEEUWENKLOOF 480 JQ AND WELGEGUND 491  
JQ BY HAROLD LEBOGO ON BEHALF OF THE MEKGARENG COMMUNITY**

1. We refer to the abovementioned land claim as well as to previous correspondence between your offices and ourselves with regard the Mekgareng land claim.
2. We attach hereto our recently updated list of clients and confirm that we are acting on their behalf and that they have elected a committee called the 26778 Land Claims Action Committee, which co-ordinates the landowners' response to the land claim. This letter serves both as our clients' response to the notice in the Government Gazette of 17 September 2004 as well as a representation in terms of section 11A of the Restitution of Land Rights Act, Act 22 of 1994 (hereinafter referred to as "the Act"). We attach the updated list as annexure "A".
3. We have now had the opportunity to study the claim, your acceptance report and the historical documentation obtained by both your offices and by our clients. We have further commissioned an anthropologist who has conducted an

anthropological study of both the claimant community as well as the historical aspects of the claimed land. Apart from this we have also commissioned an expert in the field of aerial photography and the analyses thereof.

**For the reasons stated below, our clients are of the opinion that the community claim lodged on their respective farms is not valid and that the so-called Mekgareng Community is not entitled to the restitution of any rights in land as contemplated in the Act.**

4. In terms of the Act and the Rules promulgated there under, the Commission has an obligation to fully investigate the claim; to attempt to settle claims through negotiation, mediation or arbitration, and to refer claims that cannot be settled to the Land Claims Court for adjudication. As we see it, your obligation is towards the claimants, the affected landowners and the public at large to facilitate resolution of this claim in that all stakeholders have an interest in a successful land reform program.
5. Our comments in this representation should be regarded as a formal representation in terms of section 11A of the Act and you are requested to withdraw the notice referred to above or alternatively to amend it accordingly. Our comments in this representation are an attempt to assist you, in a non-confrontational manner, towards finding a speedy resolution of this claim. The detail in this representation provides you with factual information that is relevant to your further conduct in the matter and which could form the basis for further consultation between the respective parties, should you deem it necessary. Our comments herein are in part also based on the observations made during our joint inspection of the claimed land on 1 April 2005.
6. The most appropriate way would be to approach this matter is firstly by reference to the elements which the claimant community needs to prove their terms of entitlement to restitution as contemplated in the Act and secondly by reference to your acceptance reports. For ease of reference, both reports are attached hereto marked annexures "B" and "C" respectively. In this regard we are in possession of two separate reports one undated and unsigned and one dated 6 October 2004, the latter being issued some three weeks **after** gazetting of this claim. In this respect you have not complied with Rule 3 of your own Rules. The Commissioner needs to be satisfied that the claim meet the criteria laid down in Rule 3 read with section 11(1) of the Act, and only once he or she is **satisfied**, can the claim be accepted as *prima facie* valid after which the claim can be published. It is trite practice that the Commissioner issues a so-called *Acceptance Report* to justify the publication in the *Gazette* and to justify the meeting of the requirements of section 11(1) of the Act read with Rule 3 of the Rules. It is considered highly unsatisfactory and even irregular for the

Commissioner to have issued the Rule 3 Acceptance Report some **3(three) weeks after** the gazetting of the claim.

7. As you know any community who claim that they are entitled to restitution of rights in land must prove their entitlement as per the Act. In terms of section 2 of the Act there are seven requirements, which have to be met for a claimant community to be entitled to enforce restitution of a right in land. The claimant community must be:
  - 7.1 a **community**;
  - 7.2 **dispossessed**;
  - 7.3 of a **right in land**;
  - 7.4 **after 19 June 1913**;
  - 7.5 under or for the purpose of furthering the object of a **racially discriminatory law**;
  - 7.6 without having been paid just and equitable **compensation**;
  - 7.7 who has lodged the claim **on or before 31 December 1998**.

Each of these criteria requires separate consideration.

8. It is of utmost importance that we set out a brief history of the claimed land with specific reference to the granting in ownership of the respective farms as well as the initial occupation thereof as your acceptance reports contain a number of statements, which are inaccurate, and factually incorrect. A number of the current registered landowners of the claimed land are in fact direct descendants of those who you refer to as “the Voortrekkers”. They have supplied us with the history of the initial occupation of the land and also the granting of ownership, which factual allegations have been verified not only with records obtained from the Deeds Office in Pretoria but also with documentary evidence obtained from the National Archives in Pretoria. This history, as related by these landowners accord in every aspect with the documentary evidence obtained from the institutions referred to.

