

# Whose Land Is it anyway? A historical Reflection on the Challenges URCSA Encountered with Land and Property Rights

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## Abstract

The proposal to amend the Constitution of South Africa 1996 regarding the expropriation of land without compensation has invigorated a robust discourse with regard to the land issue in South Africa. Cognisance should be taken of how the land issue was handled during the apartheid dispensation and the way it has played out in the constitutional democracy dispensation since 1994 in South Africa. This article will attend to issues relating to land in the Uniting Reformed Church in Southern Africa (URCSA). URCSA was constituted in 1994 due to a merger of two racially segregated churches, the Dutch Reformed Mission Church (DRMC) and the Dutch Reformed Church in Africa (DRCA). The DRMC was constituted through mission endeavours of the Dutch Reformed Church (DRC) during 1881 to serve so-called coloured members of the DRC. The DRCA was constituted in or about 1910 to serve African members. In order to understand the controversy in URCSA from 1994–2012 with regard to property rights, one has to understand how the colonists and missionaries (and later the apartheid regime) utilised “divide and rule” and supremacy strategies to secure property rights for churches of people from mixed descent and Indian people (the DRMC) and the Reformed Church in Africa [RCA]); while at the same time restricting property rights for churches of members from African descent (the DRCA). This is evident in the way the constitutions of the above-mentioned mission churches were drafted. This article will attend to the following subthemes: property rights of the DRMC challenged by apartheid laws; property rights of the DRCA challenged by apartheid laws; a court case regarding the expropriation of land without compensation; controversy regarding property rights (1998–2012); from litigation to out-of-court settlement on property rights (1998–2012); and lastly out-of-court settlement between the DRC, the DRCA and URCSA.



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**Keywords:** apartheid laws; Bantu Homelands Citizenship Act; expropriation of land without compensation; Group Areas Act; litigation; Natives Land Act; out-of-court settlement; property rights

## Property Rights of the DRMC Challenged by the Apartheid Laws

Already in 1880, the Synod of the Dutch Reformed Church (DRC) approved three property rights qualifications for the delegation to the first Synod of the Dutch Reformed Mission Church (DRMC), hosted in October 1881 in Wellington. These were: a church council should exist; the church council should be able to pay at least a third of the missionary's salary; and lastly, the property must have been transferred according to provisions made in the Constitution of the DRC, either in the name of the DRC or in the mission congregation (Acta NGK Algemene Sinode 1880 V Skedule in De Christen Sending 24 September 1880, 8 and Kerkwet NGK 1881, 87). Congregations of the DRMC were, therefore, able to acquire land and immovable church property before and during the apartheid dispensation and could have it transferred in their name. The DRMC was in this regard seen as a legal person. Under the common law, a juristic person is an association of persons distinct from its members and independently in their own name, carrier of its rights and obligations. One of those rights is to hold property in their name.

The DRMC, however, experienced first-hand the dire consequences of the Group Areas Act, Act No. 41 of 1950. Section 3 of the Group Areas Act states that the Governor-General may “whenever it is deemed expedient, by proclamation in the Gazette declare that as from a date specified in the proclamation the area defined in the proclamation shall be defined for the occupation by members of a certain group” (Group Areas Act, Act No. 41 of 1950. Section 3(1)(a)). The area was thus defined as an area for ownership by members of a certain racial group (Group Areas Act, Act No. 41 of 1950). Section 3(1)(b) and Section 4(1) of this Act restricted the occupation of land or premises in areas on a racial basis “except under the authority of a permit.”

With regard to the acquisition of property, Section 5 of the Group Areas Act states that no “disqualified person and no disqualified company could after the date specified in the proclamation, acquire any immovable property situated in a specific group area, whether or not in pursuance of any agreement or testamentary disposition entered into or made before that date, except under the authority of a permit” (Group Areas Act, Act No. 41 of 1950, Section 5). Across South Africa, pieces of land (where congregations of the DRMC were situated) were declared as white residential areas. The DRMC, as property holder of immovable property, was therefore forced to settle in the so-called coloured townships, for example Steenberg, Goodwood, Phillipi, Paarl, Woodstock, Noordhoek, Rondebosch, Carnarvon, Vredendal, Swellendam, and so forth. At high cost new church buildings, parsonages and schools were erected in the so-called coloured residential areas, for example Bonteheuwel 1966, Lavis 1967, Welgelegen 1971, Bergsig 1974, Lotusriver 1975, Acacia Park 1976, Eerstervier 1976, Uitsig 1978,

Macassar 1978, Mitchels Plain 1979, Scottsdene 1979, Atlantis 1987, Die Goeie Hoop 1987, Lentegeur 1987, Vahalla Park Lavender Hill 1988, Oosterzicht 1992, and Robinvale 1993 (Skema van Werksaamhede NGSK 1994, A14/1). In 1978, the DRMC congregation in Blanco was forced to settle in Pacaltsdorp due to the proclamation of the area in Blanco as a white residential area (Skema van Werksaamhede NGSK 1978, 13). The theological school of the DRMC was relocated in 1963 from Wellington to Belhar, a residential area for so-called coloureds. Numerous other forced resettlements occurred across the country.

