



COMMISSION ON RESTITUTION OF LAND RIGHTS

Third 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 LAMOSA 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.

(i) Settled claim

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 court.¹

(ii) Finalised claim

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.²

(iii) 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.

(iv) 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

(v) State Land claims

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

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 effected 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.

(vi) 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.

(vii) 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

(viii) 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 LAMOSA 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 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 targets for the number of old order claims to be processed;
- 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 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 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 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

1. Progress on the Audit of outstanding claims files

Table 1: Baseline of old order outstanding land claims as submitted under the 2nd LAMOSA 2 report

PROVINCE	*Pure outstanding as at 1 April 2020	*Phased claims still to be settled
Eastern Cape	724	41
Free State	2	3
Gauteng	441	10
KwaZulu-Natal	3078	104
Limpopo	1117	344
Mpumalanga	1401	575
North West	25	194
Northern Cape	58	24
Western Cape	484	10
TOTAL : 8635	7330	1305

- 1.1 As previously reported under the second LAMOSA report, one of Project Kuyasa's primary projects is the Backlog Reduction Strategy which has two main deliverables, namely,
 - a) data analysis and refinement to facilitate determination of the final total number of outstanding claims, and
 - b) fast-tracking settlement of all outstanding claims.
- 1.2 Data analysis has been partially completed in terms of the work that has been done internally which involved an intensive process to analyse and verify the number of outstanding claims. Provinces working with external Service Provider submitted information on details of their outstanding claims as per claim form lodged.
- 1.3 As previously submitted, two (2) reports containing the number of outstanding land claims have been submitted, however as indicated the data confidence with regard to the internal progress is at 75%. We have conceded in the past

that the CRLR has historic challenges with regard to the integrity of the existing data

- 1.4 We have commenced with an external audit of the land claims files so that we are in a position to sign off on the final baseline statistics reflecting the number of outstanding older order claims.
- 1.5 It is anticipated that this external audit is to be completed within the next six (6) months and that the audit outcome would be incorporated into the next LAMOSA report.

Table 2: Breakdown of the outstanding Claims at the date of submission of this Report

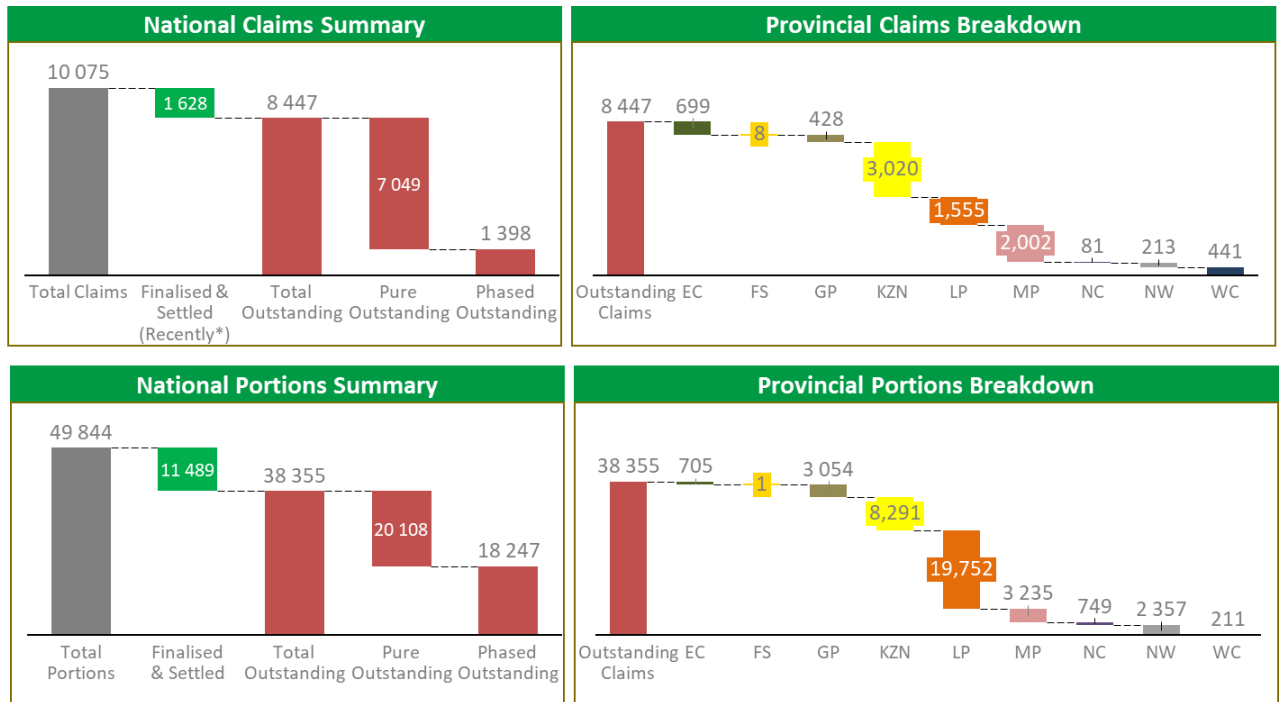
Province	*Pure outstanding claims as at July 2020	*Phased claims still to be settled as at July 2020
Eastern Cape	653	46
Free State	5	3
Gauteng	420	8
KwaZulu-Natal	2914	106
Limpopo	1155	400
Mpumalanga	1392	610
North West	52	29
Northern Cape	24	189
Western Cape	434	7
TOTAL : 8447	7049	1398

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

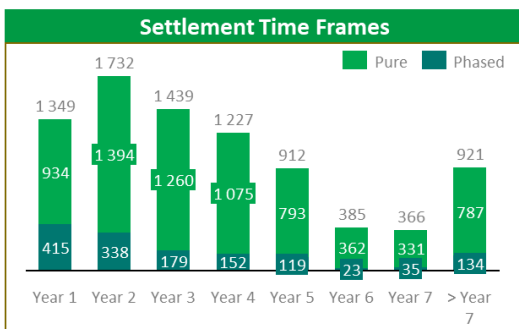
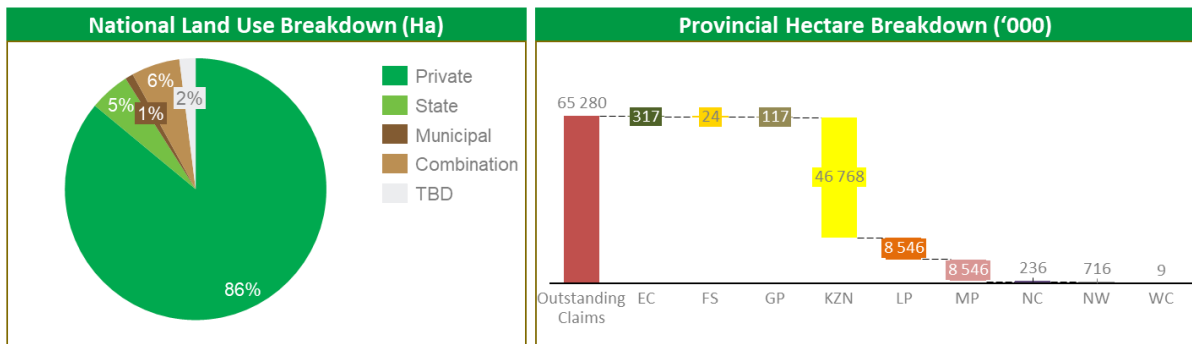
- 2.1 Between this report and the previous LAMOSA report, the number of pure outstanding claims has been reduced from 7330 to 7049. This represents a total amount of 281 claims that have been settled.
- 2.2 On the other hand, the total number of phase projects has increased from 1305 to 1398. This is an indication of a number claims that had to be dealt with as phased projects because of the extent of the hectares at play as well as the number of land owners that the Commission is required to negotiate with for each land parcel or property under claim.
- 2.3 As can be seen from the table above, KwaZulu Natal, Mpumalanga and Limpopo are the provinces with the highest number of outstanding claims while the Free State, North West and Northern Cape are the provinces with the least number of outstanding claims.

2.4 The following diagrams provide more detailed information with respect to the provincial breakdown and concentration of outstanding claims.

