G:ENESIS

Implementation Evaluation of the Restitution Programme

Final evaluation report by Genesis Analytics for the DPME

Full report

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LIST OF ACRONYMNS

ACLA	Advisory Committee on Land Allocation	DRDLR	Department Rural Development and Land Reform
ANC	African National Congress	E&R	Evaluation and Research
APP	Annual Performance Plan	EBT	Electronic Benefits Transfer
BAS	Basic Accounting System	EDMS	Electronic Database Management System
CD	Chief Director	ENE	Estimates of National Expenditure
CFO	Chief Financial Officer	EPMO	Enterprise Portfolio Management Office
CLCC	Chief Land Claims Commissioner	FGD	Focus Group Discussion
CPA	Communal Property Association	KIIs	Key Informant Interview
CRLR	Commission on Restitution of Land Rights	LARP	Land and Agrarian Reform Project
DAC	Development Assistance Community	LCC	Land Claims Court
DG	Director General	MOU	Memorandum of Understanding
DLA	Department of Land Affairs	MTEF	Medium Term Expenditure Framework
DLCC	Deputy Land Claims Commissioner	NARYSEC	National Rural Youth Service Corps
DPME	Department of Performance Monitoring and Evaluation	NEPF	National Evaluation Policy Framework

NLAC	National Land Acquisition Committee	RLCC	Regional Land Claims Commissioner
ODI	Originally Dispossessed Individual	SADF	South Africa Defense Force
PPM	Programme Performance Monitoring	SANT	South African Native Trust
PPPM&E	Provincial Project Performance Monitoring and Evaluation	SDC	Sustainable Development Consortium
PO	Project Officer	SISS	Settlement and Implementation Support Strategy
PSU	Post-Settlement Unit	SOP	Standard Operating Procedure
QA	Quality Assurance	SSO	Standard Settlement Offer
QCC	Quality Control Committee	SSU	Settlement Support Unit
RECAP	Recapitalisation and Development Programme	TOR	Terms of Reference
REID	Rural Enterprise Infrastructure Development		
RID	Rural Infrastructure Development		

GLOSSARY

Rule 3 Report	The report compiled by the CRLR to investigate the validity of the claim with respect to Sections 11(2) and Section 2 of the Restitution Act as described in more detail in Rule 3 of the Rules regarding the procedures of the CRLR in terms of the Restitution Act is referred to as the so-called Rule 3 Report.
Rule 5 Report	The comprehensive research report drafted by the CRLR to further investigate the claim lodged with reference to the key items listed in Rule 5 of the Rules regarding the procedures of the Commission in terms of the Restitution Act is referred to as the so-called Rule 5 Report. This can be referred to as the "research report".
Section 42D Report	The Section 42D report is the final document or report prepared for submission to the Minister (or as delegated) in terms of Section 42D of the Restitution Act for consideration and approval containing all the details of the claim and proposed settlement agreement in settling the claim.
Gazetting	Gazetting refers to the publication of a notice of the land claim lodged in the Government Gazette as outlined in Section 11 of the Restitution Act.
Financial compensation	Financial compensation is a form of equitable redress as provided for in the Restitution Act where the claimant is paid financially for the right in land lost as defined in Section 1 of the Restitution Act.
Land compensation	Land compensation is a form of equitable redress where the claimant receives the restoration of a right in land – including restoration of a right in land on original land disposed and or a right in alternative land as defined in Section 1 of the Restitution Act.
Bundling	Bundling of claims for research purposes occurs when a number of individual claims are researched together and processed together, though each individual claim remains separate and once approved are finalised individually i.e. processing of payments.
Consolidation	Consolidating claims for settlement purposes occurs when a number of claims are processed together and consolidated in one settlement. In this instance, claimants are artificially consolidated to form one legal entity to take transfer of the land.
Settlement	The settlement of a claim occurs when: a) The Section 42D report is approved and signed by the Minister in terms of Section 42D of the Restitution Act; or b) A settlement agreement is made an order of the Land Claims Court in terms of Section 14(3) of the Restitution Act; or c) The LCC has made an order in terms of Section 35 of the Restitution Act; or d) A High Court has made an order on the matter referred to it for adjudication A claim is regarded as settled once the outcome of any of the above results in a financial commitment as recorded on the Commitment Register.
Finalisation	The finalisation of a claim occurs after settlement once the transfer of the equitable redress has taken place e.g. the payment of compensation and or the transfer land.

Claimant verification	Claimant verification is the process of identifying a person entitled to restitution of a right in land as described in Section 2 of the Restitution Act including a person or direct descendant of such person or deceased estate or a community or part of a community dispossessed of right in land after 19 June 1913 as a result of past racially discriminatory laws or practices.
Options workshop	The options workshop refers to a workshop hosted and or ongoing process of engagement hosted and facilitated by the CRLR for the claimants to outline the various restitution settlement options available to them as provided for in the Restitution Act.
Commitment Register	When a claim is considered to be settled any financial obligation assigned to the CRLR is recorded on the Commitment Register. Once on the Commitment Register, the CRLR is committed to finalise the claim by transferring / paying the relevant form of redress.
Suspense Account	Financial payments which are not collected in the allotted time by claimants are registered on the Suspense Account.
Legal entity	For a community claim to take ownership of land, a legal entity needs to be established, i.e. Section 21 company; Close Cooperation etc. In restitution settlements this is generally in the form of a Communal Property Association (CPA) or a Trust.

EXECUTIVE SUMMARY

The evaluation of the Restitution Programme presented in this report is based on a process assessment of the Programme's implementation (from the lodgment of claims through to their finalisation), and covers the time period of January 1999 to 31 March 2013, i.e. since the completion of the first Ministerial review. The purpose of the evaluation was to assess whether the Restitution Programme has been implemented efficiently and effectively, and to identify how the Programme can be improved in time for the next phase of the restitution process.

The historical, political and policy context to land restitution and the complex legal and institutional arrangements that underpin it make for an extremely demanding and difficult operating framework for the Programme's implementation. For it to work requires a clearly defined and rigorously managed business process supported by a dedicated human resource function, and strong information and performance management systems.

The programme has managed to settle approximately 85% of the claims lodged since its inception, however, the findings of this evaluation reveal a range of serious systemic and operational weaknesses which compromise its efficiency and effectiveness, and have undermined the achievement of its developmental purpose. The reasons for this are numerous and complex and, disconcertingly, have been extensively documented in previous assessments.

Core Findings

The overall picture that emerges is one of inadequate and incomplete project, filing, performance and information management systems, and the proliferation of decision-making and accountability structures within the Commission on Restitution of Land Rights (CRLR) and the Department of Rural Development and Land Reform (DRDLR). These have been aggravated by continual processes of restructuring and business process re-engineering which has seen claim settlement shift from a predominantly legal process to an administrative one; from restitution research being managed in house to being outsourced and then brought back in-house again.

The absence of consistent and clearly defined operating procedures has resulted in variations in the processes and approaches to claim settlement across different provinces, as well as inconsistencies in the process over time. The development of the requisite institutional and managerial capacity within the Programme has been undermined by an extremely weak human resources function, de-linked from the CRLR. This has resulted in a rate of high turnover and redeployment of staff, poor systems of induction, and inadequate training and mentoring.

Many of these problems have been comprehensively identified in the past, but remain unresolved. This raises serious questions about the efficacy of the Programme's management and the extent to which it is able to fulfill its constitutional mandate and to realise its developmental purpose. The key components of this assessment can be summarised in terms of problems relating to the Programme's Function and to its Operation.

At the heart of many of the difficulties experienced by the Programme is its increasing focus on issues which are beyond its specific constitutional mandate, i.e. to administer the lodgment, research and settlement of claims for restitution. In practice, the focus of the CRLR has expanded to take responsibility for a variety of project needs which lie beyond its mandate and competence. These include taking responsibility for post-settlement outcomes, resolving ongoing community and local political economy disputes, and taking responsibility for broader local economic development issues. These all lie beyond the legal and administrative scope of the restitution function, and they detract from the core tasks of the restitution process. Focus is blurred, resources are diluted, and the process itself becomes mired in innumerable tasks and interventions which lie beyond the CRLR's core administrative and research functions, and which its staff are not equipped to manage. Beyond the burden that this places on staff and resources, it results in the restitution process becoming 'relationship-driven' and subjective in nature, as opposed to adhering rigorously to a well-defined business process - a clearly defined and structured path with a well-defined beginning and a definitive end.

This reality is enabled and exacerbated by the absence of clearly documented operational procedures and functional administrative systems, the second major source of inefficiencies. These weaknesses can be broken down into process elements, management and procurement systems, and staffing functions.

The Restitution Business Process: The restitution process is characterised by a number of distinct steps, centred around: Lodgment and Registration; Verification and Research; Valuation; Gazetting; Negotiations; and Settlement. The research reveals problems with the clear and consistent definition and fulfillment of tasks associated with each of these steps. The poor documentation of claims and incomplete files, both crucial to the legitimacy of any legal process and absolutely essential for the efficiency and integrity of the Restitution Programme, was a striking finding of the research. Beyond this, the claimant verification and research process is compromised by the incomplete and inconsistent application of procedures (no single uniform standard exists) and contribute to the poor quality and generic nature of much of the research. This in turn has resulted in the proliferation of review and authorisation steps which dilute accountability and undermine efficiency across the system. Furthermore, inconsistencies also exist during the stage of negotiations with claimants, whereby there have been instances of POs promoting one type of compensation over another, resulting in arduous negotiations stages.

These problems are compounded by the inexperience and lack of legal skills of programme personnel, poor communication with claimants, inadequate archival systems and reference material, the inherent difficulty of eliciting the facts from claimants, and difficulties in accessing deeds information. Weak arrangements for outsourcing research and managing the quality of outsourced work add to the problem. The practice of 'bundling' claims not merely for research but also for settlement has also in many cases seriously compromised the outcomes of the research process.

Taken together, these factors result in repeated 'send backs' of claims and conflict at later stages of the settlement and post-settlement process. An important consequence of weak research is the referral of significant numbers of claims to the Land Claims Court (where, typically, challenges to the CRLR are upheld), at great cost to the CRLR in terms of time and resources, and in terms of undermining the legitimacy and public respect for the restitution process.

Management and Information Systems: In respect of the Programme's management information systems (MIS), the research noted a long evolution of different systems which are incomplete, unlinked and unsuitable as a tool for the effective management of the restitution process.

The disjointed architecture of the CRLR's information management systems is compounded by the absence of any current Standard Operating Procedures (SOPs) which define in precise detail the operating requirements and components of every stage of the restitution process. A paper-based system of approval still prevails which results in delay, loss of documentation and the proliferation of decision-making milestones and authorisations.

The absence of an effective MIS undermines the CRLR's ability to monitor and manage the performance of its staff, to identify and remedy bottlenecks in the system and to guide its training and support functions. It similarly undermines the scope for effectively monitoring and evaluating progress, and for capturing and communicating the learning (from both good and bad practice) that should be a core feature of the process.

Staff Functions: While the definition and allocation of provincial Restitution Management Support Offices' (RMSOs) staff functions appears to be appropriate, a range of weaknesses are apparent: project officers are typically inexperienced, under-qualified and not formally inducted or trained; legal practitioners lack experience and are unable to translate cases into a coherent overall legal framework to guide the legal processes of the CRLR; staff do not apply rigorous or rule-based administrative processes resulting in the perpetuation of poor records; quality assurance managers are frequently drawn into the resolution of cases and community dynamics rather than assuring adherence of the technical, procedural and substantive details of claims.

These problems are a consequence of a very weak human resource function and capacity which, because it resides in the DRDLR and not the CRLR, is not adequately aligned to the

CRLR's needs. These problems are enabled and reinforced by a weak performance management system which does not capture and monitor the necessary indicators of performance across the system and inadequately differentiates between quantitative and qualitative performance measures. This results in weak incentives for performance.

The Programme's monitoring arrangements are focused primarily on assessing and reporting on the performance of two indicators: the number of claims settled and the number of claims finalised. There is no monitoring of the efficacy or quality of the claims process, of intermediate outputs or the overall qualitative aspects of settled claims. These inadequacies currently limit the ability of the system to pinpoint and respond to problems in the restitution process, dilute the quality of its deliverables, and compromise its effectiveness, efficiency and impact.

The overall finding of the report is that, taken together, the current ill-defined operational autonomy and focus of the CRLR; its inconsistently applied operating procedures and inadequate management systems; and its weak human resource capacity, performance management and quality control systems have severely compromised the efficiency and effectiveness of the Restitution Programme. The report concludes with a number of recommendations which need to be considered, finalised and adopted to avoid the prospect of systemic dysfunction. It is suggested that these recommendations be adopted in advance of the second phase of restitution becoming operational, as a necessary pre-requisite for its success.

Recommendations

The recommendations offered focus on the key high level elements of the Restitution Programme, which have a direct bearing on the CRLR's ability to efficiently and effectively implement its mandate. In formulating these recommendations, the emphasis has been on addressing a limited number of crucial inadequacies, bearing in mind the extremely demanding context, the limited management resources and the demanding time-scale at the disposal of the CRLR. The recommendations are largely interlinked and mutually reinforcing, and should be viewed and applied as an integrated package of reforms. They are deemed to be a crucial pre-requisite for any prospect of success with the second phase of the restitution process, recently announced.

- **The focus and function of the CRLR and the Restitution Programme must be more clearly defined and better communicated** – internally, politically across different departments that comprise the rural development cluster, and to the public at large. The CRLR's role must be clarified to be concerned *exclusively* with administering the legal process associated with the lodgment, review and settlement of restitution claims. The process thus defined must in all cases adhere to a strictly prescribed logical sequence, and must have a precise beginning and end point (the formal registration of a claim and its final settlement). The availability of the capital budget for restitution should have no bearing on the claim settlement process. The clear definition and communication of the CRLR's core mandate and function, and the need for a rigorous application of the procedures, will help to screen its staff from involvement in or interference from communities or affected parties whose concerns lie beyond the role of the CRLR.

- **The Restitution Programme's business and decision-making process must be reviewed, finalised and documented in terms of a strict, rule-based procedure**. This should take account of a careful review of best practice, and must be documented in a detailed SOPs Manual. This should cover every aspect of the agreed business process. It should be widely distributed and supported by training provided to all relevant staff – at national and provincial level. The defined restitution business process must be systematically applied, without deviation, to every claim lodged with the CRLR. Derogations from the SOPs Manual should require the formal authorisation of the CLCC. Thus standardised and documented restitution procedures

will greatly enhance the consistency and efficiency of the restitution process, its measurability and its impact.

- **The different management information systems currently in operation or development should be rationalised into a single, web-based management information system.** This should provide for the electronic management and oversight of every step in the business process, and should serve as the core vehicle for all relevant documentation and authorisations. It should provide for a clear location of responsibility and authority at every step in the process, from registration to settlement. This will enable the claim settlement process to be more structured, systematic and objective. It will enable real time project oversight and performance management. An integrated MIS will greatly facilitate, and indeed is a pre-requisite for, effective monitoring and evaluation, the collation and communication of best practice and learning, and performance management of the CRLR's staff, all areas which are currently lacking.

- **The CRLR's provincial offices should be given responsibility for all non-capital aspects of provincial programmes**. This should include authority (and budgets) for filling vacant posts and procuring services relevant to the restitution process. Budget planning and management training must be provided including into the requirements of the PFMA. The Department's Shared Service Centres may continue to be used to support the CRLR's procurement functions, but authority for procurement and appointments should rest with the delegated CRLR official.

- **Performance management systems should be put in place, which manage national and provincial staff according to specific, measurable indicators.** These should at the least include: the quality of research; adherence to agreed procedures and systems; the integrity of the claims process and the quality of the settlement agreement; and the rate of settled claims. Linked to the MIS, this will enhance the objectivity and integrity of the system, facilitate a focused project management approach to the settlement process against consistent targets and indicators, and provide for greater accuracy and rigor in the management of claims. Roles and responsibilities of staff (PO, QA, legal, management and director) at national and provincial level need to be clearly defined and delineated, and indicators of performance developed for each.

- **A competent human resource (HR) management capacity should be established within the CRLR.** This should be independent of the DRDLR and be dedicated to serving the needs of the CRLR in respect of its performance management, training and staff development functions. Its focus and operations should be driven by the long-term targets, indicators and circumstances of the restitution programme. A priority should be the formalization of effective, PFMA compliant arrangements for outsourcing critical research functions (which can never and should not be an internal function of the CRLR), and for ensuring adequate quality control and performance management measures.

- **The current monitoring and evaluation (M&E) system should be broadened to measure intermediate outputs of the settlement process as well as qualitative aspects of both the settlement process (e.g. its timeliness) and its outcome (the completeness, integrity and stability of a settled claim)**. It should provide independent oversight and quality assurance of each step in the process, and should be linked to the performance management system. The M&E framework should

include a learning and communication function whereby good and bad practice is captured and lessons are learned and effectively communicated. The business process should be open to structured review and change in the light of this learning.

- Beyond facilitation and coordination activities (which take place before a claim is settled) **the CRLR should be formally absolved of any responsibility for post-settlement support, local economic development processes and funding of related activities (beyond that associated with the financial settlement of claims).** The CRLR should concern itself exclusively with the adjudication of restitution claims and the restoration of rights in land.

- **The budget for the Restitution Programme needs to be re-considered.** In the recent years, the budget for the Restitution Programme has been reducing; thus impacting on the CRLR's ability to settle the outstanding claims. In line with this, should the second phase of restitution take place, the CRLR will require a greater operational budget than that which is currently available.

In terms of immediate priorities, three recommendations are made:

- **The current filing and recordal system must be cleaned up and systematised**. Concluded files should be reviewed to ensure they are complete in terms of content and chronology. Current files should be assessed in terms of their completion and compliance with legal process, and should be updated and systematised into the new MIS. All future cases should be managed through the MIS, strictly in relation to the procedures and the authorisation process defined in the SOP Manual.

- **Looking forward, all outstanding claims should be settled before any work begins, on the *processing* of new claims** arising from the recently announced second phase of restitution. Given that the window for new claims has been opened, the lodgment of new claims may proceed, but only in accordance with the requirements of the SOP Manual.

- **No new claims should be processed** before the criteria and focus determining access to the second restitution window have been translated into the SOP and incorporated into the new MIS.

1. INTRODUCTION

The National Evaluation Policy Framework (NEPF), approved in November 2011, sets out the context for a National Evaluation System for South Africa. This framework covers various government interventions, including policies, plans, programmes and projects. The Department of Performance Monitoring and Evaluation (DPME) at the Presidency has been mandated to conduct a number of the evaluations under the NEPF.

An implementation evaluation of the Restitution Programme was one of the fifteen evaluations scheduled for 2013/2014. The Restitution Programme is housed within the Department of Rural Development and Land Reform (DRDLR), in the Commission of the Restitution of Land Rights (CRLR).

The remainder of this report summarises the analysis, findings and recommendations that emerged from the evaluation research.

1.1. THE TERMS OF REFERENCE

The DPME, in partnership with the DRDLR, issued a Terms of Reference (TOR) in April 2013 for a service provider to conduct an implementation evaluation of the restitution programme. The purpose of this evaluation is to assess whether the Restitution Programme has been implemented efficiently and effectively, and to identify how the Programme can be improved for the next phase of restitution. The evaluation covers the implementation of the Programme from the lodgment through to the finalisation of restitution claims. The time period under review is from January 1999 to 31 March 2013. As agreed in the inception meeting, the evaluation covers the following five provinces: Limpopo, KwaZulu-Natal, Western Cape, Eastern Cape and the Free State. These provinces were selected for the following reasons:

- Limpopo, KwaZulu-Natal and the Free State, because of their rural bias and the large volumes of land purchased in these provinces.
- Western Cape, because of the high number of urban claims resulting in financial compensation.
- Eastern Cape, because its restitution activity focuses largely on peri-urban areas, and has a focus on betterment, urban and rural claims.
- KwaZulu-Natal and Free State, as they have a blend of rural and urban claims.

The DPME contracted Genesis Analytics (hereafter referred to as Genesis) to conduct this implementation evaluation. The following deliverables were submitted: an inception report was submitted on 6 June 2013, an evaluation plan was submitted on 22 July 2013, a literature review was submitted on 8 August, and revised data collection tools were submitted periodically as field research further informed the evaluation plan.

1.2. OBJECTIVES OF THE IMPLEMENTATION EVALUATION

In order to assess the effectiveness and efficiency of the Restitution Programme, and to inform how the Programme can be improved in the future, Genesis was guided by a number of key evaluation questions, namely:

- Are the set outputs of the Restitution Programme being achieved?
- Is the Restitution Programme implemented efficiently and effectively?
- What has made this intervention difficult to implement and are there examples of good practice that we can learn from?
- How can the process of the Restitution Programme be strengthened for future phases of restitution?
- How can the Restitution Programme be implemented more cost effectively?

1.3. EVALUATION CRITERIA

In order to evaluate the implementation of the Restitution Programme, Genesis made use of the internationally accepted Development Assistance Community (DAC) evaluation criteria[1]. The DAC criteria outline five measures against which a programme can be assessed, namely: relevance, effectiveness, efficiency, impact, and sustainability. As this is an implementation evaluation – i.e. evaluating whether the Programme's operational mechanisms support the achievement of the Programme's objectives - the study focused on effectiveness and efficiency, with some consideration given to sustainability. The guiding definitions of these criteria that we used to focus our work are summarised as follows:

- **Efficiency** measures how the various resource inputs are converted into outputs. In terms of the Restitution Programme, the efficiency criterion assessed how the Restitution Programme's processes supported the efficient settling of the restitution claims lodged.
- **Effectiveness** measures the extent to which the Programme's outcomes are being achieved. Assessing the effectiveness of the Restitution Programme therefore focused on its effectiveness in settling and finalising lodged claims and the claimants' experiences of this process.
- **Sustainability** measures the extent to which the positive changes resulting from the Programme can be expected to last after the Programme ends. As this is an implementation evaluation, this measure focused on the extent to which the Programme's *processes* contribute to the sustainability of the compensation received. It did not assess the sustainability of the land reform entities post settlement.

[1] D*AC, Principles for the Evaluation of Development Assistance,* OECD (1991). The OECD's DAC (Development Assistance Committee) criteria provide a useful framework for evaluating developmental assistance. This framework is globally recognised and is used by a number of development assistance organisations, so enables comparison between programmes. More information is available at http://www.oecd.org/dac/evaluationofdevelopmentprogrammes/daccriteriaforevaluatingdevelopmentassistance.htm.

2. THE BACKGROUND TO RESTITUTION IN SOUTH AFRICA

Restitution is framed by three dates: **19 June 1913**, which marks the start of the period in which dispossession is legally recognised in the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996) (referred to as the Constitution); **2 December 1994**, when the Restitution of Land Rights Act, 1994 (Act No 22 of 1994) (referred to as the Restitution Act) was implemented; and **31 December 1998**, which marks the cut off for the lodgment of claims.

Although under the existing programme claims are not entertained pre-1913, it is acknowledged in the supporting legislation that the major history of dispossession is located in the broader context of colonial conquest and land alienation that occurred throughout the 19th century. In part, the limitation of restitution to the date of the promulgation of the Natives Land Act, 1913 (Act No 27 of 1913) (referred to as the 1913 Land Act) was partly in recognition that the complexity that characterised the development of South Africa's land dispensation in the 19th century would be extremely difficult to unravel.

2.1. MECHANISMS OF DISPOSSESSION

2.1.1. The 1913 Natives Land Act

The 1913 Act (Act No 27 of 1913) – referred to as the 1913 Act purported to set aside:

- 77% of land for private ownership by whites and white-owned companies;
- 8% solely for African occupation; and
- 13% was reserved as Crown Land for game reserves, forests and other uses.

In reality these distinctions were hard to draw. While the 1913 Act set out to precisely demarcate land ownership it left out extensive areas of African freehold property and unsurveyed State land.

2.1.2. The 1936 Development Trust and Land Act

The 1936 Native Trust and Land Act, 1936 (Act No 18 of 1936), referred to as the 1936 Native Trust Act, provided the basis for formalising and extending the size of the African reserve areas ('Reserves') as recommended by the 1916 Beaumont Commission as it was recognised that the Reserves were overcrowded and resources stressed. The growing crisis in the Reserves was one of the factors driving the passing of the 1936 Native Trust Act, but more importantly, the Act was to provide the justification for subsequent evictions of black sharecroppers and cash tenants farming on white-owned land.

The 1936 Native Trust Act made provision for the purchase of 6.2 million hectares (ha) of so-called 'released land' from white farmers in areas adjacent to the scheduled areas. The Act established the South African Native Trust (SANT), which purchased all reserve land not yet owned by the State, and had responsibility for administering African reserve areas. The SANT imposed systems of control over livestock, introduced the division of arable and grazing land, and enforced residential planning and villagisation (called 'betterment') as part of its vision to modernise African agricultural systems.

The 1936 Native Trust Act set out to limit the number of labour tenants that could reside on white farms. It required them to be registered and imposed a system of fees payable by the landowner for every tenant registered. The 1936 Native Trust Act also formalised the separation of White and Black rural areas, laying the foundations of the apartheid homeland system. Areas in "White South Africa" where Black people owned land were declared "Black spots", enabling the State to implement measures to remove the owners of this land to the reserves.