### Property Rights of the DRCA Challenged by the Apartheid Laws

In 1910 the DRC in the Free State established the first Reformed Church for African people in particular. The mission policy of the DRC in 1935 and 1947 affirmed the central mission policy of dominance and control of people of mixed descent and African people. The mission project ultimately led to them being dispossessed of their land. The DRC acquired land from the state in order to build churches, mission schools and hospitals. Provision was made in the church order of the DRCA that the property of the DRCA could be transferred in the following manner: in the name of the local Dutch Reformed Church; in the name of the General Mission Commission of the DRC; in the name of other bodies approved by the General Mission Commission of the DRC (Kerkorde en Wette van die NGSK OVS 1934 Art v 1934, 6). The missionary commission of the DRC and their successors acted as trustees of land used for church purposes by the DRCA. Immovable church properties in the townships utilised by the DRCA were not registered in the name of the DRCA on the grounds of the provisions in the Group Areas Act, Act No. 41 of 1950. According to Section 14(2)(a) (i) and (ii) the DRC holds immovable property for mission purposes in group areas or controlled areas reserved for blacks (Group Areas Act, Act No. 41 of 1950, Section 14(2)(a) (i) and (ii)). The properties of the DRCA could not be “alienated, sold or seceded without the prior consent of the DRC” (Plaatjies-Van Huffel 2011, 6).

The DRC acquired huge portions of land from traditional chiefs and the state for mission purposes, even in the Bantustans (Minutes General Synodical Commission Meeting Cape Town 26–28 October 2009, 134). Most of these properties were not transferred to either URCSA or DRCA. Even 25 years after democracy in South Africa, many properties in which black people worship every Sunday are still registered at the Deeds Office in the name of the DRC (Minutes General Synodical Commission Meeting Cape Town 26–28 October 2009, 134). The DRC played a pivotal role in the implementation of apartheid laws, which ultimately led to spatial apartheid and the impoverishment of the DRCA. The DRC did not see the DRCA as a legal person. Therefore, the DRC made no provision in the church order of the DRCA regarding the right to hold property in their name. During the apartheid dispensation, the DRCA, like other churches in the townships, was restricted to hold property deeds other than in the Bantustans. For example, Section 2 of the Bantu Homelands Citizenship Act, Act No. 26 of 1970 states that “every Bantu person in the Republic” should be a citizen of one or other territorial

## Plaatjies-Van Huffel

authority area also known as the Bantustans (Bantu Homelands Citizenship Act, Act No. 26 of 1970). The property utilised by the DRCA for church purposes was transferred either in the name of the DRC or in the name of the so-called Bantu local authorities. The DRC acquired huge pieces of land from the traditional chiefs and the state for mission purposes, even in the Bantustans. The Natives Land Act, Act No. 27 of 1913 restricted black people from buying or leasing land in certain parts of the Union of South Africa:

Restrictions as to transactions relating to land between natives and other persons pending enquiry by a commission

1.(1) From and after the commence of this Act, land outside the scheduled native areas shall, until Parliament, acting upon the report of the commission appointed under this Act, shall have made other provision, be subject to the following provisions, that is to say:

Except with the approval of the Governor General:

(a) 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 there over: and

(b) A person other than a native shall not enter into any agreement or transaction for the purchase, hire or any other acquisition from a native of any such land or of any right thereto, interest therein, or servitude there over. (The Natives Land Act, Act No. 27 of 1913 1(1))

After the commencement of the Act, no person other than a so-called native could purchase, hire or acquire any land in a scheduled “native” area except with the approval of the Governor-General. During apartheid, the DRCA was restricted to hold property deeds other than in the Bantustans. The properties utilised by the DRCA for church purposes were in most cases transferred in the name of the DRC or so-called Bantu local authorities. Land acquired by the DRC from the state was used to build churches, mission schools and hospitals. In the case of the RCA and DRMC, the property was transferred in the name of either the DRMC or the RCA. In the case of the DRCA, these properties were never registered in the name of the DRCA (Minutes General Synodical Commission Meeting Cape Town 26–28 October 2009, 134).

Numerous instances occurred where black ministers of the Word were not allowed to occupy the parsonage in white residential areas. For example, due to provisions in the Group Areas Act, Rev. L. E. Matsaung, the first black minister of the DRCA congregation in Messina, could not stay in the parsonage in the white residential area of Messina. The parsonage in the white residential area belongs to the DRC. The DRC then decided to lease the parsonage to a white person. The congregation also lost a plot at Harper of about 6 hectares as well as another parsonage at Tshipise, 35 kilometres from Messina Town. The congregation approached the DRC on several occasions about

the issue, but with no avail (Submission to Truth and Reconciliation Commission by URCSA Messina Congregation 1997). The DRCA was unsuccessful in the repossession of the above-mentioned immovable property or to transfer it in their name, even after the dawn of constitutional democracy in South Africa.

