



COMMISSION ON RESTITUTION OF LAND RIGHTS

Second 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 Acting Judge President of the Land Claims Court (LCC) on behalf of the Commission on Restitution of Land Rights (“CRLR”) in compliance with the Constitutional Court order dated 19th March 2019 – also commonly referred to as LAMOSASA 2 Judgment.

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 the indicators on how the CRLR intends or plans to settle the outstanding claims. **Section F** provides the nature of constraints, budgetary or otherwise, faced by the Commission in meeting the anticipated completion date. **Section G** outlines the solutions that have been implemented or are under consideration in order to address the constraints cited in **Section F**.

Section H provides a briefing on Court Order handed down by the Court on the 1st of August 2019 on section 14 referrals to the LCC. **Section I** gives a progress report on the work done by the Commission following the meeting of 28 January 2020 involving the Acting Judge President, Commissioners and Senior officials of the Commission. Lastly **Section J** provides concluding remarks by the Chief Land Claims Commissioner with specific reference to the impact of Covid-19 and the lockdown on the referral timelines.

SECTION B: GLOSSARY OF TERMINOLOGY USED BY THE COMMISSION

Since June 2013, the CRLR adopted a standardized approach to reporting on outstanding claims as there were inconsistencies, as a result of various dynamics, in terms of the terminologies used by the CRLR. Such inconsistencies included terminology used in reference to settlement of claims which in turn has a bearing on accurate reporting on outstanding claims.

The CRLR has, as a result over the year, been very transparent of this challenge and continues to work on the statistics and the reconciliation needed. This section, thus, amongst other things, seeks to establish a common understanding on some of the terms used in this report.

The definitions currently used by the CRLR are in line with the Annual Performance Report (APP), Technical Indicator Descriptions (TIDs) and Operational Plan Reporting guidelines used in the Department of Agriculture, Land Reform and Rural Development (DALRRD).

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

(a) Settled claim

Refers to a claim that has been approved as valid either through an agreement contemplated in section 42D of the Restitution Act or through an order of court.¹

(b) Finalised claim

Refers to a claim where the intended award approved through settlement by 42D or court order has been fully implemented. Land has been transferred or financial compensation has been paid in full. This would have to include the full payment of grants that were allocated for the benefit of the claimants.²

(c) Pure outstanding land claim

Refers to a claim that is wholly outstanding. In simple terms, this means that none of the properties subject to the claim have been settled. It is worth noting that claims that have been partially settled, which are commonly referred to as phased settlement, are not counted in this category.

(d) Phased outstanding land claim

Refers to a claim where an agreement contemplated in section 42D of the Restitution Act has been entered into in respect of one or multiple portions/properties under this one claim. This happens mostly in large claims, where the land under claim is owned by multiple owners – involving protracted negotiations – thus resulting in a staggered (phased) approach in the settlement of the entire claim.

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;
- Limitation of the budget allocated at a point in time

¹ Once a claim has been settled, what follows thereafter is the execution of the approval which happens through effecting transfer of the land or the payment of financial compensation or both. The commitment arising out of every approval is placed in a commitment register for monitoring and tracking to ensure that the award which could be land restoration or financial compensation and development grants is affected to the benefit of intended beneficiaries.

² Once the entire award has been implemented, the value of the award that would have been entered into the commitment register is then removed.

(e) State Land claims

Refers to a claim that affects a property registered in the name of the state.

(f) Court matter

Refers to a claim that has been referred to court in terms of section 14 of the Restitution Act. The court may already have given instruction on how the claim is to be settled or such court order may still be pending.

(g) Project Kuyasa

Refers to a project that has been initiated by the CRLR and is geared towards a comprehensive overhaul of the processes, systems and models used by CRLR in the processing of land claims to ensure the entity delivers better and faster services to its clients.

Project deliverables (in short and medium) include the following:

- Strategy development towards expeditious reduction and complete settlement of all backlog claims
- Business process review and refinement to shorten turnaround times
- Recommendations on the most viable (fit for purpose) corporate entity and structure
- Recommendations on the viable land claims settlement models and cost-effective financial settlement models

(h) Post settlement

Refers to a range of processes and activities that involve the provision of a variety of technical and financial resources to land restitution beneficiaries who receive land to enable them to secure land development plans (initially) as well as production capital (secondary).

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, thus, 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.

In line with the CRLR reporting requirement to the LCC, this report contains information on claims that the CRLR has committed to refer to the LCC as discussed in the on-going engagements between the CRLR and the Acting Judge President. However, the CRLR has deemed it necessary that the Acting Judge President be provided with important background information contained in Sections D, E, F and G of this report. The import of providing the Acting Judge President with this information is to allow the AJP to have a sense of some of the back-office work that the Commission is doing in order to fundamentally change the manner in which it conducts its business for the greater benefit of the people that it was established to serve.

