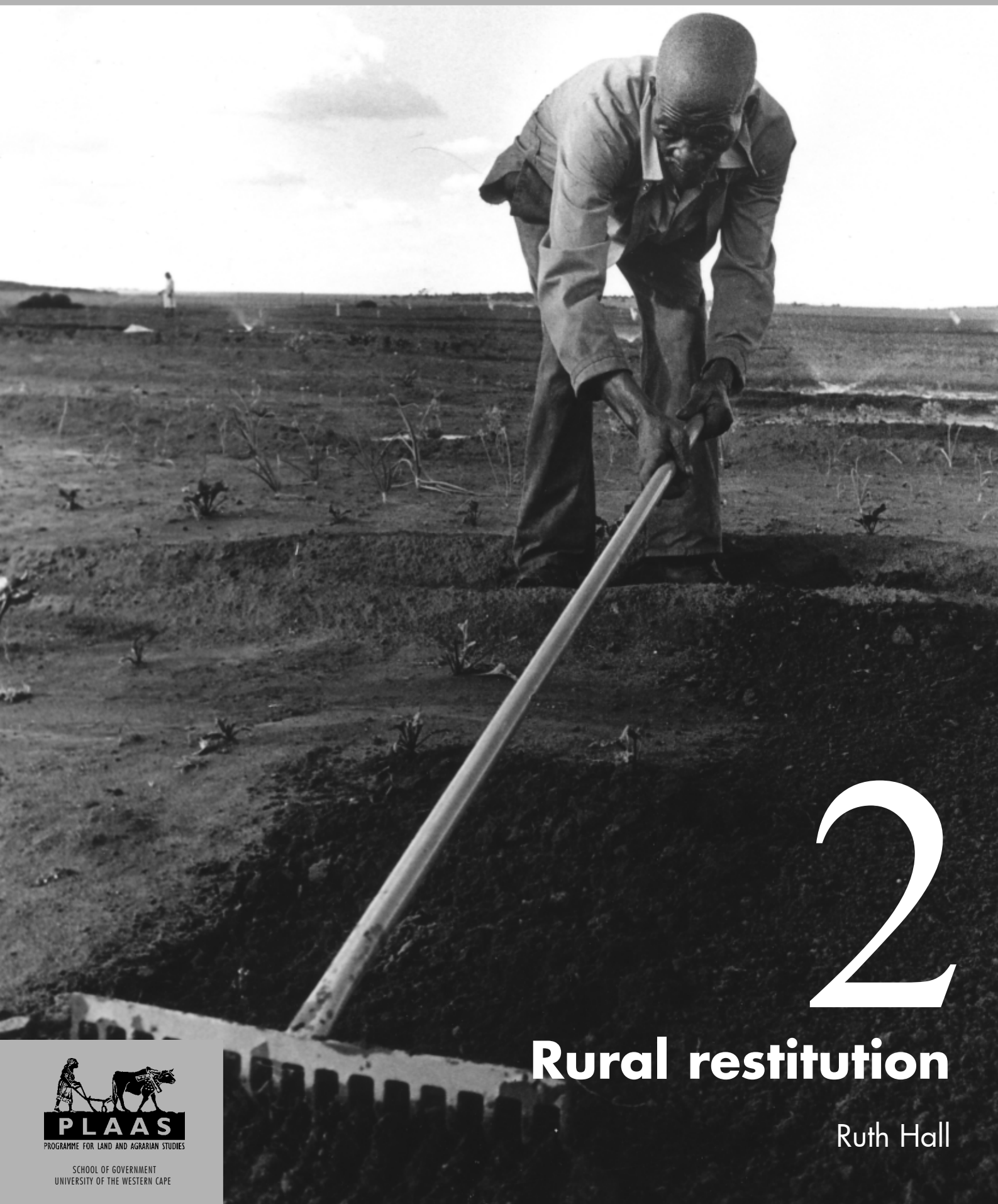
Evaluating land and agrarian reform in South Africa

An occasional paper series



2

Rural restitution

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Evaluating land and agrarian reform in South Africa is a project undertaken by the Programme for Land and Agrarian Studies (PLAAS) to respond to the need expressed by civil society organisations for independent research to evaluate progress in, and inform debates on the future of, land and agrarian reform. The reports in this series are:

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Final report

Foundation for Human Rights in South Africa

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Contents

List of acronyms and abbreviations

ANC	African National Congress
BRC	Border Rural Committee
Codesa	Congress for a Democratic South Africa
CPA	communal property association
CPI	consumer price index
CRLR	Commission on the Restitution of Land Rights
DLA	Department of Land Affairs
DPW	Department of Public Works
ESTA	Extension of Security of Tenure Act 62 of 1997
IDP	integrated development plan
ISRDP	Integrated Sustainable Rural Development Programme
LCC	Land Claims Court
LRAD	Land Redistribution for Agricultural Development
LRC	Legal Resources Centre
LTA	Land Reform (Labour Tenants) Act 3 of 1996
M&E	monitoring and evaluation
MTEF	Medium Term Expenditure Framework
MVOC	monetary value of claim
NDA	National Development Agency
NGO	non-governmental organisation
NLC	National Land Committee
Pelcra	Port Elizabeth Land and Community Restoration Association
PLAAS	Programme for Land and Agrarian Studies
Restitution Act	Restitution of Land Rights Act 22 of 1994
RDG	Restitution Discretionary Grant
RLCC	Regional Land Claims Commission
Salga	South African Local Government Association
SANDF	South African National Defence Force
SLAG	Settlement/ Land Acquisition Grant
SPG	Settlement Planning Grant
SSDP	Settlement Support and Development Planning unit (of RLCCs)
SSO	standard settlement offer

List of boxes, tables and figures

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1. Introduction

During the negotiated transition to democracy, many South Africans expected that liberation would bring the return of land they had been dispossessed of under colonialism and apartheid, but the terms on which the transition was negotiated constrained the parameters of how this could happen. The African National Congress (ANC) did not advocate nationalisation of land at the Convention for a Democratic South Africa (Codesa) constitutional negotiations and later adopted a willing buyer-willing seller approach to land reform. Both the 'interim' Constitution of 1993 and the 'final' Constitution of 1996 guaranteed the protection of existing property rights, while also placing clear responsibility on the state to implement land reforms.

The aim of the restitution programme is to restore land rights or provide other redress to those unfairly dispossessed since the introduction of the Natives Land Act 27 of 1913. Restitution is to address the loss of land rights that resulted from homeland consolidation, forced removals from 'black spots', the Group Areas Act and related laws that designated land on a racial basis. Between 1960 and 1983 alone, an estimated 3.5 million people were forcibly removed (Platzky & Walker 1985:9–12). As acknowledged in the White Paper on South African Land Policy, '[f]orced removals in support of racial segregation have caused enormous suffering and hardship in South Africa and no settlement of land issues can be reached without addressing such historical injustices' (DLA 1997:28).

While the land redistribution programme is discretionary, restitution is a rights-based programme in that eligible claimants have the right to restoration of – or compensation for – land of which they were dispossessed. The right to restitution of land rights was established in Section 25(7) of the 1996 Constitution, which prescribes that:

> *A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws and practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.*

The settlement of rural claims and the handover of land have become prominent events to celebrate the achievements of post-apartheid South Africa. Highlights have included the restoration of large tracts of land to rural communities, such as the Makhoba people in the Eastern Cape, the #Khomani San in the Northern Cape and at Elandskloof in the Western Cape. Redress has also taken the form of rural claimants entering co-management agreements to forests and nature reserves, as at Dwesa-Cwebe on the Wild Coast and Makuleke in Limpopo, rather than returning to live on their land. Among the achievements of restitution has been the settlement of large numbers of urban claims, some of them grouped together, such as the Port Elizabeth Land and Community Restoration Association (Pelcra), West Bank and East Bank claims in the Eastern Cape, Alexandra in Gauteng, and District Six in Cape Town. A total of 63 455 claims were originally lodged by the end of 1998 and, by March 2003, 36 488 claims were settled.

