



## **SIXTH LAMOSA II REPORT**

**SIXTH 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 II**

**Submitted by:**

**N. NTLOKO (MS)  
CHIEF LAND CLAIMS COMMISSIONER  
DATE: 29 June 2022**

## **SECTION A: PURPOSE**

The Chief Land Claims Commissioner (CLCC) 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 LAMOSA II Judgment.

This report is divided into nine sections as follows:

**Section A:** Outlines the purpose of the report.

**Section B:** Provides definitions of the terminology used by the CRLR for purposes of common understanding.

**Section C:** 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 as at the time or closest to the time of the submission of the report. The claims are also broken down in terms of the various applicable provinces.

**Section E:** Outlines the indicators and progress on how the CRLR intends to settle the outstanding claims, provided the required resources are made available.

**Section F:** Identifies 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 and progress to date to address the constraints cited in section F.

**Section H:** Provides an updated progress report on the cases referred to the Land Claims Court since 19 March 2019 to date. Lastly,

**Section I:** Presents concluding remarks by the Chief Land Claims Commissioner.

## **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 about settlement of claims which in turn has had a bearing on accurate reporting on outstanding claims.

The CRLR has, as a result, over the years, been very transparent of this challenge and continuous work being done on the statistics and the reconciliation needed. The work being done to sort out this issue includes what is done in the Project Kuyasa backlog reduction strategy and the external outstanding claims audit dealt with in section D of this report. This section, thus, primarily, seeks to establish a common understanding on some of the terms used in the CRLR and which also appear in this report.

The definitions currently used by the CRLR are also in line with the Annual Performance Plan (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 terminology as follows:**

NO.	TERMINOLOGY	DEFINITION/ DESCRIPTION
1.	<b>Settled claim</b>	Refers to a claim that has been approved as valid and settled either through an agreement contemplated in section 42D of the Restitution Act or through an order of the court. <sup>1</sup>
2.	<b>Finalised claim</b>	Refers to a claim where the intended award approved through settlement by section 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. <sup>2</sup>
3.	<b>Pure outstanding land claim</b>	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.
4.	<b>Phased outstanding land claim</b>	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.

<sup>1</sup> Once a claim has been settled, what follows thereafter is the implementation 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.

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

		<p><b>Phased claims arise because of one (or combination) of the following scenarios (and the list is not exhaustive)</b></p> <ul style="list-style-type: none"> <li>• Complexity of the claim (i.e. overlapping claims, high value properties, large number of claimants.</li> <li>• Disputes in terms of validity on certain properties</li> <li>• Settlement in terms of willing sellers;</li> <li>• Limitations on the budget allocated at a point in time</li> </ul>
5.	<b>State land claim</b>	Refers to a claim that affects a property registered in the name of the State.
6.	<b>Court matter</b>	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.
7.	<b>Project Kuyasa</b>	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.
		<p>Project Kuyasa deliverables (in short and medium) include the following:</p> <ul style="list-style-type: none"> <li>• Backlog reduction strategy development towards expeditious reduction of claims backlog and settlement of all old order outstanding claims</li> <li>• Business process review and refinement to shorten claims processing turnaround times</li> <li>• Recommendations on the most viable (fit for purpose) corporate entity and structure</li> <li>• Recommendations on the viable land claims settlement models and cost-effective financial settlement models</li> </ul>
8.	<b>Post settlement</b>	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 delivered on 19 March 2019 – also commonly referred to as LAMOSA II requires the CRLR to furnish the LCC with the information itemised below at six monthly intervals starting from the date of the Order:

The CRLR, thus, needs to appraise the Court with information regarding;

- The number of outstanding old order 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 order claims, including short-term settlement targets.
- The nature of any constraints, whether budgetary or otherwise, faced by the Commission in meeting its anticipated 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 order claims have been processed.

In line with the CRLR reporting requirements to the LCC, this report also 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 importance 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 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: NATIONAL AND REGIONAL BREAKDOWN OF OUTSTANDING OLD ORDER LAND CLAIMS**

In the previous LAMOSA report, we reported that the following milestone in the development of the backlog reduction strategy had been met.

The data gathering phase which formed the bulk of the work and was conducted over 18 months and involved the following three sub phases:

1. Templates and data tool development;
2. Training; and
3. Data capturing and tool population.

The next stage was an independent audit of the outstanding claims baseline. The audit so conducted determined that *"the consolidated list presents fairly in all most material respects"*. The Auditor's report was attached in the fifth report submitted to the AJP in December 2021.

In the fifth LAMOSA report, the Commission indicated that a total of **7148** claims constituted the total outstanding claims as confirmed through the baseline audit.