### Court Case regarding Expropriation of Land without Compensation

Churches also encountered problems regarding the expropriation of land without compensation. This is portrayed in the case between the Uniting Reformed Church De Doorns and the Department of Transport and Public Works, Western Cape. URCSA De Doorns owns three immovable properties, on agricultural land where three public schools were erected during the 1980s. Since 1 April 1987, the Department of Local Government, Housing and Agriculture leased the property from URCSA De Doorns. The tenancy was for a period of 20 years, reckoned from 1 April 1987 with an expiry date of 31 March 2007. Clause 16 of each of the lease agreements contains a provision in terms of which URCSA De Doorns (the applicant) was obliged to transfer at the end of a 20-year period these properties free of charge to the House of Representatives (the lessee). The House of Representatives was one of the three separate houses of Parliament, which had been created under the 1983 Tricameral Constitution of South Africa, which was abolished in 1994 with the advent of a new democratic order. The functions, which were performed by the House of Representatives, were taken over by the Department of Transport and Public Works, Western Cape with the dawn of the constitutional dispensation (URCSA De Doorns v President of the Republic of South Africa and Others 2012, 3). After April 2007, the Department of Transport and Public Works claimed to be entitled to enforce its rights against the applicant under above-mentioned lease agreements and refused to pay the lease amount.

During 2011, URCSA De Doorns lodged a Constitutional Court case with regard to the right of the state, based on the lease agreements, to expropriate the schools without compensation. The matter concerned the constitutional validity of clause 16 contained in the lease agreements entered into between the applicant as lessor and the Department of Local Government, Housing and Agriculture as lessee on 1 April 1987 (URCSA, De Doorns v President of the Republic of South Africa and Others 2012, 3). According to URCSA De Doorns, at the time of the conclusion of the lease agreements between it and the state there was unequal bargaining power. The presumption of URCSA De Doorns was that the enforcement of clause 16 of the lease agreement would result in the arbitrary deprivation of its property in contravention of Section 25 of the Constitution of the Republic of South Africa (URCSA, De Doorns v President of the Republic of South Africa and Others 2012, 3). Section 25, which deals with property, provides as follows:

- (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of law of general application:

## Plaatjies-Van Huffel

- (a) for a public purpose or in the public interest; and
- (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances. (Constitution of the Republic of South Africa 1996)

URCSA De Doorns disputed the Department's right to enforce the lease agreements, contending: "The agreements are against public policy, void and unenforceable" (URCSA, De Doorns v President of the Republic of South Africa and Others 2012, 3). In order to resolve the dispute, URCSA De Doorns sought an order to declare:

- i) That the applicant is the lawful owner of the immovable properties;
- ii) That the applicant is under no lawful obligation to transfer the properties to the state free of charge;
- iii) That the applicant is entitled to receive the consideration agreed upon between the parties, alternatively fair compensation should the properties be transferred to the state;
- iv) The following provisions of clause 16 of the Notarial Lease Agreement concluded between the Applicant (as lessor) and the Department of Local Government, Housing and Agriculture: Administration House of Representatives in respect of the properties are void and unenforceable with effect from 1 April 1987. (URCSA, De Doorns v President of the Republic of South Africa and Others 2012, 3)

The Department wanted to expropriate the property of URCSA De Doorns without compensation. The judgement of the Constitutional Court case between URCSA De Doorns and the President of the Republic of South Africa and Others was delivered on 14 December 2012. Amongst others, the judge declared that "the applicant is the lawful owner of the following properties, that the applicant is under no lawful obligation to transfer the properties to the state free of charge; that the applicant is entitled to receive the consideration to be agreed upon between the parties, alternatively fair compensation should the properties be transferred to the State" (URCSA, De Doorns v President of the Republic of South Africa and Others 2012, 5). The judge also ruled that the "provisions of clause 16 of the Notarial Lease Agreement concluded between the Applicant (as lessor) and the Department of Local Government, Housing and Agriculture: Administration House of Representatives in respect of the properties are void and unenforceable with effect from 1 April 1987" (URCSA, De Doorns v President of the Republic of South Africa and Others 2012, 5).

## Controversy regarding Property Rights (1998–2012)

The controversy between the DRCA and URCSA with regard to property rights arose between 1998 and 2012. Immediately after the constitution of URCSA, the DRCA lodged a court case regarding the legality of the decisions of the DRCA Synod 1991 with regard to the church unification decisions at the DRCA Synod 1991. The court case between the DRCA and URCSA 1998 (Dutch Reformed Church [OFS], Dutch Reformed Church in Africa [Phororo and Uniting Reformed Church in Southern Africa number 536/96]) and the numerous court cases afterwards with regard to property rights of church buildings, ultimately depleted the resources of both impoverished denominations. Approximately 40 High Court appeal cases concerning property rights of the DRCA and URCSA were lodged between 1994 and 2012. The unresolved property issues between URCSA and the DRCA and the consequential court cases led to animosity between the two denominations and drifted the congregants in the townships apart in two opposing camps. The property dispute challenged the witness of the DRC family regarding justice, reconciliation and unity. Especially URCSA was challenged with regard to how they embodied the three pillars of the *Belhar Confession*, namely unity, justice, and reconciliation. Already in 2009, URCSA proposed that a land and property audit among the churches should be undertaken with a focus on how they were acquired (Minutes General Synodical Commission Meeting, Cape Town 26–28 October 2009, 134). Regretfully, this decision was never executed.