2.1.3. Legislation leading to dispossession

In addition to the Land Acts successive governments passed a suite of legislation which undermined land rights and facilitated removals. There were numerous laws passed which regulated property rights in urban and rural areas as listed below:[2]

The Native (Black) Urban Areas Act, 1923 (Act No 21 of 1923) divided South Africa into 'prescribed' (urban) and 'non-prescribed' (rural) areas, and strictly controlled the movement of Black males between the two.

The Occupation of Land (Transvaal and Natal), 1941 Restrictions Act No 28 of 1941, better known as the Pegging Act required that all new land and property transactions between Indians and Whites required the approval of the government.

The Natives (Urban Areas) Consolidation Act, 1945 (Act No 25 of 1945) introduced influx control, applicable to Black males only[3]. People who were deemed to be leading idle or dissolute lives, or who had committed certain specified offences, could be removed from an urban area[4].

The Asiatic Land Tenure and Indian Representation Act, 1946 (Act No 28 of 1946) restricted Indian land ownership and residence to specific areas in Natal

The Group Areas Act, 1950 (Act No 41 of 1950): This Act enforced racial segregation by creating different residential areas for different races.

Prevention of Illegal Squatting Act, 1951 (Act No 52 of 1951): From the 1970's this was one of the common instruments used for forced removals. It afforded landowners, local authorities and government officials many ways of evicting people or demolishing their houses without a court order to get them off the land.

Black Resettlement Act, 1954 (Act No 19 of 1954): This Act granted powers to the government to remove Africans from any area within and next to the magisterial district of Johannesburg. This Act authorised the Sophiatown and other removals.

The Trespass Act, 1959 (Act No 6 of 1959): The Act was used in both urban and rural contexts and was used to *"…* secure the removal of people from land where their presence, has for one reason or another, become inconvenient to the owner of lawful occupier of the land or to the state*"*.

Black (Native) Administration Act, 1927 (Act No 38 of 1927): Section 5(1)(b) provided that *"…* whenever he deemed it expedient in the public interest, the minister might, without prior

[2] Referenced in Sustainable Development Consortium (2006). "Restitution: rights, livelihoods and development"".
[3] Horrell (1978). "Laws affecting Race Relations in South Africa 1948-1976"".
[4] Ibid.

notice to any persons concerned, order any tribe, portion thereof, or individual black person, to move from one place to another within the Republic of South Africa*"*.

The Black (Bantu) Authorities Act, 1951 (Act No 68 of 1951) allowed for the creation of traditional tribal, regional and territorial authorities initially run by the Native Affairs Department, but with the promise of self-government in the future.

The Blacks (Abolition of Passes and Co-ordination of Documents) Act, 1952 (Act No 67 of 1952) repealed early laws, which differed from province to province, relating to the carrying of passes by Black male workers (e.g. the Native Labour Regulation Act of 1911) and instead required all black persons over the age of 16 in all provinces to carry a 'reference book' at all times.

The Promotion of Bantu Self-Government Act, 1959 (Act No 46 of 1959) announced the existence of eight African ethnic groups based on their linguistic and cultural diversity. The Commissioner-General was assigned to develop a homeland for each group.

The **Bantu Homelands Citizenship Act (National States Citizenship Act), 1970 (Act No 26 of 1970)** required that all South African Blacks become citizens of one of the self-governing territories.

The Bantu Homelands Constitution Act (National States Constitutional Act), 1971 (Act No 21 of 1971) increased the potential governmental powers of the self-governing homelands and represented a further step towards the creation of independent Bantustans.

Black Laws Amendment Act, 1973 (Act No 7 of 1973) was designed to speed up the planning for partial consolidation of the homelands.

The Expropriation Act, 1975 (Act No 63 of 1975): This Act, which has been amended, is still on the statute books. It sets out the power of Minister to expropriate property for public and certain other purposes and to take the right to use property for public purposes.

2.2. PAST LAWS AND RESTITUTION AWARDS

The right to restitution rests on claimants being able to show that they were dispossessed by means of a racially motivated law or practice. It is not easy to come up with an all-encompassing framework that captures all the different types of removals. This is particularly the case within former reserves and homeland areas where removals and resettlement of one group of people impacted on the land rights of others creating conflicting and overlapping rights on the land. There were many different circumstances which led to forced removals, these include:

- Evictions and displacement from White-owned farms, including labour tenants, sharecroppers and surplus workers;
- Group areas removals, removal from mission lands and urban relocations;
- Homeland consolidation and “Black spot” removals;
- Betterment within the reserves;
- Conservation, forestry and related removals;
- Removals from land which became South Africa Defense Force (SADF) military training areas; and,

- Internal removals in scheduled and released areas due to consolidation of homelands and construction of dams, irrigation schemes etc.

2.3. THE LEGACY OF DISPOSSESSION AND THE CHALLENGE OF RESTITUTION

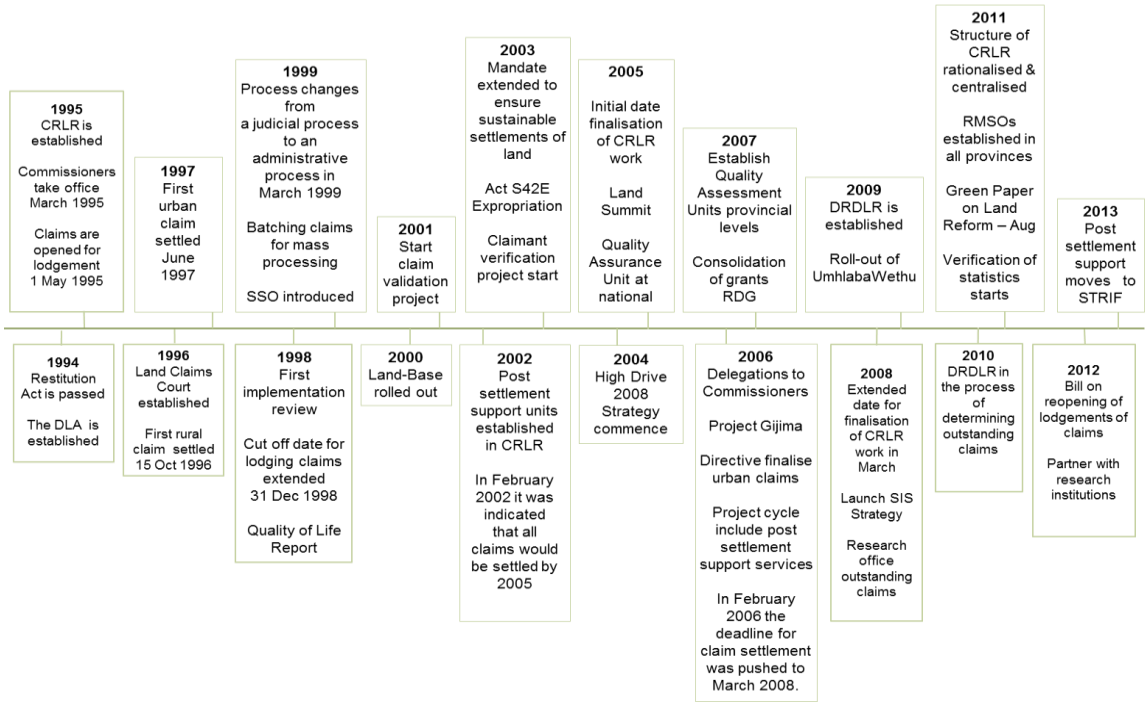
One of the consequences of forced removals was the creation of conflicting and overlapping rights in land which have led to multiple claims on the same piece of land. These have, in many instances, been exacerbated by the consolidation by land restitution administrators of lodged claims on the same piece of land, and the 'facilitation' of artificial consensus between different claimants in the claim settlement process, which later unravels with major consequences. The array of factors and laws which led to dispossession coupled with the time lapse of several decades between forced relocation and the lodgment of claims for restitution have resulted in a complex and often internally conflicted claim settlement process.

2.4. CHRONOLOGY OF THE RESTITUTION PROGRAMME

In outlining the evolution of the Restitution Programme it is important to recognise that both the former Department of Land Affairs (DLA) and the CRLR were built from scratch following the democratic transition in 1994. Staff had to be recruited and trained; and systems, procedures and institutional design developed from the ground up. While this was a challenge it was also an opportunity to advance a pro-development reform. However, the literature suggests that this opportunity was not fully exploited.

A recurrent theme that emerges from reviews of this period is the haphazard nature of systems development, data management and accountability structures within the CRLR and in the DLA and its successor the DRDLR. These challenges have been aggravated by continual processes of restructuring and business process re-engineering which has seen claim settlement shift from a predominantly legal process to an administrative one; from restitution research being managed in-house to being outsourced and then brought back in-house again, from post-settlement support being assigned to the former DLA to being progressively included in the mandate of the CRLR and then been assigned to DRDLR. Figure 1 below illustrates a timeline of the Restitution Programme, described in detail further below.

Figure 1: Timeline of key events in the Restitution Programme



Source: Genesis Analytics, 2013 adapted from information from the CRLR's annual reports (1998-2013)

2.4.1. 1994 – 2000: Stage 1

The Restitution Act was signed by President Mandela on 17 November 1994 and enacted on 2 December 1994, and the CRLR opened its doors in 1995. The Restitution Programme was further made a constitutional imperative through Section 25(7) of the Constitution, stating that *"a person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws and practices is entitled…either to restitution of that property or to comparable redress".*

When the CRLR began work, it inherited some 3,000 claims from the defunct Advisory Commission on Land Allocation (ACLA), initiated in terms of the abolition of Racially Based Measures Act, 1991 (Act No 108 of 1991)[5]. Research into these and newly lodged restitution claims started towards the end of 1994 when the DLA was formally instituted.

From the 1st May 1995 eligible claimants were given three years to lodge claims. This period was later extended to the cut-off date of 31 December 1998. As of 31 December 1998, it was reported that a total of 63 455 claims were lodged, however, as some claims were split in the process of investigation the number of claims rose to 79,693 by 2004.

The Land Claims Court (LCC) was established in 1996, based on the African National Congress' (ANC's) land policy documents- from 1992 and 1993- which argued for the development of a court-based Restitution process. On 15 October 1996 Elandskloof was the first rural land claim to be settled by an order of the LCC[6] and in June 1997 the first urban claim was settled in King Williamstown. However by the end of March 1998 only seven claims had been settled.

[5] This Act repealed the 1913 and 1936 Land Acts.
[6] LCC 20/96.

The combination of establishing the CRLR as a new institution and the court-based claim settlement process meant that progress was slow in settling claims in the first five years of the Programme; only 47 claims were settled in these years[7]. Concerns about the causes of this slow progress prompted a Ministerial review in 1998. The review identified an overwhelming array of problems impacting on the restitution process including:

- The proliferation of claimants which stem from the way in which the Restitution Act has been interpreted and framed which resulted in "a wide allocation of the right to claim" and meant that even a single dispossession can surface "scores of conflicting descendants" and made the processing of claims an "impossibly onerous task".
- The "crisis of unplannability arising out of the absence of a reliable database".
- The "absence of any coherent or nationally consistent set of management structures, policies, systems and procedures".
- The legal and procedural intricacies of the Restitution Act which led to "the evacuation of administrative authority" and the "disempowerment of claimants".
- The structural contradiction in the Restitution Act which created the Commission that was "apparently independent and accountable to parliament", while being located in the DLA with the Director General (DG) as the accounting officer.
- The assumption that the State would always be represented by the DLA which allowed metropolitan government to avoid responsibility for dealing with land claims.
- A lack of guidance with regard to the meaning of the concept "just and equitable" compensation.
- The confusing framing of options which offered compensation or restoration – often conflating restoration with settlement.
- The adversarial relationship between the CRLR and the DLA.

The Ministerial review highlighted a number of problems associated with the business process itself, emphasising the "highly complex and conflictual" nature of restitution claims which *"… requires a business process that combines elements of a mass production line and a specialised, individualised – attention approach"*[8] . The Minister of Land Affairs responded to the review findings and accepted its recommendations that the CRLR be integrated into the DLA while all functions of restitution would be vested with the CRLR to avoid duplication of effort. The CRLR would be accountable to the DG through the Chief Land Claims Commissioner (CLCC) in order to integrate into the land reform programme as a whole.

It was also accepted that emphasis should shift to providing greater administrative capacity for mass processing of claims. The role of the LCC would be reduced such that it would only adjudicate on claims not resolved through alternative dispute resolution and would act as a review or appeal court for aggrieved parties.

Consequently, the pace of the restitution claim settlement increased dramatically in 1999. The introduction of Standard Settlement Offer (SSO) in 2000 made available cash compensation

[7] Hall (2011). "Reconciling the past, present and future: The parameters and practices of Land Restitution in South Africa"".
[8] Du Toit et al. (1998) "Ministerial review of the Restitution Programme"".

for urban claims. "The SSO offered cash compensation for urban claims usually set at R40,000 per household for former owners (R50,000 in some metropolitan areas) and R17,500 per household for former long term tenants"[9].

2.4.2. 2001 – 2008: Stage 2

In July 2001 a campaign was launched to validate an estimated 38,000 restitution claims. Most of these claims were reported to have been validated by February 2003. President Mbeki announced in February 2002 that all claims would be settled by 2005. Minister Didiza called for rural claims to be prioritised in 2002.

By February 2005 57,000 land claims were reported to have been settled. In February 2006 Minister Didiza announced that deadline for claim settlement had been pushed forward to March 2008.

Historically there were sharp disagreements within the CRLR about where their role began and ended. A Settlement Support Unit (SSU) was established in the CRLR in 2002 which set out to give more substance to post settlement planning and practice. In 2006/2007 the Sustainable Development Consortium (SDC) was appointed by the CRLR with the support of Belgian Technical Co-operation to develop a comprehensive strategy for the provision of post settlement support. The scope of the Settlement and Implementation Support Strategy (SISS) was subsequently extended to land reform as a whole given the perceived widespread failure of land reform projects across the board. The strategy was launched by Minister Xingwana in 2007 but was never implemented; rather it was to be incorporated into the Land and Agrarian Reform Project (LARP).

2.4.3. 2009 – 2013: Stage 3

The DRDLR was created in 2009, opting for a 'three legged strategy" involving:

- Sustainable land and agrarian transformation;
- Rural development; and,
- Land reform based on restitution, redistribution and land tenure reform.

The DRDLR reported that during the 2009/10 financial year, that the CRLR had settled only 33 of the targeted 1,695 claims which it attributed to a budgetary reduction of 50%[10]. The report stated that since 1994 the CRLR had settled 75,844 claims.

The report of the Auditor General appended to the 2009-2010 Annual Report of the DRDLR noted that *"… the department did not have a database of all previous and current beneficiaries who benefited through different programmes and projects to ensure compliance with the criteria to qualify for land reform subsidies and restitution subsidies and prevent mismanagement of grant funding"*[11]. The report also noted that included in commitments were projects older than three years which accounted for R420 million. These funds had not been

[9] Hall (2004) "Land and agrarian reform in South Africa: A status report 2004. Research report No 20"
[10] DRDLR (2010). "Annual Report: 1 April 2009 - 31 March 2010"".
[11] DRDLR (2010). "Annual Report: 1 April 2009 - 31 March 2010"".

disbursed "… due to changes of Restitution settlement options, community, tribal and family disputes and untraceable claims"[12].

As of 1 April 2011, the CRLR was rationalised to create better synergy with, and clearer lines of accountability to the DRDLR[13]. Only the core of the CRLR, the CLCC, Deputy Land Claims Commissioner (DLCC) and a Regional Land Claims Commissioner (RLCC) remained in the ambit of the founding Restitution Act. In the provinces, restitution support personnel were placed under the Public Service Act, 1994 as amended (Act No 103 of 1994) and Restitution Management Support Offices (RMSO) were established in each of the nine provinces headed by Chief Directors, Restitution Support. The post-level of the CLCC became that of the Deputy Director-General and that of the DLCC and RLCC became Chief Directors.

2.5. PERSPECTIVES ON PROGRESS WITH CLAIM SETTLEMENT

In reviewing progress with regard to claim settlement, it has been argued that the high numbers presented by the CRLR as being settled are based on the fact that the CRLR counts the extent to which it has dealt with claims that have been lodged (in other words, claim forms)[14]. This would mean that the process is not assessing or reporting on the actual number of claims, be it a claim by a number of co-claimants as the direct descendants where a person was dispossessed of land (most often an erf in a urban residential area) or a claim where a community (as a single claimant) was dispossessed of land (most often rural/agricultural land). This problem was compounded because the CRLR incorrectly counts its claim forms on the basis of "urban claims" and "rural claims"[15]. The Restitution Act does not provide for such a distinction, though Rule 7 of the procedures of the CRLR indicates that separate sub-registers will be opened for rural, urban and such other registers as the RLCC may consider appropriate to register claims[16]. The Constitution and the Restitution Act distinguish between claims by persons (usually as co-claimants) and claims by communities (as single entities).

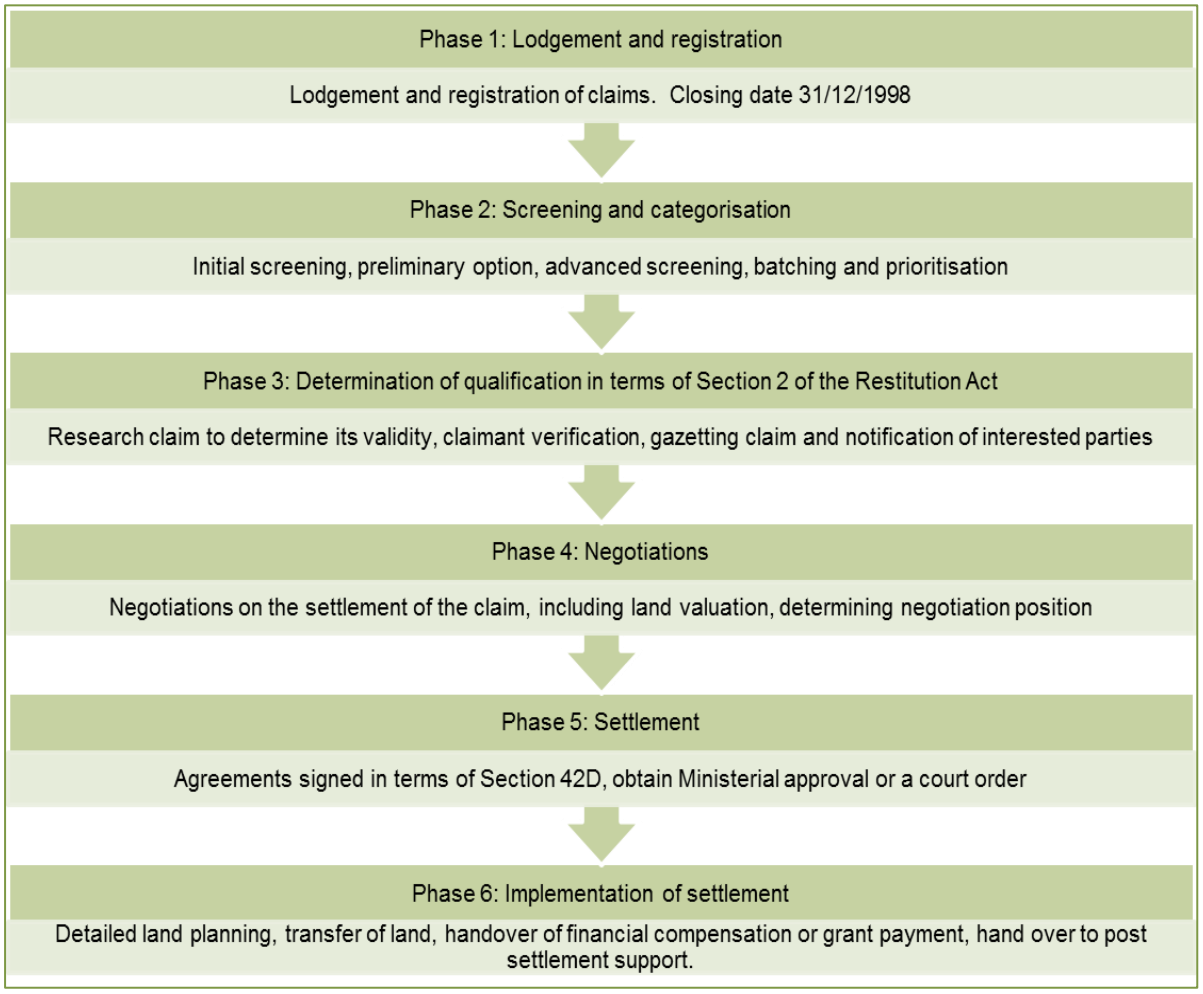
The problem with the counting of "claims" (as opposed to counting claim forms submitted) becomes even further compounded because the CRLR incorrectly refers to members of communities in community claims as "claimants" and has undertaken to verify such "claimants" on the basis of direct descent. While 'direct descent' (as opposed to testatory heir) is a requirement for the validity of a claim by a person, the validity requirement in a community claim is whether the group of people constituted a community at the time of dispossession and continued to do so up to the submission and settlement of the claim. Issues around counting uncovered in this research process are further described in *Section 4.3.1* of the report.

2.6. RESTITUTION CLAIMS PROCESS

Provinces follow the same broad process in settling claims; however, the detailed implementation differs per province. Figure 2 below, as provided by the CRLR, illustrates the overarching, broad phases in the restitution settlement process.

[12] Ibid.
[13] DRDLR (2011). "Annual Report: 1 April 2010 - 31 March 2011"".
[14] Pienaar (2006). "Status Quo Report on Legal and Policy Issues and Preliminary Recommendation concerning Post Settlement Support"".
[15] Ibid.
[16] Rules regarding the procedure of the Commission on Restitution of Land Rights (published under Government Gazette Notice No. R 703 of 12 May 1995, as amended by Government Notice No. R 1961 of 29 November 1996)).

Figure 2: Settlement process

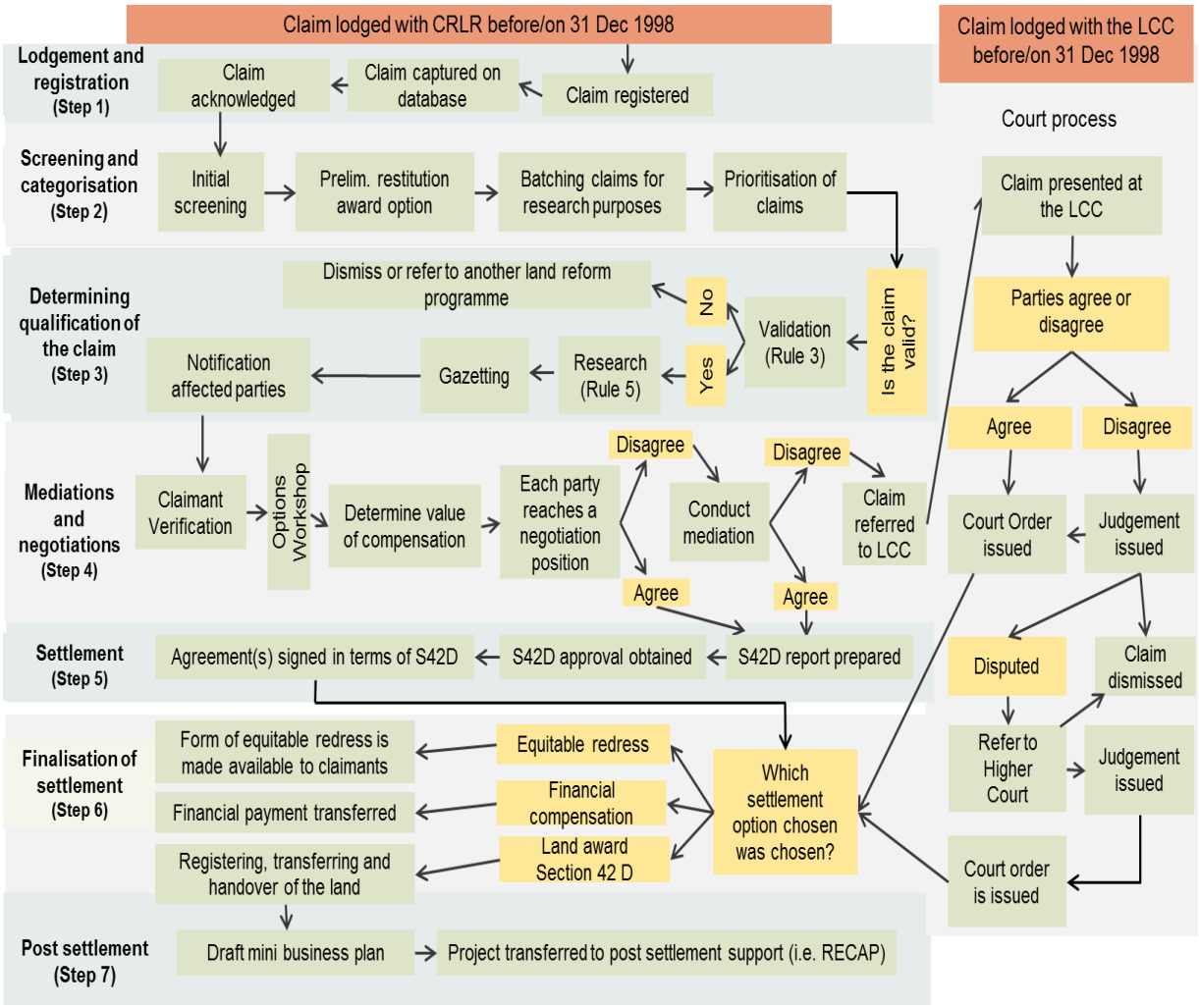


Source: Restitution Evaluation, TOR, 2013

Phase 6 indicates the handover of the project to what is commonly referred to as post-settlement support. In 2002, this function was allocated to the CRLR with the establishment of the SSU. In 2009, a separate business process for post-settlement support was developed whereby it was no longer deemed to be the responsibility of the CRLR; and in 2013, this function was transferred to the Rural Enterprise Infrastructure Development (REID) branch and the Rural Infrastructure Development (RID) branch in the Recapitalisation and Development Programme (RECAP) in the DRDLR. This handover process is still underway. As the scope of this evaluation does not include post-settlement support, Phase 6 in this evaluation focuses on the finalistaion of claims and the handover of the claims for post-settlement support.