In this report, the Commission is reporting a total number of **6685** claims that constitute a total number of outstanding claims as of 31 March 2022. This number represents a total reduction of **463** outstanding claims.

### National breakdown of outstanding claims as of 31 March 2022

Table 1

Output Indicator	PROVINCES	Outstanding land Claims	Pure Outstanding	Phased
Number of outstanding land claims	Eastern Cape	657	597	60
	Free State	5	5	0
	Gauteng	379	370	9
	KwaZulu-Natal	2124	2045	79
	Limpopo	1349	1073	276
	Mpumalanga	1588	1170	418
	Northern Cape	37	22	15
	North West	208	22	186
	Western Cape	338	326	12
	<b>TOTAL:</b>	<b>6685</b>	<b>5630</b>	<b>1055</b>

The number of 6685 consists of 5630 pure outstanding claims and 1055 phased claims

### Provincial Distribution of outstanding land claims

The provincial picture indicates that the bulk of the outstanding claims remain concentrated between the three largely rural provinces of KwaZulu-Natal, Mpumalanga and Limpopo with a combined total number of 5061 outstanding claims. KZN has the largest number at 2124 followed by Mpumalanga and Limpopo at 1588 and 1349 respectively.

The three leading provinces are followed by the four provinces viz; Eastern Cape, Gauteng, Western Cape, and North West; with outstanding claims of 657, 379, 338, and 208 respectively. The Northern Cape and Free State have the least outstanding claims with 37 and 5 respectively.

The distribution of outstanding claims as indicated also shows that the largest proportion of outstanding claims remains rural a fact which positively correlates with the degree of complexity.

The distribution of outstanding claims by province, which is depicted above is of critical importance with respect to understanding areas with the most performance pressures and implications for related deployment of additional resources.

The information that follows next provides additional characterisation of outstanding claims by looking at features such as types of ownership and land uses affected by the remaining claims.

### **Break down of outstanding claims by land ownership**

As of the last report, the Commission began to provide an understanding of the type of ownership applicable to the remaining outstanding claims. It is by now common cause that the remaining claims are largely rural in nature clustered in provinces that have a large rural sector and economy. The analysis of the claims by land ownership indicates that nearly 70% are privately owned by Municipal and state land at just under 13% combined.

That the bulk of outstanding claims affect privately owned land has serious budgetary implications which are dealt with in detail in section F of this report.

It thus would suffice at this stage to highlight that privately owned land would require considerable amount of money should the successful claimants opt for land restoration.

### **Land use of outstanding claims as percentage of land ownership**

In the last report, the Commission also began to breakdown outstanding claims by land use. This information as we indicated is of critical importance for various economic sectors who want accurate information with respect to the extent to which their properties/ businesses are encumbered by land claims,

Additionally, such information provides critical planning information in the development of the settlement models that the Commission is engaging various sector players on as part of attempts to improve the way claims are settled

The information, the commission provided diagrammatically indicated that most claims, in both private and state land, affect residential and mixed land use with a fair distribution of forestry, conservation, agriculture and mining.

The details on the character of outstanding claims presented here serve as a prelude to the discussion on anticipated completion of claims dealt with in the next section, the nature of constraints being dealt with in **Section F** and the type of solutions being implemented, as would be dealt with in **Section G**.

## **SECTION E: THE ANTICIPATED DATE OF COMPLETION, IN EACH REGION, OF THE PROCESSING OF OLD ORDER CLAIMS, INCLUDING SHORT-TERM SETTLEMENT TARGETS**

Like all other state entities, the Commission has been operating under the conditions of COVID19 19 and the attendant state of disaster regulations that tend to have adverse effect on organizational performance. Despite such adverse conditions, the Commission has successfully met its 2021/22 Annual Performance Plan targets as indicated in Table 2 below.

In the previous financial year (2021-22), the Commission settled a total of 262 claims against an annual target of 240 claims, and finalised 442 claims against a target of 316 claims thus exceeding these APP targets by 109% and 140% respectively.

**The table below shows the performance of the commission against targets set for the 2021-2022 financial year:**

Table 2

<b>Performance indicator</b>	<b>Annual Target</b>	<b>Performance Against Annual Target</b>	<b>% Achieved against Annual Target</b>	<b>Variance on Annual Target</b>
Number of land claims settled	<b>240</b>	<b>262</b>	<b>109%</b>	<b>+22</b>
Number of land claims finalised	<b>316</b>	<b>442</b>	<b>140%</b>	<b>+126</b>

Since inception up to 31 March 2022, the Commission has settled an accumulative total of 82 549 claims. A total of over 3,8 million hectares of land has been secured at a land cost of over R24 billion. Financial compensation awards totaling R19 billion have been paid to date.