Restitution was envisaged as integrally linked to other aspects of land and tenure reform and as supporting 'the vital process of reconciliation, reconstruction and development' (DLA 1997:49). By responding to the demands for land to be returned, restitution was conceived as a form of restorative justice. As the programme progressed, questions emerged about whether it is possible or indeed desirable to 'turn back the clock' and re-establish communities

fragmented and scattered through forced removals. Historical claims to land have been powerfully articulated, and carry strong political resonance within the liberation movement, but do not always coincide with current needs for development and expanded livelihood opportunities. The restitution of land has highlighted tensions between addressing historical claims and responding to current priorities. It has also brought into question the state's ability to respond effectively to claims and to link the acquisition of land to wider developmental opportunities.

While acknowledging the real achievements made in settling claims, particularly urban claims, this report poses the question of what the restitution programme has contributed to the broader objectives of land reform and agrarian change – hence the focus on the restoration of rural land. It does not seek to evaluate the restitution programme as a whole. The report describes the legal, policy and institutional framework guiding restitution and explores, through the prism of the restitution project cycle, how the programme has been implemented and how this has shaped certain outcomes. The achievements of restitution are summarised and the remaining challenges of delivery are discussed both in quantitative terms – the claims to be settled and the likely cost – and challenges for institutions, policy and politics.

The research on which this report is based combines primary and secondary research methods. Desktop research was conducted to review legislation, policy and existing literature while visits to provinces allowed for the collection and analysis of programme and project-level documents. Interviews provided perspectives from those responsible for making policy, managing, implementing and monitoring restitution, in the Department of Land Affairs (DLA), the Commission for the Restitution of Land Rights (CRLR) in its national office in Pretoria and in its provincial Regional Land Claims Commissions (RLCCs). Interviews were also held with implementing partners including non-governmental organisations (NGOs), provincial departments of agriculture, the Land Bank, consultants, legal practitioners and farmers' associations. The key limitations of the research were that extensive primary fieldwork was not possible and the range of key informants did not include officials from local government – an important partner in the establishment of viable systems of post-settlement support.

Gathering and analysing data on restitution presented a number of challenges. No national project list of restitution claims was available. Most data were not disaggregated between rural and urban claims, or between claims settled with land awards and those settled in other ways. In addition, it was not possible to obtain reliable information on the establishment of legal entities, or post-settlement monitoring of projects. The lack of availability of such information from the CRLR and DLA's Monitoring and Evaluation (M&E) Directorate is a major finding of the study.

2. Legislation, policy and institutions

The Restitution of Land Rights Act 22 of 1994 ('Restitution Act') creates a right to restitution for people dispossessed of land rights after 19 June 1913 as a result of racially discriminatory laws and practices. Those dispossessed, or their descendants, were eligible to submit claims against the state for restoration of their land rights or for compensation (Section 10(1)). The timeframe for restitution in the White Paper on land policy (DLA 1997) was 18 years in total. A

period of three years from 1 May 1995 was set aside for eligible claimants to lodge their claims, later extended to a final deadline of 31 December 1998. It was envisaged that the CRLR and the Land Claims Court (LCC) would finalise all claims in five years and a further ten years was allowed for the implementation of all court orders and settlement agreements (DLA 1997:49).

The Act established a Commission on the Restitution of Land Rights to drive the process of land restitution: to assist people to make claims, to investigate their validity, to prioritise them, and to prepare for settlement or adjudication. The CRLR falls under the authority of the Chief Land Claims Commissioner. Regional Land Claims Commissions have been established in each province with their own regional commissioners, except the RLCCs in the Gauteng and North West, which fall under the authority of one commissioner, as is the case with the Northern Cape and Free State.

The LCC was established in 1996 to approve claims, grant restitution orders and adjudicate disputes. The need for a specialist court stemmed from the need for independent adjudication of disputes arising from laws underpinning land reform including the Restitution Act, the Land Reform (Labour Tenants) Act 3 of 1996 (LTA) and the Extension of Security of Tenure Act 62 of 1997 (ESTA). The LCC is able to take proactive steps: it may 'conduct any part of its proceedings on an informal or inquisitorial basis and it may convene hearings in any part of the country to make it more accessible' (LCC 2002). The LCC has the same status as the High Court and appeals against its judgments can be made to the Supreme Court of Appeal or, in specific circumstances, to the Constitutional Court. It was initially the task of the LCC to 'decide which form of restitution is appropriate and fair in each case' (LCC 2002).

Following a ministerial review of restitution in 1998, the process for settling claims was streamlined and the role of the CRLR was expanded. It was further integrated into DLA and CRLR commissioners were made responsible to the Director-General, creating new opportunities to link the restitution programme more closely to land reform as a whole (Du Toit et al., no date). Amendments to the Restitution Act in 1999 allowed 'a shift in emphasis from a judicial to an administrative process of resolving restitution claims' (CRLR 1999:31). While previously all claims had to be referred to the LCC, this amendment meant that 'restitution claims will be resolved via agreements between the parties, with the court only intervening to decide on legal disputes or where there is a need for interpretation of the law' (CRLR 1999:31). The CRLR holds delegated powers to negotiate settlement agreements with claimants. The introduction of Section 42D into the Act removed 'the need for claimants to waive their rights in order to facilitate the administrative processing of claims' (CRLR 1999:31). Since 1999, an administrative process has by and large replaced the judicial approach to settling claims.

According to the White Paper, restitution is to be driven by 'the just demands of claimants who have been dispossessed' and 'solutions must not be forced on people' (DLA 1997:49). Claimants are able, subject to circumstances, to indicate their preference for having their land restored to them, obtaining alternative land or receiving financial compensation – or a combination of these. Restitution is intended to achieve the following outcomes:

- substantial numbers of claimants who fulfil the criteria in the Act receive restitution in the form of land or other appropriate and acceptable remedies
- the restitution process does not lead to major disputes or conflict

- public confidence in the land market is maintained
- frameworks are developed for claims and demands that fall outside of the Act (DLA 1997:50).

3. Experiences of implementation

The project cycle for restitution claims starts with claims being lodged, screened and prioritised, after which research is needed to determine whether they are valid in terms of the criteria in the Act. The monetary value of claim (MVOC) must be determined before a claim can be negotiated and settled and, if land is to be restored, then land use and development planning will also be needed. Claims are settled when a settlement agreement is signed. Claims are only referred to the LCC if a negotiated settlement cannot be reached. The CRLR remains responsible for implementing the settlement and providing post-settlement support. Despite moves towards standardising the procedures adopted by the commission, there is substantial evidence that the ways in which claims are settled in practice differ widely both within and between provinces.

Interviews with commissioners, RLCC and NGO staff and researchers have highlighted substantial areas of consensus on the key problems and challenges in restitution. There is also agreement that restitution has been far more complex than anticipated. The following sections discuss how claims have been investigated and settled, illustrating this with reference to case studies in the Eastern Cape, Limpopo, Mpumalanga and the Northern Cape. Three key challenges that have substantially shaped progress in restitution are the ability of the CRLR to acquire land for restoration, the need to manage difficult group dynamics and to establish and support viable land-holding entities, and weaknesses of the CRLR which hamper its ability to perform the enormous and complex task with which it is charged. These and other experiences and challenges are explored below.

Lodgement

The process of claimants lodging their claims started slowly, leading to concerns that many eligible claimants were unaware of the process. The 'Stake your claim' campaign undertaken jointly by the CRLR, DLA and the National Land Committee (NLC) succeeded in informing a large number of people about restitution and their right to claim. As a result, most claims were lodged during the extended period from May to December 1998.

Both cut-off dates associated with restitution have been contested. First, the exclusion of claims predating the 1913 Natives Land Act has been criticised because extensive dispossession had already taken place by then. Even so, there is a need for some kind of cut-off, and land redistribution was designed as a programme to meet the needs of those landless people not eligible for restitution. Second, many potential claimants have been excluded because they missed the deadline in 1998, most because they were unaware that they had the right to claim. It is thought that vast numbers of people dispossessed of land and their descendants have not lodged claims. There have been calls to re-open the process for the lodging of new claims, but these have not been sustained and have been strongly resisted by DLA and the CRLR.