Figure 3 below illustrates the Restitution process flow in more detail. The panel on the right describes the process that takes place when a claim is submitted to the LCC; whereas the panel on the left describes the process when a claim is lodged with and processed by the CRLR.

Figure 3: Detailed process flow for Restitution



Source: Genesis Analytics, 2013

3. METHODOLOGY

3.1. ANALYSIS FRAMEWORK

In order to ensure the comprehensiveness of the evaluation, the DAC criteria were used as the foundation for the evaluation framework. In addition to the evaluation criteria of efficiency, effectiveness, and sustainability (as outlined in *Section 1.3*); the five evaluation questions as per the ToR were consulted to identify 29 relevant themes with approximately 250 corresponding qualitative and quantitative questions. These were approved by the Steering Committee [17]prior to the commencement of the fieldwork. As this is an implementation evaluation, the focus of the evaluation was predominantly on the assessment of the *efficiency* criterion; as is shown in Table 1 below.

[17] The evaluation was guided by a broad Steering Committee, with representatives from the DPME, DRDLR and the CRLR .

Table 1: Number of themes used per DAC evaluation criterion

Evaluation Criterion	Number of indicators used
Efficiency	24
Effectiveness	3
Sustainability	2
Total number of themes	**29**

Wherever possible, qualitative responses were coded into a quantitative scale so as to ensure objectivity in recording and assessing responses. This also ensured that qualitative responses could be aggregated; enabling the comparability of findings.

A multi-method approach was used to collect responses to each of these indicators. The approach involved:

- Document and literature review;
- Focus group discussions (FGDs);
- Claim file assessments;
- Key Informant Interviews (KIIs);
- Statistical analysis; and,
- Case studies[18].

The findings from these various sources were then consolidated and analysed in terms of the five evaluation questions.

3.1.1. Document and literature review

The first component of the evaluation comprised a review of all relevant restitution documentation focusing on the implementation of the Restitution Programme. Firstly, this involved a review of the restitution legislation from 1994 to 2013, policy guidelines from 1997 to 2013, annual reports and strategic plans from 1998 to 2013, training manuals from 1997 to 2013 and supporting documentation for conducting the restitution process. These documents are detailed in Annex 1.This review was used to inform the team of what is considered the "standard" business process and how this has changed over time. The findings of the literature review informed much of the discussion around the background to and chronology of the Restitution Programme presented in *Section 2*.

During the second component of the document review the team conducted a comprehensive literature review. This was informed by the documentation outlined above, past reviews of the Programme from 2002 to 2013, academic articles/reviews from 1994 to 2013 and legal judgments which informed the settling of claims. This documentation is further detailed in Annex 1. This process was guided by academics in the restitution space as well as attorneys who have experience with the legal processing of restitution claims. The literature review highlighted the evolution of restitution and its processes, key themes in the process, factors

[18] This methodology was approved by the Steering Committee through acceptance of the Inception Report, Proposed New Methodology request, and the Evaluation Plan.

which inhibit the settling of claims and the legal judgments which have set precedents in the process.

In total, approximately 140 sources were consulted in the document and literature review. As these sources were consulted, bottlenecks in the process were identified, examples of best practice were recorded and recurring themes across the various sources were noted. From this information, the necessary stakeholders to be consulted were identified and the key themes to be considered in this evaluation were developed. Based on the broad themes identified, appropriate questions were developed for the evaluation plan, which informed the analysis framework and instrument.

Once the fieldwork was completed, and the findings from the fieldwork were drafted, the key themes and best practices emerging from the document review were re-consulted to assist in the analysis of the findings. Similarly, the annual reports and strategic plans were re-consulted to explain the findings and anomalies in the findings across the various years.

3.1.2. Focus group discussions

The document and literature review revealed that, beyond a common generic framework, there is no standardised settlement process which is followed by the various provinces. In order to better understand the process that is followed in practice, the Genesis team conducted a focus group with two national CRLR staff and three provincial RMSO staff representing three of the relevant provinces (Limpopo, KwaZulu-Natal and Free State) . This was a semi-structured discussion whereby the Genesis team was taken through the provinces' respective settlement processes from lodgment to finalisation.- informing the differences in the way in which the provinces affect the settlement process. Having the various provinces, their varying approaches to the restitution process, and the national perspective of the restitution process represented in a single focus group highlighted the provincial differences in approach as well the strengths and weaknesses of the varying processes. This approach stimulated debate among the provinces around what works best and why the provincial processes have evolved over time into what is the currently adopted process. This further emphasised the contextual differences between the provinces.

3.1.3. Claim file assessments

Upon working with the sample selection, the need to distinguish between "projects", "claims" and "rights restored" became apparent. Often closely related claims are grouped at the point of land restoration, without necessarily merging the settlement[19]. For example, a single property can be purchased for restoration to multiple claimants, with multiple claim forms; meaning that a single "project" has been finalised, but multiple "claims"/ "claim forms" are settled. In terms of "rights restored", from 1994 to 2006, a settled claim was counted as the restoration of a right in land. However, from 2006 the CRLR moved away from *rights-based counting* to recording the *number of claim forms lodged.*

As some "projects" have upwards of a thousand "claims", the initial proposal to randomly select the sample based on "claim forms"/ "rights restored", would have resulted in very few "projects" within a province being selected. Thus the number of settled claims per province was calculated on a proportionate basis, and this was interpreted to mean the number of "projects"

[19] Lahiff (2008). "Land reform in South Africa: A status report 2008"".

to be assessed. Table 2 below illustrates the number of "projects" assessed per province, based on a 1% sample of the total number of settled claims.

Table 2: Number of projects reviewed per province[20]

Province	Number of settled claims	Provincial proportion	Number of projects reviewed	Total number of projects in the province
Eastern Cape	16,444	30.62%	164	324
Western Cape	15,784	29.39%	153	459
Free State	2,682	4.99%	28	92
KwaZulu-Natal	15,161	28.23%	152	430
Limpopo	3,641	6.78%	36	356
Total	**53,712**	**100%**	**533**	**1,661**

In total, the 533 "projects" out of a total of 1,661 "projects" for the five provinces were assessed which is a representative sample. Within each province, the projects were selected randomly using a computerised random selection generator. The research teams were briefed on how to use the various data collection instruments, and subsequently the relevant project files were downloaded from the national Electronic Database Management System (EDMS) and the provincial EDMS database; and the hardcopy files were accessed from the provincial RMSO registry offices for analysis.

3.1.4. Interviews

Interviews were conducted at both the provincial and national level. Where the Project Officers (POs) responsible for the files under assessment were contactable, common trends and anomalies in the files were discussed so as to better understand the findings in the files. In addition to these semi-structured file-based PO interviews, interviews with available POs were conducted covering specific questions as approved in the analysis plan. In two of the provinces, the latter interviews were conducted in a group setting. This approach was more efficient for provinces with over 20 POs.

In addition to the interviews with the POs, provincial RMSO interviews included meeting with the provincial managers and senior staff. The provincial teams met with Directors, Deputy Directors, POs; and key staff from the legal, supply chain management, registry, administration, finance and human resources departments. These interviews were based on the pre-approved questionnaire with the inclusion of a discussion around the emerging themes from the provincial research. The provincial RMSO Chief Directors were also interviewed. These interviews were again based on the pre-approved questionnaire and findings from the provincial research. In addition to provincial CRLR staff, select claimants were interviewed during the case studies- detailed below.

At the national level, interview questions were standardised for both the CRLR and the DRDLR staff. Interviews were conducted with the CLCC; DLCC; RLCC; Chief Directors; CRLR support staff from the legal, research and policy, and finance departments; as well as staff from DRDLR support services including human resources, evaluation and policy, supply chain

[20] The sampling frame was based on the national list submitted to the Genesis team at the start of the evaluation. The total number of settled claims differs marginally in some cases to those figures in the provincial lists. Additionally, these figures differ from those in the forthcoming analysis as the published figures (that which was submitted to Genesis for sampling purposes) differ from the internal figures used later in the analysis.

management, administration and information management based at national level. See Annex 2 for a detailed list of stakeholders interviewed.

3.1.5. Case studies

Four case studies were conducted per province, amounting to a total of 20 case studies. These case studies involved assessing the claim file; and interviews with the POs, claimants, landowner (in projects involving land) and other relevant stakeholders. The projects selected for the case studies aimed to draw out issues which are representative of the province and to yield interesting practices that should, or should not, be replicated.. Various criteria were used to select a range of urban and rural cases, complex and simple cases[21], compensation types, uses of the land under claim, and the ease with which the claim was settled. Using these criteria a range of cases were selected, each with a learning for the business process.

Eight case studies were initially selected per province. These were ranked in order of preference, with motivations as to why they were selected. This list of eight was sent to the Steering Committee for selection and finalisation of the four case studies per province.

The case studies were conducted using an interview guide. This guide was refined once the file assessments were completed - ensuring that pertinent themes emerging across the file assessments were covered and that any unnecessary questions were omitted. As the interviewers assessed the case study claim file prior to conducting the interviews, the case studies probed case-specific findings from file assessment in addition to the case study interview guide.

3.1.6. Review of quantitative data

The team was provided with the Commitment Register per province, the quantitative data review thus took account of all nine provinces, from the financial year 1998/99 to 2012/13. This component of the analysis focused on the following elements:

- The number of claims settled per year;
- The cost per claim, per hectare claimed, per beneficiary and household;
- The number of beneficiaries and households that have benefited from restitution; and,
- The value of the claims that have been settled but not finalised[22].

In addition to this, the team mined the various annual reports and strategic plans of the CRLR and DRDLR for the annual settlement targets. In combination with the Commitment Register, these figures were used to assess the performance of the CRLR against their set targets.

In order to get the CRLR's expenditure inclusive of administrative costs, the Genesis team used National Treasury's Estimates of National Expenditure (ENE) reports from 2000-2013[23]. This data was used to assess:

[21] A simple claim was defined as one which has clearly defined claimants and other stakeholders, clearly defined land under claim and a standardised settlement option. A complex claim was the opposite of this.
[22] Once a claim is *settled*, it still needs to be *finalised*. When the Section 42D is signed the claim is considered to be settled and is put on the Commitment Register, however, it is only finalised once the transfer of the land, financial payment or other redress has taken place.

- The total expenditure on restitution (both nominal and real);
- Restitution's Medium-Term Expenditure Framework (MTEF) allocation;
- The variation in restitution's expenditure and MTEF allocation;
- The proportion of administrative costs to capital costs of settling claims; and,
- The administrative cost per claim settled.

3.1.7. Limitations

As with any research, this evaluation relied on a number of critical assumptions and was subject to inherent constraints, which we summarise as follows:

- Staff availability: Provincial RMSO are reportedly under capacitated and therefore extremely stretched. Thus there was a natural reluctance to set aside time to speak with the research team to the extent that was requested. This reality was compounded by the 'research fatigue' that affected many of the provincial RMSOs, following the recent completion of another comprehensive process review exercise undertaken by the Human Sciences Research Council (HSRC). As a result, staff members were either unavailable, rescheduled and in some cases cancelled meetings at the last minute to deal with more pressing demands. This naturally affects the depth and breadth of qualitative feedback that the research relies on to develop a clear picture and to address the evaluation questions.
- Accessing hard copy files: Many of the files are housed offsite, either in the DRDLR Shared Services Offices (SSOs) or, as is the case with the Western Cape, in the Surveyor General's offices. In these cases, it was necessary to do a manual check to determine where the files were located. This delayed the process, and in some cases, the files could not be obtained[24].
- Differences in the hardcopy reference number with the electronic reference number, resulting in a time consuming process of matching the various sources for the claim analysis.
- Discrepancies between national and provincial data: in many provinces, the national list of projects used to determine the sample frame differed from the provincials lists supplied. Similarly, expenditure figures differed between some of the provinces and the national data supplied. The overall report therefore used the national figures supplied and the provincial reports were based on the used the data supplied from the provinces.
- State of the files: The poor quality of the claim files limited the quantitative analysis that could be undertaken. This is in itself a significant finding, but it does unavoidably dilute the clarity and status of the evidence that is derived from the research. As a means of overcoming this, a significant amount of qualitative research was conducted.

[23] 1998/1999 and 1999/2000 were not available as a result of the structure of restitution in the budget into the sub-programmes: *Land Reform* and the *Implementation of Land Reform.*

[24] The Free State office was relocating at the time of the research, and thus hard copy files were not available. Those files stored in the Surveyor General's office in the Western Cape could not be obtained.

- Variances in the way in which the CRLR defined and counted a "settled claim" over the years (see *Section 4.3.1* for more detail). This inconsistency reduced the focus and rigour of the statistical analysis that was undertaken as part of the research.

4. FINDINGS

The findings from the research process are discussed in detail below. The findings are outlined according to the DAC criteria used in the evaluation - *efficiency, effectiveness and sustainability* – including an initial overview of the files which were assessed. The findings presented are an amalgamation of both the qualitative and quantitative research conducted at provincial as well as national level.

4.1. OVERVIEW OF THE FILES ASSESSED

As the files were selected randomly, it is important to note (see Figure 4, Figure 5, and Figure 6 below) that they were indeed representative of their provinces as per the criteria for selection outlined in *Section 1.1*. These figures illustrate that the claims selected reflect a wide diversity of restitution experience across the five provinces and that the findings of the evaluation should be seen to be reflective of a broad cross-section of the restitution experience in South Africa.

Figure 4 summaries the breakdown of the files according to the type of claim in terms of whether it was an individual claim, group claim or community claim. KwaZulu-Natal and Limpopo have a large proportion of community claims which is indicative of the rural nature of these provinces, the tribal lands that dominated these provinces and the legislation that was used in the dispossession, namely the1936 Development Trust and Land Act (Act No 18 of 1936). The significant proportion of group claims in the Western Cape is indicative of the urban nature of the province and the resulting legislation used in the dispossession, namely the Group Areas Act (Act No 41 of 1950). As a result of this legislation whole districts were disposed, whereby in lodging the claim, individuals living in these districts grouped together to lodge a single claim under the district. Figure 5 illustrates the type of land use under claim. The claims in the Western Cape illustrate the dominance of urban claims in this province. Similarly, the claims in the Free State, KwaZulu-Natal and Limpopo illustrate the significant proportion of farmland claims in these provinces. Figure 6 describes the type of compensation selected by the claimant. This shows that in the Eastern Cape, Western Cape and Free State financial compensation is most often selected, however, in the more rural provinces of KwaZulu-Natal and Limpopo, land compensation is more often chosen.

Figure 4: Type of claim in terms of individual, group or community

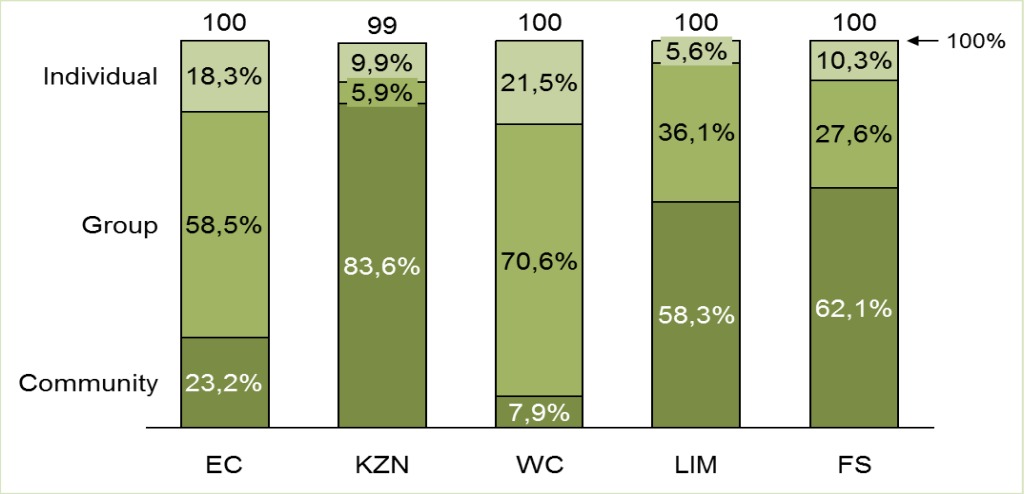


Figure 5: Land use by sector under land claims

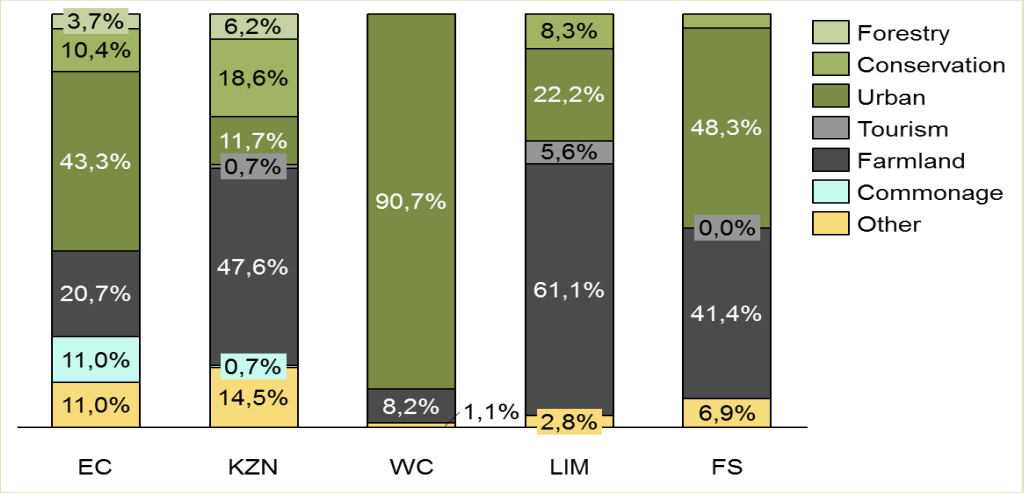
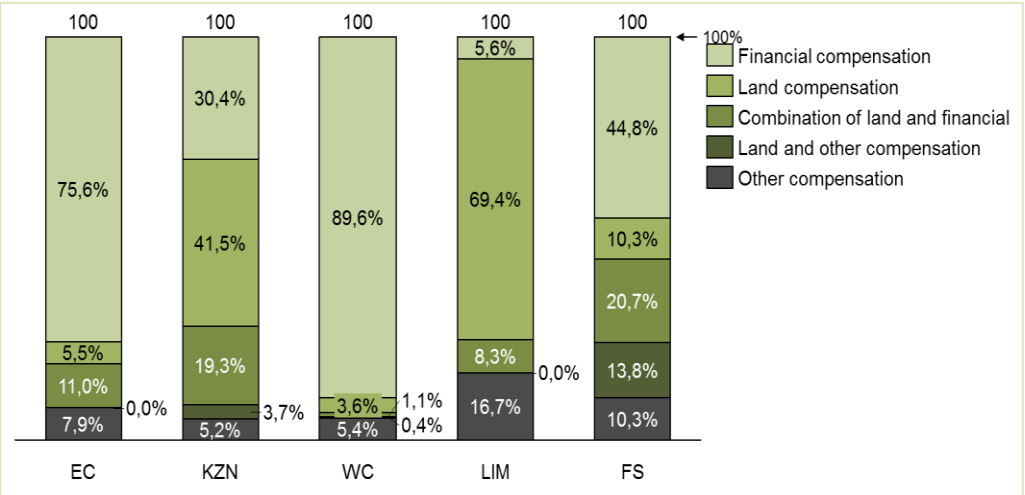


Figure 6: Type of compensation selected by the claimant



Source: Genesis Analytics, 2013

4.2. EFFICIENCY

The assessment of *efficiency* covered 24 themes, which corresponded to 210 questions. The indicators covered include the time taken to complete key phases of the settlement process, challenges faced in completing key phases of the process, communication between the CRLR, the claimants and landowners, the state of the files, status of the file registry and databases, the capacity and qualifications of CRLR staff, programme monitoring, the cost efficiency of the Restitution Programme, and the referral of claims to the LCC. The findings have been presented in three sections; the first section outlines the state of the files; the second section presents the findings according to the key stages in the restitution process (as described in *Section 2.6*); and the third section outlines the over-arching, institutional findings.

4.2.1. State of the files

Table 3 below indicates the percentage of files that are missing key documentation. While there is considerable variation between the provinces in relation to different components of the prescribed documentation, what this does illustrate is that the files are substantially incomplete and as a formal record of proceedings do not comply with the administrative requirements of the legal process that underpins restitution.

Table 3: Percentage of files that are missing key documentation

	EC	KZN	WC	LIM	FS
Stamped claim form					
Present	61%	81%	68%	86%	31%
Absent	39%	19%	32%	14%	69%
Rule 3 report					
Present	23%	29%	14%	69%	10%
Absent	77%	71%	85%	31%	90%
Rule 5 report					
Present	45%	36%	21%	89%	34%
Absent	55%	64%	78%	11%	66%
Gazette notice					
Present	63%	65%	72%	94%	41%
Absent	37%	35%	28%	6%	59%
Section 14(3) certificate					
Present	53%	56%	65%	69%	52%
Absent	47%	44%	35%	31%	48%
Negotiations position					
Present	24%	60%	30%	22%	14%
Absent	76%	40%	70%	78%	86%
Options workshop documentation					
Present	21%	23%	49%	11%	38%
Absent	79%	77%	51%	89%	62%
Signed Section 42 D					
Signed S42D present	71%	64%	92%	83%	69%
S42D absent	27%	32%	5%	17%	31%
S24D present in file but unsigned	1%	4%	3%		

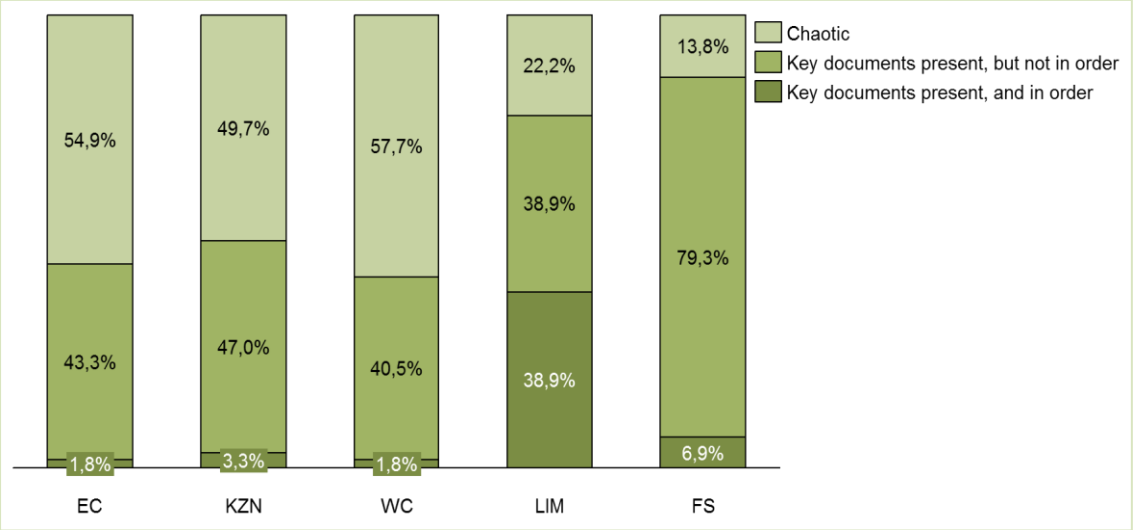
Source: Genesis Analytics, 2013

In addition to looking at the completeness of the files, the provincial research teams also gauged the condition and sequence of documents in the file. The outcome of this is described in Figure 7 below, illustrating the extent of the problem with no less than 50% of the files in three provinces being registered as 'chaotic' and, alarmingly, less than 3% in these same provinces having been found 'in order'. In the remaining two provinces (Limpopo and the Free State) only 40% and 7% of the files respectively were registered as being in order. This is concerning as the restitution function is founded on a systematic administrative legal process which, to have integrity, demands a complete and detailed record in respect of all aspects of that process.

Other issues in the files which reflect shortcomings in the restitution filing system include:

- The case names in the file registry frequently differ from those on the actual file;
- Inconsistencies in nomenclature, where seemingly identically named files are actually different communities and different claims with different KRN numbers;
- Inconsistencies in the spelling of projects across the different databases and registry;
- Mixing of documents between files; and,
- Random filing of documents in files, so there is no logic or sequence to the record, making it difficult to assess the veracity or completeness of the restitution process.