## 9. **RIGHTS IN LAND**

- 9.1 From our anthropological investigation it is clear that the only people who could have possibly had traditional or, as you term it, ancestral rights on the land claimed are the Bakwena Ba Mogopa, the Bakgatla Ba Mmakau and the Bapo who, in the past and currently, settled in the vicinity to the north and probably to the east of the land been claimed. It is, however, uncertain whether these people had traditional or ancestral rights on the land concerned due to the devastating

wars of Mzilikazi's Matabele during the 1830's. The low density in the area being claimed attested to the research of Van Warmelo (1935: Maps 18 and 19) and Breutz (1989) revealed the following, which is summarized by Bonner (2003: 26) in the following words:

*The absence of evidence of people who could have traditional rights on the land been claimed and the possible identity of such people requires an in-depth historical overview of the Magaliesberg region.*

- 9.2 In their ethnographic investigations well known state ethnologists such as Van Warmelo (1935) and Breutz (1989) did not identify any chiefdoms or did not make mention of any large concentrations of people to the south and east of the Magaliesberg. According to Bonner (2003: 26) *“Breutz is silent on the area further south and suggest that this was not a site of significant settlement, or at least a home of substantial chiefdoms.”* The nearest identifiable chiefdoms to the land being claimed were the Bakgatla Ba Mmakau, the Bakwena Ba Mogopa and the Bapo who were found north of the Magaliesberg range. In 1823 the well-known Pedi of Sekhukhuneland (an area lying to the east of the present Polokwane) led by Malekutu invaded the Magaliesberg area and started to raid the livestock of the chiefdoms in the area. Chiefdoms such as the Bakwena Ba Magopa, the Bapo and the Fokeng were attacked and large herds of cattle were captured. According to Carruthers (1990: 237) *“the Pedi invasion left a wake of destruction, but the more serious consequence of the raid was in exacerbation of the general spate of violence. The destitute Po now turned on their weakened rival, the Fokeng, and killed Nameng. His brother Noge, became chief and immediately attacked the Kwena Mmakau, forcing Thethe to flee south where he was assassinated. Some of the people who had already been displaced by the disruptions of the difaqane and who had joined the Pedi military force on its way to the Magaliesberg area, attempted to settle on the land after Bakwena Ba Mmakau.*
- 9.3 After Mzilikazi had demolished the Pedi and other Northern Sotho chiefdoms from their headquarters which was situated in the Upper Olifants River region in the Middelburg District in the present Mpumalanga, he established temporary settlements in the first part of 1825 in the Magaliesberg region from where he started to terrorize and subjugate the numerous Tswana and a few Southern Ndebele Chiefdoms in the Magaliesberg area and further a field (Becker 1966: 56, 74). By early 1826 after Mzilikazi's forces had subjugated and even annihilated many chiefdoms between the Magaliesberg and Limpopo and deep into the Western Transvaal. Mzilikazi then decided to establish permanent royal kraals and regimental barracks for the training of his regiments and for the consolidation of his power over the vast area in which the Matabele have extended their power by brutal military means.