Validation and prioritisation of claims

Validation is an initial investigation to determine whether there is *prima facie* evidence that a claim is valid in terms of the criteria in the Act, as well as recording the location of the land under claim and the size and composition of the claimant group. In July 2001 the CRLR launched a campaign to validate all outstanding restitution claims. The purpose was to enable it to plan its work, prioritise claims and budget for the finalisation of all claims. By February 2003, most claims had been validated. Because many claims were redefined in the process, the total number of claims rose. On the whole, the validation process split up urban claims into households while rural claims were consolidated into community claims (Gwanya and Van der Merwe, pers. comm.). Relatively few claims were dismissed. It was not possible to ascertain whether those whose claims had been rejected were informed and whether they had the opportunity to appeal.

Even after validation, it is neither possible to say how much land has been claimed, nor to establish the number of people involved in the claims. A further campaign to verify all outstanding claims has been mooted. This would entail the verification of the claimants and their relation to those dispossessed as well as precisely what land has been claimed and the surveying of unregistered properties.

The Act spells out which criteria are to be considered when prioritising claims. Priority may be given to 'claims which affect a substantial number of persons, or persons who have suffered substantial losses as a result of dispossession or persons with particularly pressing needs' (Restitution Act Section 6(2)(d)). In the Eastern Cape three priority criteria are being applied, according to the Regional Land Claims Commissioner. Firstly, claims in areas prioritised for development through the Integrated Sustainable Rural Development Programme (ISRDP) or the Urban Renewal Programme (that is, 'poverty nodes') take precedence. Secondly, the RLCC has prioritised claims that are expected to have an impact on a large number of people, such as West Bank (an urban claim by 2 026 households) and Makhoba (a rural claim by 1 400 households). Thirdly, priority is given to those claims in which there are large numbers of elderly people (Gwanya, pers. comm.).

Urban claims enjoyed unofficial priority until 2002, when the Minister of Agriculture and Land Affairs called for rural claims to be prioritised. In some provinces, certain claims have been prioritised as a result of land occupations by frustrated claimants or conflict between competing groups of claimants. Conflict and publicity are important triggers in moving claims up the priority list. Even so, there is much variation in how the various formal and informal criteria are applied.

Determining the value of the claim

The CRLR has developed a range of policies and guidelines on how the components and value of a restitution package should be determined (CRLR 2002a:5). These stipulate that the package should be based on the nature, extent and value of land rights lost. In order to determine what land will be awarded to whom on what terms, or the level at which financial compensation will be offered, the monetary value of the land rights lost has to be calculated in each claim. Where groups submit claims, the MVOC must be based on the average extent of land lost and the average value of these land rights in order to make offers of financial compensation (CRLR 2001b:2).

Box 1: Valuations

The CRLR relies on professional valuers to determine what the market price of a property is, or to assist in the calculation of the MVOC. Valuations provide some leeway for commissioners to use their discretion. However, some RLCCs have experienced problems with valuation including the scarcity of good valuers willing to work on restitution claims and their fees: in some cases valuers have received more from a claim than the claimants themselves. In a few cases, valuers have been accused of employing dubious methodologies and promoting the interests of sellers to inflate the market value, though this has not been proven. The valuer working on the Macleantown claim got more than R1 million – what some implementers call 'an expensive thumbsuck'.

Sources: Gwanya, Roodt, Mokono and Mabuntana, pers. comm.

The MVOC can be calculated in different ways and the CRLR has not specified which approach is to be used by the RLCCs. One approach is to establish the *current value* of the land that was lost or of equivalent land nearby. This approach is usually used where there have not been substantial improvements on the land and where claimants received no compensation, or an insignificant amount. Another approach is to determine the *historical value* of the land rights at the time of dispossession, less the compensation received at the time and plus current rand values using the consumer price index (CPI) (CRLR 2001b:2). Compensation received at the time of dispossession can be taken into account when calculating the value of the land rights lost, but this is not always simply discounted.

Box 2: Past compensation for dispossession

Past compensation constitutes grounds for dismissing a claim only if the compensation was just and equitable, but this is seldom the case. Where people were compensated in cash or with alternative land, they usually got too little and sometimes compensation was only paid to some members or a community, or to a chief. Some residents of Chatha were compensated R10 per dwelling at the time they were dispossessed in the 1960s – far below the value of their homes or the cost of rebuilding them. The CRLR therefore disregarded the issue of compensation when calculating the MVOC. When the Makotopong community was dispossessed in Limpopo in 1967, they were provided with 'compensatory land' but this was smaller and of lower agricultural value than the land they had lost, and it was not transferred to them, but remained the property of the state. For this reason, their claim to return to their original land was successful.

Sources: DLA 2000; Wegerif, pers. comm.

One problem with discounting for past compensation is that the circumstances in which compensation was paid restricted the possible uses to which this money could be put. For instance, given racial restrictions on property ownership at the time, it would have been difficult or impossible for black people to use this to purchase alternative land (CRLR 2001b:3).

Options for claims settlement

Restitution claims are usually settled through the restoration of the land rights lost, provision of alternative land, payment of financial compensation or some combination of these. Increasingly, the CRLR is exploring ways in which to add 'developmental compensation' in which claimants receive priority access to resources and infrastructure as part of integrated development strategies by different spheres of government.

Land restoration

The willing buyer-willing seller approach to land redistribution has in practice been applied to the acquisition of land for restitution, even though it is not formally part of restitution law or policy. This has made restoration a cumbersome process, since restoration of claimed land is contingent on the willingness of current owners to sell at the prices the CRLR offers. Government and civil society have both identified this as a problem with the programme, as current owners are frequently unwilling to sell, either because they are unwilling to agree on a reasonable price, or are hostile towards restitution and distrust the government. The Minister of Agriculture and Land Affairs, among others, has observed that some farmers' associations have advised their members not to agree to offers to purchase from the CRLR (MALA 2001). Landowners have not only refused to sell but, in some cases, have challenged the validity of restitution claims (Gwanya and Wegerif, pers. comm.). However, restitution claims are made against the state, not against a current landowner.

There are three instruments that the commission has at its disposal to address situations where owners refuse to sell: offer a higher price, expropriate, or offer claimants an alternative remedy. All three approaches have been used.

Box 3: Acquisition of land

In both the Pheeha and Makhoba claims, in Limpopo and the Eastern Cape respectively, the unwillingness of current owners to sell their land posed a problem and land was acquired only after landowners had disputed the claims and, in the case of Makhoba, the CRLR had threatened to expropriate. The commission's ability to acquire land has in a few provinces been described as a 'domino effect' in that, once the owner of one portion of claimed land agrees to sell, others are likely to follow. It is not only current owners of land under claim who have opposed restitution claims. At Macleantown, white residents, organised in the Macleantown Ratepayers' Association, opposed the claims made by former owners and former tenants who had been dispossessed through the Group Areas Act in the 1970s.

Sources: Gwanya, Mokono, Wegerif, Westaway and Mabuntana, pers. comm.

The CRLR's ability to offer higher prices to owners is problematic because this means that current landowners, many of whom benefited from past subsidies, are effectively obtaining yet another subsidy. While disputes remain as to whether the commission is paying inflated prices, it is clear that the market basis of the restitution process means that landowners have substantial power to set a price. Only a credible threat of expropriation and skilled negotiation by the CRLR can counteract this.

By restoring ownership not only to former owners but also to former tenants and others who had informal rights, the LCC has set a precedent and recognised 'beneficial occupation' as constituting a right to land. Where the claimants never had title to the land, restitution has involved both restoring and upgrading land rights to ownership, as happened in Kranspoort in Limpopo.

Value added to the property after the time of dispossession has frequently made restoration difficult or not feasible in the view of the CRLR. This is particularly the case in urban areas where removals through the Group Areas Act were often concentrated close to city centres on land that has subsequently been developed. District Six in central Cape Town is an unusual case where the land was not redeveloped and thus restoration is possible.