Current Outstanding Claims & Portions count as of July 2020 based on the provincially provided information (Yet to be verified by external audit)

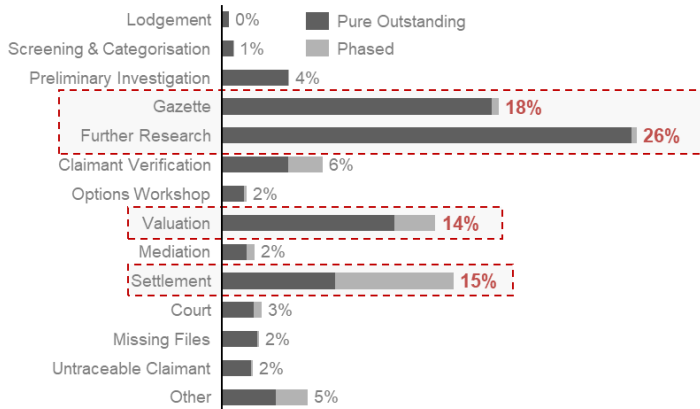


Current Outstanding Hectares as of July 2020 based on the provincially provided information (Yet to be verified by external audit)



Provincial cost of settlement breakdown still being determined

Breakdown of Claims by “Targeted” Milestone

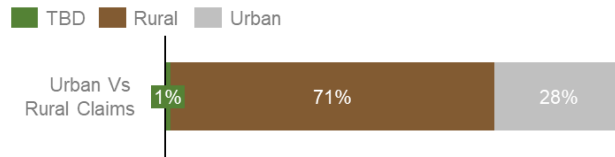


Research & Gazetting (44%)
 A variety of issues have resulted in the large portion of claims at the research stage; complex processes, not obtaining landowners permission, poor quality of external reports, missing information on claim form, limited database support, etc

Settlement “Negotiations” (15%)
 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

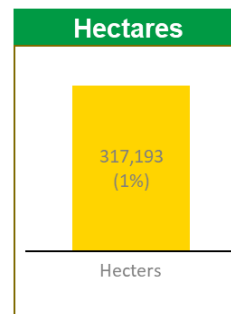
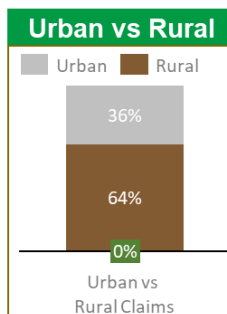
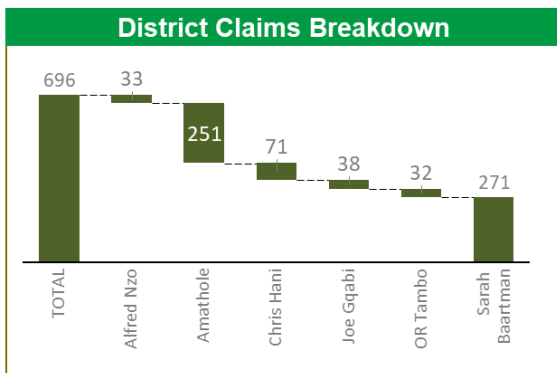
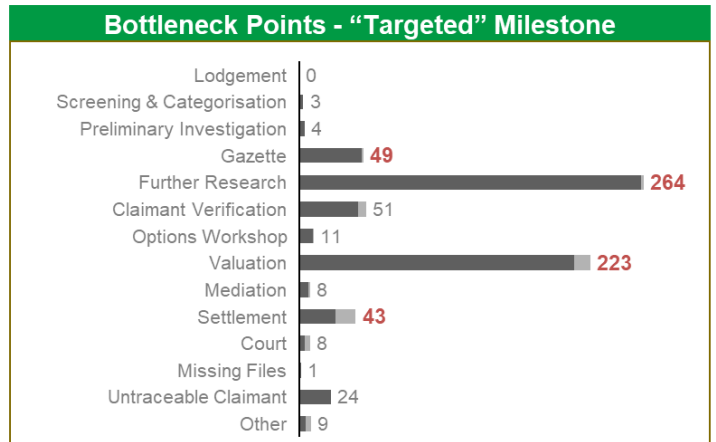
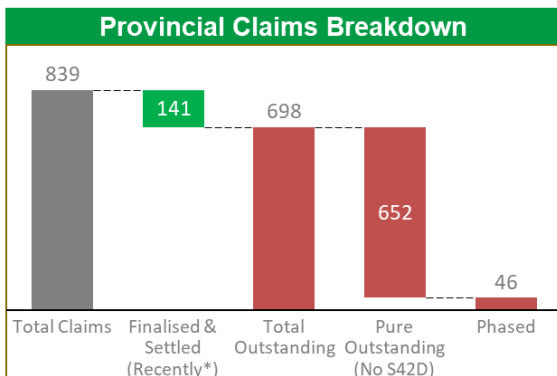
Breakdown of Claims by Urban vs Rural



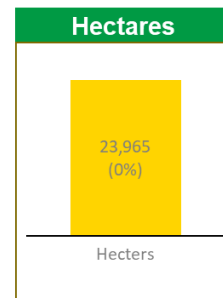
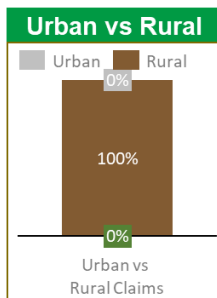
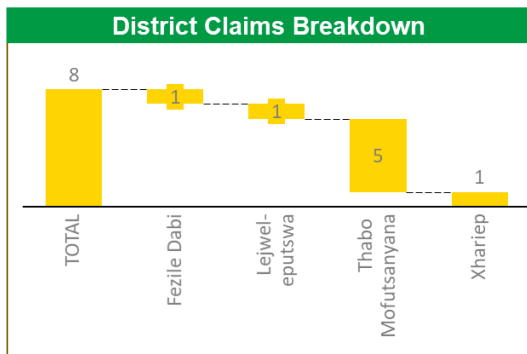
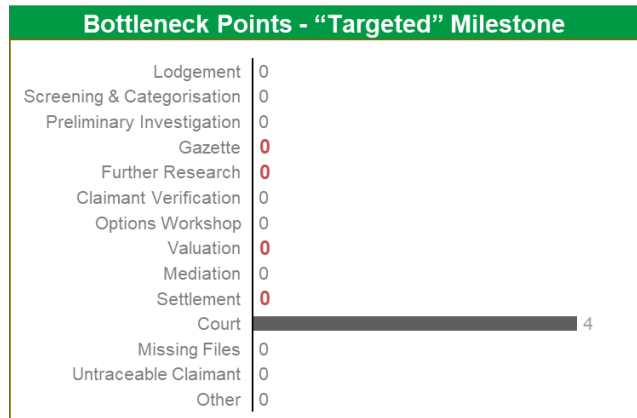
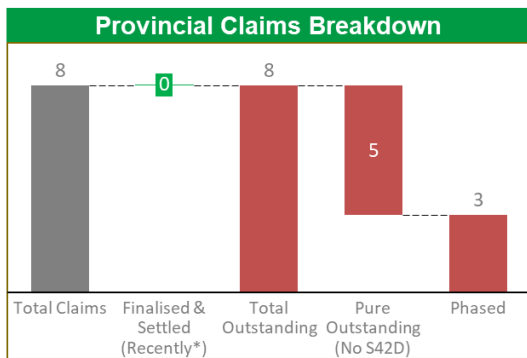
Court (3%)
 Although the current claims at court are relatively low, as the downstream bottlenecks are removed the courts could see an increased spike in cases (CRLR is aware and forecasting this spike)

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

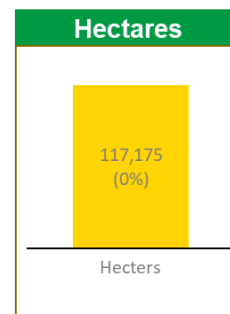
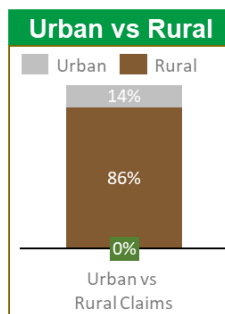
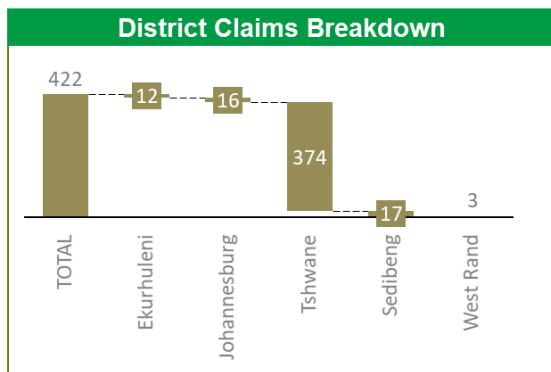
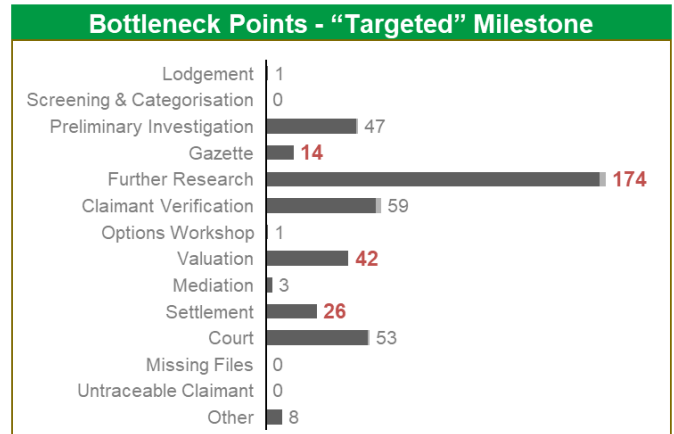
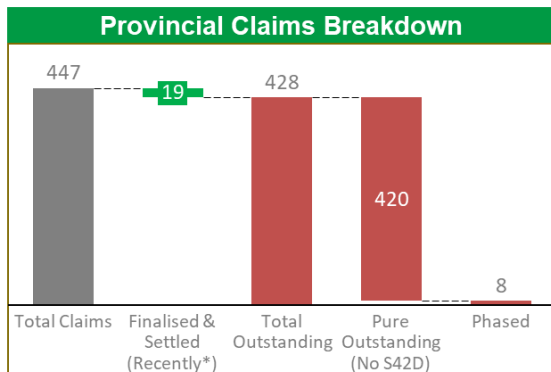
Eastern Cape stats as of July 2020 (Yet to be verified by external audit)