- 9.4 In 1836 the Matebele attacked the Voortrekkers at the Vegkop Laager near Heilbron in the Free State during which as many as 40 000 cattle of the Voortrekkers were captured by the Matebele. This led to punitive expeditions by Commandant Andries Hendrik Potgieter and Gerrit Maritz against the Matebele in January 1837 in which Mosega was destroyed. In a second punitive expedition under the leadership of Commandant Potgieter and Piet Uys in November 1837 Mezeg and Egabeni were captured and destroyed. With his military kraals destroyed and his army defeated Mzilikazi and his followers fled through the last range of the Dwarsberge through Botswana on their way to Buluwayo in the then Rhodesia where Mzilikazi reorganized the Matebele and again consolidated his power. After the defeat of the Matebele, Commandant Hendrik Potgieter and his followers started to settle in the Magaliesberg area. According to Vermaak (1966: 23) *“te Rustenburg het die Trekkers behalwe ander stamme, ook die Bakwena Ba Mogopa aangetref. Die stam het die blankes as vriende en beskermers verwelkom. Aan die stam is ‘n nuwe heenkome verskaf in die vorm van voedsel, kleding asook beeste in ruil vir die lewering van arbeid.”* Lye and Murry (1980: 55) described the outcome of the defeat of the Matebele for the subjugated Tswana people and the victorious Voortrekkers as follows: *“the first reaction of the Tswana to the expulsion of the Ndebele by the boers was an attempt to reclaim their patrimony. Some succeeded because the boers were yet too few to occupy all the vacated Ndebele lands, even though they claimed them by virtue of their conquest. With the expulsion of Mzilikazi and his Ndebele followers, the Voortrekkers had thus acquired, by right of conquest, a claim to all the lands of the central Highveld.*
- 9.5 At this point it is important to look at the vicissitudes of some of the Tswana people such as the Bakwena Ba Magopa, the Bakgatla Ba Mmakau and the Bapo of Southern Ndebele origin who originally inhabited the area in the vicinity of the Magaliesberg where the land is being claimed by the Mekgareng community and who were subjugated and even annihilated during the *Difaqane* by the Matebele of Mzilikazi. In addition, the settlement in the area of the land being claimed by the Voortrekkers and other whites, after the defeat of Mzilikazi's Matabele is also relevant in this regard. The Bakwena Ba Magopa suffered heavy losses when the impis of Mzilikazi attacked and subjugated them in 1828. When the then leader of the Mogopa Tribe and this son refused to accompany a Matebele regiment on one of their expeditions they *“were killed at Zoutpan (near Hammanskraal) by being impaled on sharpened stakes; their followers were punished by being castrated and having their ears cut off and their eyes gouged out* (Breutz 1989: 301). No wonder that the Bakwena Ba Mogopa regarded the Voortrekkers of Hendrik Potgieter as protectors and friends. In this regard some of the current landowners, who are also our clients, are direct descendants of these Voortrekkers, and who are disturbed and upset by the allegations of the claimant community that the Voortrekkers *“invaded their land”* and even tortured some of the claimant community members. The historical evidence in this regard, as has been stated above, shows clearly that the people who were residing in the

area during that time, regarded the Voortrekkers as their friends because the Voortrekkers defeated Mzilikazi and thereby made it possible for elements of the descendants of the current claimant community to survive and **who thereafter enjoyed the patronage of the Voortrekkers**. The allegations by the current claimant community, as referred to above, are not only untrue but also hurtful.

- 9.6 After the eviction of the Matebele from the then Transvaal in 1837 and after the British annexed the Republic of Natalia in 1843 many Voortrekkers settled in the newly acquired territory. Two brothers of the Voortrekker leader, General Andries Pretorius, namely Bart and Piety Pretorius, came to the area south of the Magaliesberg in 1842 and obtained land between the Crocodile and Hennops Rivers. The farm Broederstroom derived its name from the two brothers who settled in the area adjacent to the two-abovementioned rivers (C F Albertan 1971: 620).
- 9.7 Gradually the subjugated Tswana and Southern Ndebele people started to return to the Magaliesberg area from which many of them were dislodged by the Matebele forces of Mzilikazi, after 1843. Many of these returning Tswana and Southern Ndebele entered into service contracts as labour tenants or farm workers with the then owners of the farms. When the labour tenant system was phased out in 1971, many blacks residing on farms entered into ordinary labour contracts with farm owners and started to work for a salary every month. There were also those who were not prepared to sell their cattle and terminated their cultivation practices on the farms. They elected to move to chiefdoms like the Bapo at Wolhuterskop, the Bakgatla Ba Mmakau, especially to Sjamboks Location (Hoekfontein) and the Bakwena Ba Magopa in the Odi district of the then Bophuthatswana. Some people on the farms being claimed decided to move voluntarily to places like Sjamboks Location, Wolhuterskop, Hammanskraal, Garankuwa, and Mabopane and even to the urban areas of Gauteng where they saw a better future for them and their children. It is also necessary to point out the discrepancies between the allegation by Mr. Lebogo that the "community" were "given 7 days to move to their respective chiefs" and the statement in your Acceptance Report (paragraph 4.1) that "...the removals started from 1958 until late 1970's". Many of the current landowners who were residing on the claimed land at the time dispute these allegations of forced removals vehemently and we have secured affidavits in this respect.
- 9.8 From the above it is clear that the dislocation of people in the Magaliesberg area and further afield by the military force of Mzilikazi is undoubtedly the main reason why the State ethnologist, Van Warmelo and Breutz, did not identify large settlements of people in the land being claimed. Van Warmelo's ethnographic investigation in 1935 of the land being claimed shows a sparsely populated area. The people indicated on the farms by Van Warmelo could only have been the descendants of people who were dispossessed of their land rights