Alternative land is usually sought where the CRLR or, previously, the minister, deems that restoration is not feasible due to changed land use or the extent of value added to the property, or where current owners refuse to sell. In addition, any government body can apply to the LCC for an order that land it owns that is subject to a claim will not be restored to the claimants.

Expropriation

The Constitution empowers the state to expropriate property 'for a public purpose or in the public interest' (Section 25(2)) and says further that 'the public interest includes the nation's commitment to land reform' (Section 25(4)). The owner is entitled to a fair hearing and to compensation, the level of which must be determined by the LCC. The factors to be considered must include the current use of the property, the history of its acquisition and use, its market value, the extent of past state subsidy in improving the property, and the purpose of the expropriation (Section 25(3)).

Box 4: Compensation for expropriation

Judge Antonie Gildenhuys of the Land Claims Court has developed a formula for calculating compensation based on the criteria contained in the Constitution. The 'Gildenhuys formula', is as follows:

Compensation = $C - k_0 \bullet (B - A) - E_1 \bullet k_1 - E_2 \bullet k_2 - E_3 \bullet k_3 \ldots$

Where:

- C is the present-day market value of the property
- k_0 is the inflation factor related to land acquisition, based on the consumer price index (CPI)
- B is the market value of the property at the time of acquisition
- A is the actual price paid at the time of acquisition
- E_1, E_2, E_3 and following are the historical values of infrastructure and interest rate subsidies received
- k_1, k_2, k_3 and following are the corresponding inflation factors for these subsidies, based on the CPI.

Source: DLA 1999

Some of the RLCCs have at times used this formula to determine the prices they will offer to current owners, while others have adopted a practice of offering market prices. In practice, it appears that there is a range of approaches to determining what the CRLR is willing to pay.

The Gildenhuys formula effectively converts the value of a past subsidy into a current tax on the sale of the property. The owner of the farm Boomplaats in Mpumalanga, whose land the state attempted to expropriate, argued that this calculation is unjust, since it is a tax that only applies to landowners whose land is under claim. Eventually the state was able to purchase the land, but at a substantially higher price than it originally offered.

Box 5: Boomplaats claim by Dinkwanyane community

The Dinkwanyane community purchased the farm Boomplaats in the Lydenburg District of Mpumalanga in 1906. This sizeable farm of 2 297ha in a fertile area with good rainfall was later designated as a 'black spot'. The residents, numbering 169 households, were forcibly removed in 1960–61 and resettled in the Lebowa homeland. The farm was later divided into two portions and sold by the state in 1982. Following the submission of a land claim by the Dinkwanyane community, DLA was able to purchase one portion of the original farm for R1 million.

The owner of the remaining portion, Willem Pretorius, rejected the CRLR's offer of about R850 000 because he claimed the farm was worth R2.1 million. The offer was based on the 'Gildenhuys formula' using the market value of the property (about R1.5 million), from which were discounted the value of previous state subsidies, loans and the difference between the price paid by the owner and the market value at the time of purchase. Having failed to reach an agreement on price, DLA served an expropriation notice on Pretorius who challenged it in the LCC. Neighbouring farmers and farmers' unions rallied to his support. In one version of events, the expropriation case was held up by incorrect legal procedure on the part of the state's attorneys. DLA claims that the Minister of Agriculture and Land Affairs 'was persuaded to withdraw the notice of expropriation and decided to give negotiations a further opportunity'. As a result, Pretorius was offered R1 285 764, which he accepted. On leaving the farm, he reportedly stripped it of many fittings including electrical fittings, wiring, taps, roofing from outbuildings and, literally, the kitchen sink.

Sources: *Carte Blanche* 2001; DLA 2001b; *Business Day* 2002; *News24.com* 2001

The Farmerfield claim in the Eastern Cape is one of only two cases of expropriation in respect of a restitution claim identified through this research and is a lesson in some of the potential pitfalls of expropriation.

Box 6: Expropriation at Farmerfield

The owner of one of two portions of land claimed at Farmerfield in the Albany district of the Eastern Cape refused to sell at the price offered by the CRLR. Expropriation proceedings were initiated, but the LCC refused to make a ruling on the level of compensation because this was not within its jurisdiction. In terms of the Restitution Act, the Minister of Land Affairs determines compensation. However, the Expropriation Act empowers only the Minister of Public Works to issue an expropriation notice and to determine the level of compensation payable in respect of an expropriation. After a two-year delay, the expropriation notice was issued, at which point the state became the owner of the property and 80% of the compensation determined by the Minister of Public Works was paid to the owner. The rest is outstanding. A further step was needed to transfer the property to the claimants, but years later this has still not been done. The claimants have no legal right to occupy the land and are unable to lease the land back to the former owner, as was agreed, since it is not theirs to lease. Although the claim is ostensibly settled and the land has been expropriated, about five years after the case was heard at the LCC, the claimants still do not have their land.

Source: LCC 1998; Roos and de la Harpe, pers. comm.

Expropriation has not been used as a viable instrument to make land available for land reform to date. A draft amendment to the Restitution Act published in May 2003 indicates that government is exploring this avenue and aims to address the problems raised by the Farmerfield case by empowering the Minister of Agriculture and Land Affairs to expropriate land without the owner's agreement and without a court order. Parliamentary hearings into this amendment Bill were due to be heard at the end of August 2003. Expropriation may become a more feasible option in the future but RLCC staff emphasise that, while expropriation may address the availability of land for restoration, it will not necessarily reduce its cost or increase the rate at which claims are settled.

State land

Land owned by the state is of importance to restitution in a number of ways. First, some state land has been claimed but a lack of information has resulted in some state land under claim being sold off to other parties. In *Mahlangu v. Minister of Agriculture and Land Affairs and Others*, a representative of a claimant group, the Litho Ndundza Tribe, unsuccessfully applied for an

injunction against the minister to prevent the sale of state land that it had claimed (LCC 2003). More recently, there have been a few cases of municipalities selling off land to Land Redistribution for Agricultural Development (LRAD) beneficiaries while this land was subject to unresolved land claims (Manong, pers. comm.).

Claims in protected areas like national parks have been largely settled through joint management agreements where claimants become co-managers or shareholders, or are prioritised for access to jobs and other development benefits, as in Dwesa-Cwebe in the Eastern Cape and Makuleke in Limpopo. Another category of state land on which a number of claims have been made – and have been particularly difficult to resolve – is military land.

Box 7: Claiming military land

A portion of the land claimed by the Makotopong community in Limpopo, dispossessed of their land in a 'black spot' removal in 1967, was owned by the Department of Public Works (DPW) and used by the South African National Defence Force (SANDF) as a bombing range. While DPW was willing to release the land to the claimants, the SANDF opposed restoration on the grounds that the land was 'contaminated' by unexploded missiles and was unsafe for human habitation, and on the grounds that the facility was of national and strategic importance. Despite lengthy negotiations, no resolution has been reached. In the Northern Cape, the claimants of Lohatla, an area of land from which they were removed to make way for an SANDF battle school, have also been unable to settle their claim as a result of a stand-off with the SANDF, even though DPW is the owner. The SANDF has refused to release the land, also claiming that it is contaminated by military use. In frustration at the apparent lack of progress with their claim, claimants occupied the land in late 2002 and were arrested and charged with trespassing. They later set up a 'landless people's camp' at the entrance to the property. The SANDF has obtained a Section 34 order to exclude its land from the settlement of the claim but has also sought to remove the small number of people, the Khosis, who have consistently resisted removal and remain on a small portion of the land in the middle of the army's battle school. Numerous interventions by former President Nelson Mandela, current President Thabo Mbeki and Minister of Agriculture and Land Affairs Thoko Didiza have all failed to facilitate an agreement with the SANDF or to identify sufficient suitable privately-owned land in the vicinity which owners would be willing to sell.

Sources: Oganne, Manong, Wegerif and Mokono, pers. comm.