The question remains: “Whose property was it they were fighting for in the courts of law?” As shown above, the DRCA, due to provisions in the apartheid laws, was not the title deed holder of the immovable property in the townships utilised for worshipping or accommodation of ministers of the Word. The question we now ask is: “Shouldn’t the two churches rather have attended to the issue of property rights differently than in an adversarial way?” For example, in Allanridge, on one plot there were three structures: an asbestos parsonage; a half-built church (of bricks); and a corrugated iron structure. The DRCA held their services in the corrugated iron structure, while URCSA used the parsonage for worship purposes (DRC/DRCA/URCSA Church Property Settlement Panel 2012, 6). In Welkom, the URCSA congregation in Thabong occupied the church buildings, while the DRCA congregation worshipped in alternative buildings (DRC/DRCA/URCSA Church Property Settlement Panel 2012, 6). In Reitz there were three church buildings, including a parsonage. In this case, URCSA utilised all three church buildings. The church buildings in Lindley and the parsonage were also occupied by the URCSA congregation. The church building and parsonage of Bethlehem-North were also under dispute. The DRCA congregation in Bethlehem-North obtained a plot where they worshipped in a temporary structure (DRC/DRCA/URCSA Church Property Settlement Panel 2012, 6). In Thabashwe (Intabazwe) in Harrismith, there were a church and a parsonage. The minister of the Word of URCSA Thabashwe (Intabazwe) resided in the parsonage. The URCSA congregation of Thabashwe (Intabazwe) and the DRCA shared the church building. The DRCA congregation used the building for worshipping purposes, but in different time slots. In Tsiame B, also in Harrismith, the church building

was used by the DRCA, where they were in the majority (DRC/DRCA/URCSA Church Property Settlement Panel 2012, 7). In Clocolan, there was a dispute about the church building and parsonage. Both were occupied by the URCSA congregation. The minister of the Word of URCSA resided in the parsonage. The DRCA obtained a new plot for erecting a building (DRC/DRCA/URCSA Church Property Settlement Panel 2012, 8). In Hetzogville, the URCSA congregation occupied the building and parsonage, while the DRCA was worshipping in a corrugated iron structure (DRC/DRCA/URCSA Church Property Settlement Panel 2012, 9). In Wesselsbron, there were two church buildings and two parsonages; URCSA congregations occupied both. The DRCA group was worshipping in a corrugated iron building (DRC/DRCA/URCSA Church Property Settlement Panel 2012, 10). In Ventersburg, the URCSA congregation occupied the church building and parsonage. The DRCA was forced to worship in a corrugated iron structure. In Excelsior, although the DRCA congregation claimed ownership of the church building and parsonage, the URCSA congregation occupied both buildings (DRC/DRCA/URCSA Church Property Settlement Panel 2012, 10). In Vredefort, the magistrate's court decided in favour of the DRCA to occupy the church building and parsonage (DRC/DRCA/URCSA Church Property Settlement Panel 2012, 11). In QwaQwa, the two churches agreed in terms of which building should be occupied by which church. The occupation of the Maseru buildings by the URCSA congregation was not officially disputed by the DRCA. The Maseru church buildings belong to the DRCA Lesotho. The DRC requested the DRCA Synod Office to arrange for the transfer of the buildings to URCSA Maseru. The Tokoloho URCSA congregation used the disputed site in Phahameni. In Trompsburg URCSA occupied both the church and parsonage (DRC/DRCA/URCSA Church Property Settlement Panel 2012, 11). In Fauresmith, the URCSA congregation used the church building for worshipping purposes, while the DRCA used an alternative site. In Smithfield, the URCSA congregation used the church building and parsonage, while the DRCA congregation used alternative accommodation. In Boshof, the URCSA congregation used the church and the one parsonage close to the church. The DRCA used the other parsonage in the township for worshipping purposes (DRC/DRCA/URCSA Church Property Settlement Panel 2012, 12). Three cases, namely Bethlehem-West, Virginia and Koppies were set down for hearing in the Free State Supreme Court during 2003. The congregations had to instruct a new legal team to appear on their behalf. The General Synod of URCSA made the funds available in this regard. Also in the Eastern Cape, court cases were lodged against URCSA with regard to property rights of church buildings.