by Mzilikazi's forces in the Magaliesberg region. This dispossession could only have occurred before 19 June 1913 and, as such, does not qualify as a dispossession as contemplated in the Act. By the time these dislocated people returned to the land south of the Magaliesberg, the land was already occupied and even owned by white landowners.

## 10. AQUISITION OF THE CLAIMED LAND

- 10.1 The farm Broederstroom 481 JQ (initially known as Rhenosterspoort) was first granted in ownership to Hercules Albertus Pretorius in 1855.
- 10.2 The farm Welgegund 491 JQ was first granted in ownership to Marthinus Wessel Pretorius on 1 October 1856.
- 10.3 The farm Leeuwenkloof 480 JQ was first granted in ownership to Marthinus PW Pretorius on 13 March 1869.
- 10.4 The farm Hartebeeshoek 498 JQ was first granted in ownership to W A du Plessis and Barend Johannes Pretorius on 7 November 1864.
- 10.5 It is clear that all the farms claimed were granted in ownership to whites from as early as 1855. The historical evidence, however, shows that members of the Voortrekker commando's who drove out Mzilikazi occupied all the farms from as early as 1844. **Under these circumstances it is clear that any traditional rights which any community might have had (and which are in any event denied) were extinguished prior to 1913 and would not qualify for restitution under the Act.**
- 10.6 It is also clear that all the farms were Crown Land and were allocated by virtue of crown grants to private owners during 1855, 1856, 1869 and 1864 respectively. Thereafter the farms were subdivided into different portions and sold to various private owners. The Crown Land Disposal Ordinance, 57 of 1903, regulated the issue of crown grants.

## 11. THE MEKGARENG COMMUNITY

- 11.1 In the acceptance reports it is alleged that the name Mekgareng existed since the 18<sup>th</sup> century. Spokespersons from the claimant community associated the name with a "place of many trees" as if the name derives from *Dihlare*, which means "trees" in the Sotho languages. They also indicated that ward 29 of the Madibeng local municipality in the Bojala district of the North West Province, the area of which includes part of the land being claimed, is known as Mekgareng. This however does not bring us closer to the origin of the name, and neither did scrutiny of available literature and documentation gleaned from the

National Archives and libraries. Not a thread of information could be found which referred to such a name or area as **Mekgareng**. Various spokespersons were consulted in the Broederstroom area and they remained adamant throughout that the name **Mekgareng** is associated with a **place of many trees or bushveld**. According to SP Lekgoathi (2003: 37) who wrote a chapter in the report on the Cradle of Humankind World Heritage Site states *they continued to hold on to the old name, Mehlareng, which means a place of many trees, this in reference to the preponderance of trees in the area.*

- 11.2 Whether a Mekgareng community ever existed in the past is doubtful. From an anthropological prospective the functioning of such an heterogenous community consisting out of Northern Sotho, Tswana, Southern Ndebele, Tsonga, Zulu, Xhosa, Swazi, Coloureds and black foreigners from outside South Africa, it is inconceivable and hard to imagine. **The only conclusion that we can draw is that the Mekgareng community is a creation by the claimants for purposes of the land claim.**
- 11.3 The claim form of Harold Lebogo refers to an attached list of claimants who are members of the so-called Mekgareng community. The claimants also submitted a list of “313 original owners/households of Mekgareng”. It is clear that the majority of the claimant community are Sotho/Tswana speakers and which includes numerous Ndebele people, indicating that they were originally members of the Bakgatla Ba Mmakau, Bakwena Ba Magopa and Bapo chiefdoms. According to the descendants of the original Pretorius brothers, who obtained land in the area being claimed in the early 1840, the original Pretorius brothers brought a number of Zulu speakers to the area as laborers from the Pietermaritzburg area. In this regard we have secured an affidavit of Mr. Johan Pretorius confirming this. The existence of other Nguni speakers such as Xhosa and Swazi speakers may be ascribed to their settlement in the area after employment in the urban areas in Gauteng. Other Voortrekkers also brought the Griekwas/Coloured people into the area as labourers who constituted a small community called the “Malay camp” (Lekgohati 2003: 36 – 37).
- 11.4 With reference to the presence of foreigners from Mozambique (Tsonga), Malawi, Zambia and Zimbabwe in the area been claimed, Lekgohati (2003: 38) avers that *“in trying to find informants who might have stories to tell about mining, I walked directly into a brick wall ... Nonetheless, I do not find this lacunae particularly surprising, giving the use of male migrant labourers particularly from Portuguese East Africa (Mozambique, Zambia and Malawi), in the late 19th and early 20<sup>th</sup> century. Many of these migrants would have been repatriated upon expiry of their contracts, even though a handful would have fiddled their way out of their rudimentary compounds and integrated with local African communities.*