Figure 7: Description of the completeness and sequence of documents in the files



Source: Genesis Analytics, 2013

These findings were confirmed by the findings from an internal Operational Audit conducted in 2012/2013 which noted that there is room for improvement in all key controls within the Restitution Records Management processes. This further highlighted that good administrative practices in the restitution process is not only best practice, as this is a complex process needing reliable documentation, but is also a legal necessity. The poor state of the files compromises the legal basis of transfer and the historical process of restitution.

For the purposes of this evaluation, where possible, interviews were conducted with available POs as a means to fill the gaps in the case files.

4.2.2. Efficiency according to the key stages in the restitution process

4.2.2.1. Phase 1: Lodgment and registration

Lodgment of all claims was completed by 31 December 1998. According to Section 10(1) of the Restitution Act, the claim form should include a *"description of the land in question, the nature of the rights in land of which he, she, or such community was disposed and the nature of the right or equitable redress being claimed"*[25]. However, this has not always happened in practice resulting in delays and difficulties in the validation of the claim, and non-compliance with the Restitution Act. This is evidenced in the *Ndebele-Ndzundza Community Re: Farm Kafferskraal No 181JS*[26] claim which was presented to the LCC in December 2002. The LCC criticised the CRLR because the claim form only made provision for the description of the land claimed. Similarly, the CRLR came under criticism for not complying with Section 6(1)(b) of the Restitution Act which indicated that the CRLR must assist claimants in filling out the claim form. The claim forms are the basis of the restitution process - the efficiency and effectiveness with which the process can be undertaken subsequently depends crucially on the completeness of the claim form.

4.2.2.2. Phase 3: Determining the qualification of the claim (validation and research)

Key activities in this phase include the research of a claim to determine its validity, further research in terms of Rule 5, gazetting and claimant verification.

4.2.2.2.1. Validation and research

Provincial RMSO staff were asked to estimate the average time taken to complete the Rule 3 report[27] (validation report) and Rule 5[28] report (research report), depicted in Table 4 below. The time taken to complete the research was reported to be dependent on the complexity of the claim, the accessibility of data and whether the claim was urban or rural.

Table 4: Average time taken to complete a Rule 3 and Rule 5 report

	EC	KZN[29]	WC	LIM[30]	FS
Rule 3	12 months	6-12 months	12 months	2 months	3 months
Rule 5	10 months		5 months	1 month	6-8 months

Source: Genesis Analytics, 2013

As was evident in Table 3, the Rule 3 and Rule 5 reports are missing in a significant number (well over 50% in four of the five provinces; in some cases as high as 80%) of files. In some instances the missing reports are as a result of POs amalgamating these into one report in

[25] Restitution of Land Rights Act (Act 22 of 1994)
[26] http://www.saflii.org/za/cases/ZALCC/2012/7.html
[27] The RLCC conducts a so-called Rule 3 Report to accept the claim lodged for investigation with specific reference to Sections 11(2) and Section 2 of the Restitution Act as described in more detail in Rule 3 of the Rules regarding the procedures of the Commission in terms of the Restitution Act.
[28] On acceptance of the claim for investigation by the RLCC a so-called Rule 5 Report is drafted to further investigate the claim lodged with reference to the key items listed in Rule 5 of the Rules regarding the procedures of the Commission in terms of the Restitution Act
[29] In KwaZulu-Natal these reports were typically amalgamated into one.
[30] Since 2004, Limpopo has merged Rule 3 and Rule 5, however, research typically takes a total of 3 months, of which 2 months is spent on verification.

order to expedite the research process. This practice occurred in all the provinces, but was most prevalent in KwaZulu-Natal where 40% of the files had a clearly amalgamated Rule 3 and Rule 5 report. The amalgamation of these reports has been challenged in certain provinces as this goes against the procedures as set out in the Rules of the Commission.

The advantages of merging the Rule 3 and Rule 5 report were reported to be:

- The research process is done faster.

The disadvantages of merging the Rule 3 and Rule 5 report were reported to be[31]:

- A single report of lower quality and integrity, containing gaps in the research;
- Generic referencing to the dispossession that took place; and,
- Inconsistency with the application of the Rules of the Commission.

The following challenges to conducting Rule 3 verification and Rule 5 research were highlighted:

- Insufficient information on the claim form to determine if it is a *prima facia* valid claim, as per Rule 3;
- POs lack the legal skills needed to determine if the claim should be considered a *prima facia* valid claim, as per Rule 3;
- Insufficient external documentation and archival reference material. In these cases the POs have to depend on oral history and testimony;
- Difficulties in obtaining information from claimants, where there is existing documentation, claimants tend to take a long time submitting this
- Difficulties in accessing information from the Deeds, Surveyor General and other government offices. There are a number of issues here:
    - The POs do not have access to digital retrieval of documents from the Deeds Office website;
    - There is no special arrangement for CRLR staff to access information – they are required to stand in the queue like any other client;
    - There is no available database with all relevant proclamations in terms of the different Acts used for dispossession; requiring each PO to research this each time; and,
    - Tenancy claims are not easy to research if the Originally Dispossessed Individuals (ODIs) are deceased and no one can verify the details of the claimed land; requiring surveyor general and local government records which take time to retrieve;
- Claimants often provide false information in order to further their claim or deliberately exclude siblings from the claim;
- No clearly outlined method for how to go about doing the research; and,

[31] Some provinces felt that there were no disadvantages to this approach.

- The POs do not have the required skills to do the research adequately.

As noted above, one of the constraints to conducting the research phase is the difficulty in accessing necessary documentation from government departments, resulting from poor collaboration between departments. The converse of this is evidenced in the Bohlokong case study in the Free State. In this claim, the Dihlabeng Municipality was directly involved and timeously made all the documentation available to the CRLR staff. It was reported further by the CRLR staff responsible for the claim that the involvement of the municipality enabled the claim to be researched timeously and with relative ease.

Bundling claims for research purposes[32] was a common practice in the provinces, examples of this can be seen in the Brickfield, Durban North and Victoria Country case study in KwaZulu-Natal, and the Magi, Athlone case study in the Western Cape. This was done as a means to process claims faster. Where the claimed land is a coherent and contiguous property, the time taken to settle the claim can be reduced. Care needs to be taken, however, as this practice has resulted in complications when finalising the claim, whereby the bundling of claims in some instances has artificially conflated fundamentally distinct claims which undermines the legitimacy of the research and results in major dysfunction and conflict in the settlement and post-settlement phases.

Research is consistently noted as a weak area within the CRLR (see *Section 4.3.3*). Weak research results in a significant number of cases being referred to the LCC, at great cost in terms of delay and financial resources of all stakeholders in the process, by claimants and landowners who question the basis of the CRLR's decisions. This is illustrated in the Baphalane ba Ramokoka Community claim which was taken to the Constitutional Court[33]. In this case the Constitutional Court ordered the CRLR and the DRDLR to jointly pay the legal costs of the landowners because *"…far from assisting the parties and the Court with an impartial exposition of the matter's history, as was its duty, the Commission in partisan manner entered the area on the Community's side. Not only did it make common cause with the Community's case but it even gave succour to the misguided imputations of unprofessional non-disclosure against the landowners' lawyers"*[34].

Another example of weak research is captured in the Balasi case study in the Eastern Cape. In this case, the weakness in the research directly contributed to delays in the finalisation of the claim. There was a dispute over the boundary of the claim which was not clearly defined in the research, and the research failed to identify the fact that there was an overlapping claim between the Balasi and Tyutyu, resulting in disputes in the negotiations process. As a result of this, the settlement of the claim was delayed and it was decided to omit the overlapping component of the claim in the settlement agreement so as not to delay it; however, this has not yet been resolved and thus the claim is still not fully finalised.

In the evaluation of the files, the Genesis team reviewed the Rule 5 reports to determine the extent to which they were requested to be amended because of poor quality. In every province there were instances of the Rule 5 reports being amended, where typically 10-20% of

[32] Bundling of claims for research purposes occurs when a number of individual claims are researched together and processed together, but each individual claim remains separate when the claim is finalised. This is different from the practice of consolidating claims for settlement purposes where a number of claims are processed together and consolidated in the settlement. In this instance, claimants are artificially consolidated to form a legal entity; this generally results in community infighting and delays in the finalisation of the claim.

[33] *Baphalane ba Ramokoka Community v Mphela Family and Others In re: Mphela Family and Others v Haakdoornbult Boerdery CC and Others* (CCT 75/10) [2011] ZACC 15; 2011 (9) BCLR 891 (CC) (21 April 2011)).

[34] Ibid.

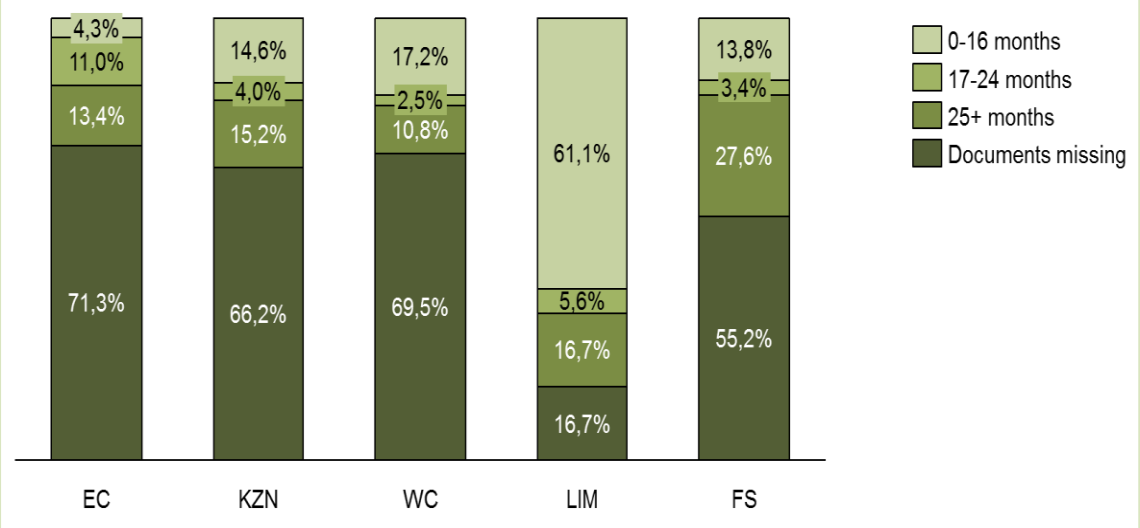
the reports had to be amended. This figure is most likely higher in reality owing to the poor state of the files, as a result of which such amendments were probably not documented.

4.2.2.2.2. Gazetting process

The time taken to gazette a claim is depicted in Figure 8 below[35]. It is important to note that four out of the five provinces noted that more than 55% of the files assessed did not have the respective documents in the claim files to calculate this timeframe. In some instances it was indicated that government gazette notices were kept in different files by the Legal Unit. Of the files that could be assessed, the majority of the claims took 0-24 months from the completion of the validation to the gazetting of the claim. . This was corroborated by the POs who stated that gazetting generally occurred in the first two years of processing the claim. POs also noted that claims that took more than two years to gazette were because of strong opposition to the claim lodged from landowners or in instances of overlapping claims, particularly on State land.

Inadequate research was noted as a key constraint to the gazetting process; resulting in incorrect gazetting. A negative impact of the gazetting process is that it can lead to disinterest in landowners to invest in the land or maintain the land after a claim has been gazetted, resulting in a loss of value of the claimed asset to the State and the claimants.

Figure 8: Time taken to gazette the claim



Source: Genesis Analytics, 2013

In the past, claims were often gazetted without consultation with the Information Management Unit (IMU)[36] or without the required information. Similarly, claims were grouped together and gazetted as one. As a result of these practices, claims had to be re-gazetted and amended at a significant cost to the CRLR. This is evidenced in the matter of *Bouvest 2173 CC and Others v Commission on Restitution of Land Rights and Others*[37]. Three of the claims were published as being lodged on behalf of the Motse community; however, the LCC found no indication in the records that the respondents were indeed a community. It was established that the CRLR had artificially created the name "Motse Community" as a means to merging a

[35] To 'gazette a claim' refers to the publication of a notice of the claim in the Government Gazette as required in terms of Section 11(1)(c) of the Restitution Act.
[36] Consultation with the IMU would confirm if the claim had already been gazetted or settled.
[37] *Bouvest 2173 CC and Others v Commission on Restitution of Land Rights and Others* (LCC68/2006) [2007] ZALCC 7 (7 May 2007)- http://www.saflii.org/za/cases/ZALCC/2007/7.htm.

number of land restitution claims into a single claim. The CRLR was subsequently ordered to pay the applicant's costs. A similar case is the *Crafcor Farming (Pty) Ltd v Regional Land Claims Commissioner, Kwazulu-Natal and Others*[38] matter; whereby the claim was grouped into an artificial community by the CRLR. The CRLR was subsequently ordered to amend the gazette and the pay the costs order. This illustrates that weaknesses in gazetting results in significant costs to the CRLR and delays the restitution process.

4.2.2.2.3. Claimant verification

Another core component of this stage involves claimant verification, which entails confirming each of the claimants and compiling the claimant list. This is faced with the following challenges:

- Inadequate skills and experience of POs: verification involves a wide range of skills such as interviewing and facilitating meetings with claimants and conducting research. This combination of skill sets was reportedly difficult to find. POs also reported not having the skills to test the claimant list against aerial photographs, which results in them accepting the claim on the basis of the community resolution.
- Difficulties tracing claimants: this is especially in cases where forced removals relocated claimants to a vast number of settlement areas. Verification must then be done in a number of different locations, which delays the process.
- Unavailable documentation: claimants often do not have copies of their IDs, marriage certificates and death certificates.
- Family disputes and intricate claimant relationships: claimant verification is complicated further when there are several wives or 'illegitimate' or 'adopted' children linked to the claimant.
- Fraudulent claimants: many opportunistic individuals attempt to use the restitution process as a means to benefit from claims from which they have no right. This is particularly the case in large, community claims.

A good practice for mitigating against fraudulent claimants – noted above as a challenge to conducting the verification process- is highlighted in the Sakkieskamp case study in the Western Cape. In this case, many fraudulent individuals attempted to use the claim as an opportunity to get funds; however, the continuous and in-depth involvement of the community elders prevented this from happening.

Another good practice in the verification of claimants is evidenced in the East Bank case study in the Eastern Cape. The 2002 settlement agreement deliberately excluded a number of claimants and the majority of the churches involved in the claim. The reason for the exclusion of the households was due to the fact that the verification was not complete at the time. The exclusion of the churches was due to the fact that valuation and settlement options had not been completed with these bodies. By phasing the claim at the verification stage, the 2002 settlement agreement was reached relatively quickly as the CRLR was able to make progress without being delayed by those who still needed to be verified. The two outstanding components were then settled as separate processes.

[38] *Crafcor Farming (Pty) Ltd v Regional Land Claims Commissioner, Kwazulu-Natal and Others* (LCC46/2007) [2009] ZALCC 10 (4 September 2009)-http://www.saflii.org/za/cases/ZALCC/2009/10.html.

Claimant verification is noted as being one of most challenging activities in the restitution process. The Brickfield, Durban North and Victoria Country case study in KwaZulu- Natal is an example of weak claimant verification. The research in this claim was challenged by senior officials for being insufficient for informed decision making. In this example, 2,802 claims were bundled together, presenting administrative and logistical challenges in correctly identifying claimants. The verification list initially lacked ID numbers for claimants and for those ID numbers that were recorded, there were substantial differences between those listed in the Section 42D list and those in the gazette notices. The Genesis team noted that although there were extensive lists of claimants and their beneficiaries, as well as confirmations of their identities and descriptions of the properties lost; there was no evidence on the file of how these claimants were identified in the first case, and little evidence proving that they were indeed the previous land occupants.

The file research in Limpopo indicated that many of the verification processes were incomplete at the time of submitting the Section 42D report and that final verification processes were undertaken post-settlement, resulting in significant post-settlement delays.

According to the Kranspoort Judgement it is not necessary for the CRLR to conduct claimant verification in community claims, as indicated by the judgment below.

"*The Regional Land Claims Commissioner raised the question whether it is necessary to specify a list of individual claimants and he obtained legal opinion thereon. The opinion correctly points out that if the claim is by a community, the land will be transferred to the community (to be held in a manner as the court order may direct), and a list of members of the community will not be necessary. On the other hand, if the claim is made by individuals, a list of the individual claimants must be submitted*."[39]

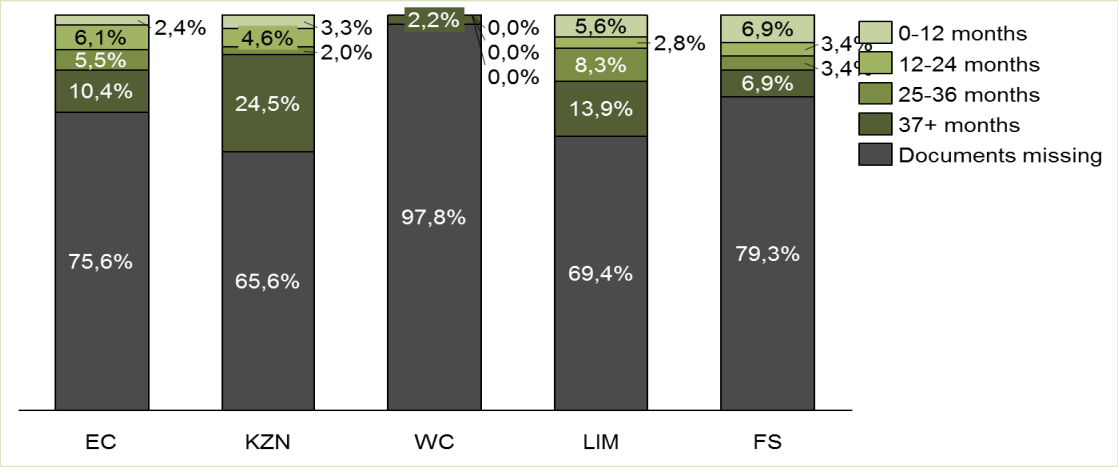
Despite this, the finalisation of a community claim is reported to be inherently difficult if this process is not undertaken by the CRLR. An example of this is illustrated in the Mokotopong CPA case study in Limpopo where the lack of a signed verification list led to serious accusations by the existing leadership of the CPA against the former CPA Committee and the PO. The interim committee has alleged that the PO provided the former CPA Committee with blank acceptance forms at a later stage and these were filled in by non-claimants who then pledged support for the CPA Committee. Thus the interim committee is now undertaking claimant re-verification independently.

4.2.2.3. Phase 4: Negotiations

Figure 9 indicates the time to take to complete negotiations and illustrates the extent to which missing documentation inhibited a proper assessment of the efficacy of the negotiations process. Of the files that could be assessed this most often took more than 3 years to complete. This phase includes a range of activities and processes focusing on both the claimants and the current landowner(s) as well as any other interested parties. Key activities in this phase include: the options workshop, determining the so-called monetary value of the claim, and negotiations with claimants and landowners.

[39] Kranspoort Community Re: Farm Kranspoort 48 LS (LCC26/98) [1999] ZALCC 67 (10 December 1999).

Figure 9: Time taken to complete negotiations



Source: Genesis Analytics, 2013

4.2.2.3.1. Options workshop

The options workshop is the most important activity for claimants in the restitution process as this is the point where they decide which form of compensation they want to pursue. The correlation between the option chosen by the claimants in the options workshop and the final option chosen is outlined in Table 5 below. This illustrates that, where the relevant documents are present, the final settlement option chosen does not differ substantively from what was chosen after the options workshop. However, the veracity of this finding is undermined by the extent of the relevant documentation missing from the files. The changing of options prolongs the process, resulting in additional resource needs and additional cost implications. The POs were generally clear that all settlement options had to be presented and that the final decision should be made by the claimants independently.

Table 5: Correlation between option chosen at the options workshop and that chosen in the final settlement

	EC	KZN	WC	LIM	FS
Same option selected	44%	47%	47%	81%	75.9%
Option changed	9%	11%	3%	0%	17.2%
No option workshop or relevant documents missing	48%	43%	51%	19%	6.9%

Source: Genesis Analytics, 2013

The following challenges to conducting the options workshop were listed by POs:

- Claimants do not fully understand the restitution process and the options that are presented;
- There are frequently differing views among the claimants, whereby the PO must facilitate these varying opinions;
- POs need to have the necessary knowledge and experience to present the viable options to the claimants, where POs do not have the necessary expertise of the land use under claim they can present short-sighted options;

- There is a lack of policy guidance on the different types of compensation that can be presented, particularly for development options. In line with this, there is no policy guidance on how to manage claimants whose options change through the process;
- The PO must take into account what option is most suitable for the claimants when presenting the options; as the claimants are not a homogeneous entity, this can be difficult to ascertain;
- The PO is unable to offer assurance about post-settlement support particularly as this is no longer housed in the CRLR; and,
- There are often disruptions in the workshop as individuals pursue their own agenda, after which it is difficult to restore order.

The POs identified the following as the best methods for conducting the options workshop:

- Ensuring from the outset that the claimants understand the restitution process;
- Ensuring that as many of the relevant claimants are present at the workshops from the outset;
- Rather than facilitating a once-off workshop, there should be numerous engagements that allow for a thorough understanding of the options presented; and,
- Owing to the differences in settlement options which are preferred, the Eastern Cape suggested that mixed option agreements should be better received by the CRLR as a settlement choice.

The Wesselsbron case study in the Free State is an example of an innovative approach to settlement options, resulting in faster agreement with claimants. In this instance, a variety of different options were selected by the various claimants, with some selecting financial compensation, some selecting a housing development award, and some selecting a combination of these two awards. This enabled each claimant to receive the award most appropriate for them and thus resulted in reducing the time taken in the negotiations stage.

Two provinces indicated that there have been time periods where POs were instructed to promote one type of compensation over the others. Concerns were expressed that this is an unfair practice to the claimants and can result in conflict between the CRLR and the claimants. The Mamashiana Communal Property Association (CPA) case study in Limpopo is an example where directives were given to offer financial compensation to expedite the process, but the claimant community was resolute on land restoration.

A similar example of an innovation approach to settlement options is evidenced in the Ithala Game Reserve case study in KwaZulu-Natal. In this instance occupation of the game reserve could not be transferred. Instead, claimants were offered, and opted for, restoration of the title deed, without the physical occupation of the land, plus a financial award.

4.2.2.3.2. Negotiations with landowners

A core component of the negotiations with landowners is the valuation of the land. Historically, this has been an area exposed to fraudulent practice. In order to overcome this, valuations are now assessed and approved by the national Quality Assurance (QA) Unit before being sent to

the RLCC for approval. Only once the RLCC has signed off the valuation, can engagements with the landowner(s) on the acquisition of the land commence.

In many cases, the time taken between the initial valuation and the signing of the sales agreement is so long that landowners request a new valuation. This delays the process further and results in perpetual rounds of negotiations.

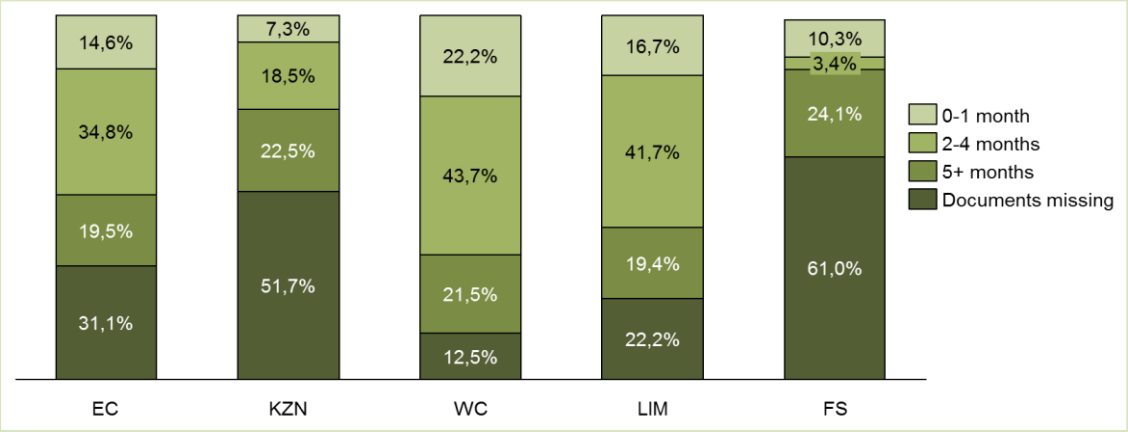
The Dwesa-Cwebe case study in the Eastern Cape is an example of a highly complex negotiations process. In this instance, the main stakeholders in the negotiations, besides the claimants (and their representative/support organisations) and the Commission were the Eastern Cape Department of Environmental Affairs and Tourism, the Department of Water Affairs and Forestry, the Department of Land Affairs, the Eastern Cape Development Corporation and the owners of the cottages on the claimed property. In addition other interested and affected parties played a role in negotiation meetings and in lobbying for specific outcomes. These groups included the Wild Coast Spatial Development Initiative and various environmental organisations. As a result of the number of stakeholders; and the varying positions of each government department, resulting from them following their functional mandate; the negotiations process was lengthy and inefficient. After two years of intensive consultations and negotiations, no agreement was reached. For this reason the claim was referred to the LCC. The LCC instructed that a process of mediation be undertaken, taking a total of three years until the settlement agreement was reached. By referring the claim to the LCC all stakeholders were forced to take the claim and the negotiation process more seriously. Government departments who were initially not supportive of the claim or the position of land restoration were forced to address the key issue of how a settlement could be achieved within this framework of land restoration. The practice of referring a claim to the LCC can be considered best practice where there are multiple stakeholders with long term interests or mandates with respect to the affected land, and where the claimant community is looking for land restoration.