Second, in some instances state land has been made available as alternative land in settlement of a claim. A state land audit was envisaged in the White Paper (DLA 1997) and the Restitution Act as a tool to make state land available for restitution purposes: 'In order to facilitate the work of the Commission and the Court, the Minister may take all necessary steps to compile a register of public land, which register shall be open to inspection by claimants and prospective claimants' (Section 39). This information has been compiled and is available to the CRLR to assist in identifying alternative land, but is not made available to claimants, in view of concerns that disclosing the location of state land is likely to lead to land occupations.

Financial compensation

By the late 1990s, the CRLR was discussing whether standard settlement offers (SSOs), a fixed level of financial compensation, should be made available as a means to expedite its work. The major benefit would be savings on valuations, which would no longer be necessary if claimants accepted the standard amount. Claimants rejecting an SSO would be able to approach the LCC for a ruling. This approach has been pursued in urban areas where most claimants are being offered financial compensation and, although the levels are not fixed,

offers are mostly made at R40 000 or R50 000 for owners (depending on the province) and R17 500 for tenants (Roberts pers. comm.; Mkwaba, pers. comm.).

Financial compensation may be less beneficial for claimants than restoration of land. For example, some RLCCs have upgraded tenant rights to freehold rights but this upgrade is possible only where land is restored – financial compensation for tenants cannot be calculated as if they owned the land. In addition, rural claims in practice may be privileged compared to urban claims since they get land or at least financial compensation based on the actual value of the land – usually more than an SSO of R40 000 per household.

There is substantial disagreement within the CRLR as to whether the option of financial compensation is in line with the spirit of the land reform programme. The tendency towards cash rather than 'developmental' settlement of claims (land, housing or commonage) limits the contribution of restitution to the broader objectives of transforming patterns of land ownership and building the livelihoods of poor rural people. While some RLCC and NGO staff argue that this option should be removed, the right of claimants to choose among possible remedies, including financial compensation, is protected in law (Roberts, pers. comm.). It would be 'unconscionable', in the view of some, for the CRLR to seek to limit the options currently available (Mgoqi, pers. comm.). Even so, there is considerable leeway available to RLCCs on the manner of claims settlement in their provinces and this can, but will not necessarily, promote developmental settlement of claims rather than financial compensation.

Developmental compensation

A failing of restitution identified in the ministerial review of 1998 (Du Toit et al., no date) was the lack of a clear link between restoring land and providing opportunities for development. Restitution was criticised as relocation in reverse, providing 'land, tin toilets and that's it' (Roodt, pers. comm.). For this reason, the CRLR has explored forms of restitution beyond land – as one official put it, 'it is not just a matter of getting your land back anymore'.

The 'developmental approach' to restitution extends to rebuilding communities and their livelihoods and must therefore include access not only to land but also to services and social infrastructure (Tuswa, pers. comm.). What sets developmental compensation apart from other remedies is that it requires institutions to work together in an integrated way – something which experience shows is rare. The Macleantown claimants, for instance, have demanded that restitution must take account that they lost not only land but also their homes – an often forgotten aspect of the value of what people lost through dispossession. The CRLR was able to conclude an agreement with the Department of Housing to provide them with these top structures – a contentious decision since this meant these claimants effectively jumped to the front of the housing queue (Roodt, pers. comm.). The value of these top-structures has been dealt with inconsistently, with some claims incorporating houses in the value of the claim (as in Chatha), while most urban and rural claims exclude this.

Developmental compensation can extend beyond housing to address productive and social infrastructure, like prioritising claimant communities for roads, public works, schools, clinics and state-supported income generation projects. This model has been pursued in 'betterment' claims where claimants are not landless but lack resources for development.

Box 8: Betterment claims at Keiskammahoek

When Keiskammahoek in the Eastern Cape was subjected to 'betterment' planning from the 1950s, the re-organisation of communal land into demarcated land-use zones dispossessed people of individual and group rights to land, including communal grazing land, disrupted livelihoods and social networks, and deepened poverty. The rights lost were 'strong and enforceable' lifelong and heritable rights in terms of existing tenure arrangements. The nature of the dispossession, then, combined an absolute loss of land, together with a loss of livelihoods due to the re-designation of residential, arable and grazing land.

Keiskammahoek residents lodged land claims even though, at the time, DLA did not acknowledge that betterment constituted dispossession and therefore fell within the ambit of the Restitution Act. The involvement of the Border Rural Committee (BRC), a land rights NGO, was crucial in informing people about the restitution process and engaging with residents' associations to ensure that claims were lodged. Later, it compiled evidence to support the claim, drawing on extensive archival and academic research. In contrast to its earlier position, the CRLR accepted the claim based on the vast evidence that dispossession had taken place as a result of racially discriminatory laws and practices. After a lengthy process of investigation and negotiation, the claim was settled and celebrated on 16 June 2002.

The settlement of the claim involved cash compensation for land rights lost, as well as developmental compensation. The total redress amounted to more than R102 million, paid out to 1 704 families, based on an average valuation of rights lost at R55 564 per claimant household in addition to Restitution Discretionary Grants (RDGs) and Settlement Planning Grants (SPGs). Half of this has been paid out as financial compensation, and half reserved to fund community development, including services like water, rural electrification, access roads and to support vegetable gardening and other agriculture.

Although a similar claim had been settled in Chatha, also in the Eastern Cape, the Keiskammahoek outcome set an important precedent which expanded the scope of the restitution programme. It has been recognised as 'an irreversible policy shift'. An estimated four million people were dispossessed through betterment – more than through the Group Areas Act, black spot removals or any other apartheid policy. However, most of those eligible for restitution as a result of this precedent did not lodge restitution claims prior to the 1998 deadline because they were informed that they were not eligible for restitution.

Sources: RLCC Eastern Cape 2002; DLA 2000; Gwanya, cited in Gerardy 2002; Gwanya, Semane and Westaway, pers. comm.

The adoption of this more holistic approach to restitution – linking land rights to livelihood opportunities – has been widely welcomed as a positive move, though it does stretch the capacity of the CRLR as its success is dependent on strong integration among implementing agencies and spheres of the state. Among these, local government is of central importance.

Claims settlement

There is a degree of variation in how RLCCs use the Restitution Act to settle claims. The judicial approach to settling claims required proof sufficient for a court. With the shift to an administrative approach, these requirements have been relaxed somewhat, but the CRLR's own policy and procedures are time-consuming and costly, and they are inconsistently enforced. Among implementing partner organisations some confusion remains about the requirements of the CRLR. The danger in these inconsistent practices is that the commission opens itself to challenges, both by family members excluded from the benefits of a claim and by opponents of land reform seeking to discredit restitution.

Where groups submit claims jointly, family trees have been used to demonstrate the validity of the claim, as was done by Nkuzi Development Association in the Pheeha claim in Limpopo. Claimants are sometimes required to provide letters giving power of attorney to a nominated

family member who will receive the financial compensation on behalf of the family, as was done at Keiskammahoek in the Eastern Cape.

Box 9: Bureaucratic processes and the onus of proof

The CRLR has sometimes required that family trees be drawn up to demonstrate how the claimants were related to those dispossessed. At Macleantown, community leaders collected all this information over a period of months, and at their own cost. However, the RLCC lost all this information. The entire process had to be repeated, causing suspicion among the claimants who had to produce their identity documents for a second time.

At Chatha, a three-person 'verification committee' was created to collect the names and identity numbers of claimants, though they were not required to prove that they were descended from the previous rights holders. They agreed informally which family member would be paid the financial compensation. In each village, a mandated negotiator was appointed to convey information on the progress in the claim and to ensure that the claim lists were complete. Despite the effort put into the process from the side of the claimants and BRC, the claimant lists were later disputed as some people alleged they had been left out.

At Keiskammahoek, in contrast, the CRLR required family trees, identity numbers, and powers of attorney to be signed by every adult. Through verification committees in every village, and at a cost of about R500 000, BRC collected this information for the commission. It was not entirely complete, though, but the CRLR settled with every individual, regardless of whether or not they had signed a power of attorney agreement.

Sources: Gwanya, Roodt and Westaway, pers. comm.