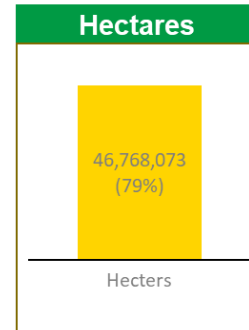
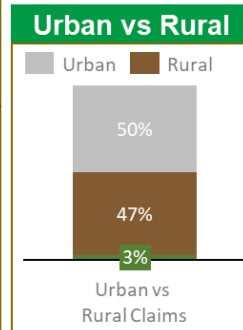
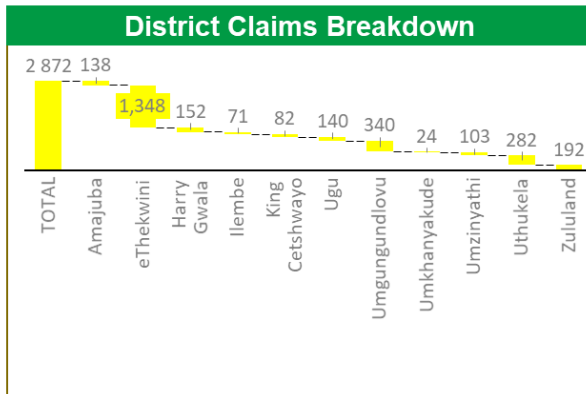
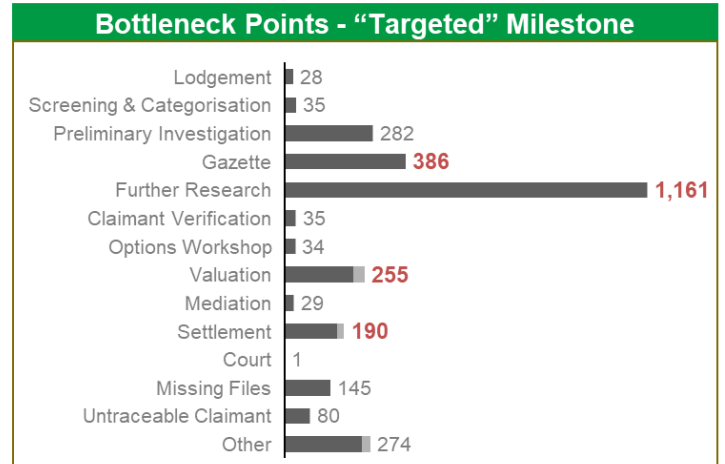
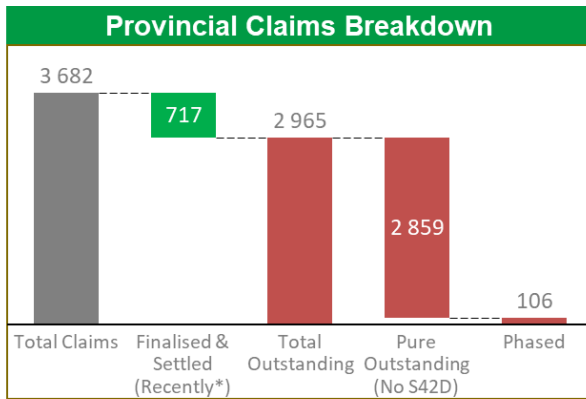
Free State stats as of July 2020 (Yet to be verified by external audit)



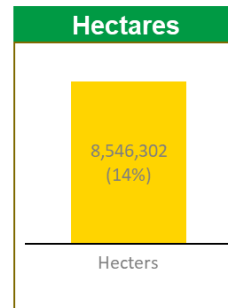
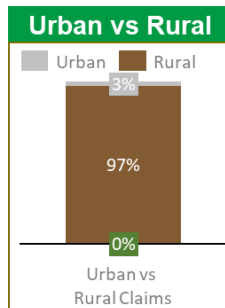
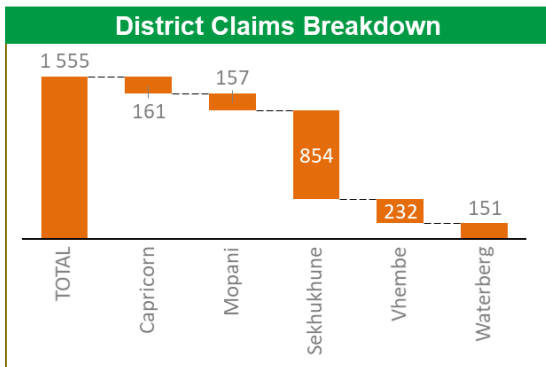
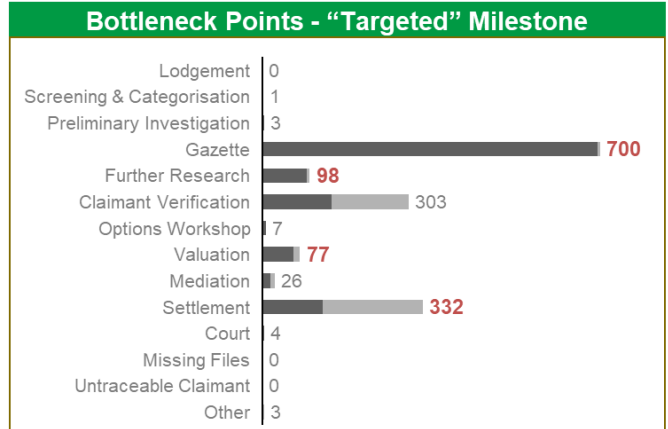
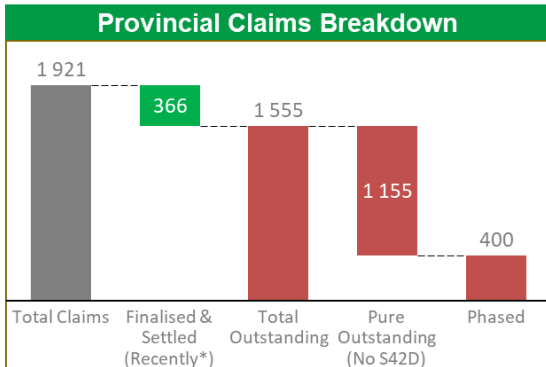
Gauteng stats as of July 2020 (Yet to be verified by external audit)



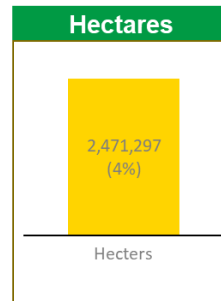
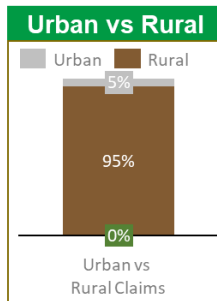
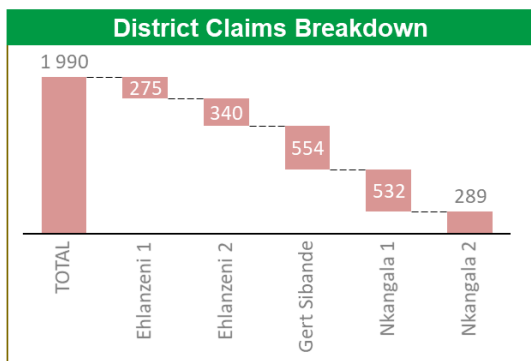
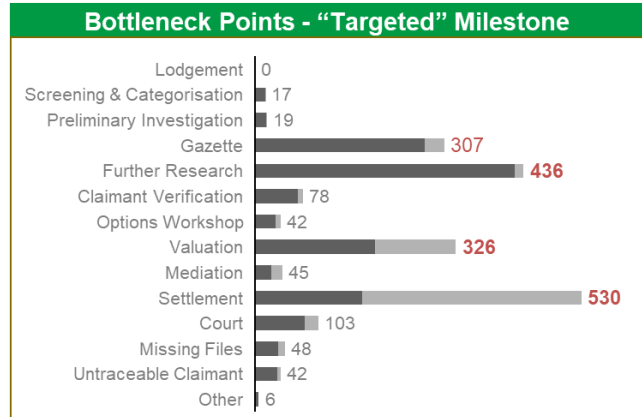
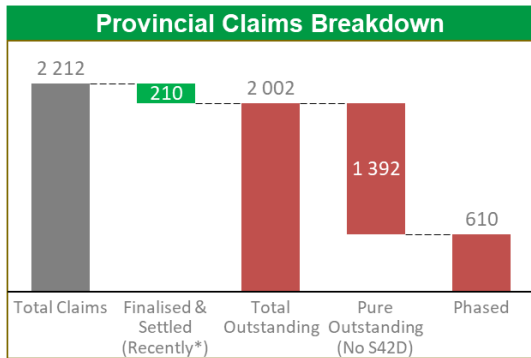
KwaZulu Natal stats as of July 2020 (Yet to be verified by external audit)