At a meeting of moderators of the family of Dutch Reformed Churches (DRC, DRCA, URCSA, RCA) held in Bloemfontein in May 2003, the offer by the Appeal Court Justice Brand to assist in finding an out-of-court settlement to the legal disputes, was accepted (Agenda General Synod URCSA 2005, 38). Legal advisors of the two churches proposed guidelines to settle the dispute out of court, namely:



## Plaatjies-Van Huffel

- i) Wherever in the window period of 1994–1998 a group of members functioned inside or outside the buildings of a certain congregation as continuation of the DRCA or laid claim to it, the properties belong to them.
- ii) If however 100% of the members cooperated and/or actively took part in the integration with URCSA, the properties belong to them.
- iii) Where this “cooperation” however was effected by violent means or threats, it falls under the first category. (Letter from the Moderamen of the DRCA 2008, 2)

The legal advisors also proposed that “an independent but understanding mediator” be appointed to resolve the disputes and reconcile the parties (Letter from the Moderamen of the DRCA 2008, 2). The General Synodical Commission of URCSA (2003) decided as follows:

- i) Affirmed the position that congregations are in the first instance liable for legal costs.
- ii) To financially support congregations as far as possible.
- iii) Supported all initiatives to secure an out of court settlement.
- iv) Approved the allocation of funds for a private members bill. (Agenda General Synod URCSA 2005, 38)

Nothing came of the decision regarding the private members’ bill. The GSC also requested the DRCA to place a moratorium on all cases pending this process. The question URCSA faced was if financial support should be granted to congregations involved in court cases related to unification. In the case of the Lehika congregation, the General Synod of URCSA was able to support the congregation financially (Agenda General Synod URCSA 2005, 38).

During 2005, several cases in the Free State and Lesotho Synod were placed on the roll for trial, for example: Koppies congregation 25 January; Witsieshoek 1 March; Ebenezer-Virginia 7, 8 and 10 June; and Bethlehem-West September 2005 (Agenda General Synod URCSA 2005, 49). Several attempts were made to reach a settlement in these cases. No settlement could be reached. An attempt by the Executive Committee of URCSA to involve an Appeal Court judge to mediate was also not fruitful. An appeal case of the Seisoville congregation was lost in February 2005, with the result that the congregation and their minister, Rev. J Diale and his family, were evicted from the church property (Agenda General Synod URCSA 2005, 49). In Heidelberg, the congregation lost a Magistrate Court case and appealed against the findings. The same happened to the Gcuwe congregation in the Eastern Cape. In Parys, the URCSA congregation took the DRC to the Equality Court with a charge of discrimination, after seeking mediation before the Human Rights Commission. The charge of discrimination

came because the DRC unilaterally took over one of the buildings as well as the members of the congregation of URCSA. The DRC further stopped subsidies to the URCSA Parys congregation. In the end, an out-of-court settlement was made between the parties, in which the DRC promised to pay out the value of the building, as well as renew the subsidy agreement for five years (Agenda General Synod URCSA 2005, 49). During 2005, the Seisoville congregation in Kroonstad was served with an eviction order and the minister had to vacate the parsonage. Koppies, Witsieshoek and Ebenezer (Virginia) had their court hearings postponed. These court cases depleted the resources of the impoverished congregations mentioned above. It became burdensome to be sustainable.

During the 1990s, URCSA was also challenged regarding the property rights of the Turfloop Theological Seminary. Turfloop had been used for the training of ministers of the Word of the DRCA since 1960, but the DRCA, due to apartheid laws, only had the right of occupation. Due to provisions in the above-mentioned apartheid laws no property rights were transferred to the DRCA. In 1999, the Northern and Southern Synods of URCSA relocated their theological training to Pretoria. Since 1999, illegal tenants, who refuse to evacuate the property and claim ownership of the buildings, have occupied the property of the Seminary. Suddenly the issue of land grabbing was on the table of URCSA. It became important for URCSA to manage the property appropriately and to secure ownership. In 2002, the Synodical Commissions of Southern and Northern Transvaal transferred the responsibility for these properties from the Curatorium to the Joint Church Administration Commission of the Northern and Southern Synod of URCSA, under the leadership of Prof. S. T. Kgatla, the moderator of URCSA, to manage the properties of the Seminary. After successful legal action, the Joint Church Administration Commission commenced with a project of developing the property into a conference/retreat centre. The Joint Church Administration Commission also initiated a legal process to obtain the title deeds of the property utilised by the Seminary (Agenda General Synod URCSA 2012, 449). URCSA still does not have the title deeds of the property of the Turfloop Theological Seminary; however URCSA has won court verdicts instructing the ownership transfer to take place (Kritzinger, Maponya, and Mokoena 2019, 10).

### From Litigation to Out-of-court Agreement regarding Property Rights (1998–2012)

Since 1998 there has been animosity between the DRCA and URCSA with regard to property rights. On 14 April 1994, the DRCA and the DRMC unified and the Uniting Reformed Church in Southern Africa (URCSA) was constituted. The DRMC and the DRCA ceased to exist. All properties, assets and liabilities of the DRCA—as a legal entity—were accordingly (by the decision of the constituting synod) transferred to the corresponding legal entities of the unified church arising from the association (Acta NGKA 1991, 393). Each congregation's rights, privileges, property, assets and liabilities were absorbed, with no participation in the decision, and transferred to a new

denomination. This decision of the DRCA General Synod 1991 was challenged by the DRCA in the OFS and Phororo. The DRCA won the court case against URCSA. The Supreme Court of Appeal ruled in favour of the DRCA OFS and Phororo on 27 November 1998. The verdict was clear. The decisions of the General Synod of the DRCA General Synod 1991 regarding the transfer of all properties, assets and liabilities of the DRCA to URCSA was not legally valid, seeing that the required approval from the congregations as legal entities were not obtained beforehand (NGKA [OVS], NGKA [Phororo] en die VGKSA 1998 Saaknommer 536/96, 34). The General Synod of the DRCA, therefore, had acted beyond its jurisdiction. After the court case the DRCA Regional Synod OFS and DRCA Regional Synod Phororo, laid claim to the property of the former DRCA utilised at that point in time by the newly constituted URCSA. Congregations were encouraged to claim the property by 31 January 1999 (Agenda General Synod URCSA 2001, 35).