Another good practice with the negotiations process is evidenced in the Baphalaborwa Ba Ga Mashishimale CPA case study. In this case the claim was separated into a four phase settlement approach. A number of landowners disputed the validity of the claim and the subsequent valuations; resulting in what would have been a lengthy negotiations process. As a result, the CRLR separated the claims such that claims where there was cooperation and agreement with the land owners could be settled first without being delayed by the claims where there was no agreement.

4.2.2.4. Phase 5: Settlement

As illustrated in Figure 10 below, from the completion of the Section 42D report to when this is signed off by the Minister of DRDLR typically takes between two and four months. In a significant number of cases the route form was missing from the file, or was not signed In 2011 the CRLR was rationalised to create better synergy with, and clearer lines of accountability to, the DRDLR. As a result of this, the Section 42D approval route form is now subject to multiple check points (the detail of this is outlined in *Section 4.2.3.4*). This results in an increased amount of time taken to get ministerial sign off. Although this process now takes longer, it is reported to result in better quality reports submitted and greater consistency in the Section 42Ds that are signed off.

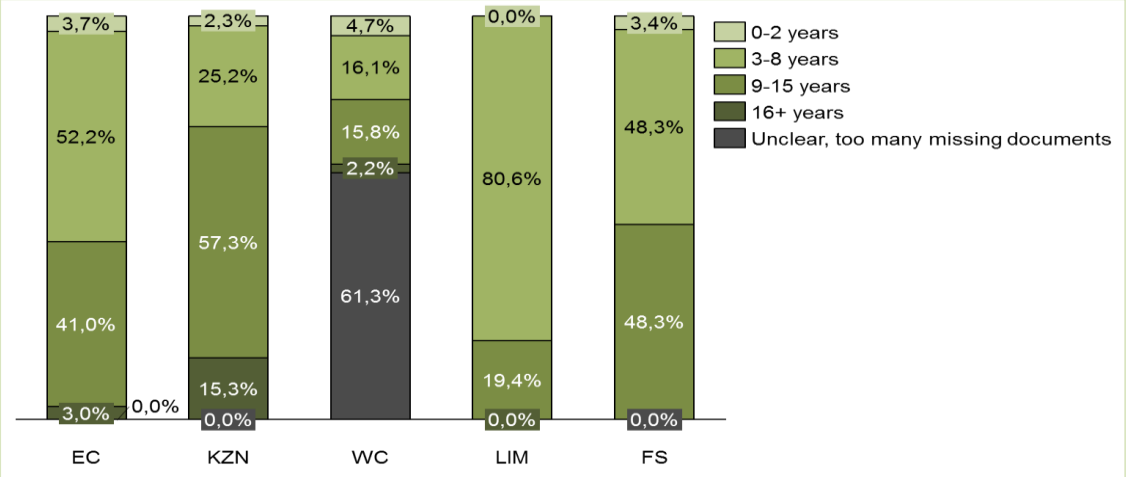
Figure 10: Time taken from completion of the Section 42D to sign off from the Minister



Source: Genesis Analytics, 2013

The total time from lodging a claim to when it is settled is depicted in Figure 11 below. This illustrates that throughout the five provinces, claims typically take between 3 and 15 years to settle[40]. Two provinces noted that these lengthy timeframes are as a result of long gaps between the lodgment of a claim and the subsequent validation in terms of Rule 3 and research in terms of Rule 5. All claims were lodged by 31 December 1998, after which many lay dormant before they were allocated to a PO; illustrating the limited capacity of the CRLR – both in terms of human resource capacity as well as operational planning and implementation to deal with the lodged claims. An example of this is the Magi, Athlone case study in the Western Cape, where the time taken from acknowledging the receipt of the claim to the validation letter being sent was seven years[41].

Figure 11: Average time taken to settle a claim from the time it was lodged



Source: Genesis Analytics, 2013

[40] In 61% of the files the Western Cape could not work this out as a result of insufficient documentation. Summing the average time taken to complete each of the key phases in the Western Cape gives an indicative 5.8 years to settle a claim.

[41] Similar instances of delays in this communication can be seen the matter of *Bezuidenhout and Others v Commission on Restitution of Land Rights and Others (LCC120/2006) [2008] ZALCC 13 (22 April 2008)*).

4.2.2.5. Phase 6: Finalisation of settlement

Once a claim is *settled*, it still needs to be *finalised*[42]. According to national level interviews, a simple financial claim typically takes 6-8 weeks to finalise once settled; whereas a simple land claim typically takes three months. A complex land claim can take much longer to finalise as there are often problems with the registration of the legal entity that is to take transfer of the land, community infighting and claimant disputes, and landowners refusing to sign the sales agreement due to the lapse in time between the phases.

The Ithala Game Reserve case study in KwaZulu-Natal is an example of finalisation being delayed for a significant period of time. The claim on Ithala Game Reserve was settled on 10 July 2006. However, this has still not been finalised. This claim is for the restoration of title, without physical occupation of the land, plus a financial award. The delay in finalisation is reported to be because the finalisation is dependent on developing a business plan via RECAP outlining the distribution of economic gains between Ezemvelo KZN Wildlife and the claimant community.

4.2.2.5.1. Commitment Register

Ernst and Young undertook an assessment of the Commitment Register in 2012, highlighting the blockages to clearing these commitments and appropriate recommendations. The report found the value of the Commitment Register as at March 2012 to be R4.79 billion, 72% of which is for grant payments[43]. Most of the outstanding commitments are older than three years, which is particularly concerning as the older projects are the most challenging to finalise. Provincial RMSO staff are responsible for clearing the Commitment Register. However it does not form part of their performance targets, and thus can fall between the cracks, particularly as tracing claimants is a time consuming task.

Other challenges to clearing the Commitment Register include availability of funding[44], landowners wanting to renegotiate the land valuation due to the lapse in time between the phases of the restitution process, landowners dying, communities needing to establish a legal entity to take transfer of the land and community infighting. If the landowner signs the agreement but the land cannot be transferred to the claimant community for such reasons, it is reported that the land is transferred to the State, to be later transferred to the claimant community. This results in duplicate transfer costs and unnecessarily arduous requirements of the State, as the State is required to enter into interim lease agreements to ensure the productive use of the land. Additionally, the Commitment Register is captured on a Microsoft Excel spreadsheet, which is an insufficient system for such a complex and important component of the restitution process.

4.2.2.5.2. Suspense account

Financial payments are transferred via an Electronic Benefit Transfer (EBT), or ABSA vouchers. The vouchers are valid for four weeks during which the claimants need to collect their money from the identified ABSA bank. If the funds are not collected, this amount goes onto the Suspense Account. The main reason for non-collection is the incorrect/inadequate verification of claimants- interestingly, the suspense account peaked in the years during which

[42] When the Section 42D is signed the claim is considered to be settled and is put on the Commitment Register, however, it is only finalised once the transfer of the land, financial payment or other redress has taken place
[43] Ernst and Young (2012). "Final Report on Restitution Technical Support".
[44] In order to overcome the challenge of funding, the CRLR has set aside 25% of the annual budget for this purpose.

the CRLR was set to close. According to national interviews, clearing the Suspense Account is faced with similar challenges as clearing the Commitment Register: lack of responsibility for this task, insufficient systems, difficulties in tracing of claimants and claimants dying.

Historically, there have been select instances of fraudulent claimants being paid out. It was reported that the finance department used to assume that the claimants had been correctly verified by the POs, which presupposed that the claimant verification process had been done thoroughly and that the claimants themselves had not been involved in perpetrating fraud. In order to overcome this, a claim now passes through multiple check points before it is submitted to the Minister (see *Section 4.2.3.4)*. Similarly, the National CRLR office is encouraging the provinces to separate staff who work on the pre-settlement (research; verification, S42D agreement) and the settlement (payments) stages of projects. The latter group should have no interaction with the claimants but work through the POs. A systematic arrangement for this has yet to be defined and applied in terms of the formal restitution procedure.

4.2.2.5.3. Establishment of the legal entity

As mentioned above, the establishment of the legal entity that is to take transfer of the land can significantly delay the finalisation of the claim. While not in the mandate of the CRLR, it has become the responsibility of the CRLR over time due to the delays resulting from the lack of capacity within the DRDLR to conduct this activity. The Eastern Cape noted that this can only take place after the claim has been approved by the Minister; however, this leaves very little time to capacitate the entity before the handover of the land and withdrawal of pre-settlement support from the CRLR staff. As a remedy to this, the Eastern Cape POs suggested that this process should take place once the community has formalised its settlement option during Phase 3. An example of this approach can be seen in the Mamashiana case study in Limpopo. In this instance, the CPA was registered prior to the submission of the Section 42D report to the Minister. As a result, when the claim was settled, the finalisation of the claim was expedited.

4.2.2.5.4. Claims consolidated for settlement purposes

In *Section 4.2.2.2* the consequences of bundling claims for research purposes was outlined. When done properly, this can result in a more expeditious process for processing claims. There are also examples of claims that have been consolidated for settlement purposes. These claims are reported to experience problems post-settlement such as claimant conflict. This is especially the case when 'communities' are artificially grouped together. An example of this is the Mokotopong Case Study in Limpopo. It was indicated to the evaluation team that there is now a resolution that needs to be signed early in the settlement process that confirms that claimants are willing to be consolidated.

4.2.3. Efficiency according to institutional findings

4.2.3.1. Communication

Evidence of communication with claimants and landowners (where relevant) in the claim file is illustrated in Table 6 below[45], illustrating that generally once the claim is lodged 60-70% of

[45] The existence of communication on file is used as a proxy for if the communication took place. There was no way to determine if the lack of a letter was because the letter was not sent, or if this is because the letter has subsequently been lost.

claimants are notified that the claim has been received. This however is substantively different in the Eastern Cape, where only 37% of claimants received this notification. There is significant variation across the provinces in terms of alerting claimants to the compliance of their claim. In the Eastern Cape, Free State and Limpopo approximately 30% of the files had evidence of this notification; in KwaZulu-Natal and Western Cape this was true for approximately 60% of the files. The discrepancies in communications with claimants is notable as many POs identified "walk-ins"[46] as one of the key factors that disrupt their work in settling claims. POs indicated that there were challenges with contacting original claimants as some had passed away and in other instances contact details were incorrect or were not provided in the first case. There are also instances, specifically in the Eastern Cape, where claimants are contacted telephonically. These conversations are not minuted or documented in any way. This is problematic from a legal point of view, which is often compounded when the PO on the claim changes, as all the institutional information is lost.

The lack of communication with claimants was repeated noted as a concern in the case studies. The Bohlokong case study in the Free State is one such example. In this case, the communication with the claimant was so limited that the claimant thought that her claim had been disqualified.

Table 6: Evidence of communication on file with claimants and landowners

	EC	KZN	WC	LIM	FS
Evidence of a letter sent to the claimant acknowledging receipt of the claim					
Yes	37%	67%	62%	72%	34%
No	63%	33%	38%	28%	66%
Evidence of a letter sent to the claimant alerting them to the fact that the claim form submitted has been found to be compliant					
Yes	27%	58%	67%	28%	34%
No	72%	42%	33%	72%	66%
Evidence of the landowner being informed of the claim					
Yes	18%	60%	15%	58%	34%
No	19%	36%	65%	39%	66%
N/A	63%	3%	21%	3%	0%

Source: Genesis Analytics, 2013

Other than the Eastern Cape and Western Cape where the majority of relevant files do not have evidence of communication with landowners on file; the other provinces, for the most part, do have evidence of this on file[47]. According to POs in Limpopo, at the onset of the restitution landowners asked their attorneys to monitor the claims and make them aware of any claims on their land, and such the CRLR communicated, for the most part, with these attorneys rather than the landowners. This may explain the lack of documentation with landowners in the other provinces.

A formal letter is normally used to inform the landowners that the claim was settled with alternative compensation or that the claim was withdrawn. This however is not always the

[46] Where claimants arrive unannounced at the CRLR for updates on the progress of their claim.
[47] Eastern Cape and Western Cape have a significant number of claims settled through financial compensation. Thus the lack of communication with the land owners altering them that an alternative method of compensation was selected is worrisome, potentially resulting in disrupted land-use and land productivity. Other than this instance, there is no significant difference between the provinces with an urban bias and those with a rural bias.

case; in KwaZulu-Natal, the POs and Project Coordinators noted that communication with landowners was sometimes a gap in their work as they focus mainly on claimants. Evidence of this is seen in Limpopo, where there are only three of the files reviewed have evidence of correspondence with landowners that financial compensation was chosen. The importance of the communication with landowners is illustrated in the matter of *Allie NO and Another versus Department of Land Affairs and Others*[48] where the lack of communication between the CRLR and the landowners resulted in the landowners contravening the Restitution Act when they tried to sell the land under claim.

Another aspect of communication is that between the national and provincial offices. The transfer of hardcopy files to national is normally done by courier service, which has cost implications and gives rise to the risk of misplacement and loss. POs and Project Coordinators noted that although they know when a document arrives at national, from there onwards they cannot track it and communication from national about the progress of the claim is limited.

4.2.3.2. Outsourcing

Activities that historically have been outsourced include research (Rule 5 reports), land valuations, land surveys, business planning services, tracing agents and senior legal councilors. The land valuation is currently the most significant service which is outsourced, typically taking between 4 and 12 weeks to complete and costing between R10,000 and R500,000. There is currently a process underway to establish the "Office of the Valuer General" which will be housed in the DRDLR and be responsible for land valuations.

Senior provincial RMSO staff noted that the advantage of outsourcing is that the service is done faster and was more easily managed. There are however a number of important constraints and negative consequences to outsourcing. This includes: the arduous procurement channels that need to be navigated, which results in the appointment of a service provider taking 2-3 weeks[49], as it is done through the provincial DRDLR Shared Service Center; insufficiently skilled consultants, and poor monitoring of the outsourcing, resulting in processing delays and poor quality work. For outsourcing to work, a clearly defined and closely managed contracting process needs to be defined and adhered to, with strict quality control relating to all aspects of the contracting and delivery process. This seems not to have been in place.

4.2.3.3. Electronic databases and file registry

To date the CRLR has implemented a range of databases. The CRLR originally used a database called Magic whereafter the LandBase database was introduced in 2000. In 2006, a new system called UmhlabaWethu was developed and rolled out to the various provincial offices. Both LandBase and UmhlabaWethu are DRDLR systems with a specific restitution module. The various RMSOs have been directed to migrate to UmhlabaWethu, however, this migration is still taking place. Only one RMSO Chief Director noted that they had successfully migrated to UmhlabaWethu. Many of the provinces are still using both systems as LandBase is limited in what it can do – for example it cannot produce reports for management purposes-while UmhlabaWethu is often inaccessible. Two of the four RMSO Chief Directors interviewed

[48] *Allie NO and Another v Department of Land Affairs and Others* (LCC13/00) [2002] ZALCC 50 (1 October 2002) http://www.saflii.org/za/cases/ZALCC/2002/50.pdf
[49] This is based on the KwaZulu-Natal finding.

noted that they only use UmhlabaWethu as the National CRLR directed them to, and not because they believe this is a better system.

One of the reasons LandBase was phased out was because of its inability to report on a project basis. This is illustrated in the District 6 claim, where there were approximately 1,500 claim forms filed and recorded on LandBase. In practice District 6 was managed as a project; but because LandBase does not register projects, only one of the 1,500 claims has data recorded; where this data in fact relates to each of the claims submitted. UmhlabaWethu was intended to overcome these challenges, however, senior management in the provinces noted that both of these systems are insufficient as they are not management tools. These systems are consequently only used by the provinces to record and report on data required by national office, for example the total number of ha restored to claimants.

In additional to these two databases, the DRDLR has put into place the EDMS, which is an electronic file storage system – storing scanned copies of the claim file electronically. EDMS was implemented on the back of the CRLR requesting the Special Investigating Unit (SIU) to investigate fraudulent cases based on their experience in other branches of the DRDLR where files "went missing" to hide fraudulent practice. Files were scanned onto this system by the National Rural Youth Service Corps (NARYSEC) [50] at a cost of R23 million. The POs highlighted many challenges in working with EDMS:

- Claims settled post 2012 are not yet on EDMS;
- EDMS is a read-only file and thus information cannot be updated or improved;
- EDMS is a file repository and is not a file management system;
- EDMS is not consistent with the hardcopy files, where many documents in the hardcopy file have not been scanned onto EDMS. Similarly, these files are not linked with the file and project reference numbers;
- EDMS is often inaccessible and can take a long time to download as files are large; and,
- The actual scanning was poorly done - the pages are mis-filed; they are in no sequential order; there are un-associated documents (such as staff expenses) filed in the digital files; pages have been scanned upside down and there are often misspellings in the claim names, resulting in multiple locations for a single file - for example, a *District 6* claim should be linked to a *District Six* claim but will not be as a result of the misspelling.

The scanning process is believed to be one of the reasons for the poor state of the hard copy files, whereby NARYSEC did not re-file the documents correctly once they had scanned the claim. The DRDLR is busy with organising phase two of the scanning process to ensure claims settled post 2012 are included on the system and that the functionality of the system is improved. The lessons from phase one of the process need to be taken carefully into account in the appointment of the service provider and in putting in place appropriate oversight and quality assurance arrangements, both with regard to the physical and electronic files.

[50] NARYSEC, housed in the DRDLR, was established in 2011 with the aim of recruiting and developing rural youth to perform community service in their own communities.

As discussed in *Section 4.2.2.5,* Microsoft Excel is used for both the Suspense Account and the Commitment Register. Similarly, a number of RMSO Chief Directors noted that they use Microsoft Excel for their management purposes. The use of Microsoft Excel is concerning as it is susceptible to human error, information is easily corrupted, updates are not done on a real-time basis and this is not a shared platform

A new project management system, *Enterprise Portfolio Management Office* (EPMO), is in the process of being designed according to each Branch's needs; such that what is developed for the Restitution Programme will differ to that of Tenure Reform. This system will be a project management tool, run on project management principles[51]. EPMO is designed to record key milestones identified in the processing of a restitution project including alerting relevant staff when a claim is about to reach a milestone and what deliverables/outputs are to be finalised for consideration and approval before the project moves to the next stage.

The necessity for an adequate project information and management tool is highlighted in the Ebrahim Mall case study. This was an easy, individual, urban claim; however, the research of this claim took eight years. Interviews suggest that the reason for this eight year delay is because prioritisation was given to settling community claims. A suitably designed project management tool would have flagged this claim, indicating the unwarranted amount of time taken for basic research.

The research found that the provincial RMSO file registries do not comply with archival regulations, highlighting the following issues with the file registries:

- Files are often unfiled, lying in piles in the office;
- There is no access control to the Registry; and,
- The offices have not been adequately equipped to meet archival regulations.

The DRDLR provincial SSC is now responsible for the file registry. This change has been problematic as the files in some provinces are now stored off-site. In practice, files and documentation for claims are located haphazardly in a number of different places as many of the POs keep their project files in their offices. Interestingly, half of the RMSO Chief Directors interviewed believed that their registries were in order and fully functional, which is significantly at odds with the findings of the research.

KwaZulu-Natal's Legal Unit raised concern around the Registry not complying with archival regulations, and problems occurring in court whereby cases are thrown out by the courts as a result of these technicalities. Our assessment suggests that this is symptomatic of the *status quo* in all RMSO offices.

4.2.3.4. Human resource contingent

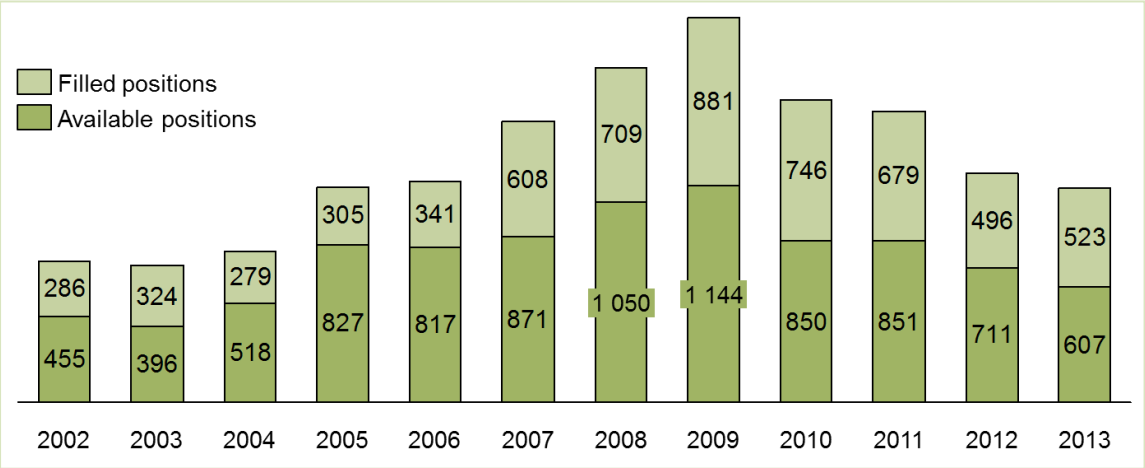
The latest version of the staff establishment (Version 2.9) was implemented in 2011/12 when the CRLR structure was rationalised. As a result of this restructuring all the Human Resources, Supply Chain Management, Information Management and Financial Management posts were removed from the provincial CRLR structures to the provincial DRDLR SSCs. The RMSOs, however, still needed to fulfill these functions despite the fact that the capacity to do so had been removed. At the national office, a number of posts were removed, staff levels changed

[51] These principles are the Prince 2 project management principles.

and divisions were moved to the DRDLR. As a means to overcoming these shortcomings, the Rapid Response Unit was implemented, with varying success, to address some of the concerns expressed. Version 2.9 is now being amended.

Each RMSO noted concerns about the number of the staff in their offices. The number of vacancies in the CRLR is illustrated in Figure 12. Although the data supplied does not indicate the level of the post, the location of the post, or covering the full period under review, this does illustrate that there have consistently been more than 250 posts vacant every year, where in some years this is as high as 700 or 800. This is confirmed in Table 7 below, where staff capacity issues by location were captured through interviews, highlighting specific staff constraints. Together with the high rates of staff turnover that were reported, this translates into a weak institutional capacity within the CRLR to manage the complexities of the restitution process effectively.

Figure 12: Number of staff vacancies in the CRLR, as at 31 March from 2002-2013



Source: Genesis Analytics, 2013

Table 7: Staff capacity issues by provincial/national staff

EC	• The consensus from management indicated that there was an insufficient number of staff in the Eastern Cape office. • Management noted that the Eastern Cape has quality staff, however, a significant number of them cannot be promoted as they do not have post-matric qualifications; thus limiting capacity at middle management.
KZN	• KwaZulu-Natal was clear that the staff establishment was not filled due to budget constraints and that there were posts omitted in error on Version 2.9 of the staff establishment. The Legal Unit in particular felt that it was understaffed, the motivation for this being that Gauteng is said to have 10 legal officers and five cases in court; whereas KwaZulu-Natal has 100 cases in court and only three legal officers. As this province has such a vast number and type of claims, it was suggested that two instead of the one Operations Director would be more appropriate. • Senior managers were of the opinion that only 50% of the operations staff are adequately skilled to perform their tasks, even though they might meet the minimum qualification requirement. • Expertise in research was highlighted as a particular concern.

WC	• The Western Cape highlighted the lack of staff as a constraint to settling claims. According to the Operational Manager, the Western Cape office has 20 vacant posts, which cannot be filled because of a lack of budget. These posts are for eight POs, three Restitution Advisors, one Project coordinator, five Senior Administration Clerks, one Senior Legal Administration, one Director for District Six, and one Secretary for District Six. • Senior managers highlighted the difficulty in finding adequately skilled POs as a result of the combination of skills that is required of them. POs need to be good researchers, able to manage conflict within communities, have a good understanding of the land use of the land which is under claim, and have solid project management skills.
LIM	• Limpopo highlighted the need to increase the staff compliment for post-settlement support. The DRDLRs staff in REID and RID do not adequately address restitution projects, as such Limpopo's CRLR staff are addressing this over and above their settlement commitments.
FS	• Free State management highlighted the need for more staff. In addition, they noted that Version 2.9 has allocation for staff, however, there is insufficient funding for these employees.
National	• National interviews highlighted the high staff turnover as a cause for concern as it results in limited institutional knowledge of the restitution process. • A number of interviewees noted that the RLCC lacked support as a result of the centralisation of this function. • Currently there are posts in the Communication Unit that are vacant, as such client liaison and parliamentary and ministerial inquiries are poorly managed. • Currently the post Director Management is vacant and critical for addressing various recommendations flowing from recent reports conducted by Ernst & Young on the Commitment Register and Suspense Account as well as the file registry and associated problems identified. • National level interviews raised concern around the number vacant posts for legal staff in the provinces and the unclear line of authority for legal staff. Legal staff, although adequately qualified, lack traditional legal experience. • National raised a similar concern to that of the Eastern Cape, whereby experienced, deserving personnel cannot be promoted as they do not have a post-matric qualification, which limits capacity in middle management.