These land and financial compensation awards have benefitted a total amount of 447, 807 households who constitute a total of 2,242,689 beneficiaries. A total of 172, 458 are female headed households while over 1200 constitutes people living with disabilities.



## CUMULATIVE STATISTICS ON SETTLEMENT OF CLAIMS: 1995 - 31 MARCH 2022

Table 3

PROVINCE	CLAIMS	HHs	BEN	FHHs	HECTARES SETTLED	LAND COST	FINANCIAL COMPENSATION	GRANTS	TOTAL AWARD
E CAPE	17090	88634	409179	34012	142528	131,659,350.29	5,428,195,284.53	548,882,545.36	6,108,737,180.18
F STATE	2671	8721	52659	3221	60387	93,522,832.05	449,679,893.22	55,460,224.71	598,662,949.98
GAUTENG	13411	21613	83590	9669	23970	101,419,933.57	1,085,790,038.55	85,659,986.38	1,272,869,958.50
KZN	15933	96782	547910	32737	869452	8,312,217,773.38	4,540,483,180.41	977,217,059.28	13,836,293,013.07
LIMPOPO	4689	66289	317900	27008	755995	4,559,224,860.04	2,923,558,574.77	1,026,328,879.86	8,509,112,314.67
MPLANGA	3336	60651	313336	20882	544701	6,437,913,943.93	1,414,091,117.33	730,948,246.77	8,583,003,808.03
N CAPE	4056	25917	139705	10453	846750	890,606,806.23	1,205,470,268.07	281,386,952.81	2,377,464,027.11
N WEST	3977	45449	225994	19652	580173	3,717,608,306.77	771,046,383.47	762,228,877.26	5,250,883,567.50
W CAPE	17386	33751	152416	14824	11211	305,049,750.52	1,660,542,680.27	859,217,909.02	2,824,851,339.81
<b>TOTAL</b>	<b>82549</b>	<b>447807</b>	<b>2242689</b>	<b>172458</b>	<b>3835167</b>	<b>24,549,223,556.78</b>	<b>19,478,857,420.62</b>	<b>5,327,330,681.45</b>	<b>49,361,833,158.85</b>

### Indicators on how the CRLR intends to settle the outstanding land claims

In this section the Commission indicates how many claims it would settle and finalise in multiyear projections up to 2024, within the constraints of current annual and MTEF budget allocations, assuming conditions regarding COVID19 19 do not get worse.

Progress against short term targets is also demonstrated to indicate how the Commission has made strides under the unprecedented tough conditions of 2020/21 financial year.

The Commission's Strategic Plan which was annexed to the last LAMOSA 2 report indicates that significantly more resources would be required to enable the Commission to settle all the remaining claims in a shorter period. This issue is dealt with at length in the next section of this document.

The Commission has set itself a target of settling a total of 558 claims and finalizing a total of 473 claims for the 2022/23 Annual Performance Plan. This represents a significant increase from the targets set for 2021/22 and is premised on the anticipated improvement in the COVID19 19 situation in the country.

The indication on how the Commission intends to settle outstanding claims based on current Medium-Term Expenditure Framework allocations is outlined in the Commission 20/21-24/25 Strategic Plan as indicated in the table below.

While noting challenges which are detailed in the next section of this report, the Strategic Plan communicates a desire by the Commission to settle all outstanding claims within a five-year period. It must be noted though that the realization of this goal is dependent on the availability of increased financial and human resources, to mention but a few.

### Multi-year settlement targets for outcome 1

Table 4

			TARGETS	MTEF PERIOD		
Outcome	Output	Output indicators	20/21	21/22	22/23	23/24
<b>1. Restored land rights and alternative forms of equitable redress</b>	1.1 Land claims settled	1.1 number of land claims settled	244	240	336	549
	1.2 Land claims finalised	1.2 number of land claims finalised	295	316	372	477

The Commission notes the marginal increase in the allocated 2022/23 annual budget which is an amount of R3,7 billion. However, as indicated in section F, a considerable increase in the MTEF allocations and a move towards an autonomous entity would be required if the remaining claims are to be settle and finalised in the shortest time possible.