- 11.5 Our investigations reveal that the name Mekgareng is undoubtedly associated with a place where there is an abundance of trees. Whether a Mekgareng community ever existed in the past as alleged by the claimant community is doubtful. **We are of the opinion that the name Mekgareng Community is their own creation by the claimants for purposes of this land claim.**
- 11.6 It terms of the Act, a community is defined 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.”-none of these conditions are met by the so-called Mekgareng Community.
- 11.7 We are therefore not convinced that a so-called Mekgareng Community, in terms of the Act’s definition, ever existed and we are of the opinion that it was created for the sole purpose of this land claim.

## 12. DISPOSESSION

- 12.1 The dispossession of the right in land must have been the result of past racially discriminatory laws or practices as defined. A dispossession that took effect before 19 June 1913 is not actionable under the Act. There must also be a casual link between the dispossession and racially discriminatory laws or practices.
- 12.2 The claimants in their claim allege that their rights were dispossessed in terms of the Development Trust and Land Act, Act 18 of 1936 in that *“any area which was owned/occupied by African people outside the scheduled and released areas, was to be regarded as so-called black spots.”* The claimants further allege that the residents of these black spots had to be removed from white areas by buying the land from the African owners, providing alternative land within the released area and in the case of resistance from the Africans, expropriation. This statement is not only factually incorrect but also legally incorrect. The four farms within the claimed area were never regarded or declared as black spots and as such, an allegation that the members of the claimant communities were dispossessed by virtue of the declaration as a black spot is factually incorrect and false. The reference to expropriation is also legally incorrect as the title deed history of all the abovementioned farms clearly shows that they have been in the possession of white persons since as early as the 1850 and that no expropriation occurred.
- 12.3 From paragraph 3.1 of annexure **“B”** hereto, the claimants claim that the so-called Mekgareng community *“occupied the land since the late 1800, prior to the arrival of whites in that area (sic)”*. This is, as we have stated above, factually incorrect.
- 12.4 In paragraph 4.1 of annexure **“B”** hereto the claimants allege that *“they were not removed at the same time, the removals started from 1958 until late 1970”*. It is

inconceivable that a community, if it existed, was removed over a period of 12 years. If a community did in fact exist, or if the area was declared a black spot, as alleged, such a community would have been removed over a very short period of time and definitely not over a period of 12 years. We have already referred to affidavits secured from current landowners, who resided on the claimed land at the time, denying the allegations of forced removals. In addition the references made to the so-called "trekpasses" do not form the basis of a restitution claim. The reference to the "trekpas" in paragraph 4.1 of annexure "B" refers to one individual and not to a community. A "trekpas" in itself does not form the basis of a restitution claim as it does not comply with the requirements of a dispossession as contemplated in the Act and is therefore regarded as irrelevant.

12.5 It is noteworthy to mention that in our investigation we could not find any documentary evidence to indicate that a community was removed from the claimed land during the periods mentioned in your acceptance reports. No evidence exists of any planned or executed forced removal by the then Government or any State department. The lack of any evidence in this respect strengthens our clients' belief that the land claim in this specific context is fabricated and does not in any way meet with the requirements as laid down in the Act.

