



COMMISSION ON RESTITUTION OF LAND RIGHTS

First report to the

ACTING JUDGE PRESIDENT OF THE LAND CLAIMS COURT

As required in terms of the

**CONSTITUTIONAL COURT ORDER DATED 19TH MARCH 2019 – ALSO
COMMONLY REFERRED TO AS LAMOSA 2**

SECTION A: PURPOSE

The Chief Land Claims Commissioner submits this report to the Judge President of the Land Claims Court (LCC) on behalf of the Commission on Restitution of Land Rights ("CRLR") in compliance with constitutional court order dated 19th March 2019 also commonly referred to as LAMOSASA 2.

This report is divided into the following sections. Section B is the definition of the terminology used by the CRLR. Section C is the background and itemises the type of information that the CRLR is required to provide to the Acting Judge President of the LCC as per the constitutional court order. Section D presents the total number of outstanding old order claims and these are also broken down according to the provinces/ regions. Section E presents indicators on how the CRLR intends - plans to settle the outstanding claims.

SECTION B: GLOSSARY OF TERMINOLOGY USED BY THE COMMISSION

Since June 2013, the CRLR adopted a standardized approach to report on outstanding claims as there were various dynamics in terms of the terminologies used by the CRLR that did not clearly indicate the total claims still to be settled, which could either be a claim form not settled or either a right not being restored to the claimant/s. This definition currently used by the CRLR which is in line with the Annual Performance Report (APP), Technical Indicator Descriptions (TIDs), Operational Plan Reporting.

The Commission attaches the following meaning to the terms on this list.

(a) Settled claim

- A claim that has been resolved either through an agreement contemplated in section 42D of the Restitution Act or through the order of the court.
- Once a claim has been settled, it is placed on a commitment register for monitoring and tracking till the award or agreement such as land restoration or financial compensation is paid.

(b) Finalised claim

- A claim where the intended award or agreement entered has been fully implemented. Land has been transferred or financial compensation has been paid as the may be. Where any amount of grants was allocated for the benefit of the claimant, a finalised claim also implies that such grants has been used to depletion

(c) Pure outstanding land claim

- A claim that is absolutely and completely outstanding. That is a claim that does not involve any phased settlement.

(d) Phased outstanding land claim

- A claim where an agreement contemplated in section 42D of the Act has been entered into in respect of one or multiple portions/ properties under the claim, however there are still outstanding portions/ properties that require a section 42D agreement/s in order to reach full and final settlement of the claim.

(e) State Land claims

- A claim that affects a property registered in the name of the state.

(f) Court matter

- This is claim that has been referred to court in line with section 14 of the Restitution Act.

(c) Phased claims arise as a result of one (or combination) of the following scenarios:

- Complexity of the claim (i.e. overlapping claims, high value properties, large number of claimants.
- Disputes in terms of validity on certain properties
- Settlement in terms of willing sellers;
- Limited budget allocated

SECTION C: BACKGROUND

The constitutional court order dated 19th March 2019 also commonly referred to as LAMOS 2 requires the CRLR to furnish the LCC with the information itemised below at six monthly intervals from the date of the order:

The CRLR needs to appraise the Court with information regarding;

- The number of outstanding old claims in each of the regions on the basis of which the Commission's administration is structured;
- The anticipated date of completion in each region of the processing of old claims, including short-term targets for the number of old claims to be processed;
- The nature of any constraints, whether budgetary or otherwise, faced by the Commission in meeting its anticipation completion date;
- The solutions that have been implemented or are under consideration for addressing the constraints; and
- Such further matters as the Land Claims Court may direct; until all old claims have been processed.