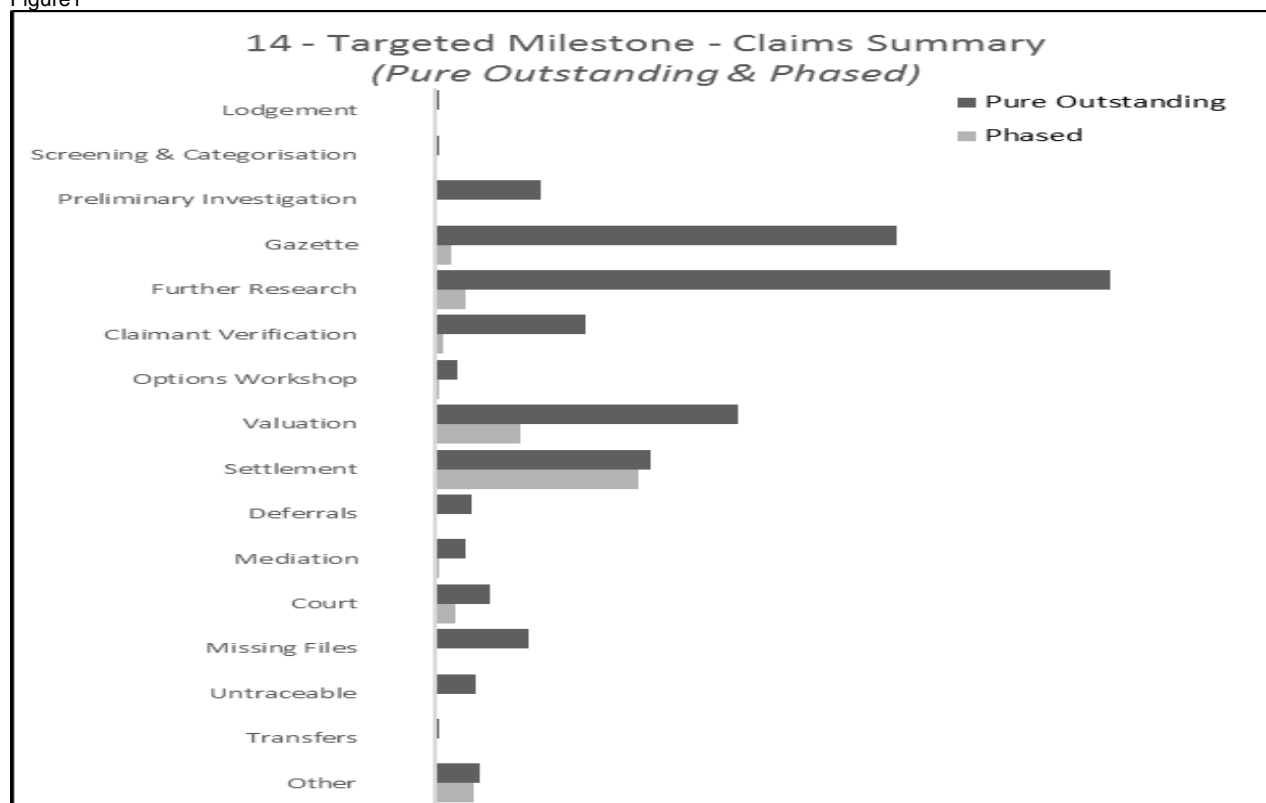
### SECTION F: THE NATURE OF ANY CONSTRAINTS, WHETHER BUDGETARY OR OTHERWISE, FACED BY THE COMMISSION IN MEETING ITS ANTICIPATED COMPLETION DATE

The various Restitution Programme performance reviews and the analysis done in the Project Kuyasa, has helped to identify performance weaknesses and blockages that are both internal and external to the Commission.

These challenges are outlined here, so that the Commission can demonstrate steps being taken to resolve them.

## Key blockage areas in the Restitution business process

Figure1



As has been mentioned in the previous reports, the age analysis of outstanding claims done under Project Kuyasa as part of the analysis had identified three (3) main blockage areas in the process of settling a land claim. The analysis showed that the bulk of the outstanding claims tend to be mostly concentrated at (i) **Research and Gazette**, (ii) **Land Valuation** and (iii) **Settlement Negotiations** stages of the Business Process.

**Research:** is a critical stage as it involves the determination of the acceptance of the claim where the interests of the other parties must be taken onboard and where disputes are often inevitable.

As indicated in section D, the bulk of the remaining claims are privately owned and rural in nature, thus likely to involve informal types of rights claimed, in such instances the quality of the investigation report that accepts or dismisses a claim becomes key in avoiding needless disputes and delays.

This problem is compounded since the research stage can take up to 18 months to complete in some of the more complex claims.

There have also been several issues raised about the poor quality of research which often leads to several legal disputes and/or rework.

**Land valuation:** the valuation of Land as previously stated are now the sole domain of the Valuer General in line with the Property Valuation Act of 2014. The act provides for the valuation of property that has been identified for Land Reform. The VG determines the value of the land that is to be acquired on behalf of the claimants and provides the Commission with a certificate that is then used to negotiate the sale of the property with the landowner.