12.6 What is however clear is that the people who did reside on the claimed farms during the periods mentioned in your acceptance report, resided as employees or labour tenants in terms of individual labour agreements and not as a community. It is clear that even on your own documents and findings, there was no dispossession of a community, even if specific landowners evicted some of the claimants during the period mentioned. As we have mentioned, even if specific landowners evicted some of the labourers, they in any event did not hold rights in common with other families to form a community as defined in the Act and since no individual claims for restitution have been lodged, the claim by the so-called Mekgareng community does not qualify for restitution. Evictions of individual labourers are even in our constitutional state valid providing the due process of law is followed and has no racial basis. We are therefore of the opinion that individuals who form part of the claimant group, had at best had individual rights on some portions of the claimed land (and not on the claimed land *in toto*), and which rights were based on employment agreements, labour tenancy agreements and other similar contracts between the individuals and the then land owners. There is and was no community as contemplated in the Act and there was no dispossession as contemplated in the Act of any such community.

### 13. DOCUMENTS SUBMITTED BY CLAIMANTS

- 13.1 The documents referred to in paragraph 3.2 and 3.3 in annexure “B” purports to substantiate the claimant’s claim that they had been residing on the land claimed. With reference to the two baptismal certificates dated 19 August 1944 and 20 February 1927 respectively it is noted that the only name that appears on the list of family names submitted by the claimants, is the family name Masemola.
- 13.2 With reference to all the other documents such as baptismal-, confirmation-, and consecrate certificates it is noteworthy to mention that all these certificates indicate that the specific persons were resident on the farm **Hartebeeshoek 112**. According to the alphabetical list of farms, in the province of Transvaal, which we attached hereto as annexure “D”, documents compiled in the Surveyor General’s Office, Pretoria, the farm Hartebeeshoek 112 was re-numbered to Hartebeeshoek 502 JQ. The farm Hartebeeshoek 502 JQ is not being claimed. This is the farm on which the satellite station of the CSIR is currently situated and to which the claimant community refers to as “Skotiphola,” according to the hand drawn map that they submitted with their claim documents. In this regard it is further worth mentioning that the copy of the old passbook of one J R Rakube, which was also attached to the claim documents, confirms that Rakube was allowed to work at the CSIR at Hartebeeshoek.

**Any reference therefore to the farm Hartebeeshoek 112 in the documents submitted by the claimants is a reference to the farm Hartebeeshoek 502 JQ, which has not been claimed.**

- 13.3 With reference to the other documents submitted by the claimants, we confirm that we have also been able to trace copies of correspondence relating to the farms claimed with specific reference to the then labour situation on these farms. We know that some mines operated in the area during the 1940’s and 1950’s and that there had been compounds, which housed laborers, in the area. We have managed to secure copies of the relevant correspondence of which the following are examples:

13.3.1 with regards the farm Leeuwenkloof, leasing agreements were concluded with certain natives as is evident from annexure “E” hereto. This portion of land belonged to one Mr Glas who is still today the registered owner of this portion (portion 2 of the farm Leeuwenkloof). We have also established, with reference to the land of Mr Glas, that he housed several labourers in a compound on his property during the time when the mine was operation thereon. These labourers resided on the property in terms of their individual labour contracts and when the mine closed down, their employment relationship terminated with the resultant closure of the compound. Aerial photographs show the specific compound in question.

13.3.2 With reference to mines and related industries on the farm Leeuwenkloof we attach hereto a copy of a letter from Peri-Urban Areas Health Board addressed to the Director of Native Labour, dated 11 February 1957 and marked as annexure "F", that the industries referred to employed a number of employees on the portions of Leeuwenkloof belonging to Mr. Glas and other surrounding portions. As has been stated above, these employees were resident in so-called compounds and their right of residence arose solely from their employment relationship with the employers. Apart from the fact that the structures referred to were single-sex compounds, they also paid monthly rental to Mr. Glas, the owner of the land. Our investigation further shows that these employees vacated the premises once the industries and mines closed down during 1958 as is evident from a copy of a letter attached hereto as annexure "G" and which is self-explanatory. The other industry, a lead mine operated by Silverdale Investments on a portion of the farm Leeuwenkloof closed down during 1961 as is evident from a copy of their letter dated 24 January 1962, attached hereto as annexure "H".

13.4 The facts referred to above illustrate the existence of compounds in the context of commercial mining and industrial operations and does not constitute or represent a community as envisaged in the Act.