From 1994, the court issued court orders to regulate the use of the three properties in dispute (two church buildings in Mmabatho and Montshiwa townships respectively as well as the mission house in Montshiwa—all in Mahikeng). The court ordered that the DRCA and URCSA Lehika should alternate usage of church buildings on Thursdays and Sundays (first group 9 o'clock; the other 11 o'clock) (Agenda General Synod URCSA 2016, 631). DRCA Lehika lodged a court case with regard to property rights during 1999. The two churches interdicted each other regarding the disruption of church services. DRCA Lehika also filed a counter-application, which was suspended pending the outcome of the 1999 action by DRCA Lehika. In 2002, the court ordered (by consent of both parties) that the matter be settled out of court and an agenda with facilitators of the meeting was attached to the court order. The facilitators were Rev. Lebone on behalf of DRCA Phororo Region; Rev. L. S. Mahlabe on behalf of URCSA Phororo Region; and Dr Hannes Knoetze on behalf of the DRC. The DRCA Lehika church council did not cooperate and threatened to resolve the matter through the court, which they did. The DRCA Lehika congregation cut their ties with DRCA Phororo Region, and informed the executive of the DRCA Phororo to not represent them or involve them in the out-of-court settlement process. The URCSA Lehika church council proposed an out-of-court settlement (Agenda General Synod URCSA 2016, 631). The North West High Court, Mahikeng decided the matter. On 20 June 2013 the DRCA Lehika congregation lost the court case (413/99) with costs against the Uniting Reformed Church Southern Africa (URCSA) Lehika congregation in the North West High Court, Mahikeng (DRCA Lehika congregation v URCSA, Lehika congregation 2013). The DRCA Lehika petitioned the Supreme Court of Appeal and URCSA Lehika defended the case. On Monday, 6 January 2014, the Supreme Court of Appeal granted DRCA Lehika special leave to appeal and ordered the full bench of the North West High Court; Mahikeng to hear the matter on appeal. DRCA Lehika lodged an appeal against the whole judgment by Justice Gutta, and the three judges (full bench) had to decide the correctness thereof (Agenda General Synod URCSA 2016, 631). On 4 December 2014, Judge A. J. Djaje handed down judgement at the North West High Court in the matter

between DRCA Lehika and URCSA Lehika. The appeal was dismissed with costs, confirming the judgment of J. Gutta.

Already in 2001, the DRCA had lodged an application to the Court of Appeal for the conviction of URCSA from the buildings of the DRCA (Agenda General Synod URCSA 2001, 134). This eventually led to never-ending conflict, and/or litigation between the DRCA and URCSA regarding property rights. Both the DRCA and URCSA did not attend to the dire consequences of apartheid's laws mentioned above that restricted property rights of the DRCA. At its 2005 session in Pietermaritzburg, URCSA's General Synod took the following decision: "The General Synod initiates discussions with the DRC (bilaterally) and the DRCA (bilaterally) to consider the possibility of a 'Truth and Reconciliation' type of process, chaired by a 'neutral' chairperson or committee, to attempt to achieve reconciliation and out-of-court settlements in all the areas where tension has developed between the DRCA, DRC and URCSA" (Acta URCSA General Synod 2005, 354; Report Moderamen to the GSC 2006, 11). It was deemed important that all three churches involved should take joint responsibility for the process. The GSC of URCSA, the executive of the General Synod of the DRC as well as the DRCA General Synod executive approved the out-of-court settlement process (Report Moderamen to the GSC 2006, 12). The executives of the three churches in the Free State also approved the process. Finally, a decision was reached that a pilot project should be launched in three or five towns, to test the format and procedures. After this pilot project, the commission should submit an interim report to the three General Synod executives containing recommendations on the way forward. The General Synod of URCSA proposed that a "'neutral' chairperson or committee" should be appointed (Report Moderamen to the GSC 2006, 11–12). The intended outcome of the process is "to attempt to achieve reconciliation and out-of-court settlements" of the disputes that have arisen between the three churches, primarily in the Free State and Phororo (Report Moderamen to the GSC 2006, 12–13).

At the GSC 2009 of URCSA, a proposal was approved regarding the property rights of congregations of the former DRCA, which was part of URCSA. It became evident that properties of the former DRCA were not transferred, based on the provisions of the apartheid laws, into the names of congregations as legal entities. The GSC urged all congregations of URCSA to send proof of the registration of title deeds in the name of URCSA to the actuaries of the regional synods (Minutes GSC Meeting 2009, 22). However, until 2016 not much was done to execute this decision. At the GSC 2009 of URCSA the regional actuaries were requested to submit a report on the court cases between URCSA and the DRCA congregations to the General Synod's actuary for consolidation. This decision was also not followed up.