The lack of capacity and provincial footprint has of the OVG, has created some delays in how quickly the Commission can settle claims.

The VG has provided clear Regulations and guidelines on how the determination of a just and equitable compensation is to be determined, this is done in line with Sec 25 of the Constitution on how acquisition of land for Land Reform purposes should be dealt with. The formula that has been determined by the VG has not necessary been understood nor well received by the industry.

The determination of land values and/or compensation has an effect of causing both delays in the settlement of claims due to the processes the OVG must follow to conduct land valuations, as well as increased occurrence of rejected compensation offers due to the disputed valuation procedures.

Once the OVG has issued a certificate to the Commission which states the value of the land in question as determined by the VG we present the offer to the landowner as the value we intent to acquire the land for. We also submit the certificate to the claimants as the base to offer financial compensation.

It is important to note that since the inception of the OVG we have observed an increase in the number of rejected offers both by the current landowners as well as the claimants. Most of the reasons given for the rejection of the offers are the values offered which are regarded as lower than expected.

We acknowledge that the OVG was introduced specifically to ensure that valuations for land reform are based on Just and Equitable compensation and to deal with the historic challenges faced by the state where the focus became the market value of the land excluding the other factors defined in the Constitution.

The OVG and the Minister of DALRRD are continuing to engage on the best approach to dealt with the litigation and appeal processes necessary to deal with the concepts of value determination verses compensation and or award. In the meantime, the commission continues to engage with all the parties and well as the courts of the interpretation including the courts.

**Land claim processing time:** Currently the baseline for the full settlement process of a claim is estimated to take a period of 246 weeks per claim. The length of time is caused by several historic process inefficiencies, rework and unnecessary approvals

processes in the standard operating procedures. We plan to reduce the time to about 89 weeks.

### **Lack of a fit for purpose Commission structure and mandate**

As discussed previously and determined by various reviews as well as the recent report by Public Service Commission (PSC) dated March 2021<sup>3</sup>. The PCS report concluded that in the 6 performance factors that in reviewed that the CRLR performed unsatisfactorily. They were identified as follows:

1. Understanding of the Legal and Regulatory framework
2. Organisational structure
3. Responsiveness to the needs of the beneficiaries
4. Skills, capacity and performance management of human resources
5. Adherence to the Constitutional Values and Principles
6. Leadership.

There are several issues identified prior and during the Project Kuyasa that make the current configuration of the Commission irregular as defined by the office of the Auditor General and thus adversely impacting on performance. These include the existence of the Commission as a Branch in the Department of Agriculture, Land Reform and Rural Development (DALRRD), with the Director General of the same Department being the Accounting Officer of the Commission.

This position is then contradicted by Section 21 of the Restitution Act which requires the Commission to prepare and submit its own Annual Report to Parliament separate from that of DALRDD.

There is an understanding which is strongly enforced by the Auditor General of South Africa which also accords with Section 4 of the Restitution Act that regards the Commission as a Statutory Body or Entity that is meant to operate independent of the DALRRD.

However, the current organisational configuration together with a centralised structure where the Chief Land Claims Commissioner, Deputy Land Claims Commissioner and the Regional Land Claims Commissioner are all located in the National Office, militates against improved performance and corporate governance for optimum efficiency.

In addition, there is a realisation and acknowledgement that the involvement of the Commission in matters relating to post settlement deprives the Commission of much needed resources which should be better deployed to fast track the settlement and finalisation of the outstanding claims.

---

<sup>3</sup> Report on the Investigative Analysis into the performance of the Commission on Restitution of Land Rights, March 2021

In the current environment the Commission continues to find itself having to respond or attend to matters related to post settlement including disputes that relate to the land holding entities on claims that were settled years ago instead of focusing of the outstanding old order claims, thereby putting a strain on the already reduced staff complement and resources.

### **Budgetary constraints with respect to settlement of claims**

The Commission is expected to expedite the settlement of all old order claims in line with the resolution made under Operation Phakisa as well as announcements made in the State of the Nation Address and other platforms. However, the pace of settling claims is heavily reliant on the number of resources especially financial and human resources that the State provides the Commission year on year.

Based on current budgetary allocations, which the Commission invariably spends, the Commission receives an annual budget of R3 billion which ranges around R9 billion at the Medium-Term Expenditure Framework level. We note that the budget allocated year of year for Household has increased marginally while the budget allocated towards Compensation of employees has reduced substantially over the years.

While of the converse, independent financial forecasting conducted under Kuyasa Project indicates that an estimated amount of approximately R65 billion will be required to settle all outstanding old order claims. This figure has a 25% margin of error as most of the claims analysed are still in the Research and Gazetting stage where the determination of the extend of the validated of hectares is outstanding and value of the land is yet to be determined by the office of the Valuer-General .