13.5 In 1933 the manager of the Pelindaba Township and Land Company Limited applied for permission to lease grazing rights to certain natives on the company's portion of the farm Welgegund. Find attached hereto annexure "I". From annexure "I" it is clear that the respective natives leased grazing from the then owners of the land in terms of a lease agreement. This relates to commercial leasing of grazing land and does not establish any rights other than those flowing from the lease agreements

13.6 Again it is clear that very little evidence exists, documentary or otherwise, of the existence of a **community** on the claimed land during the time of the alleged dispossession and that even less evidence exists of a **dispossession** of a community as is claimed by the claimants.

#### 14. ANALYSIS OF AERIAL PHOTOGRAPHY

14.1 We have commissioned an expert in the field of aerial photography to analyse photographs of the farms under claim and, having done so, compile a detailed report of the investigation and his findings. The earliest aerial photography that could be obtained was of August 1949. In addition we further secured photographs dated 1968, 1973 and 2002.

14.2 Our expert's analysis draws the following relevant conclusions in respect of the claimed farms. We believe the following to be relevant:

14.2.1 Over the total period covered by the photography it is clear that the focus in terms of land use changed quite dramatically from traditional agriculture in the 1950's to predominantly residential and business related land use from the 1960's. This is ascribed to the reality that most landowners could not make a living from agriculture due to, amongst other factors, poor soil quality, little arable agricultural land and poor quality grazing. A further reason for very little agriculture being practiced is the lack of sufficient sources of potable water in the area.

14.2.2 Between 1949 and 1968 the number of structures fit for human habitation increased substantially confirming the overall shift in focus of land use. A clear pattern exists whereby landowners, unable to practice traditional agriculture due to the unfeasibility thereof, subdivided their properties and sold off the subdivided portions.

14.2.3 No areas which would be consistent with a community resident in the four named villages referred to in the claim form, such as traditional dwellings huddled together with common kraals, lands etc. could be identified on any of the four farms concerned. On the contrary, areas, which we know had significant numbers of resident employees such as the Glas property, were clearly identified. The "villages" referred to both by the claimants in their land claim forms as well as by you in your acceptance report were not identified on photography for the periods concerned and specifically not between 1949 and 1973.

14.2.4 The issue of "**beneficial occupation**" as claimed by the claimant need also be addressed. The adjective "**beneficial**" is said to mean "**entitling a person to receive the profits or proceeds of the property**" (*The Collins English Dictionary 3<sup>rd</sup> ed., 145*) or "**lucrative, bringing pecuniary profit**" The weight of connotation in a legal context is **entitlement to proceeds**. From the analysis of the photography it is palpably clear that on the farms claimed:

- a. No villages exist;
- b. No points of assembly of people can be identified;
- c. No traditional kraals were identified;
- d. No traditional subsistence farming lands were identified
- e. No cattle handling facilities nor dipping tanks were identified.

It is therefore unclear on which basis the claimant community alleges that they had beneficial occupation of the claimed land. **Arable**

**cultivated lands identified are almost all still there today and therefore the allegation of the “loss of arable lands” by the claimants are also denied.**

14.2.5 From the photography it is also clear that there has been an increase of business related structures such as shops, garages, holiday resorts which have contributed to both the general change in land use and a change in the local economy.

14.3 Our expert has been involved in other land claims and has testified as an expert in the Land Claims Court on his findings in similar circumstances. His opinion is that the aerial photography of these four farms does not compare to any other photography where a community was involved. Typical examples are those communities of the Old Mabaalstad, Vogelfontein (Beestekraal) and Haakdoornbult (Mphela). Our expert analyzed all the available photography of these communities and he opines that they differ vastly from the photography of the claimed land. From the photography in these other areas, he was able to substantiate the presence of communities by identifying villages, gathering points, traditional kraals, subsistence farming practices, grazing patterns etc. all of which can be clearly identified as being consistent with the existence of a community.

14.4 Aerial photography is objective evidence and we are therefore satisfied that the allegations by the community that they functioned as a community that were removed from the land are unfounded.

## 15. FEASIBILITY

15.1 Although our clients are of the opinion that the claim does not meet with the requirements of the Act in respect of entitlement to restitution, and should be dismissed as frivolous and vexatious, it is worth addressing the issue of feasibility of restoration at this stage, in the event that the Land Claims Court finds that the community is entitled to restoration.