In 2009, the DRCA approached the lower courts of law to pursue court cases that are on the High Court roll (Minutes GSC Meeting 2009, 70). The DRCA wanted URCSA to agree to withdraw these cases from the High Court (Minutes GSC Meeting 2009, 16). In 2010, two congregations in the Botshabelo Presbytery, namely Botshabelo West and

Rethabile, signed an out-of-court agreement. In 2010, the executive of URCSA received a request from the DRCA that magistrates should deal with the property issue and that out-of-court settlements should be supported (Minutes GSC Meeting 2010, 33). The presumption of the regional Synod Free State and Lesotho was that the General Synod had no authority to decide on the request that the property issue should be referred to the magistrate courts. Their presumption, based on their understanding of Reformed Church Polity, was that the powers of the general synod/synodical commission are restricted not to intervene on issues which should be dealt with on regional synod level (Minutes GSC Meeting 2010, 33).

The Appeal Court 1998 did not bring an end to the dispute on properties. The attempt to resolve this issue outside of court failed when it became clear that, even where URCSA congregations have three (Reitz) or two (Boshof) buildings in one town, they will not willingly, without a court decision, agree to transfer the title deed of one of them to the DRCA (Minutes GSC Meeting 2010, 32–33). Congregations of URCSA opted to follow an adversarial process. However, during 2010, more and more congregations of the DRCA and URCSA indicated a willingness to sign out-of-court settlements (Minutes GSC Meeting 2010, 32–33). During 2010, the executive of URCSA Free State and Lesotho, DRC Free State and DRCA Free State jointly met to deal with court cases. This set a path for a new way to deal with the strife regarding property rights. This includes, amongst others, the following: all court cases should be stopped; a panel of seven should be appointed (two per church plus a chairperson); each church needs to make a proper presentation to the panel concerning the buildings in dispute; the DRC guaranteed R1 000 000 (one million rand), to be used in the process for compensation; The churches would get an opportunity to accept or decline the decision of the panel of seven (Minutes GSC Meeting 2011, 22). Furthermore, the GSC of URCSA 2011 approved the out-of-court settlement process and encouraged congregations in the Free State and Phororo to embrace the process.

### Out-of-court Settlement between the DRC, the DRCA and URCSA

In terms of the agreement reached on 15 September 2011, between the executive of the DRC, the DRCA and URCSA, a panel of seven members consisting of two representatives of each of the aforementioned three churches, chaired by an independent chairperson, was appointed. A Central Settlement Fund worth R1 000 000 (one million rand) made available by the DRC, was utilised in the settlement process. The settlement established which of the churches:

- i) Would get occupational rights to the church property.
- ii) Would pay compensation to the other congregation (between R30 000–R60 000, 00).

- iii) Would receive compensation from the Central Settlement Fund (between R40 000–R100 000, 00). (DRC/DRCA/URCSA Church Property Settlement 2012, 1)

The panel also requested the local DRC congregation to assist both the DRCA and URCSA congregations. The DRC also assisted both the DRCA and URCSA in the erection of church buildings or to make buildings in townships (owned by the DRC) available to either the DRCA or URCSA (DRC/DRCA/URCSA Church Property Settlement 2012, 6–12). The task of the panel was to assist the three churches in coming to a mutually agreeable and equitable settlement regarding the utilisation of disputed church properties in the Free State. The panel had the following mandate: to hear representations (oral and written) and input from the various executives of the respective synods regarding possible settlement solutions; to formulate, based on such representations, a settlement proposal; to present the settlement finding to the executives as a final proposal for their consideration and final acceptance; and to make recommendations on how the final proposal could be made an order of court settlement (DRC/DRCA/URCSA Church Property Settlement 2012, 1). The panel was constituted for its task on 5 December 2011. On 7 December 2012, an agreement was reached between URCSA, the DRCA and DRC regarding church property.

## Conclusion

Apartheid socially engineered spatially, directing where people should live, work, study, have access to land and property. Provisions in lease agreements signed with the state during the apartheid regime made it possible for the state to expropriate land without compensation. This was successfully challenged during the new constitutional democracy in the case *URCSA De Doorns v President of the Republic of South Africa and Others*. The DRCA and URCSA have a wretched history regarding ownership of church property of which neither, in most cases, was the title deed holder. In most cases they only had occupational rights or the mission commission of the DRC acted as trustees of property utilised for church purposes. During the apartheid dispensation it was illegal for blacks to purchase or lease land in certain areas. The DRCA could acquire land for church purposes in the Bantustans. For years, the two denominations tried in vain to solve the dispute over property rights with litigation. This controversy challenged URCSA to embody the principles of the *Belhar Confession*, namely unity, reconciliation and justice. The out-of-court settlement during 2012 ended this decade-long conflict.