In general, when settlement agreements are concluded, these specify what land and other remedies the claimants will get. In practice, though, there appear to be two other ways of settling rural claims with land awards, each of which results in the CRLR over-reporting its achievements. Both also reduce the time required to settle claims, which the commission reports has shrunk from an average of 2–3 years to only nine months (Contact Trust 2003). First, some claims are only partially settled. Second, claimants opting for land are sometimes paid out money earmarked for land purchase, without land actually being purchased. These two variations, referred to here as 'partial settlement' and 'the payout approach', are described below.

Partial settlement of claims

Partial settlement is where a claim is settled in respect of less than all the land claimed. A sale agreement may have been concluded in respect of one farm or a portion of a farm. For example, in at least three claims in the Northern Cape, settlement agreements have been signed in terms of which only part of the claimed land is restored, after which there is no further progress in respect of the other farms or portions of farms within the claim (Manong; pers. comm.; Oganne, pers. comm.). In Mpumalanga, the claimants at Kafferskraal have received only one of the 14 farms they claimed, while the Masha community has received one of the eight farms it claimed at Kalkfontein under the chief, who has agreed to 'share' one other farm with another claimant group whose claim overlapped with theirs; and has relinquished a claim to a further farm in view of the competing claim of another group (James, pers. comm.). The way that claims actually proceed, and which properties are settled first, is often determined by which owners are willing to sell, which property is seen as the 'key' property for the claimants (for example, the former seat of a chieftaincy or other significant sites), and whether or not

the claim is contested or complicated by overlapping claims. This practice of partially settling claims can result in each property being counted as a separate claim: each time a new portion of land is acquired for purchase, a new settlement agreement is concluded and another claim is recorded as having been settled. It can also lead to partially settled claims being relegated to the bottom of the priority list.

The payout approach

Where claims are to be settled with alternative land, the CRLR adopted an approach in which settlement agreements are concluded and funds are disbursed prior to the land being identified. These claims are settled by valuing the rights lost and claimants sign a settlement agreement to accept the calculated MVOC. Settlement agreements specify how much money can be made available to buy land rather than specifying what land claimants will get. They are then allocated this money, which is put into a trust account, following which claimants and the RLCC can continue to look for land to purchase (Waring, pers. comm.). While this has the advantage for claimants of enabling interest on unspent funds to accrue to them, it also means that they become dependent on the goodwill of CRLR staff to continue to help them, since the claim is ostensibly settled and funds have already been disbursed. This 'payout approach' is tantamount to financial compensation, except that the money is earmarked – claimants cannot choose to use it for purposes other than to buy land. In the Fatman claim in the Eastern Cape, settled in this way, the claimants were unable to find land suitable for their subsistence farming, but eventually settled on land that was inappropriate because of the conflict and frustration within the group (Roos, pers. comm.). Using the payout approach, the CRLR allocates money to buy land based on the value of land lost rather than buying land for claimants, but the two are not equivalent.

The emergence of 'partial settlement' and the 'payout approach' might be a response to political pressures for 'delivery' to take precedence over careful and thorough restitution processes on the ground. It is not currently possible to comment on how widespread these practices are, but both are grounds for concern. Practitioners have expressed fears that progress in claims on more than one property might stop once one key farm has been restored – as has been the case with some claims so far. With CRLR staff under enormous pressure to make inroads into the outstanding claims, it is reasonable to suspect that the actual completion of incomplete claims which are currently described as 'settled' may be jeopardised.

Implementation of settlement agreements

Claims are 'settled' when a settlement agreement has been signed or when the LCC has issued judgment. Many of the claims that are 'settled', however, have in fact not been finalised. Implementation of settlement agreements can take a number of years. The steps include budgeting, purchase and transfer of land and the design and implementation of a development or business plan. Each step may be lengthy – the registration of title deeds in the names of claimants or their legal entities, for instance, takes a long time, especially in the case of state land. This process must be expected to take time, but some claimants experience particularly long delays that result mostly from two factors: conflicts among claimants, and integration problems among implementing agencies.

Box 10: Delays between settlement and implementation

Macleantown, a settlement agreement concluded in 2000, is still being implemented. Some of the residential land is yet to be purchased, the township layout plan has not been finalised, and part of the commonage is still to be transferred and rezoned. According to the town planners contracted to manage the project, the claimants can expect to move to their homes and receive rights to the commonage in 2004. Similarly, the land claim at Chatha, also settled in 2000, is to involve the line departments responsible for education, labour, agriculture, water affairs and forestry, among others, in a variety of developments to build infrastructure and economic activities. However, progress hinges on the District Council, which holds the money. In this way, compensation earmarked for 'development', which rightfully belongs to the community, is held up and subject to the process requirements of local, provincial and national government structures. It is not yet clear whether individual plots will be surveyed and transferred, or whether a legal entity (a trust or a communal property association) will take ownership of the entire area and keep a register of individually-held residential and arable land.

Sources: Jonas, Semane, Roodt, Tuswa and Westaway, pers. comm.

Legal entities and group dynamics

Groups of people jointly claiming land are usually internally differentiated along lines of gender, generation and class. Some dispossessed communities were geographically scattered across the country. These differences often manifest in a degree of contestation regarding how the land is to be used and managed and how decisions should be taken. For this reason, intensive facilitation of claimant groups is crucial from the point at which options for claim settlement are discussed. A number of practitioners cited experiences in which community representatives do not report back to the rest of the claimants, giving rise to later conflicts. The danger of the more vocal and powerful 'representatives' acting unilaterally also exists after the transfer of land when the stakes are raised as decisions need to be made about access to infrastructure, land and other natural resources. For example, who will be able to occupy a farm house, who will have access to what land and who will be able to chop down trees to sell firewood?

Communal property associations (CPAs) formed in terms of the Communal Property Associations Act 28 of 1996 and trusts are two types of legal entity that restitution claimants have used to jointly acquire, hold and manage land in terms of a written constitution or a trust deed. A CPA has an elected committee, accountable to all its members. Most CPAs stipulate that at 30–50% of the committee members must be women, but in practice women are often marginal both in numbers and in their ability to speak and to influence decisions. The potential for restitution to impact positively on the livelihoods of poor rural communities is strongly related to the viability of these important institutions. Complexities in how CPAs are constituted and how they function have rendered many ineffectual or defunct, with an undisclosed number having been liquidated – in effect, reversing the land reform gains they promised.

Box 11: Restitution CPAs registered

The statutory CPA Register maintained by DLA contains details of 31 CPAs that have acquired land through restitution: 11 in North West, eight in Limpopo, five in Northern Cape, two in KwaZulu-Natal, two in Mpumalanga, one in the Eastern Cape, one in the Free State, and one unspecified. None were registered in the Western Cape and Gauteng. The register is very incomplete. Of the 555 registered CPAs, 309 do not specify through which policy programme they acquired their land.

Source: DLA 2003

Some legal entities define membership according to a category of people (along linguistic or lineage criteria) rather than specifying exactly which individuals or households are members, but the rules of membership entry and exit are often unclear. The rights and duties associated with membership are often left undefined: once CPAs take transfer of land, further processes of defining the content of substantive individual and group land rights are not pursued. In addition, governance problems have been the downfall of many CPAs, due to the absence or lack of appropriate institutional support from DLA. Legal entities are not necessarily suited to being business entities, especially since this can jeopardise the tenure rights of members. Also, legal entities need not be coterminous with land – it may be more appropriate and provide flexibility if different entities are established for different types of land or land uses. CPA committees sometimes vie with traditional authorities or civic organisations for authority in communities, leading to conflict or to the functional disintegration of the CPA.

Restitution requires the definition of communities and this has sparked struggles over rights to land in three ways: firstly, between competing communities claiming the same land; secondly, between former owners and former tenants; and thirdly, between claimants returning to their land and farm dwellers already living on it. Experiences of these divisions and different approaches to addressing them are presented in Boxes 12, 13 and 14.

Box 12: Overlapping claims to land

Overlapping claims to land result from the nature of dispossession – it was not a linear process, nor did it happen at one point in time. Many communities were forcibly removed more than once as homeland boundaries were redrawn. As a result, historical claims to land now overlap.