The Commission has in the past six months engaged National Treasury on the financial implications of establishing the Commission as an Autonomous Entity following the completion of a business case, also drawing their attention to limitations presented by the current budget allocations on the need to expedite the settlement of outstanding claims.

As reported in the last report, national treasury has yet to respond to whether there is a commitment to support the commission in its transition towards becoming an autonomous entity and the financial implications of settling remaining claims in the suggested five years.

It should be noted therefore that should the budget allocation status quo remain; the Commission will have no room to accelerate the settlement of the old order outstanding claims beyond limitations of current resource availability and allocation.

## **The Human Resource Constraints**

Human resource capacity constraints remain a challenge. Although the Minister of DALRRD has approved the Commission's "Interim Structure" that is meant to alleviate the current pressing human resource constraints, the posts in the structure can only be filled once there is commensurate budget adjustment.

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

The following are interventions that are being implemented to deal with the challenges identified in the previous section:

### **Research and Gazetting targeted interventions.**

Informed by current distribution of outstanding claims, the commission continues to prioritise provinces with the larger share of remaining outstanding claims in respect of both requirements to research and settle land claims. Based on the categorisation and distribution of the remaining claims presented in section D of this report, the Commission knows that three provinces have the bulk of outstanding claims that are largely rural in nature and have competing and overlapping rights affected.

In the previous reports, it was indicated that the commission had developed a research strategy aimed at accelerating the research and finalisation of outstanding research.

The Commission continues to execute this strategy with an aim to;

- finalise outstanding research in the 2022/23 financial year, by
- dedicated research units within the Provincial offices with the largest number of outstanding claims to be researched; and strengthening case management throughout
- bi-weekly progress monitoring meetings to ensure that Provinces can meet set delivery targets.
- co-ordination with all stakeholders

### **Land valuation targeted Interventions**

In the previous report, the Commission indicated that the following intervention had been embarked upon;

- A Service Level Agreement with specific performance expectations has been entered into between the Commission and the OVG.

- Supply Chain Process for valuations have been decentralised Provincial Shared Service Centre offices of the DALRRD to support the OVG to shorten the turnaround times and for close monitoring
- The need to improve capacity in the OVG has been escalated to the Minister of DALRRD and as a result some additional capacity to the office has been added.
- A Panel of experts has been appointed by the Minister to engage stakeholders and present Minister with proposals on desired amendments to the Property Valuation Act, regulations and the mandate of the OVG. The Commission has already made presentations to the panel on all identified areas of concern.
- These measures are being reinforced through the elaboration of Standard Operating Procedures (SOPs) and close tracking of the movement of cases handed to OVG for valuation as part of project Kuyasa business process improvement.
- Additionally, the Commission continues to interact with both the office of the Valuer General and that of the Director General of DALRRD in continuously monitoring performance on the SLA.

As a result of these interventions the office of the National Director Quality Assurance in the Commission indicates that there is marked improvement in the performance and output of the OVG.

As a consequence, it is expected that the Valuer General will be issuing a departmental circular restating the function of facilitating procurement of land valuations back to the OVG.

### **Negotiations and settlement targeted interventions**

The Commission continues to negotiate to reach settlements on land claims as envisioned in Section 42D of the Restitution Act including, instituting mediation as contemplated in Section 13, beyond which point disputed claims are packaged for Land Claims Court referrals as required in Section 14 of the same legislation.

Section H of this report provides an update on claims designated for LCC referral. Mainstreaming of SOPs, especially, age tracking and analysis ensures that dispute ridden claims that cannot be resolved through negotiation or mediation are timeously referred to the LCC.

### **Interventions aimed at improved claim processing time**

Within the Kuyasa BPR project several improvement areas have been identified and key process changes mapped. These have all been approved and a plan for pilot implementation has been developed. The work done in the BPR workstream of project Kuyasa strives to shorten claim processing time from the current 246 weeks to a



considerably reduced 89 weeks. This would be a significant achievement when the Commission begins to mainstream the SOPs.

### **Interventions aimed at creating sustainable restitution projects**

The Commission continues to engage sector stakeholders in the development of improved sector-based settlement models as part of project Kuyasa. As mentioned previously this exercise aims at getting collective agreements on how best to settle claims applicable in the various land uses to ensure optimum benefits to successful land claimants who get land while ensuring the continued sustainability of the sector or industry.

These models establish best practices based on known success factors on settlement of claims applicable to a specific land use such as Forestry, Mining, High Value Agriculture etc. These success factors are then mainstreamed through binding agreements called settlement model agreements.