Source: Genesis Analytics, 2013

The Ebenaeser case study in the Western Cape is indicative of the lack of capacity within the CRLR to deal with complicated cases where POs are required to be knowledgeable about the land use. Both the claimants and the landowners were frustrated by the lack of capacity in the CRLR to handle the agricultural issues, the legal issues and the general management of the process. In addition to the need for higher skilled personnel to handle this multifaceted claim, it was also noted that there was a need for an increased number of staff on the claim.

The concerns raised in the interviews around high staff turnover are confirmed in a number of the case studies, including the Makwane case study in the Free State. Claimants noted that high staff turnover affected the consistency of the settlement process and delayed the process.

Each time the PO changed the claimants had to re-orient the new PO and had to re-submit documentation as there appeared to be no formal handover process to the new PO.

Interviewees noted that there was no induction process for new employees, although this is now said to be a key objective of the DRDLR. Training on the restitution policies is provided as necessary by the national Policy Unit, however, this is not systematic or comprehensive according to feedback received from the various provinces. Any other training provided is based on individuals' requests in their Performance Management Agreements.

In terms of staff management, project staff are monitored against their performance with regard to settling claims against their allocated targets. However, the quality of meeting these targets against set standards is not monitored and the complexities of the individual projects are not taken into account. This translates into a perverse incentive for staff to maximize the achievement of quantitative targets at the expense of quality, which is the key long-term indicator of success.

Research capacity was consistently raised by national staff and RMSO staff as an area of weakness.

4.2.3.5. Operational documentation, manuals and management systems

The Genesis team was given all the operational manuals and policy frameworks that guide the implementation of the restitution process. These documents are outdated, filed in no coherent order, do not reference other policies that should be read in conjunction with the manual, are not user-friendly and not easily accessible on the intranet of the DRDLR. In addition to this, there are no Standard Operating Procedures (SOPs) and thus the policies are treated as "guidelines." As the CRLR finalises the remaining, more complex claims and prepares for the re-opening of claim lodgment for the next phase of restitution, such documents comprehensively prepared, regularly updated and systematically applied are an essential pre-requisite for any semblance of effective and efficient restitution activity going forward.

With regards to specific policies that are needed, the RMSO Chief Directors highlighted the need for clarity on what constitutes non-restorable land and at what point equitable redress is finalised. National interviews additionally highlighted the need for improved policies around verification and valuations and how these processes should be optimally conducted and clarity on where post-settlement support should enter the process.

The SSO is an example of good practice with regards to the CRLR's policies. This enabled the CRLR to dispense with complicated and expensive research around the historical value of the claim; thus expediting the settlement process. This is illustrated in the Magi, Athlone case study in the Western Cape, and the Brickfield, Durban North and Victoria County case study in KwaZulu-Natal.

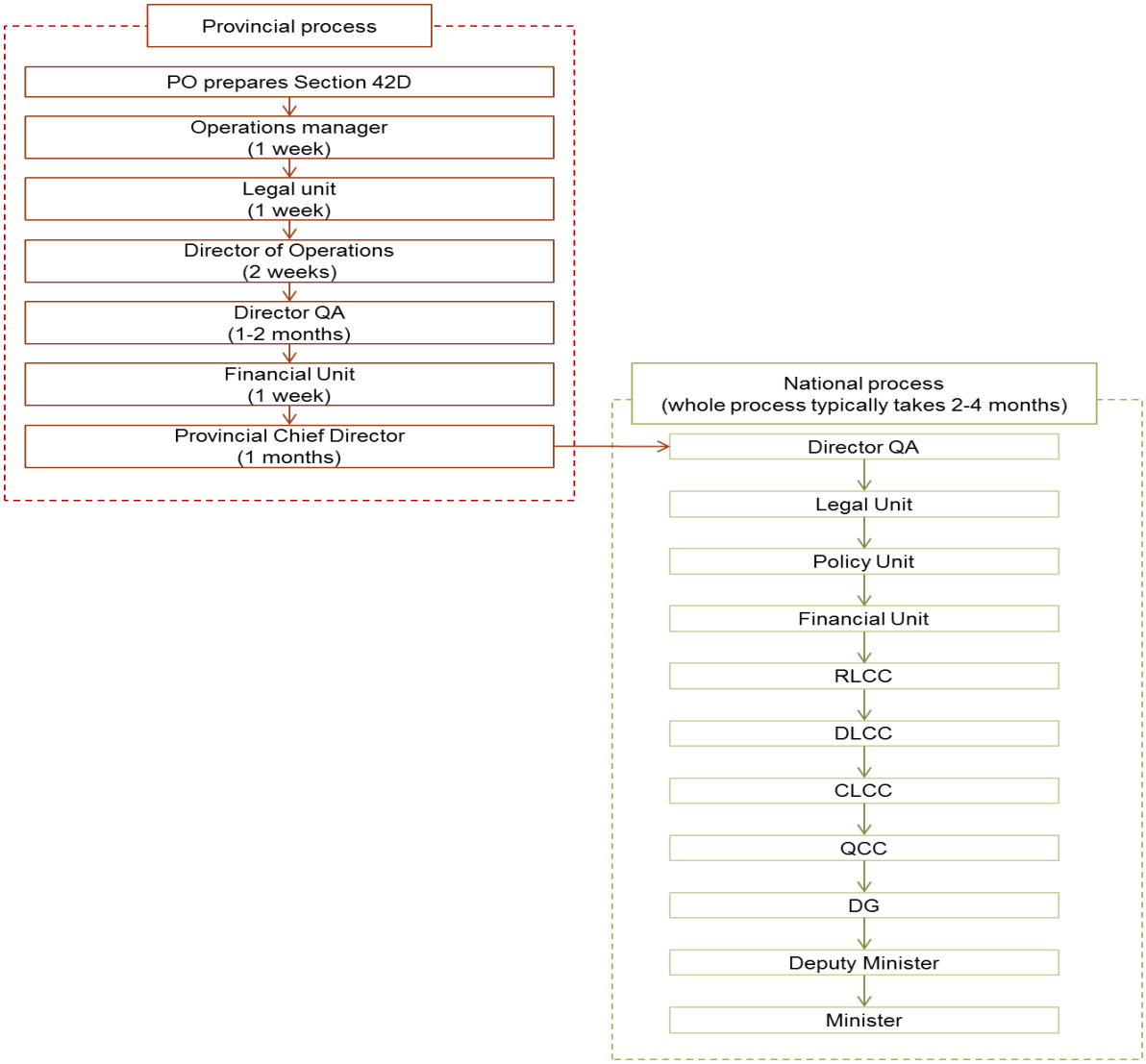
A general concern noted by national staff is the lack of formalised, documented systems and procedures, and the fact that the current systems are dependent on the people driving them. This is particularly problematic as a result of the high rate of staff turnover, and results in the discontinuity, inconsistencies and delays that this research has observed across the restitution process.

4.2.3.6. Evolution of the business process

Respondents stated that the centralisation of delegations resulted from an over commitment of funds in the provinces by the former RLCCs. Opinions were mixed around whether a centralised or decentralised approach is better. Centralisation was said to delay the settlement process, however, it has resulted in greater consistency in the approval of Section 42D reports in the absence of a set policy framework and SOPs.

Figure 13 below illustrates the process of obtaining Ministerial sign-off on a Section 42D report once it leaves the province. This illustrates that the process is lengthy, and inefficient as it involves multiple signatures,. In total this amounts to 17 formal points of reference and sign-off, where at any point the Section 42D report can be sent back. The diagram below is based on information from the Section 42D route form, national level interviews and provincial interviews; with time provincial estimates given by the POs in Limpopo. It was evident from these interviews that the RMSOs are not always sure of the process that is undertaken once a claim is submitted to national, or how long this process should take.

Figure 13: Transition of a Section 42D report from the province to obtaining Ministerial approval



Source: Genesis Analytics, 2013

The importance of quality control and ensuring accountability cannot be overstated; two case studies identified instances where problems with the submission were identified and noted, but signed anyway (Brickfield, Durban North and Victoria County – KwaZulu-Natal; and Magni, Athlone – Western Cape).

The Quality Control Committee (QCC) chaired by the DRDLR Chief Financial Officer (CFO) was introduced in 2011 to ensure synergy with, and improved accountability to, the DRDLR. This process is in alignment with the other land reform programmes in the DRDLR and, according to national level interviews, has enabled better consistency of Section 42D reports. The QCC was also noted as a key point at which the DRDLR REID Branch should begin their involvement with post-settlement support as outlined in the "Virtuous Cycle".

The re-integration of the CRLR into the DRDLR and the removal of post-settlement support from the CRLR to the DRDLR is viewed negatively for a number of reasons:

- In practice post-settlement support is still being done by the RMSOs, although the staff capacity to do so has been moved to REID;
- The line of reporting is now longer;
- Access to the Minister is no longer direct; and,
- Staff within REID and RID engaged in RECAP are perceived to be reluctant to take-on the restitution post-settlement support projects as they do not have a clear understanding of restitution and they have their own projects and set targets to attend to.

4.2.3.7. Monitoring and Evaluation of Restitution Programme

The Planning, Monitoring and Evaluation Chief Directorate consists of four Directorates, namely: Programme Performance Monitoring (PPM), Evaluation and Research (E&R), Strategic Planning and Provincial Project Performance Monitoring and Evaluation (PPPM&E). The PPM Directorate is responsible for monitoring all DRDLR programmes on a quarterly basis. In terms of the Restitution Programme, the PPM Directorate measures the performance of the Restitution Programme against two indicators as outlined in the Departmental Annual Performance Plans (APPs):

- The number of claims settled
- The number of claims finalised[52]

The PPM Directorate receives quarterly updates from the Information Unit in the CRLR on its performance in terms of these indicators, whereupon PPM Directorate verifies the figures against copies of the Section 42D reports submitted and Basic Accounting System (BAS) expenditure information. There is no monitoring of the process of settling a claim (time-scale or integrity of the process), no intermediate outputs are monitored, and the qualitative aspects of settled claims are not measured. Only the final output of the number of settled claims is verified against the number of Section 42Ds submitted. This presents a very limited

[52] An additional indicator has just been introduced around researching the reopening of the lodgment process, however, it is unclear who is responsible for doing this research.

perspective on the effectiveness of the restitution process, a weakness that is symptomatic of the narrow indicators used by the Programme to measure its performance.

The Evaluation and Research (E&R) Directorate is responsible for evaluating service delivery programmes within the DRDLR and for compiling statistical reports on the land reform programmes of the DRDLR. The E&R Directorate receives monthly updates from the information unit in the CRLR on its performance in terms of a number of quantitative variables including number of claims settled, number of hectares transferred, land and financial compensation value, and the number and profile of beneficiaries. The E&R Directorate verifies the figures against copies of Section 42D reports submitted and basic accounting system (BAS) expenditure information. Using this information, the E&R Directorate then compiles monthly and quarterly reports for the DRDLR.

A number of national staff referred to meetings with the E&R Unit to explain the statistics to them as the E&R Unit newly appointed staff are not yet familiar with the restitution process and the intricacies relating to issues such as phased and consolidated claims.

4.2.3.8. Court referrals

It was reported that referring claims to the LCC was a straight-forward and efficient process. A common concern was the quality of information presented to the LCC; whereby it is reported to be of a poor quality and missing documents. National level interviews also noted that there is a divergence in the approaches taken in settling a claim between the LCC and the CRLR. The LCC takes only the direct claimant into account, whereas the CRLR actively looks for other claimants who might be related to that claim to broaden the benefits of the restitution process.

The capacity of RMSO's legal teams to deal with specialised court cases was highlighted as a concern in the national level interviews. As a result of this limited capacity, all documents submitted to the LCC now go through the DLCC and CLCC before being submitted to the LCC as they are legally trained and can provide assistance to the legal teams.

4.2.3.9. Cost efficiency

From 1995/96 to 1997/98 the budget for the Restitution Programme was housed within the former DLA's budget, under the sub programme: *Restitution of Land Rights Programme.* In the years 1998/99 and 1999/00 expenditure on restitution was grouped with land reform such that National Treasury reported only on *Land Reform* and the *Implementation of Land Reform.* A specific budget for the Restitution Programme was only established in 2000/01, firstly within the former DLA, and from 2010/11, within the DRDLR.

The budget allocation for the Restitution Programme is currently divided by the following sub-programmes[53]:

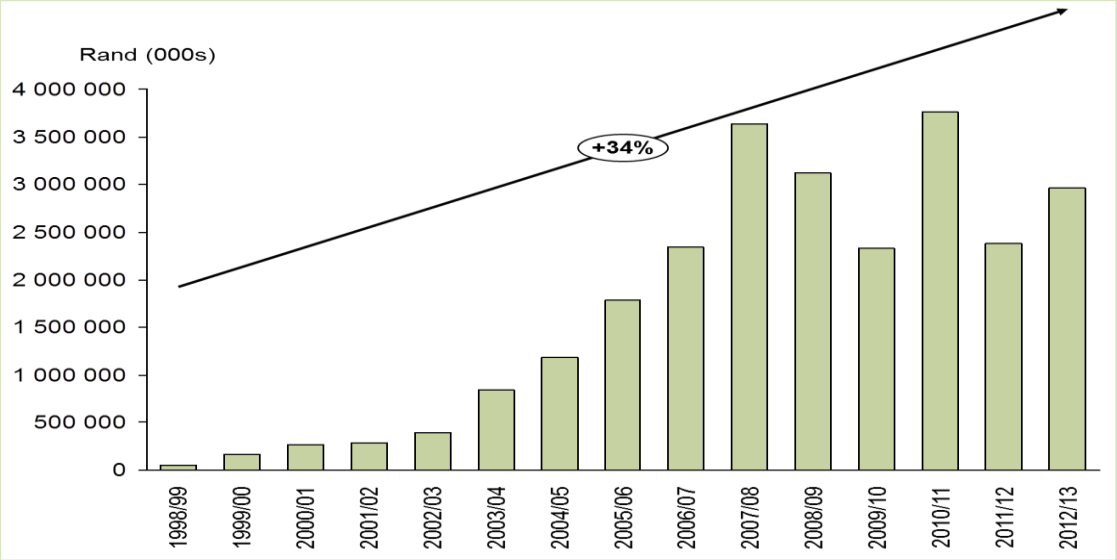
- *Restitution National Office.* This sub-programme is responsible for providing administrative and professional support and secretarial services to the CRLR for processing and investigating restitution claims. This programme also co-ordinates restitution policy and oversees cases in the LLC.
- *Restitution Regional Offices.* This sub-programme is responsible for negotiating restitution agreements and providing administrative support to the RLCC(s).

[53] National Treasury (2007). "Estimates of National Expenditure"

- *Restitution Grants*. This sub-programme distributes grants for restoring land and makes provision for alternative land to victims of forced removals. It also provides financial compensation and alternative relief, provides settlement planning and facilitation assistance, and any incidental costs occurred when resettling claimants.

Based on National Treasury estimates for the period under review (1998/99-2012/13), approximately R25.51 billion has been spent on the Restitution Programme. The amount spent per year has varied over the years, and has grown with a compounded annual nominal growth rate of 34%, as show in Figure 14 below.

Figure 14: Actual expenditure on the Restitution Programme from 31 March 1999 to 31 March 2013

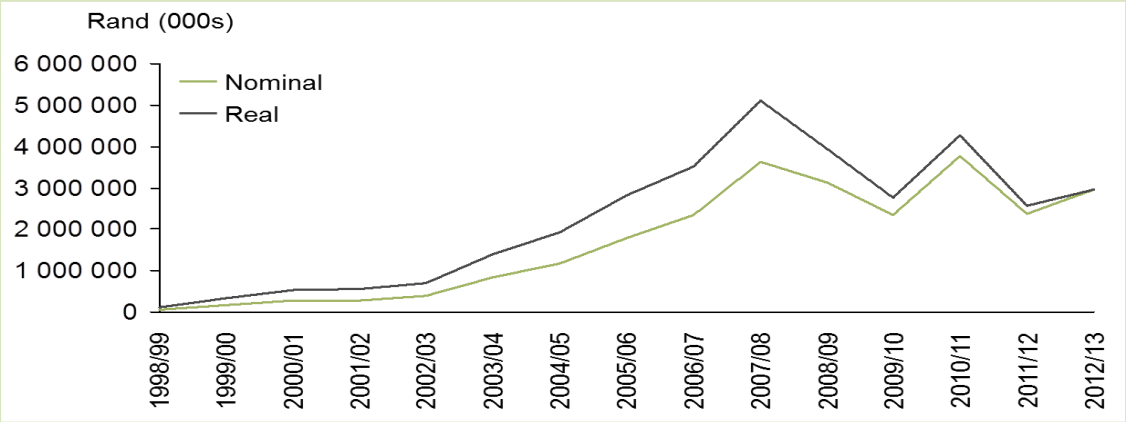


Source: Genesis Analytics, 2013, adapted from information from Treasury's Estimates of National Expenditure (1998-2013)

From 1998/99 to 2007/08, there was a steady increase in expenditure; however, from 2007/08 onwards, this has fluctuated substantially. Expenditure peaked in both 2007/08 and 2010/11 to R2.34 billion and R3.77 billion, respectively. The increased expenditure in 2007/08 resulted from the CRLR's attempts to finalise all claims by March 2008 as per the President's directive and the spike in 2010/11 resulted from a once-off R2 billion reprioritisation made available to pay for urgent court orders and to finalise critical outstanding claims[54]. Without this reprioritisation, the expenditure pattern would have had a clearer peak in 2007/08, when the Restitution Programme should have ended, with a subsequent decline in expenditure until 2012/13 when there was significant impetus to speed up the process of settling outstanding claims. When this nominal expenditure is plotted against real expenditure, it appears that the Restitution Programme's expenditure is in line with inflation, as depicted in Figure 15.

[54] This LCC ordered these critical payments to be made. An example of this is the matter of Quinella Trading (Pty) Ltd and Others v Minister of Rural Development and Land Reform and Others (LCC 03/2010) [2010] ZALCC 14; 2010 (4) SA 308 (LCC) ; [2010] 4 All SA 331 (LCC) (18 May 2010) where it was found that "It should not be necessary to force the State through a court order to comply with its contractual obligations"

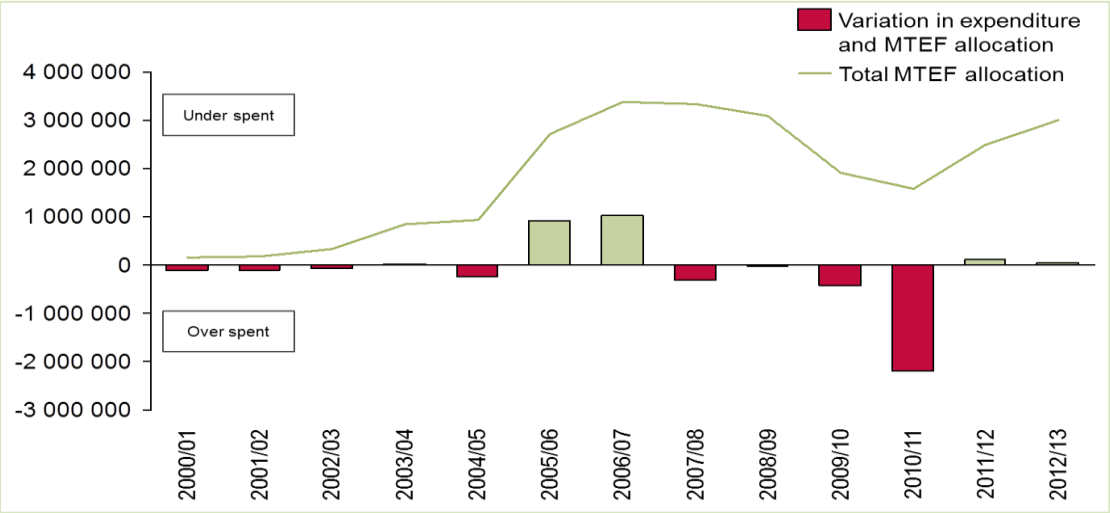
Figure 15: Real and nominal growth in expenditure (Dec 2012=100)



Source: Genesis Analytics, 2013, adapted from information from Treasury's Estimates of National Expenditure (1998-2013)

The amount that the Restitution Programme receives from the MTEF is not based on the targeted number of claims to be finalised or settled in a given year, rather this amount is currently centered around a R3 billion baseline that is requested per annum. The MTEF is based on a three year cycle, however, what is requested in the three year cycle is not always received, something which may be informed by under spending in previous years. According to staff in the national office, this makes planning for the finalisation and settling of claims difficult. Figure 16 below illustrates the variance in actual expenditure to MTEF allocation at the beginning of the financial year.

Figure 16: Variation in actual expenditure and MTEF allocation at the beginning of the financial year [55]



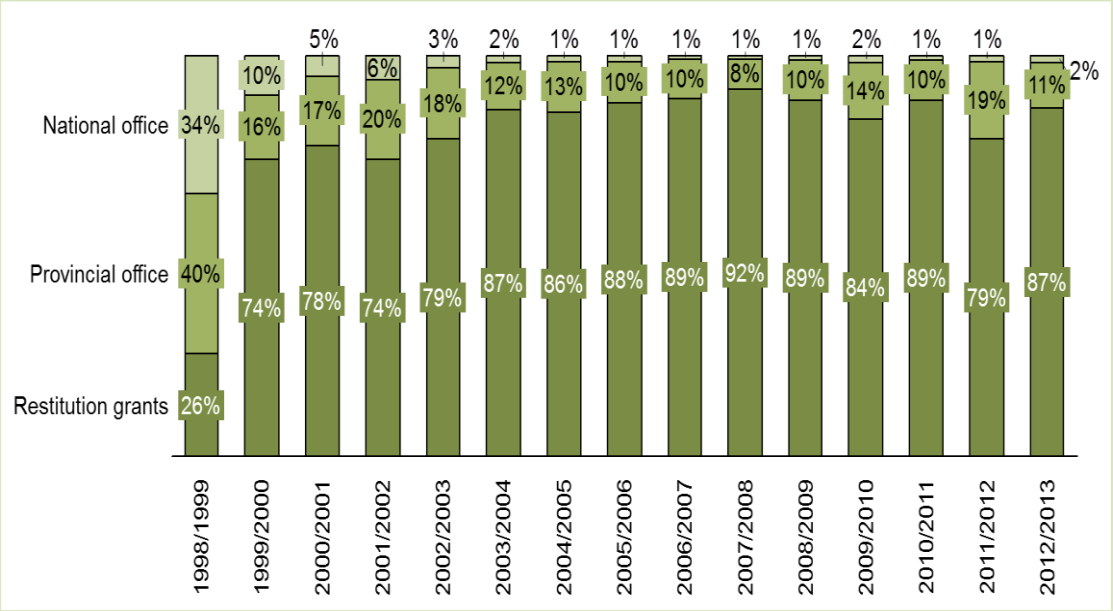
Source: Genesis Analytics, 2013, adapted from information from Treasury's Estimates of National Expenditure (1998-2013)

[55] Allocations for 1998/1999 and 1999/2000 are not available as a result of the programme's structure into the subprogrammes: *Land Reform* and the *Implementation of Land Reform.*

Over the period 2000/01 to 2013/13, the Restitution Programme overspent its allocated budget in eight years and underspent it in five years. The over-expenditure in 2009/10 and 2010/11 resulting from the R2 billion reprioritisation is clearly shown above. The under expenditure in 2005/06 and 2006/07 was as a result of the Programme's budget almost tripling from R933 million in 2004/05 to R2.7 billion in 2005/06; however the CRLR did not have the increased capacity to settle the number of claims required to utilise the budget. In the last two years there has been an improved alignment between expenditure and the MTEF allocation, whereby in the last financial year the Restitution Programme spent 99% of its budget. A policy directive was given this year stating that 25%of the budget should be allocated to post-settlement support, 25% be allocated to finalising claims as indicated on the Commitment Register and 50% be allocated to the settlement of new claims.

Figure 17, below, illustrates the pproportion of expenditure by the various Restitution sub-programmes from 1998/99 to 2012/13. When divided by the respective sub-programmes, *Restitution Grants* accounts for approximately 75-90% of total expenditure across the years under review. The 1998/99 financial year is a slight anomaly as very few payments were being paid in this year in comparison to subsequent years. From 2000 onwards, the *Provincial Office* and the *National Office* proportions have not varied considerably such that *National Office* accounts for only 1-5% of total expenditure. These allocations are set to remain the same for the re-opening of the lodgment process; despite the increased demand for operational personnel resulting from this process.