More than two years after the start of work on the Pheeha claim in Limpopo, it emerged that three other communities were also claiming some portions of the land under claim. Negotiations led to an agreement that two of the communities would withdraw their claims on those farms that were also being claimed by the Pheeha clan, in return for which the Pheeha claimants permitted members of the Bakgaga ba Maupa tribe to reside on a portion of their land. Despite an ongoing dispute with the Raphahlelo community, the Pheeha claim was settled on this basis.

Elsewhere, particularly in the eastern parts of the country (KwaZulu-Natal and Mpumalanga), restitution claims have overlapped and conflicted with claims to land made by labour tenants in terms of the Land Reform (Labour Tenants) Act. At Gongolo and Nkaseni in KwaZulu-Natal, for instance, current labour tenants and former labour tenants have laid claim to the same land in terms of the LTA and the Restitution Act, respectively. In practice, this has required DLA and the CRLR to negotiate with both groups regarding how the claims can be settled. These overlapping claims provide considerable grounds for conflict. Clarity on process and strong integration between institutions is necessary.

Sources: Del Grande, Shange and Westaway, pers. comm.

Claimants are also differentiated according to who had what kinds of rights to land at the time of dispossession. The major divide is between people who were owners – or *de facto* owners – of land and those who were rent-paying tenants.

Box 13: Owners and tenants

After about two years of preparing the Kromkrans claim for settlement, the RLCC in Mpumalanga became aware of the existence of a second group of claimants, called Vukuzenzela, representing the former tenants who had lived on the farm and paid rent to the owners. They had thus enjoyed 'informal rights'. The RLCC attended to their claims alongside those of the 'formal owners'. This required buying up successive pieces of land, including the original land and properties adjacent to it, some of which are still to be bought.

Similarly, the Makotopong claim in Limpopo was lodged by former owners who argued that their former tenants were not part of their claim because they had never owned the land. Through negotiation between the RLCC and Nkuzi Development Association, the owners agreed that the tenants could become part of their claim, and a deal was struck in which the tenants would become owners of the compensatory land on which they and the owners had lived since their forced removal, while the owners would have their original land restored to them.

At Macleantown in the Eastern Cape, former owners and former tenants disputed who had what rights in terms of the claim. After a failed attempt at a court settlement, and lengthy negotiations, the former owners settled their claim. They would get their plots back and, where this was not feasible because the plots had been built on, they would get alternative land that would be excised from the commonage. The tenants, too, would be awarded residential plots excised from the commonage and the RLCC would purchase additional land to be incorporated into the municipal commonage.

Sources: James, Mmako, Roodt and Westaway, pers. comm.

In claims involving the restoration of commercial farms, there is the potential for conflict between claimants returning to their land, and farm dwellers living on the farms who have lost their jobs as a result of the transfer of the land. This raises the possibility that satisfying the historical rights of one group might result in the dispossession of another. The position taken by CRLR staff interviewed was that this does not justify intervention, since farm dwellers' tenure rights are protected by law, regardless of changes in the ownership of the land. The #Khomani San is an exceptional case in which the farm dwellers were incorporated, though on an unequal basis, into the CPA of the restitution claimants.

Box 14: Claimants and farm dwellers

When the #Khomani San claim was settled in Namaqualand in the Northern Cape, two disputes arose regarding the status of the farm dwellers formerly employed by white commercial farmers on the farms transferred to the CPA. As farm dwellers, they had tenure rights in terms of the Extension of Security of Tenure Act and continued to live on CPA land. These 'inherited members' could not be excluded entirely as they had certain rights to the land owned by the CPA. On the other hand CPA members opposed their full incorporation as they did not have the cultural or historical affiliations that defined the identity of the CPA, namely San ancestors. As a compromise, the CPA utilised Section 9(1)(b)(ii) of the CPA Act which allows for the creation of different 'classes' of members. They assigned the ESTA occupiers the status of a 'special group' and limited the obligations of the CPA towards this group.

Source: Ellis, pers. comm.

The fundamental conundrum still facing many CPAs is the question of who decides when and by what process which portions of land or income generated from the land goes to which persons. In the face of this contentious question, rights are sometimes not allocated at all, and disputes arise as a result of this lack of definition. These issues are to be the focus of a DLA review of communal property institutions, the broad term for group-based legal entities, including CPAs.

Post-settlement support

There is no consensus in the CRLR on its role after a settlement agreement has been signed and after land has been transferred, or on its strategy to exit from projects. This debate in the commission has been described as 'volatile'. A few individual RLCC staff and commissioners, together with some NGOs, have spearheaded the argument that restitution must be integrated with a development process, and that it is important to draw in other line departments when planning is done. Some CRLR staff are opposed to this, holding the view that the role of the commission is purely to settle claims, not to engage in development. Only three RLCCs have established Settlement Support and Development Planning (SSDP) units with dedicated staff, and there is no national policy framework in place to guide this aspect of the CRLR's work.

The absence of post-settlement support has led to serious problems of the new owners of land being unable to use the land as a basis for their livelihoods. Three key areas of post-settlement support have been identified as important. Firstly, there is a need for institutional support to legal entities such as CPAs or trusts. Secondly, there is a need for support for agricultural production, including training, extension advice and market access. Thirdly, there is a need for assistance with improving access to infrastructure and services.

The CRLR has engaged with the South African Local Government Association (Salga) on the need to factor restitution claims into the integrated development plans (IDPs) of municipalities so that local government can become the central co-ordinating institution responsible for ongoing support. This requires communication and integration among institutions at an early stage of the project cycle, rather than after a project has been established. At present none of the rural claims settled with land awards in Limpopo feature in the IDPs of their respective areas, yet most identified settlement as a priority (Broderick, pers. comm.).

The CRLR has also concluded a trilateral agreement with the Land Bank and the National Development Agency (NDA) to provide financial and related support services to restitution claimants in the post-settlement stage. Early indications are that the Land Bank will use its existing procedures and criteria – commercial viability, business plans and credit references – that in practice are exclusionary, while the NDA has played a role on a small scale in setting up partnerships between established commercial farmers and restitution claimants. White farmers – sometimes the former owners – have been contracted to mentor the new owners and to transfer skills. Some RLCCs have favoured this approach and even arranged for these mentors to become shareholders so that they continue to have a financial interest in the success of the enterprise, while others argue that providing white farmers with equity defeats the purpose of restitution (Mabuntana, pers. comm. and Contact Trust 2003).

It appears that, after having framed its role fairly narrowly, the CRLR has felt compelled to adopt a more holistic understanding of its role, which is to be welcomed. However, this expanding role is partially due to the need to make up for the failure of other agencies – particularly provincial departments of agriculture and local government – to play this role. It is not clear what will happen to post-settlement support when the restitution programme is complete and the CRLR ceases to exist.

Institutional challenges

Among the challenges faced by the CRLR are the scale of its task, the need to integrate its work with a range of other state and non-state bodies, the need to deal with large and

differentiated groups of claimants, the need to address rights and to settle claims in a holistic and developmental way, and the need to respond to the political pressure to complete this work in a short space of time with very limited resources. The commission also faces institutional challenges. Prime among these are high staff turnover, inadequate numbers of staff and a lack of delegated authority, all of which result in delays in settling claims. Other problems cited include inadequate support from DLA for RLCCs, and from RLCCs for claimants in the post-transfer phase (CRLR 2003b:4). In addition, the CRLR is faced with pressure to deliver from landless people, political pressure from other quarters, and continued opposition to claims by landowners.

Levels of staffing in the commission are widely agreed to be insufficient for the task. In February 2003, only 342 of the CRLR's 433 posts were filled – meaning that 21% of its posts were vacant at that time (CRLR 2003b:24). The RLCC commissioner in Limpopo estimated that his staff would need to be increased fourfold to deal with existing claims. In the Eastern Cape, the RLCC has 42 staff, of whom 12 are administrative. Because the staff is too small to deal with all the claims, the RLCC relies extensively on contracted service providers to research claims.