SECTION D: REGIONAL BREAKDOWN OF OUTSTANDING OLD ORDER LAND CLAIMS AND PERFORMANCE FOR 2019/2020 FINANCIAL YEAR

Province	Claim categorisation				
	Pure Outstanding as at 1 st Oct 2019	Settled Q3 (Oct to Dec 2019) and Q4 (Jan to March 2020)	Summary of Performance for 2019/20 financial year	*Pure outstanding as at 1 April 2020	*Phased claims still to be settled
Eastern Cape	764	40	61	724	41
Free State	5	3	3	2	3
Gauteng	450	9	18	441	10
KwaZulu-Natal	3166	88	125	3078	104
Limpopo	1157	40	60	1117	344
Mpumalanga	1461	60	78	1401	575
North West	39	14	17	25	194
Northern Cape	64	6	6	58	24
Western Cape	529	45	67	484	10
TOTAL	7635	305	435	7330	1305

**The CRLR continues to verify the statistical information which is updated part of the Backlog Reduction Strategy.*

As can be seen in the table above, 305 claims were settled in the period between the 1st LAMOSA 2 report and the end of March 2020. However, from 1 April 2019 to 31 March 2020, a period that roughly eclipses LAMOSA 2 Constitutional Court judgement and the due date for this 2nd report, the Commission settled a total number of 435 claims as targeted for the 2019/20 financial year, and also spent the entire budget allocated for the period under review.

As a result of the many challenges, alluded to in the first report, experienced by the Commission during the lodgement of claims prior to the deadline of 1998, the Commission has been looking at various ways to improve the categorisation and management of claims information in order to expedite settlement of remaining claims.

One of Project Kuyasa's primary projects is the Backlog Reduction Strategy and has two main deliverables, namely, a) data analysis and refinement to facilitate determination of the final total amount of outstanding claims, and b) fast-tracking settlement of claims.

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

One of Project Kuyasa's primary deliverables is the development of the Backlog Reduction Strategy. The Strategy and has two main deliverables, namely:

- (a) data analysis and refinement to facilitate determination of the final total amount of outstanding claims; and
- (b) fast-tracking the settlement of claims.

PROGRAMME 3: RESTITUTION							
Strategic Objective	Performance Indicator	Medium term targets					
		Province	2020/21	2021/22	2022/23	2023/24	Total
Facilitate the restoration of land rights and alternative forms of equitable redress by 2020	Number of land claims settled	EC	100	95	90	72	357
		FS	0	0	0	0	0
		GP	10	15	26	32	83
		KZN	100	168	170	171	609
		LP	64	82	82	80	308
		MP	90	110	130	150	480
		NW	5	8	8	0	21
		NC	7	7	5	0	19
		WC	78	70	65	60	273
			454	555	576	565	2150
	Number of land claims finalised	EC	85	80	75	70	310
		FS	6	0	0	0	6
		GP	20	14	14	14	62
		KZN	137	153	174	181	645
		LP	32	32	32	32	128
		MP	54	66	78	90	288
		NW	30	25	20	20	95
		NC	15	9	5	0	29
		WC	100	80	75	70	325
		479	459	473	477	1888	

The table above depicts the projections in terms of how the Commission plans to settle the remaining claims in the current financial year and the next three financial years.

The 2020/21 targets have been adjusted downwards due to the anticipated impact of the corona virus induced lockdown. There are rumours that there may be downward budget adjustments that could possibly be imposed by National Treasury as a result of the Covid-19. If the rumoured budget cuts were to be implemented, such would frustrate the Commission's intentions to expedite the settlement of the backlog claims and this is a concern to the Commission.

A balance needs to be struck between the urgency to settle and finalise all outstanding claims and the budget allocated.

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

Challenges encountered by the Commission during the processing of land claims are outlined in this section. As mentioned the Commission has progressively implemented various interventions and as identified in the Project Kuyasa.

The Backlog Reduction Strategy under Project Kuyasa is ceased with data analysis and data integrity. Some of the other bottlenecks identified are:

Key bottleneck areas in the Restitution business process

Analysis of the outstanding claims reflect in the business process indicates three main blockage areas where the bulk of the claims tend to be concentrated. (See the breakdown and the total percentage of claims at each stage indicated in the diagram **A** below)

The strategy undertaken has been aimed at understanding the root cause of these blockages to be able to devise solutions.