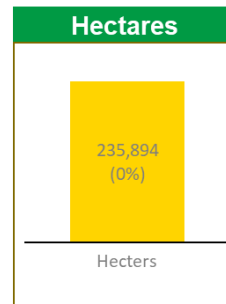
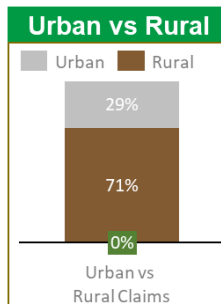
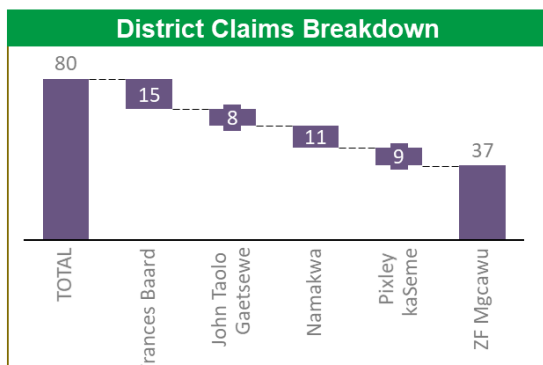
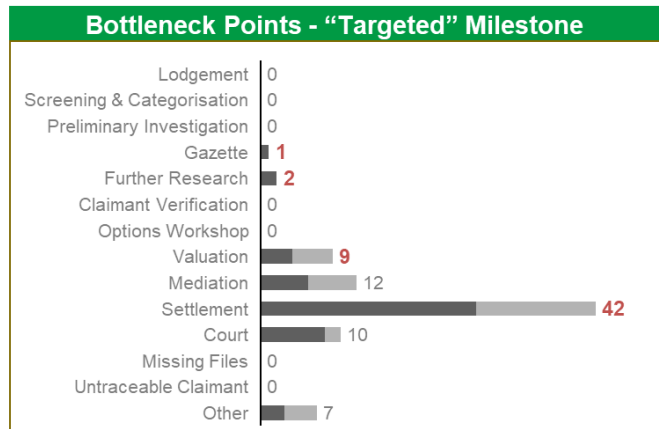
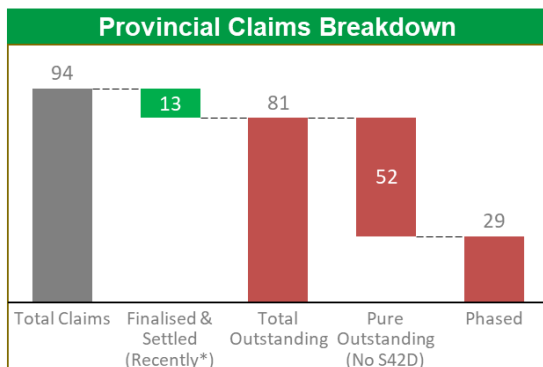
Limpopo stats as of July 2020 (Yet to be verified by external audit)



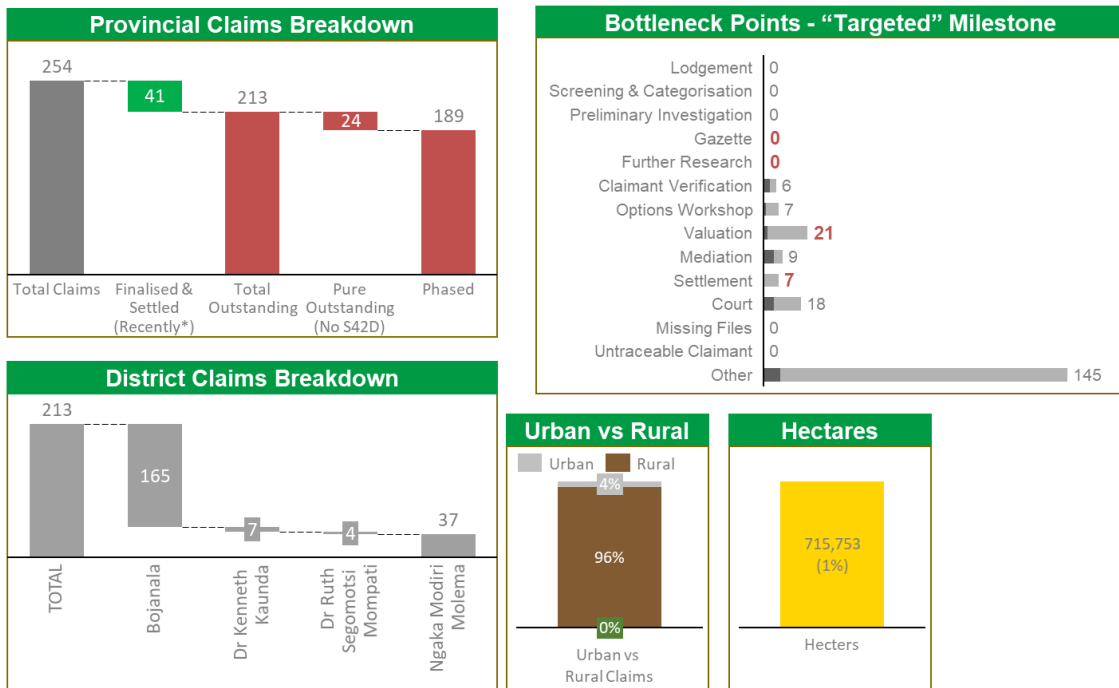
Mpumalanga stats as of July 2020 (Yet to be verified by external audit)



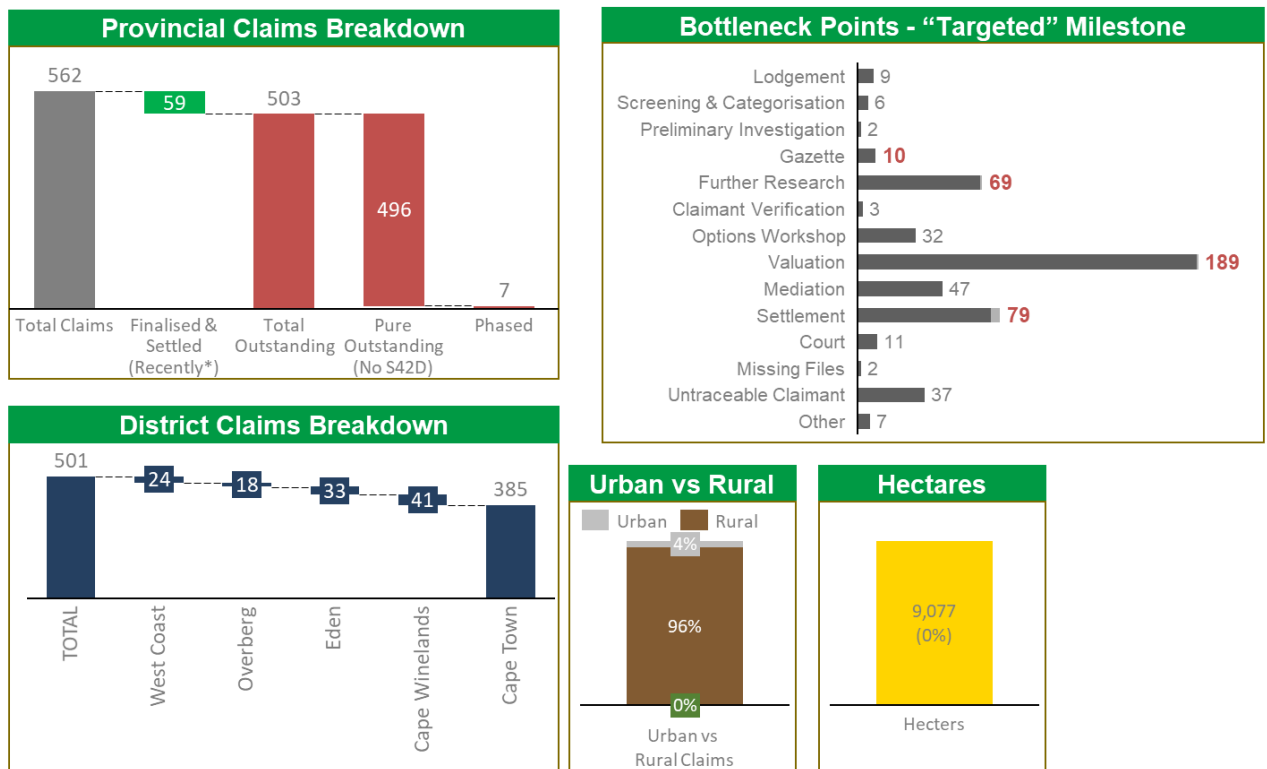
Northern Cape stats as of July 2020 (Yet to be verified by external audit)