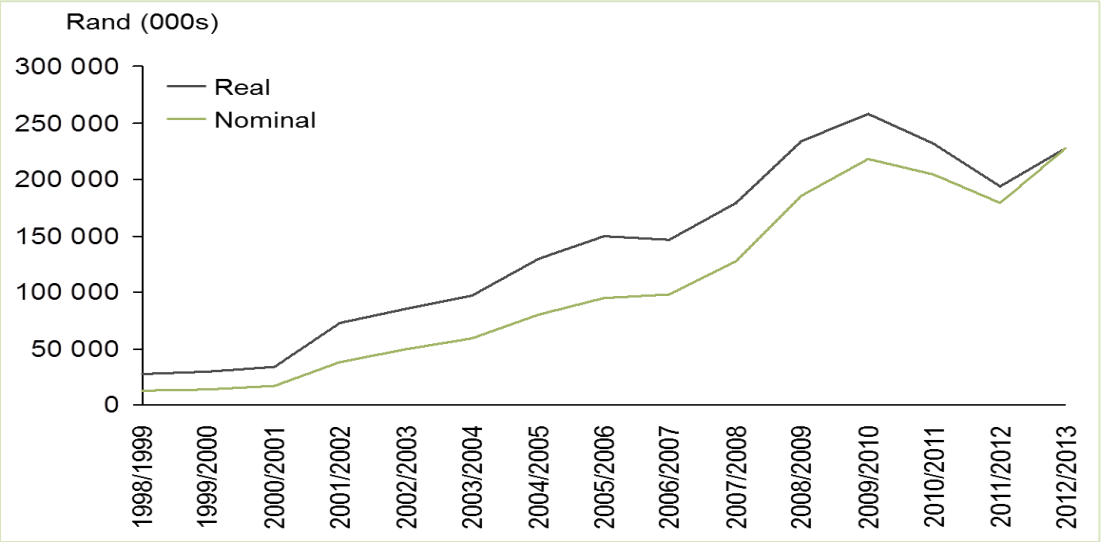
Figure 17: Proportion of expenditure by sub-programme from 31 March 1999 to 31 March 2013



Source: Genesis Analytics, 2013, adapted from information from Treasury's Estimates of National Expenditure (1998-2013)

Employee compensation, falling within the *current payments* line item, illustrates the staffing changes to the CRLR over the years, shown in Figure 18 below. The significant decrease in 2010/11 illustrates the removal of the Post-Settlement Units (PSUs), and their respective posts and operational budget, from the Restitution Programme to other branches in the DRDLR.

Figure 18: Employee compensation from 31 March 1999 to 31 March 2013

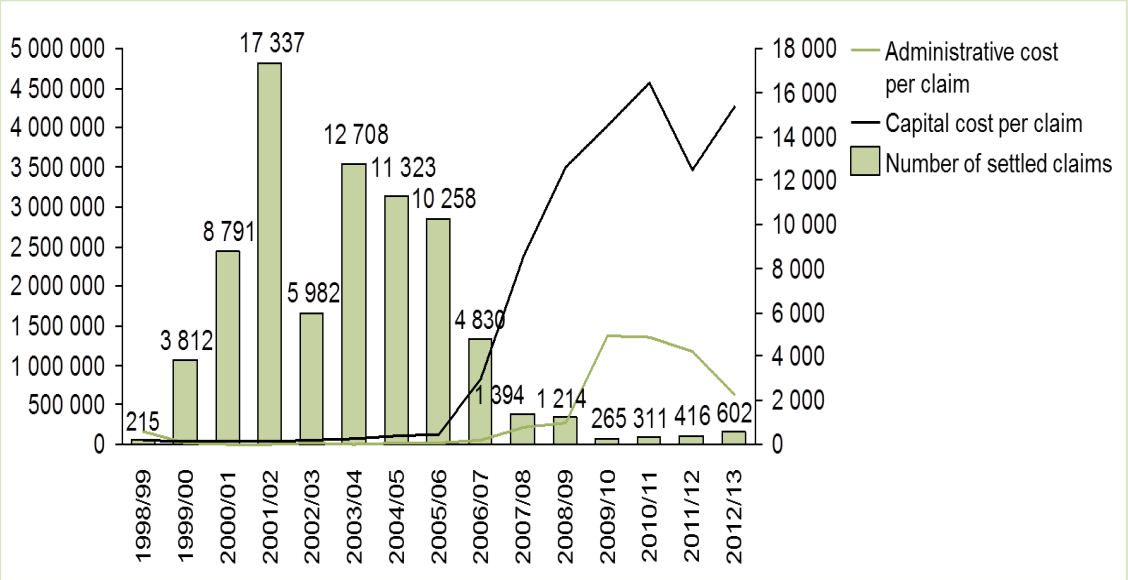


Source: Genesis Analytics, 2013, adapted from information from Treasury's Estimates of National Expenditure (1998-2013)

A key indicator for cost efficiency is the cost per claim, both in terms of capital costs and administrative costs incurred when settling a claim[56]. As is illustrated in Figure 19 below, the capital cost per claim has been increasing since 1998, with a sharp inflection in 2005/06 resulting from the attempt to finalise all claims by then. The lower capital cost per claim in the early years is indicative of the easy, financial compensation claims that dominated this period. The increased capital cost associated with the later years illustrates the more prevalent complex, land compensation claims that are being settled. Administrative costs per claim have reduced since 2010, this is partially as a result of the PSUs moving to other branches in the DRDLR.

[56] Capital cost is calculated using the sum of land cost and financial compensation as indicated in the Commitment Register; administrative costs are calculated using the sum of the national and provincial sub-programmes as per the ENEs.

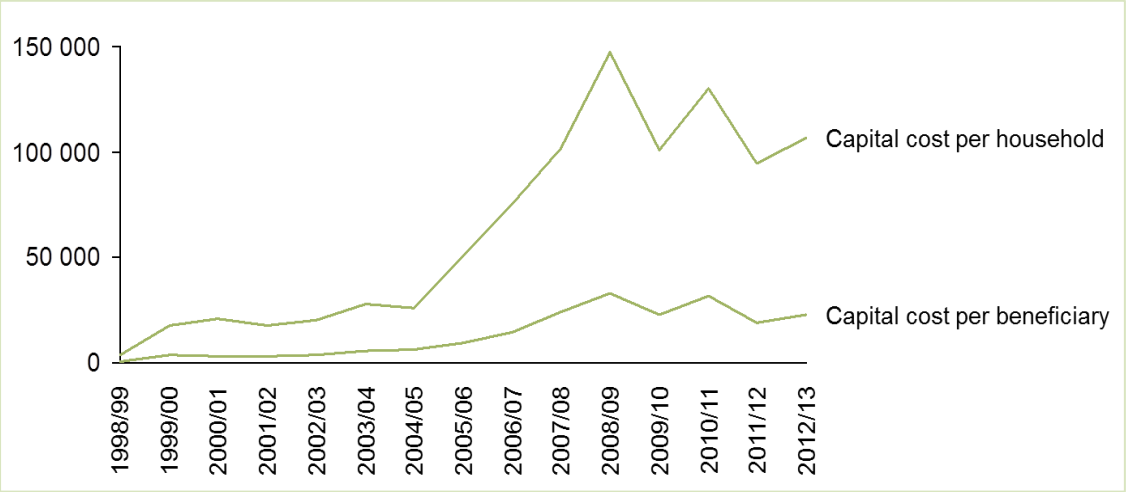
Figure 19: Cost per claim from 31 March 1999 to 31 March 2013



Source: Genesis Analytics, 2013, adapted from information from Treasury's Estimates of National Expenditure (1998-2013) and the CRLR's Commitment Register as at 31 March 2013

Capital cost per household and capital cost per beneficiary mirror one another, as Figure 20 below illustrates. Other than the inflections in 2009/10 and 2011/12, this has been a relatively smooth increase since 1998/99.

Figure 20: Capital cost per household and per beneficiary from 31 March 1999 to 31 March 2013



Source: Genesis Analytics, 2013, adapted from information from the CRLR's Commitment Register as at 31 March 2013

Table 8 below gives the breakdown of costs by province for the period under review. This clearly illustrates that provinces which typically award land compensation, namely Limpopo and Mpumalanga, have the highest cost per claim, whereas those provinces that typically pay financial compensation, Gauteng and Western Cape, have the lowest cost per claim. Eastern Cape and Western Cape similarly have the lowest cost per household as these are predominantly financial settlements, whereas KwaZulu-Natal and Mpumalanga have the highest cost per household as these are predominantly land compensation settlements. The

Western Cape has the highest cost per hectare, which is five times the cost of the next highest province (Mpumalanga) and 100 times the cost of the cheapest province (Eastern Cape).

Table 8: Various cost ratios per province, for the period from 31 March 1999 to 31 March 2013 [57]

	Total claims	Beneficiaries	Households	Hectares	Capital cost per claim	Capital cost per household	Land cost per hectare
EC	16622	240639	64514	129574	R 102 838	R 26 496	R 508
FS	2899	49100	7614	55747	R 104 167	R 39 661	R 663
GAU	13585	67208	14320	16964	R 58 268	R 55 277	R 6 908
KZN	15731	494605	84485	761311	R 451 151	R 84 004	R 6 864
LIM	3618	245081	48490	603641	R 1 068 148	R 79 698	R 5 596
MPU	2846	240116	53775	459243	R 1 686 368	R 89 250	R 9 464
NC	3716	110219	20845	492493	R 356 556	R 63 563	R 929
NW	3547	194054	39016	393861	R 592 138	R 53 832	R 4 383
WC	16894	123821	27103	1037	R 59 256	R 36 936	R 51 131
Total	**79458**	**1764843**	**360162**	**2913872**	**R 289 339**	**R 63 833**	**R 5 287**

Source: Genesis Analytics, 2013, adapted from information from the CRLR's Commitment Register as at 31 March 2013

4.3. EFFECTIVENESS

The assessment of *effectiveness* covered three indicators; namely, the extent to which the Restitution Programme is achieving its targets; the claimants' experiences of the restitution process; and finally the barriers staff face in implementing the Restitution Programme.

4.3.1. Achievement of set outputs

The strategic objective of the Restitution Programme as highlighted in the CRLR Annual Report of 2012/13 is to provide the *"restitution of land rights or awards of alternative forms of equitable redress to claimants finalised within MTEF baseline allocation."* Within this, the Programme sets annual targets for claims to be settled and recently has been setting targets for the number of claims to be finalised.

Measuring the performance of the Restitution Programme in terms of the number of claims settled, finalised and outstanding is met with the following inconsistencies:

- From 1994 to 2006, the CRLR defined a settled claim as the restoration of a right in land. However, from 2006 the CRLR moved away from this rights-based approach to counting the number of claim forms lodged.
- As of 31 December 2006, the CRLR was given a directive to stop reporting on all urban claims that were settled as per the Minister's directive[58].
- In 2006, the CRLR began settling claims in phases, from 2006 to 2009 these claims were counted as settled once one of the phases of the project was settled, however, from 2009 the claim was only considered to be settled once the settlement of *all* the phases were complete.

[57] The total for settled claims includes the dismissed claims as well as adjustments due to ongoing verification
[58] Commission on Restitution of Land Rights (2007) "Annual Report 2006 – 2007" p. 33.

Similarly, analysing claims on a year by year basis is met with inconsistencies as claims are not static for the reasons outlined below,:

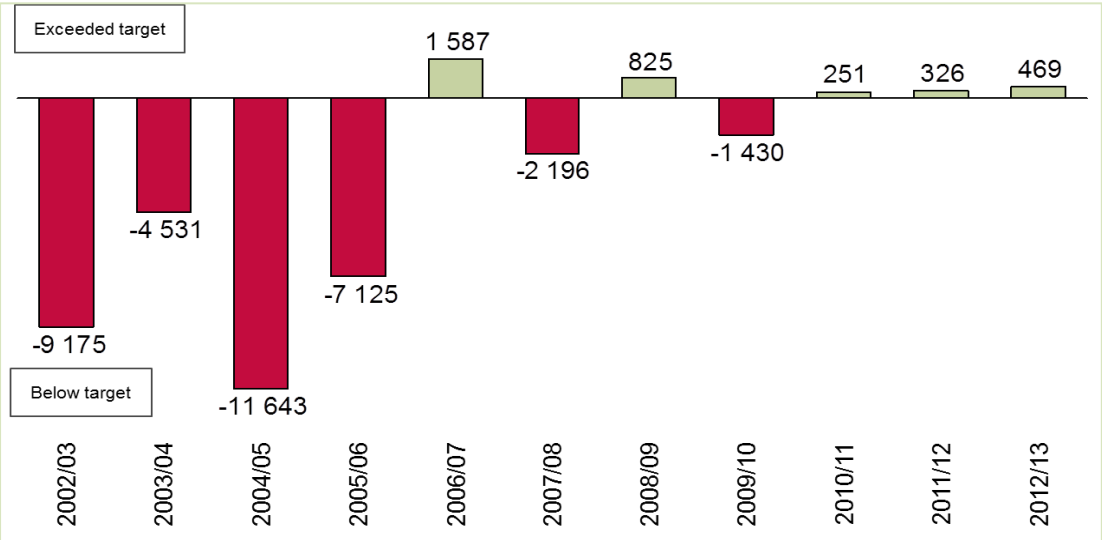
- Post-settlement disputes stemming from the consolidation of claims resulted in instances of claims which were settled from 2006-2009 being withdrawn and replaced with new Section 42D approvals in 2012/13.
- There are instances of projects being moved from Mpumalanga to Limpopo (or vice versa) and from North West to Gauteng (or vice versa) due to provincial boundary demarcations.
- In some instances the statistical information for claims settled were amended after the initial approval date.

The total number of lodged claims quoted publicly is 79 696[59]. This is an amalgamated figure, consisting of both claim forms and rights restored, thus inaccurately depicting the exact number of claims lodged. According to the Commitment Register, as at 31 March 2013, 79 582[60] claims were settled. This again is an amalgamated figure, and thus is not directly comparable to the above figure. This figure differs from that which is publicly quoted as it includes urban claims that were settled post 2006, which are no longer publicly reported. There is currently a process under way to determine the exact number of outstanding claims in terms of claims claim forms lodged - which has been indicated to the Genesis team to be approximately 8 733. Similarly, there is a process underway to determine the number of claims settled - in terms of claim forms lodged - this is currently estimated to be in the region of 60 000.

For the reasons outlined above, the analysis of the number of settled claims per year versus that which was targeted is not without inaccuracies. Figure 21 indicatively shows the achievement of targets using the figures in the Commitment Register and targets that are quoted in the CRLR's strategic plans. Having over-estimated the number of claims to be settled in the earlier years, the CRLR has subsequently exceeded their targets for 2010/11 to 2012/13. These figures are more positive than that which is in the public domain as a result of urban claims not being reported on post-2006. This is particularly pertinent for the 2006/07 year, where the Commitment Register figures result in an overachievement of targets, as compared to the under achievement as reported in the annual report.

[59] DRDLR (2006). "Annual Report: 1 April 2005 - 31 March 2006".
[60] CRLR's Commitment Register, as at March 2013.

Figure 21: Variation in the number of claims settled and that which was targeted[61][62]



Source: Genesis Analytics, 2013, adapted from information from the CRLR's strategic plans (2002-2013) and the CRLR's Commitment Register as at 31 March 2013

As of 31 March 2013 there was R4.97 billion outstanding on the Commitment Register, amounting to approximately 18% of the total commitment from 1995. Performance in terms of finalising these outstanding commitments is shown in Table 9 below. Actual performance of finalised claims is irregularly reported and the targets are less frequently reported.

Table 9: Number of claims finalised, 31 March 2009- 31 March 2013[63]

	2008/09	2009/10	2010/11	2011/12	2012/13
No. claims finalised	653	131	60	209	153

Source: Genesis Analytics, 2013, adapted from information from the CRLR's annual reports (2008-2013)

4.3.2. Claimants' experience of the process

Through the case study exercise, the provincial teams consulted with claimants around their experiences of the restitution process. The claimants were not fully *au fait* with the various stages in the restitution process, however, their general perceptions are outlined in Table 10 below. A consistent theme noted by claimants was insufficient communication during the claim settlement process; similarly claimants were disgruntled by the length of time taken to settle the claims.

[61] Targets could only be found in the annual reports from 2002 onwards.
[62] From 2008/09 the Commission began reporting the number of dismissed claims; thus figures for 2008/09 onwards are exclusive of the dismissed claims.
[63] DRDLR (2013). "Annual Performance Plan: 2013-2014"

Table 10: Claimants experience of the process

Experience of the lodgment process
Lodgment is said to be relatively easy, involving only filling out the claim form. As the communication section above illustrates, there is room for improved communication around acknowledgement of the claim.
Experience of verification and research
Claimants had mixed responses around their experience of this process. Claimants from communities and group claims seemed to accept that this process would take a while to complete; however, individual claimants expected this to be a more efficient process. A number of claimants reported being frustrated by the apparent loss of documentation by the PO on the case; and the high turnover of POs, resulting in delays to the settlement of the claim. In general, it was felt that there was a need for improved communication from the CRLR particularly at this stage.
Perceptions of the implementation process
Where financial compensation was selected, claimants were generally happy with this process. However, where land compensation was selected and the claim was settled but with a significant delay before finalisation, claimants were reportedly were very frustrated with the inefficiency of the process and the delays. This frustration is amplified for those claimants who are still awaiting finalisation.

4.3.3. Barriers to implementation of Restitution Programme

All RMSO staff were asked what they consider to be the key barriers to the effective implementation of the Restitution Programme. The prominent themes that emerged were:

- **Insufficient collaboration between the different stakeholders**: there is little collaboration between the CRLR and the Deeds Office and other relevant government departments. Despite the Intergovernmental Relations Framework Act, 2005 (Act No 13 of 2005) and the identification of a "champion" to drive collaborative settlement, in many cases there has not been the required level of collaboration, which results in slower settlement. Although there are Memorandums of Understanding (MOUs) in place with Water Affairs, Forestry, Mining and Conservation; these need to be revised to align with the current preferred implementation model. An example of where close collaboration between stakeholders can expedite the settlement process is the Steufhof Group Claim case study. The Steurhof Group claim was settled by means of a housing development established on alternative land. In this instance, the CRLR in the Western Cape and the City of Cape Town worked in close partnership, resulting in the development of low-cost housing for 36 claimants in less than a year. The Chata case study in the Eastern Cape further illustrates the benefits of having a "champion", particularly when development is chosen as a settlement option. The case illustrates that development option can bring substantial benefits to a community. However for these benefits to be achieved there has to be an active "champion" and development agent driving the development process. In this instance the "champion" was an NGO.
- **Inadequate filing and management information systems**: there is no systemic means of enforcing a standardised approach to restitution, and, related to this, there are no "checks and balances" to monitor adherence in the existing systems. This means that documents are missing and key steps can be by-passed without any consequences. This has major implications for the integrity of the restitution process

and opens the CRLR up to serious risk of future challenges, conflict and dysfunction regarding claims which have ostensibly been settled. This is particularly problematic when POs leave and the institutional memory is lost; as the new POs cannot get the relevant information from the files. The Balasi case study in the Eastern Cape illustrates the need for such systems. In this claim the PO changed with no formal handover to the new PO, as a result all the institutional memory was lost, causing delays in the settlement of the claim. Information systems should also link with departments such as the Deeds Office, Department of Home Affairs and the Surveyor General as this would facilitate the research process.

- **Non restitution process related requirements**: requirements external to the CRLR are reported to significantly disrupt their work in settling claims, including ministerial requests, and departmental campaigns, meetings, and strategic sessions. Owing to the poor data management systems at national level, these ministerial requests are referred to the RMSOs to attend. Furthermore, as the Commission becomes the face of the claim, RMSO staff are consistently asked to manage conflicts and facilitate community meetings in settled and finalised projects, activities which should be beyond their mandate (but which are often informed by incomplete or poorly managed processes in earlier stages of the restitution process). Two RMSO Chief Directors stated that instead of provinces devoting their time to the settlement of claims, RMSO staff spend 80% of their time dealing with the above mentioned non-restitution related matters. CRLR staff often felt that their mandate went beyond restoring rights in land, to broader "food security and poverty alleviation". Claimant "walk-ins" were also noted as being a key source of disruption and distraction.

- **The flawed legal and institutional arrangements that are frequently put in place to manage the post-transfer settlement process**: the simplistic application of standardised 'pro forma' (CPA and Trust) legal arrangements without taking account of contextual differences rapidly gives rise to confusion and infighting which is typical of many, if not most, community claims.

- **Poor research and verification**: This results in project approvals being sent back at various stages of the business process, resulting in unnecessary, time-consuming and expensive court referrals and delays in having to redo research and claimant verification.

When asked which aspect of restitution is the most challenging; all five of the RMSO Chief Directors highlighted research and verification as being the most challenging aspect of the restitution process. This was corroborated in the national interviews, where five out of the six respondents to this question noted this as being the most difficult aspect of restitution. Weak or inconsistent research capacity and systems will therefore have a serious effect on the effectiveness of the entire process.

4.4. SUSTAINABILITY

The assessment of *sustainability* explored the extent to which the Programme's processes enable the sustainability of the compensation awarded and received.

4.4.1. Post-settlement support

The National Land Acquisition Committee (NLAC) has been established with the objective to facilitate the handover of a settled claim to ensure that post-settlement support is made available to the claimants in terms of the implementation of the 'Virtuous Cycle'[64]. This is considered to be too late in the restitution process to be effective as the new team in the DRDLR (REID/RECAP) does not have an adequate knowledge of the process followed, the claimants nor the settlement award selected and the reasons for this. In order to ensure that the land that is transferred to claimants is sustainable and remains productive, the transition needs to be done earlier and needs to be better facilitated.

It was reported by POs and senior RMSO management that the CRLR becomes the face of the claim throughout the settlement process and thus claimants are reluctant to place their trust in a new team, preferring to refer back to the CRLR. This results in the CRLR continuing their involvement in post-settlement activities.

The CRLR's involvement in claims post-settlement is evidenced in the Vusi Oakford case study in KwaZulu-Natal. In this case there was a community dispute regarding the re-sale of the land. The community was receiving rental from a school building located on their land. However, when the community sold the land there was a dispute between the community, the new landowner and the Department of Education around the rental income. The CRLR was subsequently called in to handle the matter. This is far beyond the mandate of the CRLR.

Furthermore, the objectives of post-settlement support for restitution projects are said to be misaligned with that of REID, as restitution projects do not form part of their performance agreements and targets, thus 'forcing' RMSO staff to become involved in rendering post-settlement support to settled projects.

Whilst there is development support for land restoration, there is no such support for claimants who are paid financial compensation. Whilst financial education is not a function of the CRLR, there is room for linking with other programmes/partners to ensure the sustainability of financial compensation and its responsible use by recipients.

5. ANALYSIS AS PER THE TOR QUESTIONS

A number of key themes emerged from the evaluation which together inform its conclusions and recommendations. The following section analyses these themes with reference to the evaluation questions outlined in the TOR.

Presenting the analysis of our findings according to these key questions has its own challenges. In analysing the findings of the survey according these questions, it is important to recall the incompleteness of the quantitative data on which our analysis is founded, the diversity of circumstances and operating experiences across geographies, and the deeply complex nature of the processes that underpin 'restitution'. A high degree of aggregation was therefore necessary, particularly as the weak file data necessitated complementary reliance on the findings of key informant interviews in the targeted provinces and at the national level.

[64] Mala Mala will be the first case to undergo this formal transition to the "Virtuous Cycle".

5.1. ARE THE SET OUTPUTS OF THE RESTITUTION PROGRAMME BEING ACHIEVED?

As discussed in *Section 4.3.1,* the objective of the Restitution Programme is to provide the *"restitution of land rights or awards of alternative forms of equitable redress to claimants finalised within MTEF baseline allocation"*[65]. Within this objective, the CRLR sets annual targets of the number of claims to be settled and, recently, the number of claims to be finalised. *Section 4.3.1* illustrated the various changes in the way that a 'settled claim' was counted and how these figures can change *ex post* as the underlying definitions change. These variations in definition over time have resulted in wide variations in the quantification of the number of claims that have been settled under the Programme. A rigorous assessment of the Programme's performance in terms of meeting its targets is thus not feasible as there is no basis for consistent comparison of uniform indicators. Going forward, the Programme needs to clearly define the definition of a settled claim to ensure consistency in the measurement of the Programme's achievement.

As outlined in *Section 4.3.1,* the CRLR over-estimated the number of claims that would be settled in the earlier years (up to 2005), whereafter there was a substantial improvement in the achievement of targets - or the more realistic setting of targets - driven by high level directives. As of 31 March 2013, the Commitment Register indicated that 79 582[66] claims had been settled, been settled out of the publicly quoted figure of 79 696 claims which were lodged. As noted, these figures have little meaning as they represent an amalgam of definitions, including 'claim forms' and 'rights restored', each of which result in different interpretations of a 'restituted claim'.

A more accurate indicator of the Restitution Programme's achievement in terms of claims settled derives from the current exercise the CRLR is undertaking to translate all its claimant records into the number of claim forms outstanding and settled to date. This indicates that the CRLR has settled approximately 85% of the total number of claims lodged[67]. Before this process was undertaken, setting the Restitution Programme's targets without knowing the exact number of claims outstanding was ill-informed. These targets were set based on political considerations and timeframes proclaimed for the finalisation of the work of the CRLR and the LCC. It is now acknowledged that credible targets need to be based on the reality the CRLR's ability to settle the claims and according to a standard definition of a 'settled claim'. This has since been agreed as referring to 'claim forms settled'.