Looking at the diagram, there are 3 notable peaks and each of these peaks indicates a bottleneck in the restitution business process. These notable bottlenecks, mainly, are located at the stages of Research and Gazette; land valuation and Settlement negotiations. Research & gazetting as well as negotiations and settlement phases have been grouped together due to their interdependence:

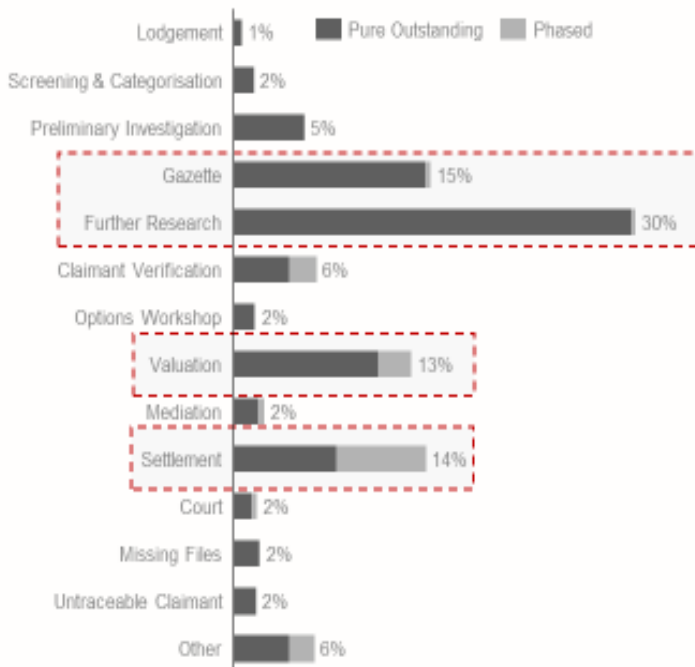
Challenges and constraints that give rise to these bottlenecks are discussed below.

Diagram(A)



Using the provided management reporting tool information, the 3 key bottlenecks have been identified; Research, Valuation & Settlement Negotiation

Breakdown of Claims by "Targeted" Milestone



Research & Gazetting (45%)

A variety of issues have resulted in the large portion of claims at the research stage; complex processes, not obtaining landowners permission, poor quality of external reports, missing information on claim form, limited database support, etc

Settlement "Negotiations" (14%)

Settlements cannot be finalised due to number of issues: untraceable beneficiaries, Claimant and/or Owner not happy with settlement amount, Claimants trying to changing the settlement model (financial to land), errors or lapses in some of the supporting documentation

Valuation "OVG" (14%)

Validations cannot be finalised due to number of issues: capacity at the OVG (takes on average 18 months), rejection of original offer requiring revaluation by OVG, original offer lapses due to prolonged time

Court (2%)

Although the current claims at court are relatively low, as the downstream bottlenecks are removed the courts could see an increased spike in cases (CRLR is aware and forecasting this spike)

Specific Kuyasa Projects, such as BPR and Settlement Models, are implementing solutions to reduce the specific bottleneck areas

Research & Gazetting - 45%

A variety of issues have been identified as to why a high number of the outstanding claims are sitting at the Research stage. Some of these are the failure of the provinces to comprehensively research the entire claim as defined in the claim form.

With the extensive work that has been conducted to establish the conclusive number of outstanding claims we have found that provinces like North West and Limpopo did not fully conduct comprehensive research according to the land or property description in the claim forms; instead conducted only partial research focusing only on those portions that were ready for settlement.

The portions of land that were ready for settlement are the ones where the current land owner acknowledged the validity of the claim and chooses to offer the land for resolution of the claim. Other areas identified are instances where there are complex claims with competing claims with overlapping rights. In other instances, even though the research was conducted it is later established that the research report was either

poor, inconclusive or not adequate for the determination of the validity of the claim and as a result further research has to be commissioned.

We also acknowledge that a key weakness identified in the CRLR was the very poor or limited research skill set in the Commission. Although over the years the commission has co-opted the use of external service of expert research companies including universities. Despite the intervention we have experienced the same challenges with regards to the quality of the research or reports that fail to provide clear conclusion. Missing information on claim form, limited database support are other factors identified.

Settlement “Negotiations” - 14%

Settlements negotiations that cannot be finalised due to number of issues: untraceable beneficiaries, Claimants and/or land owner not satisfied with settlement amounts offered; Claimants attempting to change the settlement options at the last stage. (financial to land).