North West stats as of July 2020 (Yet to be verified by external audit)



Western Cape stats as of July 2020 (Yet to be verified by external audit)



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

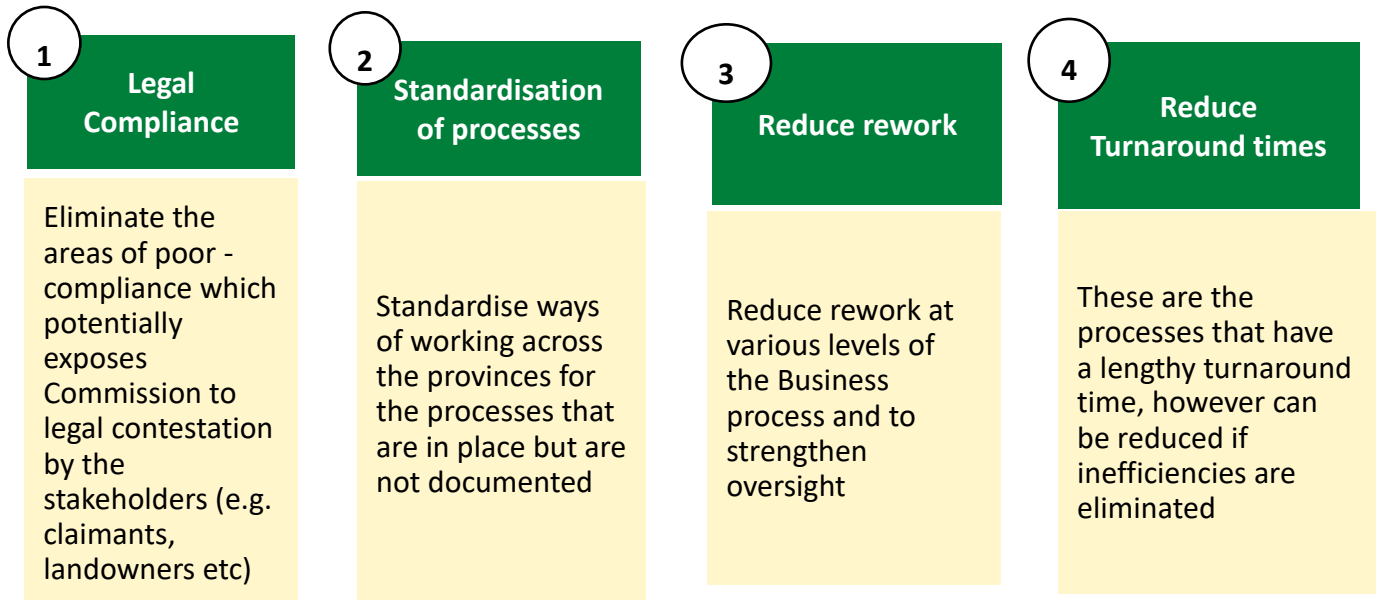
1. The Commission is required each year as part of Government wide planning process to submit its Annual Performance Plan (APP) which is aligned to the 5 year Strategic plans.
2. The Commission prepared and submitted its APP for year 2020/21 as required however due to the unforeseen challenges caused by the Declaration of Lockdown and the Declaration of a state of disaster by the President, we were forced to revise our targets downwards

Table 3 2020/2021 Targets and COVID - 19 Revised Targets

PROGRAMME 3: RESTITUTION													
Strategic Objective	Performance Indicator	Medium term targets			Revised Quarterly Breakdown as per provincial input								
		2020-21			Quarter 1		Quarter 2		Quarter 3		Quarter 4		
		Province	Initial Provincial Target	Revised Provincial Target	Initial	Revised	Initial	Revised	Initial	Revised	Initial	Revised	
Facilitate the restoration of land rights and alternative forms of equitable redress by 2021	No. of Land claims settled	EC	100	60	15	14	20	14	35	21	30	11	
		FS	0	2	0	1	0	1	0	0	0	0	
		GP	10	7	0	0	3	2	4	3	3	2	
		KZN	100	29	15	9	20	20	35	0	30	0	
		LP	64	64	16	16	16	16	16	16	16	16	
		MP	90	40	12	6	20	10	32	14	26	10	
		NW	5	1	1	0	2	1	1	0	1	0	
		NC	7	1	1	1	3	0	2	0	1	0	
		WC	78	40	12	8	28	12	26	12	12	8	
			454	244	72	55	112	76	151	66	119	47	
	No. of Land claims finalised	EC	85	65	15	10	24	10	27	25	19	20	
		FS	6	6	4	0	1	4	1	2	0	0	
		GP	20	9	5	0	5	4	5	1	5	4	
		KZN	137	50	25	10	40	20	39	10	33	10	
		LP	32	32	8	8	8	8	8	8	8	8	
		MP	54	54	7	7	12	12	19	19	16	16	
		NW	30	14	7	0	9	6	7	8	7	0	
		NC	15	5	4	1	5	2	4	2	2	0	
		WC	100	60	10	10	30	10	25	15	35	25	
		479	295	85	46	134	76	135	90	125	83		

3. Backlog Reduction Strategy

3.1 The backlog reduction strategy has been developed to help the Commission accelerate the process of dealing with the outstanding claims; by addressing the following 4 impact areas identified as key priorities:



3.2 **There are four (4) core backlog and two (2) business enabling strategic objectives as follows:**

- 3.2.1 Ensure the CRLR is adequately equipped to restore all land rights
- 3.2.2 Establish the CRLR as an autonomous organisation, improving the governance structures and overall service delivery
- 3.2.3 Define a clear organisational mandate in line with processes and supported by an appropriate structure
- 3.2.4 Improve stakeholder management, communication channels and overall customer satisfaction
- 3.2.5 Implement a secure information system that promotes effective management
- 3.2.6 Prepare the CRLR to adequately process new order claims (i.e. 166 000 claims) when authorised to do so.

3.3 Linked to the 4-core backlog strategic initiatives, the Key Strategic Goal is to eliminate and or deal with all the outstanding claims over the next five (5) years. The five (5) year plan is still to be developed in consultation with provinces through the strategic planning session of the Commission.

4. Business Process Improvement

- 4.1 The Business Process Improvement project aims to assess and recommend improvement of the current processes at the CRLR with a key focus on enhancing compliance and efficiency.
- 4.2 The CRLR has identified about 7049 pure outstanding and 1398 phased claims outstanding and one of the key factors caused by an inefficient, non-standardised, lengthy, manual process, hence the recommendation of a Business Process Improvement project to assist in improving operations and turnaround times and to increase efficiencies.
- 4.3 Analysis of the current land restitution claim process and other key enabling processes was conducted in order to recommend and design the “To-be business processes”. This included identification of key enablers (people, facilities and governance) & development of an implementation plan.
- 4.4 In summary the To-be process design is expected to deliver specific benefits that are legally compliant and standardised with a key benefit being reduced turnaround times as follows:

Table 4 Proposed To-be Business process

#	Business Process	Turnaround Time As-Is ⁽²⁾	Turnaround Times(To-be)	Percentage Reduction
1	Lodgement	<i>Not documented</i>	1 week	n/a
2	Screening & Categorisation	44 weeks	4 weeks	-90%
3	Qualification of Claim	42 weeks	8 weeks	-81%
4	Claimant verification	78 weeks	35 weeks	-55%
5	Valuation & negotiation	78 weeks	11 weeks	-86%
6	Settlement & Finalisation	NA <i>(Linked to Project 1.3)</i>	4 weeks	n/a
Total		242 weeks	63 weeks	-74%

5. Costs Associated with the settlement of all outstanding claims in the next five (5) years

5.1 Through Project Kuyasa, the Commission is undertaking an analysis of the outstanding claims, the delineation of functions between the Commission and the Restitution Branch under the Department so as to arrive at an estimated cost of settling all outstanding old order claims. The information on associated costing will form part of the next report to the LCC.