As discussed in *Section 4.3.1,* a further complication in assessing the achievement of the Programme's targets arises from the fact that as of 31 March 2013 there was R4.97 billion outstanding on the Commission's Commitment Register, amounting to 18% of the total Restitution Programme's commitment since1995; and a total of R90,9 million on the Suspense Account. These amounts arise as a result of settled claims not having been finalised for a variety of reasons, ranging from flawed and/or disputed claimant verification to difficulties in tracing claimants post-settlement. Though the claims relating to these amounts are currently considered to be settled, these do not relate to a formal "restitution of land rights or award of alternative forms of equitable redress." This suggests that measuring 'claims settled' is an

[65] DRDLR (2013) "CRLR Annual report 2012-2013"
[66] The CRLR 's Commitment Register, as at March 2013, states that there have been 79, 582 claims settled. However, according to the CRLR this figure is approximately 76 000. The discrepancies may be as a result of the various definitional and related counting inconsistencies.
[67] 8733 are outstanding out of a total of 60,000 lodged.

inaccurate indicator for whether the Programme is meeting its strategic objective. A more accurate measure would be the number of finalised claims – i.e. claims which have been settled and closed financially.

A further concern in measuring the Programme's performance relates to the CRLR's exclusive reliance on the quantitative indicator of the *number* of claims settled. There are no qualitative indicators measured and there is no focus on measuring the veracity or integrity of the process. The large number of claims that are settled but later refuted (or are refutable – an important consideration, given the pending opening of the next restitution window) because of poor research or incomplete documentation, or claims that need to be re-processed because of claimant conflict, reflect serious weaknesses in the Programme's ability to fulfill its purpose. They also highlight the need for the CRLR's to include in its impact and performance measurement arrangements qualitative measures, targets and indicators which relate to the definitive and inclusive restoration of legal ownership rights.

Compounding this, there are currently no intermediate outputs measured for the Programme, with the result that the process is not adequately monitored in terms of its constituent steps. It therefore becomes difficult to identify and isolate problem areas timeously. Moreover, by not monitoring intermediate outputs, the CRLR has a limited indication of the number of claims at each point in the process, which makes for difficulties in planning, budgeting and resource allocation. Monitoring intermediate outputs will also ensure accountability in relation to the quality of these deliverables; thus forming the basis for a quality Section 42D or Section 14(3) settlement which is less likely to be refuted, resulting in lower costs and delays, less scope for claimant conflict and better prospects for the restitution award to lay the foundation for productive investment, employment creation and growth. Examples of intermediate indicators that should be measured and which will enhance the quality and sustainability of the restitution process are included in the Log Frame for the Programme which has been developed as part of this exercise (see Annex 3). The Theory of Change for the Restitution Programme has also been revised to place it within the broader landscape of rural development, the DRDLR and Outcome 7 of the Presidency's Delivery Agreement [68,] included in Annex 3. The use of these instruments to inform a more useful and relevant framework of target indicators to measure the Programme's achievements and guide its operations is urgently needed.

To conclude this analysis, the current measure used by the CRLR to assess the achievement of its restitution objective reflects a narrow and incomplete interpretation of the restitution process and its purpose. It significantly exaggerates the numbers of claims that have been finalised, and takes no account of a variety of qualitative indicators which determine the legal integrity and organisational coherence of each claim. This one-dimensional measure of the fulfillment of the Programme's objectives does more than misrepresent the Programme's restitution achievements. It misdirects the efforts and resources of the CRLR and its staff, it compromises the quality and content of the settlement process and it undermines the foundation and prospects for long-term stability and development of claimants and or claimant communities. Therefore, while the Restitution Programme can be considered to have been successful in settling 85% of restitution claims, it has fallen well short of this figure in bringing these settlements to financial closure, and in fulfilling the legal-process requirements of the Programme. These shortcomings significantly undermine the fulfillment of the legal and rights-based purpose of the Restitution Programme, and compromise its ability to lay the foundation for future investment and development.

[68] Outcome 7 of the Presidency's Delivery Agreement refers to: "Vibrant, equitable and sustainable rural communities and food security for all"

5.2. IS THE RESTITUTION PROGRAMME IMPLEMENTED EFFICIENTLY AND EFFECTIVELY?

5.2.1. Efficiency

Efficiency measures how the various programme inputs - staff, time, budget allocation - are converted into outputs – i.e. settled and finalised restitution claims.

Based on the findings outlined in previous sections, the Restitution Programme is deemed not to be an efficiently implemented programme. This is evidenced by the inordinate amount of time (2 – 15 years) taken to settle claims, and relates to problems that the research highlighted in respect of each phase of the restitution business process. In unpacking these problems and their consequences for the efficiency of the system, it is important again to acknowledge the hugely complicated nature of the restitution 'project cycle' and the reality of incomplete information that staff must deal with. This is compounded by ill-informed, disorganised and, frequently, opportunistic participants (claimants and land owners), and regular interference by a variety of authorities at various stages of the settlement process.

The discussion that follows will be concerned less with repeating the indicators of efficiency that have been described in previous sections, than with identifying their causes. In doing so we are concerned to pinpoint the key issues and causes that lie at the heart of the Programme's inefficiencies, from which most of the difficulties flow, and which can be addressed with the limited resources and time available to the Commission. It is worth recording however, that there is not a single aspect of the restitution project cycle – from lodgment through research and verification, gazetting, review and negotiation of options, settlement and communications – in which our findings did not illuminate major shortcomings. Manifesting all these problems is the very poor state of the formal archival record, which in many instances offered inadequate information on which to base a rigorous assessment of performance.

The efficiency constraints summarised below are interlinked and mutually reinforcing, and would require a coordinated approach to address effectively. For the sake of clarity we deal with each key point separately.

At the heart of the Programme's inefficiencies is the **absence of adequate management information systems (MIS) and clearly defined, standardised procedures**. There is a lack of standardised operating procedures (SOPs) that clearly and comprehensively describe the legal and administrative processes that underpin restitution. There is no single definitive and authoritative reference point to guide restitution staff and decision-makers through the complex processes and decision points that make up the restitution project cycle. This has resulted in the evolution over time, and across different geographies, of differing approaches to managing and settling claims. These divergences have become entrenched and have resulted in the proliferation of practices and approaches which together have diluted the overall process thus deviating from and compromising the legal basis of the restitution process itself.

Moreover, **as the CRLR has evolved over time, various processes and structures have, understandably and necessarily, been implemented in order to improve the pre-existing process**. While the logic of each of these revisions may have been sound in its historical context, they have lacked a systematic and coordinated framework and the sum of these revisions has resulted in a highly disjointed and fragmented framework of operating procedures without any documentary base. This has resulted in major cost and time

inefficiencies which manifest themselves at the key decision points, resulting in extensive 'send-backs', duplication of effort, backlogs delays and court referrals. This is also evident at the later stages of the settlement process, for example in relation to the frequently revised process of obtaining ministerial sign-off on a Section 42D report, which currently requires 17 different senior level approvals for a claim to be settled.

Linked to and compounding this is the **absence of a single, integrated MIS** with which to manage the restitution process. The process is currently supported by a paper-based system which, beyond the problems of file and documentation management that this results in, does not allow for effective management, decision-making and quality control. The inefficiencies that result from this include the following:

- **There is no means of tracking of projects through the restitution process**: Claims can lie dormant for extended periods of time and their quality and the timeliness of the different steps in the process cannot be effectively monitored. This results in high costs with respect to time and resources associated with frequent send-backs and updating claimants on the lack of progress. Moreover, the CRLR is unable to efficiently plan and budget for the finalisation of claims as it does not easily know the number (and value) of claims at the various points in the process. Problems and blockages in the process cannot be identified timeously, and key steps in the process are easily by-passed, resulting in poor quality subsequent outputs which require resource-intensive amendments or which simply fall below the legal standard required.

- **Timeous monitoring of the quality of restitution outputs is difficult**: The quality of intermediate outputs (e.g. research reports) is not adequately monitored until the Section 42D is submitted, where after any required amendments are resource-intensive owing to the progression of the process. Projects which are poorly documented leave the CRLR vulnerable to legal challenge, and resource-intensive dispute resolution. The current system does not adequately capture all the documentation required nor the institutional memory associated with a claim's progression, resulting in extensive disruption, cost and duplication of work when, as frequently happens, the PO on the claim changes or when the claim is questioned.

- **The system cannot identify claims with similar characteristics or capture and disseminate key learnings**: This undermines the scope for cross-learning in the settlement of similar claims, resulting in unnecessary duplication of effort and high opportunity costs, e.g. with regard to claims which might be batched for efficient processing. As a process, restitution becomes rigid and fragmented and does not lend itself to controlled innovation or improvement.

- **Monitoring and evaluation of key indicators is compromised.** The scale and complexity of the national system means that, without an electronic, web-based MIS it is extremely difficult and costly to monitor operational progress at both claim and Programme level. This in itself is a major contributing factor to the poor quality of restitution's settlement outcomes and the cost and time implications that derive from this.

- **The system provides no basis for performance monitoring and management of staff.** The paper-based MIS system poorly aligns authority and responsibility at different points in the decision chain. Poor quality, delays or incomplete procedures are difficult to track and allocate responsibility for. This not only compromises the

efficiency of the system but undermines any objective basis for performance management of staff at all levels – a critical long-term driver of operational efficiency.

Weak human resources and management systems are also a major cause of inefficiency. The causes are multifarious and interlinked, but relate to skill shortages across the board, inappropriate and inexperienced appointments, the absence of systematic training and induction arrangements, high rates of staff turnover across the board, the absence of effective performance management systems and a weak MIS which exacerbates the normal complexities and difficulties of the restitution process for everyone involved. Limited and inappropriate M&E indicators limit the measurement of the Restitution Programme's deliverables to simplistic quantitative indicators ('numbers of claims settled') which in turn drives inappropriate behavior by Programme staff who have little regard for considerations of quality and timeliness.

Fundamentally, the **ill-defined nature of what the restitution process entails, at what points the process begins and ends and the precise role of the Commission in this** are major sources of inefficiency. The lack of adequate operational autonomy of the CRLR from the DRDLR means that it is dependent on the Department for the appointment and performance management of staff and for its procurement needs. Undertaken through the DRDLR's SSCs, these are responsible for fulfilling a variety of departmental needs. They frequently do not prioritise those of the CRLR. The inadequate (and inadequately communicated – both internally within the DRDLR and the CRLR, and externally) autonomy of the CRLR around its role and purpose means that its staff are subject to frequent, debilitating interference around aspects of different claims, and settlement and post-settlement processes which lie beyond the CRLR's mandate. Related to this, the imposition of changes to the restitution business process by the Department and the extensive participation of CRLR's staff in a variety of departmental review and change processes is a major source of distraction for CRLR's staff, often with little relevance to its core mandate or functions.

Insufficient and ill-defined arrangements for collaboration between the agencies responsible for restitution, particularly relevant government departments - including other branches within the DRDLR such as the Surveyor General and the Deeds Office - results in major coordination problems and delays, thus negatively impacting the efficiency of the Programme. The lack of formalised systems and relationships between these agencies particularly affects the negotiations and research processes where routine processes are subject to resource-consuming delays, and where changes in personnel and process can be highly disruptive.

5.2.2. Effectiveness

Effectiveness measures the extent to which the Restitution Programme is meeting its set outputs – i.e. settled and finalised claims. As described in *Section 4.3.1*, the Restitution Programme has exceeded its targets of settling claims in the last three years. However, this does not reflect a rigorous measure of the effectiveness of the Programme as it does not take into account the inconsistencies in the counting of claims; the differences between what is termed a finalised versus a settled claim; and the quality of these outputs. As has been detailed earlier, the risks and consequences of poorly researched and finalised claims are considerable and typically manifest themselves in dysfunction and conflict within the recipient communities, with severe consequences for the prospects of stability, investment and future growth.

An additional measure of the effectiveness of the Programme is the degree to which it contributes to achieving its stated result – in this case sustainable, equitable redress. *Section 4.4.1* illustrates the inadequate hand-over of claims from the CRLR to post-settlement support whereby the transfer to post-settlement agents is uncoordinated, takes place too late in the process, and is inadequate thus disrupting productive activity and undermining long-term prospects. There is insufficient alignment from the Department's REID to support these claims, and the other agencies at both provincial and local level which are essential for a smooth transition in ownership and use of the land are frequently absent from this process. This undermines the sustainability of land which is transferred.

Whilst there is some degree of development support for land restoration, for claimants who are paid financial compensation there is no such support, for example in terms financial education and support for decision-making around different investment and consumption options. Thus the sustainable and responsible use of this compensation by recipients is not ensured and frequently results in the capital asset of financial compensation being badly spent or wasted entirely.

In summary, for the last three years the Programme appears to have been effective when measured against the quantitative indicator of the number of claims settled. However, when more qualitative indicators are taken into account, the Programme's effectiveness is severely compromised and does not sufficiently contribute to the sustainability and development impact of the redress which lies at the heart of the restitution process. Beyond the well documented tendency of many settled claims to succumb to internal conflict as a result of these weaknesses, many of these claims will be exposed to counter claims once the next phase of restitution gets under way.

Against all these measures, the current Restitution Programme can therefore not be deemed to be efficient or effective. Based on the results of the evaluation survey, the Programme can also not be judged to have laid or be laying a sound basis for poverty reduction and development. Looking forward to the next phase of the restitution process, urgent attention will need to be given to addressing a number of key constraints (discussed further in *Section 6*) to avoid replicating the problems of the current phase.

5.3. WHAT HAS MADE THIS INTERVENTION DIFFICULT TO IMPLEMENT AND ARE THERE EXAMPLES OF GOOD PRACTICE THAT WE CAN LEARN FROM?

Since the Programme's inception, there have been a number of barriers to its effective implementation and conversely, a number of best practices that should inform the future implementation of the Programme. The following section outlines the factors which have inhibited the Programme's effective implementation and some of its best practices.

The Restitution Programme has been one of the most successful of the land reform programmes, resulting in the greatest transfers of land. While this study highlighted many examples of factors which impede the effective and efficient implementation of the Restitution Programme, it also identified examples of good practice which have enhanced the implementation of the Programme.

The SSO is one such best practice. The case studies illustrated that having a standardised settlement value greatly assisted the POs in the negotiations stage and expedited the

settlement process. This also enables the CRLR to be more cost efficient as valuations are not necessary if the claimant accepts the SSO.

Effective collaboration between stakeholders has been shown to enhance the quality and sustainability of the restitution process. This is particularly the case with sector specific or commodity specific claims where MOUs or partnerships with relevant government departments and private sector organisations are established. These set a basis for the negotiations process and ensure that both the CRLR and the landowner's expectations are aligned. Similarly, aligning local level interests and authorities through their inclusion in the process from an early stage reduces the time taken in the negotiations stage and improves the implementation of development assistance where this is selected as a settlement option. The use of multi-stakeholder Steering Committees - with representatives from the CRLR, landowners and claimants - has also proven to be an effective means for communicating with all relevant parties and as a forum for conflict resolution. Similarly, collaborating with appropriately qualified 3rd party experts – be it in research or legal representation - who ensure the quality and sustainability of the claim has been proven to be a best practice.

Bundling of claims for research purposes has been an effective and time-efficient way of processing multiple claims. This has worked best when the claimed land is a coherent and contiguous property. However, care needs to be taken when batching claims, ensuring that the legitimacy of the research and the complexity and distinct nature of the underlying cases are not compromised. Furthermore, the strength, and validity, of batched claims is dependent on fundamental administrative processes being adhered to and meticulous record keeping of these processes and their rationale. Batching of claims should only ever be done for research purposes, and should never be consolidated for settlement purposes. The arbitrary consolidation of claims for settlement purposes, and the linked creation of artificial claimant 'communities', has resulted in a multitude of post-settlement contestations and problems.

Phasing the settlement of claims has been shown to be an effective way of settling complex claims. In instances where there are distinct parties delaying the process, separating the claim such that the "easier to settle" parties are processed first is highly effective. For example, where a subset of the claimants cannot be easily verified, separating these claimants from those who can be easily verified is effective in expediting the process. This is also applicable in the negotiations stage where a subset of the landowners may be unwilling to settle.

Innovative approaches to packaging redress options in relation to the feasibility of the land has been shown to be more successful than a "one-size-fits-all" approach. For example, where the claimed land cannot be restored to the claimants, offering the restoration of ownership without the right to occupation has been shown to be a success. Another innovative approach to packaging redress options includes offering a combination of different settlement options to (different) claimants within a single claim. This enhances the sustainability of the settlement and reduces the time taken in the negotiations stage as claimants are able to select the settlement option that is most appropriate to them.

There are also a number of factors that have restricted the effective implementation of the Restitution Programme. **The CRLR has always operated within strict timeframes**, following from political pressures to settle all the lodged claims by a set year. These time pressures have resulted in the CRLR rushing to settle claims; conducting research in a hurried, incomplete manner; artificially consolidating claims to expedite the settlement process and, ultimately, conducting incomplete, legally unsound settlements. As has been noted, these difficulties are compounded by the absence of standardised procedures, systematically enforced and linked to a uniform management information system which should govern the

restitution process. Together, these factors present a significant barrier to the successful settlement of claims as these are often of a poor quality and are open to internal conflict and external challenge and refutation which impacts negatively on the sustainability of the settlement.

The roles and responsibilities of the CRLR and the DRDLR are unclear. Pre 1998, the CRLR was independent. However, this changed in 1998/99 when it was incorporated into the former DLA. The motivations for incorporating the CRLR into the Department and the underpinning logic was sound– to provide for greater coordination and collaboration between branches to enable the effective implementation of the comprehensive rural development programme. However, this has resulted to some extent in duplication of post-settlement support in practice. It is a general perception that REID and RECAP, both housed within the DRDLR, inadequately take over the post-settlement aspects of restitution projects. As a result of this and to provide for continuity, the CRLR staff undertake these activities themselves, despite the fact that this is outside the mandate of the CRLR. In addition to the departmental campaigns, meetings, strategic sessions and ministerial requests that have resulted from the CRLR's inclusion into the DRDLR, this has resulted in the RMSOs reportedly spending up to 80% of their time on non-restitution related matters.

The CRLR views the Restitution Programme as a social programme. The CRLR's approach differs significantly to that of the LCC. As outlined in *Section 4.2.3.8* the LCC deals only with the claimant as per the claim form, whilst the CRLR actively searches for additional claimants who are linked to the land under claim so as to extend the benefits of restitution. This results in additional work for the CRLR and impedes the process of settling the existing lodged claims. Linked to this, the rights-based approach that is pursued by the CRLR allows claimants to change their selected settlement option at any point in the process, resulting in arduous delays and increased costs.

There is a lack of skilled and experienced staff, specifically research staff. This results in weak research reports that continually need to be amended or weak research that is signed off. The former results in arduous additional demands on already stretched staff, time delays and high costs as cases are referred to the LCC by opposing parties questioning the validity of claims. The latter problem results in the conclusion of legally unsound settlements, claims that are open to refutation and resource-intensive dispute resolution processes. The poor state of the CRLR's archival record suggests that a large number of settled claims belong in this category. If, as may well be a feature of the next phase of the restitution process, settled cases are challenged as part of new claims by disaffected or excluded communities, the CRLR will have difficulty in defending the legality of many such settlements. Improved research will mean less re-doing of work already done, greater legitimacy of claims settled, and fewer disputes between stakeholders. Weaknesses in the CRLR's research capacity are exacerbated by the high staff turnover, absence of quality training and insufficient performance management systems, the features of which have been discussed in previous sections[69].

[69] Whereas the CRLR needs to give urgent attention to improving the quality of its research capacity, it is infeasible for it ever to acquire the kinds of expert research capacity that is needed to adequately research and verify many of the claims it receives. Such capacity only exists outside of the Commission – in universities, specialist research agencies and expert individuals. Arrangements, including the quality control of outsourced experts, need to be put in place to ensure that this expertise can be efficiently and effectively accessed and contracted as needed.

6. RECOMMENDATIONS

The final two evaluation questions in the TOR relate to how the Programme can be implemented more cost-efficiently and how it can be improved for future phases of restitution. These questions need to be considered together; improvements for the next phase of restitution have direct implications for cost savings and vice versa.

The following recommendations are thus provided as a means of addressing both of these considerations. The recommendations offer focus on the key high level elements of the Restitution Programme, which have a direct bearing on the CRLR's ability to efficiently and effectively implement its mandate. In formulating these recommendations, the emphasis has been on addressing a limited number of crucial inadequacies, bearing in mind the extremely demanding context, the limited management resources and the demanding time-scale facing the CRLR. The recommendations are largely interlinked and mutually reinforcing, and should be viewed and applied as an integrated package of reforms. They are deemed to be a crucial pre-requisite for any prospect of success with the second phase of the restitution process, recently announced.

- **The focus and function of the Commission and the Restitution Programme must be more clearly defined and better communicated** – internally, politically across different departments that comprise the rural development cluster, and to the public at large. The CRLR's role must be clarified to be concerned *exclusively* with administering the legal process associated with the lodgment, review and settlement of restitution claims. The process thus defined must in all cases adhere to a strictly prescribed logical sequence, and must have a precise beginning and end point (the formal registration of a claim and its final settlement). The availability of the capital budget for restitution should have no bearing on the claim settlement process. The clear definition and communication of the CRLR's core mandate and function, and the need for a rigorous application of the procedures, will help to screen its staff from involvement in or interference from communities or affected parties whose concerns lie beyond the role of the CRLR.

- **The Restitution Programme's business and decision-making process must be reviewed, finalised and documented in terms of a strict, rule-based procedure**. This should include a careful review of best practice, and must be documented in a detailed Standard Operating Procedures (SOPs) Manual. This should cover every aspect of the agreed business process. It should be widely distributed and supported by training provided to all relevant staff – at national and provincial level. The defined restitution business process must be systematically applied, without deviation, to every claim lodged with the CRLR. Derogations from the SOPs Manual should require the formal authorisation of the CLCC. Thus standardised and documented procedures for the Restitution Programme will greatly enhance the consistency and efficiency of the restitution process, its measurability and its impact.

- **The different management information systems currently in operation or development should be rationalised into a single, web-based management information system.** This should provide for the electronic management and oversight of every step in the business process, and should serve as the core vehicle for all relevant documentation and authorisations. It should provide for a clear location of responsibility and authority at every step in the process, from registration to settlement. This will enable the claim settlement process to be more structured,

systematic and objective. It will enable real time project oversight and performance management. An integrated MIS will greatly facilitate, and indeed is a pre-requisite for, effective monitoring and evaluation, the collation and communication of best practice and learning, and performance management of the CRLR's staff, all areas which are currently lacking.

- **Provincial offices should be given responsibility for all non-capital aspects of provincial programmes**. This should include authority (and budgets) for filling vacant posts and procuring services relevant to the restitution process. Budget planning and management training must be provided including into the requirements of the PFMA. The Department's Shared Service Centres may continue to be used to support the CRLR's procurement functions, but authority for procurement and appointments should rest with the delegated CRLR official.

- **Performance management systems should be put in place, which manage national and provincial staff according to specific, measurable indicators.** These should at least include: the quality of research; adherence to agreed procedures and systems; the integrity of the claims process and the quality of the settlement agreement; and the rate of settled claims. Linked to the MIS, this will enhance the objectivity and integrity of the system, facilitate a focused project management approach to the settlement process against consistent targets and indicators, and provide for greater accuracy and rigor in the management of claims. Roles and responsibilities of staff (PO, QA, legal, management and director) at national and provincial level need to be clearly defined and delineated, and indicators of performance developed for each.

- **A competent human resource (HR) management capacity should be established within the Commission.** This should be independent of the DRDLR and be dedicated to serving the needs of the Commission in respect of its performance management, training and staff development functions. Its focus and operations should be driven by the long-term targets, indicators and circumstances of the Restitution Programme. A priority should be the formalization of effective, PFMA-compliant arrangements for outsourcing critical research functions (which can never and should not be an internal function of the Commission), and for ensuring adequate quality control and performance management measures.

- **The current M&E system should be broadened to measure intermediate outputs of the settlement process as well as qualitative aspects of both the settlement process (e.g. its timeliness) and its outcome (the completeness, integrity and stability of a settled claim)**. It should provide independent oversight and quality assurance of each step in the process, and should be linked to the performance management system. The M&E framework should include a learning and communication function whereby good and bad practice is captured and lessons are learned and effectively communicated. The business process should be open to structured review and change in the light of this learning.

- Beyond facilitation and coordination activities (which take place before a claim is settled) **the CRLR should be formally absolved of any responsibility for post-settlement support, local economic development processes and funding of related activities (beyond that associated with the financial settlement of claims).** The CRLR should concern itself exclusively with the adjudication of restitution claims and the restoration of rights in land.

- **The budget for the Restitution Programme needs to be re-considered.** In the recent years, the budget for the Restitution Programme has been reducing; thus impacting on the CRLR's ability to settle the outstanding claims. In line with this, should the second phase of restitution take place, the CRLR will require a greater operational budget than that which is currently available.

In terms of immediate priorities, three recommendations are made:

- **The current filing and recordal system must be cleaned up and systematised**. Concluded files should be reviewed to ensure they are complete in terms of content and chronology. Current files should be assessed in terms of their completion and compliance with legal process, and should be updated and systematised into the new MIS. All future cases should be managed through the MIS, strictly in relation to the procedures and the authorisation process defined in the SOP Manual.

- **Looking forward, all outstanding claims should be settled before any work begins, on the *processing* of new claims** arising from the recently announced second phase of restitution. Given that the window for new claims has been opened, the lodgment of new claims may proceed, but only in accordance with the requirements of the SOP Manual.

- **No new claims should be processed** before the criteria and focus determining access to the second restitution window have been translated into the SOP and incorporated into the new MIS.

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APPENDIX: