



planning, monitoring  
& evaluation

Department:  
Planning, Monitoring and Evaluation  
REPUBLIC OF SOUTH AFRICA



**PSPPD**

PROGRAMME TO  
SUPPORT PRO-POOR  
POLICY DEVELOPMENT

# POLICY BRIEF SERIES

02 | JANUARY 2016

Evidence-based policy-making and implementation



## RESTITUTION – SETTING RIGHT THE PAST WRONG

### BACKGROUND

Restitution is a key part of land reform. It is a human rights-based programme to correct past wrongs by settling land restitution claims under the Restitution of Land Rights Act (1994). Restitution involves returning land rights, providing alternative land and grant funding to develop the land, or financial compensation, or any combination of these.

Initially, land claims were settled through the land claims courts. The courts' slow progress led to a review of the process in 1998, resulting in the administrative settlement of land claims through the provisions of section 42(d) of the Restitution Act and an increase in the number of claims being settled from 1999 onwards.

The Restitution Programme was evaluated between 2013 and 2014 to assess its success and identify improvements for the next phase of restitution. The evaluation covers the programme's implementation from January 1999 to 31 March 2013.

Although the programme has settled about 85% of claims lodged since its inception, findings reveal systemic and operational weaknesses that spoil the programme's efficiency and effectiveness. Essential processes, such as the filing and recording system, are poorly managed and this must be corrected if the Restitution Programme's second phase is to be successful.

An improvement plan was developed in August 2014 and by September 2015 significant progress had been made in carrying out the recommendations.

The Restitution Programme focuses on one of the four features of land reform, the other three being tenure (landholder) reform, redistribution and development. Land restitution is a human rights-based programme to correct past wrongs by settling land restitution claims under the Restitution of Land Rights Act.

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## WHAT IS RESTITUTION?

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Restitution can take the form of returning land rights, providing alternative land and grant funding to develop the land, or financial compensation, or any combination of these.

Under the programme, South Africans who were moved off their land under unfair land legislation such as the Natives Land Act (1913) lodged land claims before 31 December 1998.

The programme helps the Department of Rural Development and Land Reform (DRDLR) achieve its goal to increase access to and ensure the productive use of land, and in so doing build the nation.

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## SETTLEMENT OF CLAIMS

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The Commission on Restitution of Land Rights carries out the DRDLR's Restitution Programme. The Commission had settled 77 662 claims by 31 March 2014, leaving 8 471 outstanding claims, the majority of which still need to be inspected. As at 31 March 2014, about 3.1 million hectares had been awarded to claimants requesting land settlements.

Approximately R16 billion was paid to acquire the land that has been awarded. The programme paid about R7.1 billion as financial compensation to settle 72 000 claims.

A total of 1.8 million beneficiaries from 371 191 households (138 487 of which are female-headed households) have benefited from the Restitution Programme.

Initially the Commission on Restitution of Land Rights assisted claim settlements through the land claims courts. However, this process was too slow, with only about 14 claims settled by 1998. This led to a ministerial review of the court process in the same year, resulting in the administrative settlement of land claims through the terms of section 42(d) of the Restitution Act, and an increase in the number of claims being settled from 1999 onwards.

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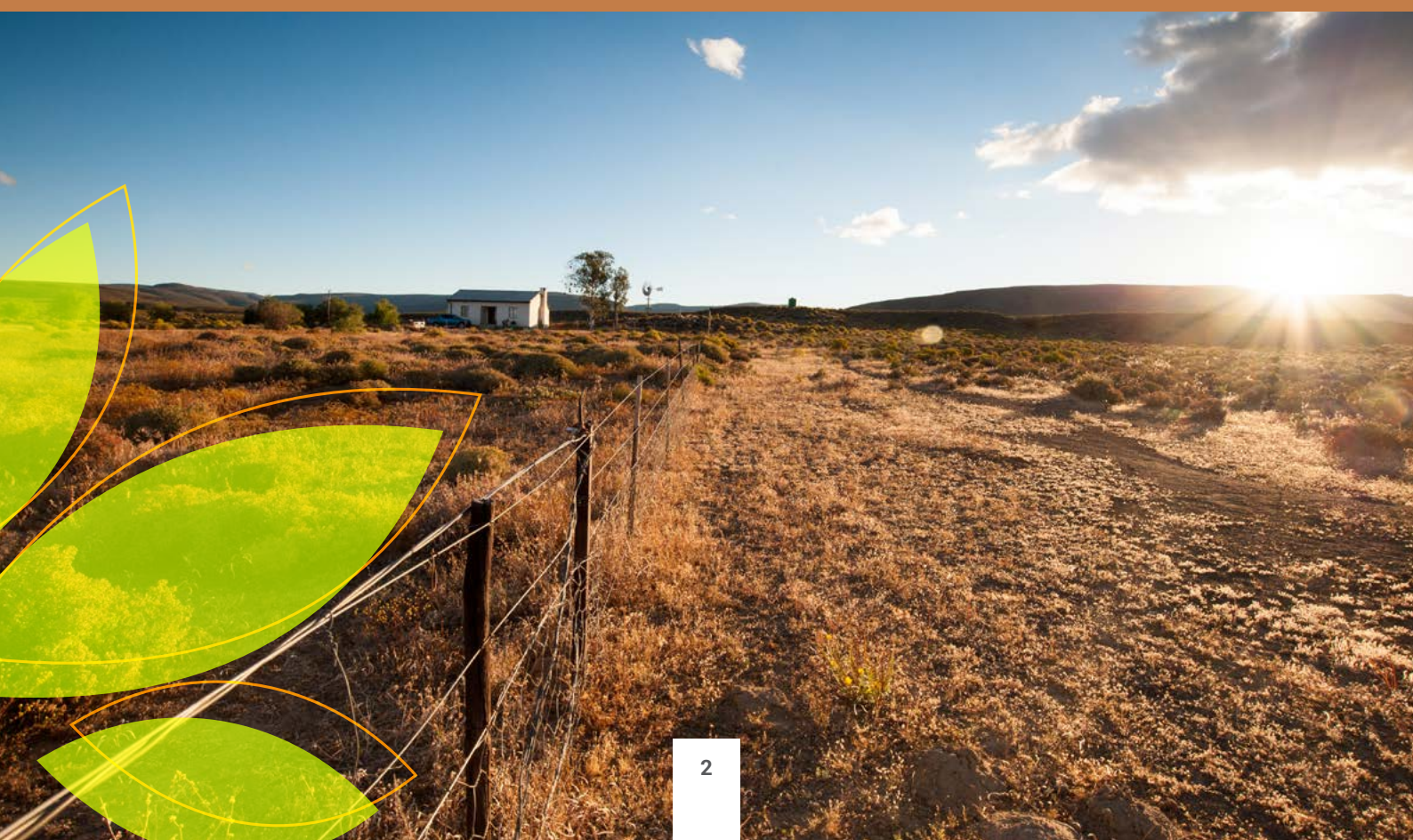
## ASSESSING THE FIRST PHASE

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Agricultural reform has not yet led to fair land ownership, enough new black commercial farmers, or the productive use of newly awarded land. The Commission on Restitution of Land Rights and the Department of Planning, Monitoring and Evaluation requested an evaluation of the Restitution Programme's success to identify how it could be improved for the next phase of restitution.

The evaluation was carried out between June 2013 and February 2014, and studies the programme's performance from January 1999 to 31 March 2013.

A representative sample of 533 projects (out of a total of 1 661 projects) was examined over five provinces. Four case studies were carried out per province. This involved inspecting the claim file and holding interviews with relevant stakeholders, including the project officers, claimants, and landowners (in projects involving land). The Commitment Register for all nine provinces from 1998/99 to 2012/13 was inspected.





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## KEY FINDINGS

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Although the programme has settled about 85% of claims lodged since it began operations, findings show weak systems and operational workings. The programme's efficiency and effectiveness have been badly affected by the Commission's:

- poorly outlined self-government practices and focus
- inconsistent and unclear operating procedures
- inadequate and ineffective management information systems
- weak staff capability, performance management and quality control systems.

These weaknesses – which can be broken down into process elements (how the programme works), management and purchasing systems, and staffing functions – have resulted in differences in the way claims are settled across the provinces.

Merging the Commission into the DRDLR has blurred its independent processes. There are many decision-making and responsibility levels within the Commission, some of which overlap with similar structures in the DRDLR, partly due to constant restructuring. The programme's institutional and managerial capacity has been weakened by poor human resources management, a section that is separate from the Commission.

At the centre of the programme's challenges is its increasing focus on issues beyond its legal authority, including taking responsibility for post-settlement outcomes, solving ongoing community and local political arguments, and taking responsibility for broader local economic development issues. These all lie beyond the legal and administrative scope of the restitution function and they lessen the time spent on the Restitution Programme's core tasks. In addition to the burden this places on staff and resources, it results in the restitution process becoming relationship-driven and personal instead of being a well defined business process.

The programme's monitoring system only examines two factors: the number of claims settled and the number of claims finalised. It does not monitor the effectiveness or quality of the claims process or intermediate (in between) outputs or the overall quality of the settlement of claims. These weaknesses limit the system's ability to identify and respond to problems in the process, lower the quality of its results, and limit its effectiveness, efficiency, and impact.

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## RECOMMENDATIONS

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### OPERATIONAL WEAKNESSES

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- Improve the poor handling of essential operational procedures to ensure the success of the second phase of the restitution process.
- Organise the filing and recording system, and develop a detailed set of standard operating procedures.

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### FOCUS AND FUNCTION

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- Clearly define and communicate the focus and function of the Commission and the Restitution Programme.
- Review, finalise and record the programme's business and decision-making process according to a strict rule-based procedure that is supported by a single web-based management information system.

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### HUMAN RESOURCES

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- Set up an efficient human resource management system within the Commission. Introduce performance management systems to manage national and provincial staff according to specific, measurable targets.
- Hand over the responsibility of all the provincial programmes' non-capital activities to the Commission's provincial offices.

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## MONITORING AND EVALUATION

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- Broaden the monitoring and evaluation system to include the measuring of intermediate outputs of the settlement process and qualitative aspects of both the settlement process and its outcome.

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## SETTLEMENT OF CLAIMS

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- The Commission should be formally released from any responsibility for post-settlement support, local economic development processes, and funding-related activities (beyond that associated with the financial settlement of claims).
- All outstanding claims should be prioritised for settlement while the programme starts to process simple claims arising from the recently announced second phase of restitution.
- No new claims should be processed before the conditions and focus outlining access to the second restitution phase have been incorporated into the standard operating procedures and the new management information system.



## POLICY DIRECTION

The Restitution Programme plays an important role in the government's efforts to deal with past wrongs.

A policy evaluation has started building on the programme evaluations that have been conducted (Comprehensive Agricultural Support Programme, Comprehensive Rural Development Programme, Land Restitution, Micro Agricultural Financial Institutions of South Africa, Recapitalisation and Development Programme, and one soon to start on the Extension Recovery Programme).

This policy evaluation of smallholder farmer support programmes will have implications for the improvement of the Restitution Programme, particularly around post-settlement support for those communities choosing land and not financial compensation.



## IMPROVEMENT PLAN

**An improvement plan was approved in August 2014. As at September 2015, the following progress had been made:**

- A self-government (independent) programme was introduced. The chief land claims commissioner now reports directly to the minister and a full legal opinion has been drafted on the authority of the commission and the need for its independence. A separate strategic plan for 2015–2020 was submitted to Parliament giving details on the strategy for establishing an independent commission.
- The minister gave the chief land claims commissioner the power to approve several phases in the settlement of claims.
- The process for settling and finalising claims was reviewed. Standard operating procedures were completed for lodgement offices, mobile buses, and the settlement and finalisation processes.
- Settlement models have been developed for claims on sugar and forestry land. Models are being developed for mining and conservation claims.
- Since the land claims process reopened in July 2014, mobile lodgement offices have been rolled out in rural areas to help people lodge claims. Detailed communication and information material on how to lodge a claim was supplied.
- Various corporate management and human resource matters have been addressed, including the standardisation of performance agreements.



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## Disclaimer

This policy brief is drawn from the evaluation findings and recommendations and does not necessarily represent the views of the departments concerned.

The detailed evaluation report may be accessed at:

<http://www.dpme.gov.za/keyfocusareas/evaluationsSite/Pages/Publications.aspx>

or:

<http://www.ruraldevelopment.gov.za/publications/evaluation-reports>



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**LEARNING FACILITY**