6. Management reporting tool:

6.1 Over and above the strategy, a detailed management reporting tool has been developed in order to improve reporting accuracy and track progress. .

6.2 The objective of this tool is to give real-time feedback to the Commission management and key stakeholders on the current claim status as well as the challenges identified.

6.3 The tool is intended to monitor and track the settlement of claims by being able to identify challenges and blockages and deal with these timeously. It will also assist managers to ensure and adhere to the targets set and to timeously come up with intervention strategies where necessary. This is augmented by a monitoring and evaluation framework which has the following three (3) key objectives:

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

7. Improved guidelines, policies and standard operating procedures

7.1 Project Kuyasa has further identified the gaps that exist with regard to policies in the CRLR and has recommended further policies and standard operating Procedures that would support the proposed re-engineered business process to fast track the settlement of claims.

7.2 A Policy Development Committee has been established to ensure that the process of policy and SOPs review and development is properly steered and monitored.

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

1. Some key challenges encountered by the Commission while processing land claims are outlined in this section.

2. Key bottleneck areas in the Restitution business process identified:

2.1 Project Kuyasa, as part of the analysis, has identified Three (3) main blockage areas in the processing of land claims. The analysis shows that the bulk of the outstanding claims tend to be concentrated at (i) Research and Gazetting; (ii) land valuation and (iii) negotiations- settlement stages of the business process.

2.2 The Challenges and constraints that give rise to these bottlenecks were listed in the 2nd LAMOSA report and are summarised hereunder as follows:

2.2.1 44% of Claims identified sitting at Research & Gazetting Stage

- A failure by the provinces to comprehensively research all the land parcels and or properties as identified in the land claim form. An analysis indicates that certain provinces conducted partial research focusing only on those portions that were ready for settlement because the land owners accepted validity of the claim.
- This is compounded by the existence of a number of complex claims where there are a number of competing claims lodged by different communities with overlapping rights.
- In other instances research was conducted however, it is later established that the research report was poor, inconclusive or not adequate for the determination of the validity of the claim and as a result further research has to be commissioned.

2.2.2 14% of the Claims sitting at Settlement “Negotiations”

Settlements negotiations that needed to be undertaken between the various stakeholders could not be finalised due to number of issues:

- Land owners who suddenly reject the validity of the claims when the financial compensation offer made by the Commission does not match their expectations
- Claimants who reject financial compensation offer made by the Commission when it does not match their expectations
- Claimant who change their preferred form of compensation at the last stage

2.2.3 14% of the Claims sitting at Land Valuation “OVG” Stage.

- There is lack of capacity in the Office of the Valuer General (OVG) who by law conducts all land valuation for land reform purposes. The capacity challenges in the OVG create long turnaround times for the receipt of required land valuation reports and certificates. In certain instances such turnaround time can be a total of 18 months.

2.3 Rural claims are the most intractable and complex often requiring further interaction and continued negotiation with various stakeholders in the process of settlement.

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

- In Kwa Zulu Natal -most of these claims are situated in the rural areas and involve land that can be defined as communal land or land that is under traditional leadership including Ingonyama Trust Land.
- In Mpumalanga- outstanding claims are 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.
- in Limpopo Province - claims located in the Sekhukhune District - majority of outstanding claims involve overlapping rights and counter claims relating to proclamations granted pre-1994 in favour of various traditional leaders and communities who are all contesting the claims in question.
- Claims on mining, sugarcane, forestry and conservation land at times take longer to settle due to lack of buy in from the respective stakeholders and distrust from communities especially where their right to beneficiation is concerned.

2.4 There has been no clear roles and responsibility on who is responsible for post settlement – including lack of clear handover points between the CRLR and the other key stakeholders.

2.4.1 Several external performance reviews of the CRLR have recommended that the CRLR focus on its core mandate which is about receiving; investigating and settling claims. The reviews have been emphatic that the CRLR needs to be relieved of all responsibilities related to post settlement support.

2.4.2 The Minister of Agriculture, Land Reform and Rural Development (DALRRD) has endorsed this position and had recommended to the Director General that the Department takes responsibility for all projects requiring post settlement support.

3. Structure of the commission not aligned to its mandate

3.1 The Commission is meant to fulfil the requirement of section 25 (7) of the permanent Constitution. The Restitution of Land Rights Act no. 22 of 1994 is thus the enabling legislation which establishes both the CRLR as well as the LCC

3.2 The Commission on Restitution of Land rights (CRLR) was established as the entity with the functions as elaborated in section 6 of the Restitution Act. However, overtime, the status of the CRLR within the department responsible

for land reform has become synonymous with that of a branch or programme. This status however conflicts with the statutory requirements placed upon the commission in the restitution Act.

- 3.3 Such requirements include the provision of section 21 which require the Commission to submit its own annual report to parliament. To underscore this point, the Commission has begun to receive adverse findings from the Auditor General of South Africa (AGSA) for not complying with requirements expected of an entity.

The AGSA is adamant that the Commission is an entity because;

- a) It is established in terms of national legislation, and it is
- b) Fully funded from the National Revenue Fund in terms of national legislation, and
- c) It is accountable to Parliament.

- 3.4 The independent reviews mentioned earlier further highlighted that the inappropriate organisational structure of the Commission was the contributory factor to the various institutional and systemic challenges afflicting the organisation.

- 3.5 The AGSA has indicated that it expects the Commission to prepare separate financial statements from those of the Department as it intends to continue auditing the CRLR as an entity

The 2019/20 AGSA qualified audit with an adverse opinion comes at a time when the CRLR is hard at work in an effort to comply with the recommendations of the various Reviews as well as the LAMOSAs court order

The Commission is further more seeking clarification on the role of the CRLR verses the role of the Restitution branch which is a branch in the Department (DALRRD).

The analysis conducted under Project Kuyasa continues to assist the CRLR to identify and clarify the different roles that should be undertaken by the various components.

A legal opinion from the State Attorney's Office has advised that the most suitable organisational form for the Commission is a Schedule 3A Public Entity. This is the opinion that the Commission intends taking further in consultations with the Ministry and Parliament.

4. Budgetary constraints with respect to settlement of claims

- 4.1 In the Financial year 2020/21 settlement and finalisation targets have had to be adjusted downwards due to the impact of the Covid 19 induced lockdown. The Commission's household budget (purchase of land and payment of financial compensation) was also subsequently reduced from R2 680 296 000.00, by R336 342 000 to R2 343 864 000.00.
- 4.2 Compensation of Employees budget was reduced from R450 462 000.00 by R30 407 000.00 to R420 055 000.00. Goods and services budget was reduced from R291 022 000 by R36 432 000.00 to R254 590 000.00. Overall the budget of the Commission was reduced by a total of R403 271 000.00
- 4.3 Against the R2.343 billion household budget allocation, the Commission has spent R1.011 billion representing 43% of the household budget allocation leaving a balance of R1.332 billion for this financial year. The Commission is also processing further payments of R290 million after which the Budget available for household budget would be R1.043 billion.

5. The Human Resource Constraints

- 5.1 In terms of the approved structure of the then DRDLR, the CRLR has a total number of 1544 approved posts. However because of various moratoriums placed on the Department for the filling of vacant posts, the CRLR has found itself in a situation where it is currently operating with only 699 staff members. This is only about 45% of the then approved structure.
- 5.2 Now, under the new DALRRD, the Commission's posts were further reduced to 777 because all the vacant unfunded posts were withdrawn from the system. There are 78 posts that are currently vacant and cannot be filled unless there is either lifting of a moratorium or a prior special approval from the Minister.

Table 5: Breakdown of staff per Province

Office	Number of funded posts	Number of posts filled	Number of posts vacant	% Vacancy rate	Employees additional employed	Head count
Head office	87	68	19	22%	1	68
Eastern Cape	69	62	7	10%	0	62
Free State	35	34	1	3%	1	34
Gauteng	66	60	6	9%	0	60
KwaZulu-Natal	119	109	10	8%	1	109
Limpopo	100	97	3	3%	0	97
Mpumalanga	117	106	11	9%	0	106
Northern Cape	38	32	6	16%	0	32
North West	74	67	7	9%	0	67
Western Cape	72	64	8	11%	1	64
TOTAL	777	699	78	100	4	699

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

2. In terms of the three bottleneck areas identified above, on:

2.1 **Research and gazetting.** It has been agreed that there is a need to re-establish the Provincial Research Units (PRU). The plan is to establish and prioritise the PRUs in the 3 provinces with the highest number of outstanding claims. These PRUs will focus on the districts with the highest outstanding claims where targeted area/district based research will be undertaken. A Project Manager has been appointed to manage the research strategy on the outstanding claims and is in the process of finalising the Research Strategy working with the National Research Unit in the office of the Chief land Claims Commissioner.