To date draft settlement models have been completed and implementation of pilots undertaken in the following various land uses:

- Forestry,
- Mining,
- Sugar Cane,
- Conservation/Ecotourism,
- High Value Agriculture
- and Urban Settlement Development
- Financial Compensation

In tandem , such sector players are expected to assist claimants make informed choices during the Options workshop stage of the restitution business process by, amongst other things, developing feasibility studies education and awareness.

This allows for critical role division where the Commission concentrates largely on legal aspects of processing a land claim while land development aspects are taken care off by the designated components inside and outside DALRRD as key post settlement role players. Note that this work is expected to happen before the claim is settled during the consultation processes with the claimants.

While the Commission can and does facilitate these processes, the success of these endeavours largely depends on the role played by external stakeholders both public and private in the various sectors where claims are settled- who are required to deploy resources to make restitution projects a success.

## **Progress towards an autonomous Commission**

In the last report the commission indicated that after the Minister approved the business case in April 2021, some progress was covered in the form of the following steps:

- The Business Case was submitted to DPSA and National Treasury for further consultation.
- Feedback from DPSA has been received and inputs were incorporated into the business plan.

We are still awaiting a response from the National Treasury while the Commission with support from DALRRD continues with drafting legislative amendments that seek to facilitate transition to an autonomous entity.

## **Alignment between budget allocation and realistic settlement of claims forecast**

The question of available budget plays and will continue to play a decisive role in the goal to accelerate settlement of outstanding old land claims. The Commission has costed the required budget to settle all outstanding old order claims in a period of about five years as estimated at approximately R65 billion. At current budgetary allocations this target will not be met without requisite increased funding.

To push targets on land acquisition and transfer, the Commission continues to prioritise state land and is a key contributor to the Inter-Ministerial Committee on land reform (IMC) chaired by the Deputy President which amongst other things drives the coordination on the identification and release of state land for land reform purposes.

The progress being made does contribute, but the settlement of claims on state land will not hasten the process of settling claims as most of the outstanding old order land under claims is in private hands.

## **Interventions relating to human resource constraints**

The Department has compiled a macro and micro interim structure based on the approval from Minister. In terms of the Interim structure, the Commission would have four (4) Regional Land Claims Commissioners instead of the current one (1).

Notably, this would see one Regional Commissioner overseeing a cluster of provincial offices as opposed to the earlier situation where there had been a RLCC per each of the nine provincial offices – this being informed by the relatively significantly reduced number of remaining claims with two offices at the verge of settling all their old order claims.

This, if realised, would provide greatly needed relief, considering that RLCC functions are prescribed, and the existing bottleneck created by one RLCC located in the national office. The Commission has, however, been informed that these posts cannot be filled until the requisite budget is available. The Commission continues to engage the DALRRD on all these matters.

## SECTION H: PROGRESS MADE ON SECTION 14 REFERRALS TO THE LAND COURT AND PROGRESS

During 2021/2022 financial year, the Commission had targeted 85 cases (equating to 132 claim forms) to be referred to the Land Claims Court for adjudication. Fifty- Four (54) cases have been issued at the Land Claims Court.

The Provincial breakdown is captured in the Table below:

### PROGRESS ON PROVINCIAL REFERRAL TARGETS FOR FINANCIAL YEAR 2021/2022

Table 5

Performance indicator	Province	Annual Target	Achieved	Quarter 1 Target	Achieved	Quarter 2 Target	Achieved	Quarter 3 Target	Achieved	Quarter 4 Target	Achieved
Section 14 Referrals as per LAMOSA 2 judgement	Eastern Cape	3	2	0	0	1	0	0	2	2	0
	Free State	0	N/A	0	0	0	0	0	0	0	0
	Gauteng	6	1	1	0	5	0	0	0	0	1
	KwaZulu-Natal	19	19	4	11	5	3	6	2	4	3
	Limpopo	22	16	8	7	4	8	5	0	5	1
	Mpumalanga	24	13	6	8	6	2	6	2	6	1
	North West	5	3	1	1	2	0	1	2	1	0
	Northern Cape	0	0	N/A	0	0	0	0	0	0	0
	Western Cape	6	0	0	0	2	0	2	0	2	0
	TOTAL	85	54	20	27	25	13	20	8	20	6

A much higher number of claims were targeted to be referred to the LCC, however due to challenges such as limited capacity due to resignations and skills in the legal unit of the Commission in some of the Provinces, capacity constraints within the offices of the State Attorney and the Sheriff, e.g. currently the Pretoria State Attorney is allocated to support Gauteng, Limpopo, Mpumalanga, and North West Provinces cases.