## Author Biography

**Mary-Anne Plaatjies-Van Huffel (15 December 1959–19 May 2020)**, professor of Church History and Polity at the Department of Systematic Theology and Ecclesiology, at the Faculty Theology, Stellenbosch University, sadly passed away on 19 May 2020. She was the first woman to be ordained in the former Dutch Reformed Mission Church, which became the Uniting Reformed Church in Southern Africa, and later she was also elected as the first woman moderator of its General Synod. Plaatjies-Van Huffel was the first black woman to be promoted to full professor at the Faculty of Theology at Stellenbosch University. She was a staunch activist for causes like black theology, woman's rights and transformation on many levels. She represented our continent in prominent positions including in the World Communion of Reformed Churches and the World Council of Churches. She will be remembered as a passionate church historian, church law expert and pedagogue.

## References

Acta Nederduits Gereformeerde Kerk Algemene Sinode 1880 V Skedule, in *De Christen Sending* 24 September 1880.

Acta Nederduits Gereformeerde Kerk in Africa 1991.

Agenda General Synod of the Uniting Reformed Church in Southern Africa, 2001.

Agenda General Synod of the Uniting Reformed Church in Southern Africa, 2005.

Agenda General Synod of the Uniting Reformed Church in Southern Africa, 2012.

Agenda General Synod of the Uniting Reformed Church in Southern Africa, 2016.

Bantu Homelands Citizenship Act, Act No. 26 of 1970.

[https://disa.ukzn.ac.za/sites/default/files/pdf\\_files/leg19700309.028.020.026.pdf](https://disa.ukzn.ac.za/sites/default/files/pdf_files/leg19700309.028.020.026.pdf)

Constitution of the Republic of South Africa, 1996.

<https://www.gov.za/documents/constitution-republic-south-africa-1996>.

DRC/DRCA/URCSA Church Property Settlement Panel, Final Report and Settlement Recommendations, December 2012.

Dutch Reformed Church in Africa, Lehika Congregation v Uniting Reformed Church in Southern Africa, Lehika Congregation and Another (CIV APP 1/14) [2013] ZANWHC 98, 20 June 2013 , <http://www.saflii.org/za/cases/ZANWHC/2013/98.html>.

Group Areas Act, Act No. 41 of 1950.

[https://disa.ukzn.ac.za/sites/default/files/pdf\\_files/leg19500707.028.020.041.pdf](https://disa.ukzn.ac.za/sites/default/files/pdf_files/leg19500707.028.020.041.pdf)

Kerkorde en Wette van die NGSK OVS 1934.

## Plaatjies-Van Huffel

Kerkwet NGK 1881.

Kritzinger, Johannes N.J., Moses Selaelo Maponya, Katleho K Mokoena. 2019. "25 Years of Ministerial Formation Praxis in the Uniting Reformed Church in Southern Africa: How Belharic Have we Become?" *Studia Historiae Ecclesiasticae* 45 (3): 10–15.

Letter from the Moderamen of the DRCA Orange Free State and Phororo, 5 June 2008.

Minutes General Synodical Commission Meeting Cape Town, 26–28 October 2009.

Minutes General Synodical Commission Krugersdorp, 2010, 32–33.

Minutes General Synodical Commission Meeting Bellville, 22–25 September 2011.

Natives Land Act, Act No. 27 of 1913.

Nederduitse Gereformeerde Kerk in Afrika (OVS) en 'n Ander v Verenigende Gereformeerde Kerk in SuiderAfrika (536/96) [1998] ZASCA 111; 1999 (2) SA 156 (SCA); [1999] 1 All SA 480 (A) (27 November 1998). <http://www.saflii.org/za/cases/ZASCA/1998/111.html>.

Plaatjies-Van Huffel, M. A. 2011. "Control, Secede, Vested Rights and Ecclesiastical Property." *Studia Historiae Ecclesiasticae* 37 (2): 173–188.  
<http://uir.unisa.ac.za/bitstream/handle/10500/5126/Plaatjies%20Van%20Huffel.pdf?sequence=1&isAllowed=y>.

Report of the Moderamen to the General Synodical Commission, 19–20 June 2006, Johannesburg.

Skema van Werksaamhede NGSK. 1978.

Skema van Werksaamhede NGSK. 1994.

Submission to Truth and Reconciliation Commission by URCSA Messina Congregation. 1997.  
[http://www.religion.uct.ac.za/sites/default/files/image\\_tool/images/113/Institutes/Archives/submissions/SUBMISSION\\_TO\\_TRUTH\\_AND\\_RECONCILIATION\\_COMMISSION.pdf](http://www.religion.uct.ac.za/sites/default/files/image_tool/images/113/Institutes/Archives/submissions/SUBMISSION_TO_TRUTH_AND_RECONCILIATION_COMMISSION.pdf)

Uniting Reformed Church, De Doorns v President of the Republic of South Africa and Others (905/2012) [2012] ZAWCHC 237; 2013 (5) BCLR 573 (WCC); 2013 (5) SA 205 (WCC) (14 December 2012) <http://www.saflii.org/za/cases/ZAWCHC/toc-U.html>