15.2 You are reminded of the inspection in loco, which was conducted on 1 April 2005 where our clients accompanied your technical team on a full inspection of relevant properties in the area. During the inspection you were also informed of the current value of properties in the area. There is evidence that suggest that property around the Hartbeespoort Dam is the most valuable land in the Republic. We pointed out many properties which recently sold for up to R100 000.00 per hectare, depending on the class of improvements. There can be no doubt that the extent of the four farms which are being claimed, some 15 000 hectares, at current market value, would exceed a few hundred million Rand - for land only. Once the improvements are calculated we are of the opinion that

the financial burden to restore the claimed land could be in excess of R750 million.

- 15.3 Apart from the enormous financial implication you have also witnessed that the majority of landowners do not practice agriculture but either conduct businesses from their properties, or use their property exclusively for residential purposes. Owners of businesses in the area employ large number of employees thereby creating a significant contribution to the micro economy of the district.
- 15.4 You were also informed about the 10km and 5km safety zone, which exists around the Pelindaba Nuclear Facility as well as the need for a safety zone. In this regard we attach hereto copies of letters relating to the possibilities of establishing a township in the area during the 1960's, marked annexures "J" and "K". From annexure "J" it is clear that the Atomic Energy Board was very concerned about the establishment of a township due to the fact that it would have led to an increase in population of the area

*"...enige ontwikkeling binne 'n straal van minstens 5 myl ... wat waarskynlik 'n toename in die bevolkingsdigtheid kan lei."*

From paragraph 3 of annexure "J" it is clear that one of the reasons why the facility was built in the area in the first place was because of its low population density

*"Een van die faktore wat die keuse van die Raad se terrein beïnvloed het was die lae bevolkingsdigtheid in die onmiddellike omgewing..."*

Annexure "K", paragraphs 2A (1) (i) and (ii) are self-explanatory and confirms the undesirability of substantial settlement within the then prescribed 5 mile radius.

- 15.5 Your attention was also drawn to the fact that Leeuwenkloof and Hartbeeshoek, in their entirety, as well as a large portion of Broederstroom fall within the Cradle of Humankind World Heritage Site (CHWHS) and, as such, are subject to conditions imposed in respect of development and land use. It is important to note that all land falling within the World Heritage Site are categorized into five different land use intensity zones. Any development on land falling within the borders of the Site is implemented in a controlled way to ensure that the character of the Site is protected and enhanced. This is done by way of various pieces of legislation, amongst others, Environmental Conservation Act, the National Environmental Management Act, the National Heritage Resources Act and the Water Act. In respect of the five land use intensity zones referred to above, it is important to note that a significant portion of the claimed land falls within the Moderate Intensity Zone whilst the remainder falls within the

Corridor Zone. The Site derives its significance from the fossil-bearing cave deposits that preserve a remarkable record of the early stages in the evolution of humans. The unique nature of this record led to it being accepted as a site of universal value. You will also be aware that the National Heritage Resources Act, 25 of 1999 protects archaeological and historical sites older than 60 years. We are of the opinion that the settlement of a large number of people would not only be unfeasible but also probably impossible given both the facts stated above and the onerous planning and development constraints apparent in the CHWHS. In this regard additional information could be obtained from the following website: **[www.cradleofhumankind.co.za](http://www.cradleofhumankind.co.za)**.

- 15.7 Given all the factors referred to above we are also of the opinion that it would be unfeasible to restore the claimed land to the claimants in the event that the Land Claims Court find that the claimants do meet the requirements of entitlement.
16. In respect of the farm Welgegund we note that according to the claim form Mr Lebogo never claimed this farm. The same applies to the farm Weldaba. There is no basis on which these two farms could have been included in the gazetting of this claim. In this regard your attention is drawn to the provisions of section 10 as well as Rule 2. Having regard to the provisions of the Act as well as the Rules we can find no justification for the publishing of these two farms and, as such, you are requested to act in accordance with the provisions of section 11A (2) forthwith.

Under the circumstances you are requested to act in accordance with the provisions of section 11A (2) for the reasons stated above. In the event that you decide, after applying your mind to this representation, that you will not withdraw the said notice, you are requested to act in accordance with section 14 of the Act by referring the claim to the Land Claims Court for adjudication.

Lastly, we shall be pleased if you could respond to this representation within a reasonable time.

Yours faithfully,

Peet Grobbelaar