The Free State Province State Attorney's office also has serious capacity challenges which have been evident for the last three years. This has had a direct impact on how quickly we can draft and prepare referrals in line with the LCC guidelines to the LCC as anticipated, we continue to engage with the office of the state Attorney to deal with these challenges.

Regarding the Sheriffs' office, they have reported that they sometimes cannot locate landowners to effect service. This has contributed to the cases not proceeding as expected at court. The Commission has intervened by using its own officials to effect the service on the land owners however this continues to have a negative impact on the process and in ensuring that all cases issued are trial ready.

Regarding the provision of legal representation at state expense, we advise that previously the commission arranged this through the Land Rights Management Facility. This facility and function have since been transferred to the Legal Aid South Africa. The Legal Aid South Africa formally accepted this function from the 1<sup>st</sup> April 2022.

Paragraph 4.5 of the Memorandum of Understanding signed by the Director General: Department of Justice and Constitutional Development on 29 April 2022, Director General: DALRRD on 4 May 2022, and the Chief Executive Officer: Legal Aid South Africa on 19 May 2022 states that: the DALRRD and Legal Aid SA must work in collaboration to ensure that the constitutional rights of farm occupiers, labour tenants and restitution claimants are realized

Due to the obligations placed by legislations (Extension of Security of Tenure Act No. 62 Of 1997, The Land Reform (Labour Tenants Act No. 3 Of 1996 And Restitution of Land Rights Act No. 22 Of 1994) on DALRRD and the Commission, the bulk of the referrals to the Legal Aid Board will come from DALRRD and the Commission.

Currently we are in a transitional period to formalise the Standard Operating Procedure with Legal Aid South Africa, to approve legal representation to land claimants.

## **SECTION I: CONCLUDING REMARKS BY THE CHIEF LAND CLAIMS COMMISSIONER**

The COVID19 19 virus continued to have a significant impact on the Commission staff throughout the period of 2021/22 as we saw the Delta variant sweeping through, creating the third wave. The Commission experienced the death of some officials as a result as well as the loss of family members. We also experienced a number of hospitalisations as a result of COVID19. The offices of the Commission across provinces and National office had to be closed a number of times for decontamination when cases were detected. We Built on the experiences and lessons learnt in controlling numbers of people and the interface between ourselves and other stakeholders when performing operations such as claimant verification and general consultation with Communities, the Commission was able to function and met the targets for settlement and finalization of claims for 2021/22.

As indicated earlier, a total of 262 claims against an annual target of 240 claims was settled, while a total of 442 claims were finalised against a target of 316 claims thus exceeding annual targets by 109% and 140% respectively.

This performance indicates the extent to which the Commission despite the extremely difficult circumstances that we operated under because of COVID 19 and the anxiety associated with which had to continuously manage we were able to despite the limited resources (both human and capital) to demonstrate commitment to the expeditious settlement of outstanding claims.

The performance under review also demonstrates that the performance improvements being undertaken through project Kuyasa are beginning to bear fruit.

In the same spirit, the Commission has set itself a target of settling a total of 558 claims and finalizing a total of 473 claims for the 2022/23 Annual Performance Plan.

The targets represent an increase from the targets of the preceding period and are also premised on the apparent improvement in the COVID19 19 conditions as well as a slight increase in the allocated budget for household allocation and possible approval of the filling of addition posts. being available.

We note with appreciation the marginal increase in the allocated 2022/23 annual budget which is an amount of 3,7 billion we nonetheless underscore the need for a significant increase in the budget if the remaining claims are to be settle and finalised in the shortest time desired.

We await the finalization of the Kuyasa processes, Approval of the Business case and especially the funding by National Treasury and the commitment to support the initiatives driven by the Commission transition to an 3A autonomous entity and the allocation of estimated budget to settle outstanding old order claims in the short term.

A lot of what needs to happen is dependent on external factors and or role players to the Commission. We continue to engage and deliberate with all key stakeholders both in government and the private sector. In future reports the Commission anticipates that there might be a need to request other stakeholders in government who are critical to these reports to submit addendum reports in support to this report in line with the Constitutional Court LAMOSA 2 order.

The Commission acknowledges the support a of the Land Claims Court for the directives issued in a collective endeavour to ensure that disputed claims that are referred are adjudicated upon timeously.

The Commission on Restitution of Land Rights hereby submits the **Sixth Report** to the Land Claims Court as required by the Constitutional Court under case number: **CCT 40/2015** for ease of reference, we also submit the following for consideration with the report :

- A copy of the Ori Audit - ANNEXURE A
- Report on the Investigative Analysis into the performance of the Commission on Restitution of Land Rights (Public Service Commission) - ANNEXURE B

-----END-----