Land Valuation “OVG” (13%)

The valuation of land for settlement of land claims continue to be a challenge. Land valuations cannot be finalised timeously due to mainly capacity of the Office of the Valuer General (OVG). On average it currently takes about 18 months for the OVG to conduct land valuation and present a valuation certificate. Further in some instances the land owners or claimants reject the valuation offers made, a situation that often requires further negotiations. The negotiations collapse the end result if often prolonged litigation. All this has an effect of prolonging the time it takes to settle land claims.

Rural claims most intractable and complex

KwaZulu Natal, Mpumalanga and Limpopo continue to be the provinces with the highest number of outstanding claims overall.

KwaZulu Natal has the majority of outstanding claims that are spread across the various districts across the province. Most of these claims are situated in the rural areas and involved land that can be defined as communal land or land that is under traditional leadership including Ingonyama Trust Land.

KwaZulu Natal -Mpumalanga Province reflect the second highest number of outstanding claims. The outstanding claims are also mostly rural in nature affecting vast tracts of land within communal land which is state land held by traditional leaders or was leased out to black farmers during the TBVC states era.

The Limpopo Province has the third largest number of outstanding claims. These are complex claims also located in the rural area including claims located in the Sekhukhune District where the majority of outstanding claims involve overlapping rights and counter claims relating to proclamations granted pre-1994 in favour of various traditional leaders and communities. The three provinces collectively account for about 78% of the total number of outstanding claims.

Responsibility for post settlement – lack of handover points between the CRCLR and key stakeholders

There has been a continued lack of clarity as to which component/s in the Department is responsible for the post settlement support.

Several external evaluations and research Reports conducted on the Commission's mandate, recommend that the Commission focus on its key mandate that of investigating and settling claims and that it is relieved of the responsibility for post settlement support.

There have been interventions in that a directive for land redistribution and development unit to take responsibility and lead post settlement and to draft a comprehensive post settlement strategy.

The clear delineation of roles between the CRLR and specifically the DARDLR in as far as the *post settlement* support work is concerned is welcome. This will have an impact although it will not reduce the process turnaround time but will release much needed capacity so that the focus is on the outstanding claims as opposed to claims that have already been finalised.

Budgetary constraints with respect to settlement of claims

As mentioned in section E on settlement projects, the budgetary allocations for the Commission are constantly declining. This coupled with constraints in the filling of vacant posts presents challenges in efforts to fast track the settle of all outstanding claims.

The Commission wants to implement a comprehensive Strategy to fast track and finalise the settlement of claims, however, if these improvements are not complimented by commensurate budgetary allocations, then these efforts may not be achieving the transformation and efficiency intended.

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

As previously reported the CRLR has initiated Project Kuyasa which while having a strong backlog reduction focus, its strategy is meant to bring improvements in other critical operational and institutional areas such as;

- Business process review and refinement
- Recommendations on the most viable (fit for purpose) corporate entity and structure
- Recommendations on the viable land claims settlement models and cost-effective financial settlement models and
- Change and people management

While the deliverables of Project Kuyasa are realised, they would then have a positive mitigating effect on the following challenges noted in section F such as Improved:

- Information management system
- quality of research produced, standardisation and turnaround times
- standard operation procedures and policies
- Formalised and clear roles and responsibilities between DARDLR and CRLR with respect to post settlement functions
- Formalised and clear roles and responsibilities, tight but realistic turn around on land valuation services between CRLR and OVG.
- Clear staffing requirements linked to Fit for purpose - executive authority endorsed corporate entity & structure
- Sector broadly accepted – empowerment benchmarked settlement models and financial models

The following planning and information management systems are built into the Backlog reduction strategy:

Management reporting tool:

The objective of this tool is to give real-time feedback to the CRLR management and key stakeholder in terms of current claim status and potential challenges and blockages areas. A sample of the Management is attached herein as **Annexure A**

Monitoring and evaluation tool analysis:

Due to the challenges mentioned above about the input data accuracy into the management reporting tool. The management reporting tool is augmented with a M & E framework which has the following 3 key objectives:

- Constant information / data flow;
- Accurate, quality and on time data submissions; and
- Clearly defined ownership and accountability governance channels.

The last stage of the data analysis under back log reduction is the undertaking of external audit of the outstanding claims data which should give a final number on outstanding claims

Breakdown of claims by land use

The work being done is also ensuring that outstanding claims are also categorised in terms of land use. This information is critical when engaging directly with the sectors stakeholders so that accurate plans, strategies and impact assessments can be produced.

A number of land claims involve mixed land uses and would thus require involvement of multiple sector stakeholders during negotiations on settlement or framing of settlement models

Alignment between budget allocation and realistic settlement of claims forecasts

In an effort to address the outstanding old order claims, the CRLR has initiated a Comprehensive Backlog Reduction Strategy; as a result, the capacity to settle claims is anticipated to improve significantly

As settlement projections are developed with estimated costs, it would be difficult to settle all remaining claims timeously, if requisite budget is not availed in line with desirable time lines.