SECTION D: REGIONAL BREAKDOWN OF OUTSTANDING OLD ORDER LAND CLAIM

In total approximately 80,000 claims were lodged, with over 60,000 of these being lodged in the last 6 months of the lodgement window. Although there was a prescribed claim form, non-standardised claim applications were also accepted by the CRLR. Consequently, the CRLR has experienced some challenges in determining the exact total number of claims that were lodged by 31 December 1998. Several factors have contributed to this challenge, including, amongst others:

- a) The inconsistencies in the use of classification terminology;
- b) Human errors carried throughout the manual systems;
- c) Interpretation of counting of claims due to settlement dynamics

Province	Total lodged as at 31/12/1998	Number of claims settled as at 31/03/2019	Number of claims finalised as at 31/03/2019
Eastern Cape	16 716	16 875	17 663
Free State	2 682	2 666	3 278
Gauteng	13 162	13 343	11 323
KwaZulu-Natal	16 394	15 678	1 243
Limpopo	3 489	4 451	4 485
Mpumalanga	3 400	3 143	2 999
North West	3 902	3 945	2 216
Northern Cape	3 852	3 997	3 193
Western Cape	16 099	17 203	17 070
TOTAL	79 696	81 301	63 470

*The CRLR continues to verify the statistical information which therefore will be updated in due course.

The total outstanding claims as per the Backlog Reduction Project as at 1st October 2019 is approximately 8940 claims (the List is attached as **Annexure A in an electronic format (disc) due to the volume of information**), which consist of about 7635 pure outstanding claims and 1305 outstanding claims relating to phased settlements.

It is important to note that the CRLR has populated all data, which is currently being updated and aligned by all regional offices in line with the training working sessions that took place from 26th September to 2nd October 2019. See table below.

Province	Claim categorisation		Total claims as at 1 st October 2019
	Pure-Outstanding	Phased claims still to be settled	
Eastern Cape	764	41	805
Free State	5	3	8
Gauteng	450	10	460
KwaZulu-Natal	3166	104	3270
Limpopo	1157	344	1501
Mpumalanga	1461	575	2036
North West	39	194	233
Northern Cape	64	24	88
Western Cape	529	10	539
TOTAL	7635	1305	8940

SECTION E: INDICATORS ON HOW THE CRLR INTENDS - PLANS TO SETTLE THE OUTSTANDING CLAIMS

Taking the above into consideration, the CRLR has earmarked a total of 2013 claims for settlement for 2019/20 to 2023/24 financial years. Additional to this a 25% of this budget is set aside to deal with grants that have been approved under Sec 42C of the Restitution Act. The grants are released to assist the communities that have been restituted with start-up funding.

PROVINCE	2019/20 APP	2020/21	2021/22	2022/23	2023/24	TOTAL
Eastern Cape	61	100	95	90	72	418
Free State	4	0	0	0	0	4
Gauteng	8	10	15	26	32	91
KwaZulu Natal	99	137	168	170	171	745
Limpopo	72	0	0	0	0	72
Mpumalanga	60	90	110	130	150	540
Northern Cape	6	7	7	5	0	25
North West	16	0	0	0	0	16
Western Cape	102	TBD	TBD	TBD	TBD	102
TOTAL	428	344	395	421	425	2013

We re-emphasise as stated above that that settlement of claims specifically related to the approval of the Land Claim under Section 42D of the Restitution Act and does not speak to the Final implementation of all the awards due to the claimants. The CRLR assists with the setting up of the structure and the for the beneficiaries towards finalization but the responsibility to provide and funding and implementation of Post settlement support for development rests outside the CRLR.

SECTION F: THE NATURE OF ANY CONSTRAINTS, WHETHER BUDGETARY OR OTHERWISE, FACED BY THE COMMISSION IN MEETING ITS ANTICIPATION COMPLETION DATE

The tables below outline the expenditure of the Commission on current projects as defined in the APP from 01 April 2019-30 September 2019.

Province	CURRENT PROJECTS		
	Total	Land, Fin Comp & Conv	Grants
Eastern Cape	339 819 186.13	304 553 706.27	35 265 479.86
Free State	6 417 332.49	-7 075 947.62	13 493 280.11
Gauteng	22 108 176.50	22 108 176.50	0.00
KwaZulu- Natal	230 735 711.62	157 522 052.85	73 213 658.77
Limpopo	31 131 344.25	1 108 673.10	30 022 671.15
Mpumalanga	137 510 070.61	77 245 830.22	60 264 240.39
Northern Cape	7 098 684.56	2 475 657.41	4 623 027.15
North West	93 658 432.30	80 312 966.62	13 345 465.68
Western Cape	488 503 979.29	23 530 137.14	464 973 842.15
TOTAL	1 356 982 917.75	661 781 252.49	695 201 665.26

In an effort to address the outstanding old order claims lodged as at 31 December 1998, the CRLR has adopted and is developing a Comprehensive Backlog Reduction Strategy, which will include clear targets broken down into specific districts including the estimated cost for the settlement of these claims. The CRLR in collaboration with the DALRRD will provide the relevant detail on the finalization of those claims that have been settled but have not been finalised.