The Provincial Research Units will, therefore, be set up in Kwa Zulu-Natal, Mpumalanga and Limpopo as the Provinces with the most number of claims requiring research or further research.

Priority will be given to the finalisation of research on claims on state land.

Close monitoring of Gazette notices will be effected as part of the broad strategy.

2.2 **Valuations** – The CRLR has signed a Service Level Agreement with the Office of the Valuer General to enable the smooth operations between the two Institutions. The Commission will continue to interact with both the office of the OVG and that of the Director General for more efficiency

2.3 **Settlement Negotiations** – The provinces continue to negotiate with all the stakeholders towards the settlement of claims. The focus of the settlements is based on the claims identified and registered in the project register as required by the Department and in line with the APP targets set. A further focus would be that of claims that needed to be finalised from the previous financial years. The performance is monitored by National office through monthly branch Management meetings and quarterly reports.

3. **Complex Claims**

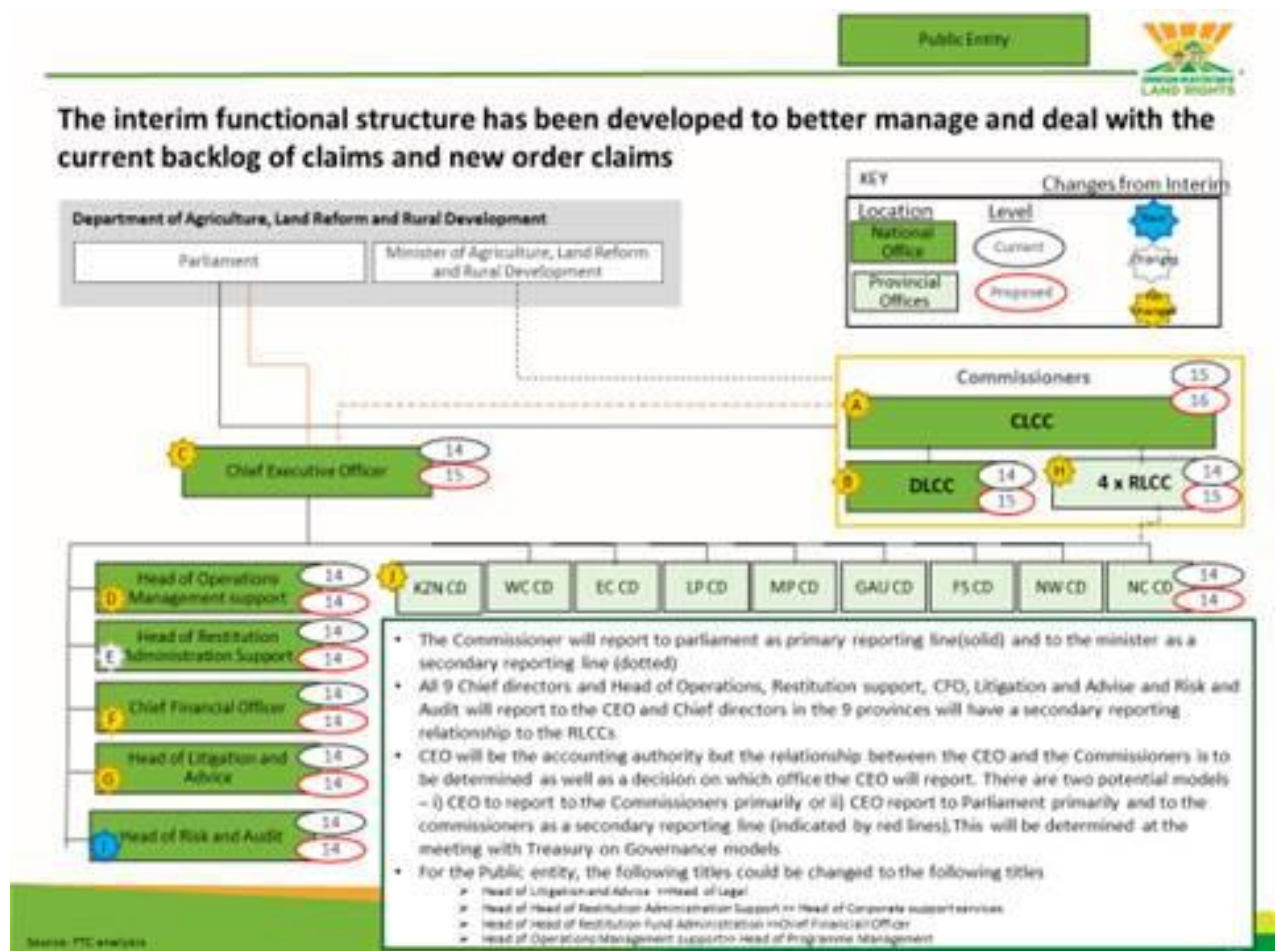
3.1 Special focus has been place on Complex claims with the setting up of Joint Co-ordination Committees (JCC) with all relevant stakeholders both in government and outside of government as well as the claimants. The intention of the JCCs is to ensure coordinated decision making while negotiating the settlement of the claim.

Where the mediation towards settlement fails, the matter is then referred to the LCC for adjudication in line with section 14 of the Restitution Act as amended. Where necessary the claimant community is assisted with funding for the litigation concerned under section 29(4) of the Restitution Act.

3.2 Various Claims on mining, sugarcane, and forestry or conservation land require involvement of multiple sector stakeholders during negotiations on

framing of settlement models that would benefit the claimants and for sustainability. The work being done by Project Kuyasa also focuses sector specific engagements to develop settlement models that incorporate accurate planning, strategies and impact assessments.

- 3.3 The above process will also ensure that post settlement support is addressed during the processing of the claims and stakeholders are brought on board early in the process.
4. Proposed Structure of the Commission aligned to its Mandate
- 4.1 The proposed structure of the Commission as a Schedule 3A Public Entity is as follows:



5. The Mandate of an Autonomous Commission versus the mandate of the Restitution Branch in the Department of Agriculture Rural Development and Land Reform (Department).
- 5.1 The Restitution programme was set up by the Democratic government as one of the key drivers for transformation and land Reform with the primarily intention to provide equitable redress to victims of racially motivated land dispossession, in line with the provisions of the Restitution of Land Rights Act, 1994 (Act No 22 of 1994).

The CRLR was set up as the implementing body with a clearly defined mandate which is to solicit; investigating claims for land restitution; resolving them through negotiation and mediation, and preparing them for settlement and where this is not possible refer these to the LCC for adjudication.

- 5.2 The mandate of the Department on the other hand through the Branch Restitution is to implement the recommendation made by the CRLR on how the claim should be settled and the Department would be implementing the award on behalf of the Minister under the guidance of the Director General who is identified as the accounting officer in line with section 20 of the Restitution Act. The Department carries the broad mandate of Land Reform which is divided into 3 components being Land Redistribution; Tenure Reform and Restitution for just and equitable redistribution of land across South Africa in an effort to change the patterns of land ownership and control.
- 5.3 The Department is also responsible for the development of sustainable land reform programmes inclusive of post-settlement support that is necessary for those claimants who have successfully claimed their land and for Implementation of a comprehensive rural development programme leading to sustainable and vibrant rural communities.
- 5.4 The CRLR must therefore solely focus on its core function and process a claim up to the stage where it makes a recommendation for settlement to the Minister where after the branch Restitution in the Department will have an obligation to construct the required section 42D in consultation with the relevant stakeholder including claimants or refer a claim to the Land Claims court if there is no agreement on settlement recommended by the Commission.
- 5.5 The Restitution Branch in the Department will then be responsible for the implementation of the settlement reached either administratively or judicially.
- 5.6 The clear separation of roles and responsibilities is key as it will ensure that the CRLR focuses on its core mandate which will mean that it can provide a comprehensive plan to the court on how it intends to deal with all the outstanding old order claims and will continue to refer those that cannot be settled administratively to the LCC.

6. Legal Definition of the mandate of the Commission

- 6.1 The Commission is defined in section 1 of the Act and is established in terms of section 4 therefore it is a creature of statute. The Commissioners of the CRLR are appointed by the Minister of Agriculture Land Reform and Rural Development in terms of section 4(3).
- 6.2 The officials appointed under section 4(3) are the Chief Land Claims Commissioner (CLCC), the Deputy Land Claims Commissioner (DLCC) and Regional Land Claims Commissioners. The Act provides for as many Regional Land Claims Commissioners as may be appointed by the Minister. Equally, the Minister may terminate any appointment of the CLCC, Deputy

Land Claims Commissioner or a Regional Land Claims Commissioner (“RLCC”).

6.3 It is important to bear in mind that it is only the CLCC, Deputy Land Claims Commissioner and the RLCCs, appointed by the Minister in terms of section 4, that are officials employed in the Commission. The majority of personnel within the CRLR are seconded in terms of section 8 of the Act to support the work of the Commission.