A balance needs to be struck between the urgency to settle and finalise all outstanding claims and the budget that gets allocated

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

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.

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.

In the first report, the CRLR submitted the below summary table reflecting the number of referrals and attached the full report, accompanied by the necessary affidavits, 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.

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	26
GRAND TOTAL	295

SECTION I: PROGRESS REPORT FOLLOWING THE MEETING OF 28 JANUARY 2020 INVOLVING THE ACTING JUDGE PRESIDENT, COMMISSIONERS AND SENIOR OFFICIALS OF THE COMMISSION

On 28 January 2020, a progress report meeting on section 14 referrals took place involving the Acting Judge President, Commissioners and Senior Officials of the Commission.

In summary, the Commission explained the challenges that it had experienced which resulted in its failure to meet the targets that were set for the months of November, December and January. As at the date of the meeting with the AJP, against the target of referring 96 land claims to the LCC, the Commission had referred a paltry 8 matters to the Court.

At the said meeting, the Commission presented a recovery plan to the AJP which included the appointment of the Project Manager and revised delivery targets for each of the provinces. The revised referral targets for the provinces are as follows:

PROVINCE	Number of matters
EASTERN CAPE	2
FREE STATE	2
GAUTENG	49
KWAZULU NATAL	19
LIMPOPO	47
MPUMALANGA	22
NORTHERN CAPE	8
NORTH WEST	5
WESTERN CAPE	124
GRAND TOTAL	278

The progress that the Commission has made thus far in advancing the process to refer the 278 matters can be summarised as follows:

Number of Issued Referral Notices	Number of Referral Instructions given to the State Attorney	Number of Referrals still with RLCC Offices
Mpumalanga (6)	Gauteng (49)	EC (1)
Limpopo (9)	KZN (28)	Mpumalanga (8)
	Limpopo (46) (60 claim forms)	Northern Cape (8)
	Mpumalanga (8)	Free State (2)
	NW (5)	KZN (4)
	WC (115)	
Total 15	Total 265 (if we count the claim forms)	Total 23

Whilst many matters appear to be sitting with the State Attorney, it is worth noting that many of these matters were referred to the State Attorney just before, or during, the lockdown. Consequently, between the time that they were referred and the time of preparing this report, not much movement would have happened in terms of appointing Counsels or preparing referral reports. However, it is expected that when the lockdown has been eased down, progress would be made in this regard. The full provincial referral reports are attached hereto as **Annexures “B1 to B9”**.

In order to streamline the referral process with a view to also strengthen the accountability process, the Commission has now developed Referral Guidelines which will, in future, inform the manner in which the referral process is managed both at provincial and national level. The guidelines also take into account some of the useful comments that were made by the court at the meeting of 28 January 2020.

SECTION J: CONCLUDING REMARKS BY THE CHIEF LAND CLAIMS COMMISSIONER WITH SPECIFIC REFERENCE TO THE IMPACT OF COVID-19 AND THE LOCKDOWN ON THE REFERRAL TIMELINES

With the risk of stating the obvious in mind, the Chief Land Claims Commissioner would like to bring to the attention of the AJP that, in the same way that all aspects of our lives have been negatively affected by the emergence of the coronavirus pandemic, the Commission was equally negatively affected.

As already mentioned earlier, the reason why there is a significant number of matters that are stuck in the State Attorney is, at least at this stage, largely attributable to Covid-19 reality. As a result of the lockdown and Covid-19, some of our instruction letters reached the State Attorney at a time when the Regulations made in terms of the Disaster Management Act had been published following the declaration of the national state of disaster by the President of the Republic. In some instances, the Commission could not deliver files, which are an integral part of the matters to be referred, to the State Attorney due to the lockdown restrictions. When the lockdown started, the Commission and the State Attorney could not proceed with activities which could have assisted the process of briefing Counsels and getting the referrals drafted.

The basis for making the abovementioned points is to foreshadow the point that, given the emergence of Covid-19 and the measures that were introduced in the country to flatten the curve of infections, the Commission requests the adjustment of referral deadlines that were agreed to in January 2020 with the AJP. The extent of the requested adjustment of the deadline can be the subject of discussion between the AJP and Chief Land Claims Commissioner.

Finally, the Commission would like to express its gratitude for the unwavering support and guidance that the AJP and rest of the Land Claims Court judges always give to the Commission in its handling, particularly, with this matter.

The Commission hereby submits its second 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.

---END---