SECTION G: THE SOLUTION THAT HAVE BEEN IMPLEMENTED OR ARE UNDER CONSIDERATION FOR ADDRESSING THE CONSTRAINTS;

In order to accelerate the settlement of claims, the CRLR participated in the Operation Phakisa of Agriculture Land Reform and Rural Development and as a result sought the services of external experts to assist in the development of a Backlog Reduction Strategy for settlement of all old order land claims (lodged as at 31 December 1998). The project is called Kuyasa and has identified nine (9) work streams of which the Backlog Reduction Strategy is the key work stream. Attached as **Annexure B** is a schematic outline of the work streams.

As a result of the LAMOSA 2 judgement handed down on 19th May 2019, the CRLR in order to comply with the Court Order decided to incorporate the elements of the order in LAMOSA 2 information request into the Kuyasa Project, this to ensure the authenticity of the information requested.

The Backlog Reduction Strategy is in the process of being finalised and will be provided to Court in the Second (2nd) Report. The Backlog Reduction Project has so far proposed the following aspects:

- a) All outstanding claims have been populated into an improved standardized format;
- b) A Management Reporting Tool has been devised to ensure integrity of data to minimise data manipulated and human errors;
- c) An external expert (auditor) outside of the CRLR is in the process of being appointed to verify and underwrite the populated data as completed by the provinces on all the outstanding old order claims (lodged as at 31 December 1998);
- d) A draft Backlog Reduction Strategy with 43 initiatives (Quick-Wins) has been completed and is currently under discussion.
- e) Attached as **Annexure C** is the North West outstanding list and Management reporting tool which is subject to verification by an external service provider. It should be noted that there is a report available for the other provinces, North West is only attached as a specimen template.
- f) We are providing continued training sessions for the officials in the short term with the intention of upskilling our officials to be able to implement the improved business process and Spread Sheets as well as the Management Reporting Tools.
- g) IT of the Department will assist to provide shared access to nominated officials which will enable live updates of the spread sheets and Management Reporting Tools to monitor and updated progress. The shared access will be monitored and access to the system is password protected for integrity of the process.

SECTION I: COURT ORDER HANDED DOWN BY THE COURT ON THE 1ST OF AUGUST 2019 ON SECTION 14 REFERRALS TO THE LAND COURT

- a) The Executive Management of the Commission on Restitution of Land Rights met the judges of the Land Claims Court on the above-mentioned date to prepare for reporting in line with the Court order handed down by the Constitutional Court referred to as LAMOSA 2 in April 2019.
- b) At the said meeting the Acting Judge President, Justice Meer, then gave an order directing that the CRLR furnish the LCC as part of the required report to court a number of all the identified Restitution old order claims that are to be referred to court for adjudication in terms of Section 14 of the Restitution Act No 22 of 1994 as amended, as part of the backlog reduction Strategy to deal with the outstanding claims.
- c) We attach herein the summary table reflecting the number of referrals and attach the full report, accompanied by the necessary affidavits, attached as **Annexure D**, attested to by Chief Land Claims Commissioner and the 9 (Nine) Provincial Heads of the Commission offices, which identifies the cases to be referred to court as mentioned above. (See **Annexure E**).

PROVINCE	Number of matters
EASTERN CAPE	3
FREE STATE	5
GAUTENG	82
KWAZULU NATAL	19
LIMPOPO	122
MPUMALANGA	18
NORTHERN CAPE	14
NORTH WEST	6
WESTERN CAPE	43
GRAND TOTAL	312

The Commission hereby submits its first report in the Land Claims Court as required by the Constitutional Court under case number: **CCT 40/2015** and will submit an updated follow up report in six months.

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