6.4 The role of the Commission must be understood within the context of section 6(1) of the Act. It can essentially be broken down into four process flows, being:

6.4.1 the lodgement of the claim;

6.4.2 the acceptance thereof;

6.4.3 the investigation phase of the claim; and

6.4.4 the referral to the LCC , or

6.4.5 The recommendation for settlement of the claim.

6.5 The drafters of the Act envisaged that the restitution process would require an institution that would facilitate it. They created the Commission and granted it specific powers and functions which place it at the centre of the restitution process. These functions and powers are already bestowed on the Commission through the various sections highlighted herein above.

6.6 In **Transvaal Agricultural Union v Minister of Land Affairs and Another, 1997 (2) SA 621 (CC) at 633D-F** Chaskalson P indicated that the restitution of land rights is a complex process in which the rights of registered owners and other persons with an interest in land must be balanced against the Constitutional injunctions to ensure that restitution is made where this is just and equitable. As a result, a Commission that is able to unequivocally execute its statutory mandate is inviolable.

6.7 In the matter of **Midlands North Research Group and Others v Kusile Land Claims Committee 2010 (5) SA 57 (LCC) paras [32] – [35]**, the Court discussed the role of the Commission and indicated that the Commission is an organ of state which has its functions set out in section 6(1) of the Act. In summary, the Commission manages the restitution process on behalf of the State. The Court said the following:

“[33] This Court, seized with litigation under the Restitution Act, must deal with conflicting constitutional rights⁴¹. A claimant who qualifies has a constitutional right to seek restitution of land rights which were taken from him. A landowner has a constitutional right to preserve his property. The RLCC is a central role player, with the task of deciding whether or not a claim is prima facie valid.

[34] Oliver JA stated [in] Gamevest (Pty) Ltd v RLCC, Northern Province and Mpumalanga, and Others that “this is not a task that can be done in a superficial, cursory manner”. If the RLCC is satisfied that the claim appears to be in order, he proceeds to publish it. Thereafter, he conducts a further investigation, and attempts to resolve the claim through mediation and

negotiation. If a land owner believes that a restitution claim is not valid, or that the claimant is claiming more than what he is legally entitled to, he has the right to shield himself and his property against such a claim. His resistance is against the State which, through the RLCC, has decided that the claim is prima facie valid. Because neither the RLCC nor the State can be the final adjudicator of a dispute over the validity of a claim, the Land Claims Court was given that duty. ... “

7. Post Settlement Support as a result of AGSA finding

- 7.1 Once the CRLR has made the recommendation for settlement, the branch Restitution has to implement the recommended settlement. The Department is mandated then on behalf of the Minister to ensure that the settlement is set up such that the claimants receive their land and the development grants that are available from government.
- The Department therefore has the duty to ensure that it provides post settlement support for all land restored.
- The Project Kuyasa has also undertaken a process of redefining and proposing various settlement models depending on the nature of the land and what it would be used for.

8. Alignment between budget allocation and realistic settlement of claims forecasts

- 8.1 The CRLR under the project Kuyasa has begun to cost the associated budget that would be needed to deal with all the outstanding claims. The budget projections will have to differentiate between the role of the CRLR as well as the Department through the Restitution Branch and the Post Settlement Support Unit. It is envisaged that the full cost breakdown will be submitted for all the above and will be made available on the next LAMOSA report due in 6 months.

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 March 2019.

At the said meeting, the Acting Judge President, Justice Meer, then gave a 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.

In the first report, the CRLR indicated that 295 cases will be referred by March 2020 as per Table 6 below.

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

1. 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.
2. 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 2019 and January 2020. 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.
3. 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.

Table 6 Matters to be referred as at October 2019 and January 2020

TARGETS PRESENTED TO THE LCC IN OCTOBER 2019 AND REVISED TARGETS PRESENTED IN JANUARY 2020						
NO	Province	No. of Referrals	Referral Dates	Referrals Submitted to LCC	Revised Targets	Revised Referral Dates
1	EC	3	End November 2019	1	2	30 June 2020
2	FS	5		0	2	30 April 2020
3	NW	6		1	5	30 April 2020
4	GP	82		0	49	30 April 2020
TOTAL		96		2	58	
	LP	122	Between End February /March 2020	2	47	30 April 2020
	NC	14		0	8	5 BY 30 April 2020 3 BY 15 June 2020
TOTAL		136		2	55	
	WC	26	End of March 2020	0	124	30 April 2020
	KZN	19		3	19	11 By 30 April 2020 5 BY 30 June 2020
	MP	18		1	22	30 April 2020
TOTAL		63		4	165	30 April – 265 30 June – 10
		295		8	278	

4. In May 2020 when the Second LAMOSA 2 report was submitted to the LCC a progress report on the matters referred was submitted. It was noted that progress was slowed down by the declaration of the state of Disaster which resulted in the President announcing a national lockdown.
5. On the 31st May 2020 the AJP addressed an e mail to the CLCC requesting a consolidated list of all matters referred since the LAMOSA 2 judgement as well as a list of cases to be referred in the next six (6) months to the LCC. The CLCC responded to the email of the AJP on the 19th June 2020 providing the information requested.

Table 7 Summarised version of revised targets as at June 2020

PROVINCE	NUMBER OF MATTERS REFERRED	Number of Claim Forms	NUMBER OF MATTERS TO BE REFERRED IN THE NEXT 6 MONTHS	Number of Claim Forms	TOTAL CASES	TOTAL NUMBER OF CLAIM FORMS
EASTERN CAPE	1	1	2	2	3	3
FREE STATE	-	-	2	2	2	2
GAUTENG	3	4	47	47	50	51
KWAZULU - NATAL	3	3	35*	38	38	41
LIMPOPO	4	9	44	58	48	67
MPUMALANGA	6	12	15	52	21	64
NORTH WEST	1	1	5	5	6	6
NORTHERNCAPE	-	-	8	18	8	18
WESTERN CAPE	-	-	126	135	126	135
TOTAL	18	30	284	357	302	387

*KZN 35 reflect their actual annual target

Table 8: Breakdown of cases to be referred per Province from June 2020

PROVINCE	TOTAL TO BE REFERRED IN NEXT 6 MONTHS	Issued	NUMBER OF CLAIM FORMS	JUNE	JULY	AUG	SEPT	OCT
EASTERN CAPE	2	0	2	-	-	-	1	1
FREE STATE	2	0	2	2	-	-	-	-
GAUTENG	47	3	47	3	-	44		
KWA ZULU NATAL	35*	21	38	19	-	-		16
LIMPOPO	44	0	58	-	-	-		44
MPUMALAN GA	15	11	52	15	-	-		
NORTH WEST	5	4	5	-	5	-		
NORTHERN CAPE	8	4	18	3	2	3		
WESTERN CAPE	126	0	135	-	-	117	9	
TOTAL	284 *total for financial year- 19 in next 6 months	43	357	42	7	164	10	61

Table 9. Total number of cases referred per Province as at 2 November 2020:

PROVINCE	NUMBER OF CASES REFERRED AS AT MID JUNE 2020	ADDITIONAL NUMBER OF CASES REFERRED	TOTAL CASES REFERRED TO DATE
EASTERN CAPE	1	1	2
FREE STATE	0	2	2
GAUTENG	3	3	6
KWA ZULU NATAL	3	27	20
LIMPOPO	4	0	4
MPUMALAN GA	6	12	18
NORTH WEST	1	5	6
NORTHERN CAPE	0	5	5
WESTERN CAPE	0	0	0
TOTAL	18	55	73

The full list of all 73 cases issued at the LCC to date is attached as **Annexure “A”**

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. We have also consulted with the State Attorney’s office for better alignment.

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

The Commission is still negatively impacted by the effects of the Covid 19 pandemic which resulted in targets being reviewed.

As already mentioned earlier, the State Attorney was briefed on a number of matters just before the lockdown. Consultations with Counsel on some of the matters only commenced from July 2020 after the easing of the regulations of the lockdown. This impacted the 47 cases in Gauteng and 117 cases in Western Cape.

Secondly, Covid 19 has had a direct negative impact on the pace of delivery of the CRLR and continues to do so. Our work requires that the staff members have face to face interaction with the claimants as well as arrange large community gatherings for Annual General Meetings, community resolutions and any other meetings involving processing land claims.

Furthermore, the offices of the CRLR have had to be closed intermittently as a result of positive covid19 incidents identified and confirmed in the various provinces. As a result the Commission has seen a slowdown in the pace of settling claims. However, the Restitution Team continues to show strong commitment to deliver on its mandate.

Finally, the Commission would like to once again express its gratitude for the unwavering support and guidance that we continue to receive from the AJP and rest of the Land Claims Court judges.

The Commission hereby submits this 3rd report to 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 the next six months.

---END---