There are differing views within the CRLR on what impact outsourcing its work has on the quality of processes and outcomes. The former Chief Commissioner argued that the CRLR's work can be largely outsourced and the role of commission staff should be limited to identifying needs for service providers, contracting them and managing them. However, there are two problems with this approach. Firstly, a number of RLCCs say that there are not enough appropriately skilled service providers available, they are very unevenly spread across the country (most are based in metropolitan areas), and they charge very high fees. Secondly, CRLR staff have limited time and skills to effectively manage service providers. Some were recruited as fieldworkers or community liaison officers, but are expected to manage contracts with outside agencies – a task which requires a different set of skills. Outsourcing is one strategy to relieve the pressure on the CRLR, but it has its limitations.

Box 15: The presidential deadline to settle all claims

There is enormous pressure to settle all outstanding claims before 2005 – the end of the three-year deadline set by President Thabo Mbeki. Within the CRLR there appears to be consensus that this is not achievable with current resources, but there are different views on whether it is achievable at all. The former Chief Commissioner argued that, with increased budgets, the target could be met because the CRLR could replicate its strategy of outsourcing throughout the project cycle, right through to post-settlement support. Additional operational funds could be used to pay service providers rather than increase CRLR staff, though it has been acknowledged that the commission's work cannot be wholly outsourced and there is, at least, a need to ensure sufficient internal capacity to manage the work of outside service providers.

In order to meet the presidential deadline for settling claims, and to spend its newly increased budget, the CRLR plans to review its policy and implementation procedures, and amend the Restitution Act to expedite expropriation of land for the purposes of settling claims. A raft of new policy is also due to be adopted during 2003, including revised policy on grants, a 'sliding scale' of SSOs, revised methods for the valuation of rural claims, offers to purchase, and church land. Despite these efforts to streamline its work, the CRLR acknowledges that not all claims will be settled by December 2005. Among the residual claims expected to be unresolved are those where the claimants are untraceable, those that are 'highly disputed' and those that are before the LCC. There are no indications at present how many might fall into these categories.

Source: CRLR 2003b:16, 23; Mgoqi, pers. comm.

In this context of time constraints, institutional challenges and the enormity of the task at hand, NGOs have played a central role in implementing restitution, working closely with claimants to pursue their claims, and providing unremunerated services to the CRLR.

Box 16: The role of NGOs

Land rights NGOs played a pivotal role in motivating for land restitution to be included into the land reform programme and, since its inception, have worked alongside the CRLR to ensure that eligible claimants lodge claims, that claims are investigated, negotiated and settled, and that settlement agreements are implemented. In the Eastern Cape, BRC has worked on ten rural restitution claims. Its work has included compiling evidence, preparing claims for settlement, managing projects, and other tasks that would otherwise have fallen on the CRLR. In Limpopo, Nkuzi Development Association has worked on nine of the 13 rural claims settled so far in the province. As well as preparing claims for settlement, Nkuzi has met extensively with the claimant group members and negotiated how they would like to pursue their claim and how they would like to use and manage their land once it is restored to them.

NGOs have worked on contract for the CRLR, but have also challenged the commission's policies and approaches to claims. By working with the CRLR and with claimants, NGOs have pushed the pace of restitution, influenced the kinds of settlements reached, and acquired experience that makes them both important allies and informed critics. Relations between NGOs – particularly the affiliates of the National Land Committee – and RLCCs in the various provinces vary. In some cases good working relations exist at the local level, along with political tensions on questions of policy, particularly between the national offices of NLC and the CRLR.

Sources: Mokono, Gwanya, Wegerif, Westaway and Mgoqi, pers. comm.

The work of the RLCCs is also hamstrung by the extent to which they are dependent on approvals from the CRLR, DLA and the Minister of Agriculture and Land Affairs. A logical extension of the changes in the law to expedite settlement through an administrative process would be to confirm devolution of powers to RLCCs. This would avoid delays in authorisation, for instance for mandates to negotiate the settlement of claims which currently have to be sent on a long route form to get signatures. This has been described as time-wasting and ties the hands of regional commissioners.

3. Achievements

The indicator usually used to measure the achievements of restitution is the number of claims settled. Other quantitative and qualitative measures of importance, however, include how many people have benefited, the extent to which land has been restored to claimants, and the impact of restitution on achieving national reconciliation, promoting gender equity, stimulating economic activities and contributing towards viable rural livelihoods. This section focuses on the quantitative achievements of restitution.

Claims lodged

A total of 63 455 claim forms were lodged with the CRLR by the extended deadline of 31 December 1998 – a figure consistently reported between 1998 and 2000.

As the regional commissions started to investigate and validate claims, some claim forms were found to represent more than one claim and were split up. There are various reasons why splitting up claims might be useful or necessary. First, if rights lost were vested in individuals

or households, a community claim would be split up for the purposes of settlement. A separate settlement agreement would need to be signed by each claimant household or groups of households, or their representatives. Second, claims might be split up if claimants were divided on the manner in which they would like their claim settled – for instance, if some would like their land restored while others opt for financial compensation. For these reasons, some claims were 'split', with the result that the total number of claims was constantly being revised, rising to 68 878 in 2001 and to 72 975 by 2003.

Table 1: Claims lodged by province

Province	Total claims at Dec 1998	Total claims at March 2001	Total claims at March 2002	Total claims at Feb 2003
Eastern Cape	9 615	9 292	9 469	*
Free State		4 715	2 213	*
Northern Cape	12 044		2 502	*
Western Cape		11 938	11 938	*
Gauteng	15 843	15 843	13 158	*
North West			2 508	*
KwaZulu-Natal	14 208	14 808	14 808	*
Mpumalanga	11 745	6 473	6 473	*
Limpopo		5 809	5 809	*
Total	**63 455**	**68 878**	**68 878**	**72 975**

Sources: DLA cited in SAIRR 2000:154; CRLR 2001a:11; CRLR 2002a:67; CRLR 2003d:10

* This information is not available even though a national total was published by the CRLR.

As the number of settled claims rises, the total is expected to overtake the number of claims originally lodged. In the Eastern Cape, for example, 9 469 claims were originally lodged but, as investigations proceeded, this number increased to 14 755, of which 12 979 are urban and 1 776 rural (CRLR 2002a). By 2003, the number of claims settled in the province exceeded the number originally lodged. For this reason, it is misleading to judge the number of settled claims against the number of claims lodged. The total number of claims is a shifting target.

Claims settled

Restitution started slowly. The need to establish a new institution, recruit staff, establish procedures, publicise the process, receive claims – as well as the heavily legalistic nature of settling claims – were some of the factors that led to less than 50 claims being settled in the first five years of the programme. The pace of delivery accelerated dramatically from 1999.

There has been an enormous increase in the number of claims settled, but the number of households benefiting and the amount of land being restored has not increased in the same way. From 1998 to 2002 the average number of households per claim dropped from 432 to 2, while the average number of hectares restored per claim declined from 5 185 to 8 during the same period. This striking trend suggests that smaller claims have been prioritised or that

Table 2: Claims settled per financial year					
Financial year	**Claims**	**Households**	**Beneficiaries**	**Hectares**	**Total award cost**
1996/97	1	350	2 100	2 420	R5 045 372
1997/98	6	2 589	14 951	31 108	R15 568 746
1998/99	34	569	2 360	79 391	R2 988 577
1999/00	3 875	10 100	61 478	150 949	R155 045 907
2000/01	8 178	13 777	83 772	19 358	R321 526 061
2001/02	17 783	34 860	167 582	144 111	R994 168 313
2002/03*	7 031	27 266	117 873	164 384	R518 222 476
Total	**36 908**	**89 511**	**450 116**	**591 721**	**R2 012 565 452**

Source: CRLR 2003b:25

* Restitution claims settled as at 28 February 2003 are included for the financial year 2002/03

larger claims have been split up. The CRLR confirms that the increase in settled claims has been largely among urban claims where land is not restored and there are fewer claimants per claim. A provincial breakdown of households and hectares per settled claim supports this view, with the lowest ratios being in Gauteng and the Western Cape where there are more urban claims than rural ones.

Table 3: Settled claims by province as at 31 March 2003*			
Province	**Claims settled**	**Average households per claim**	**Average hectares per claim**
Eastern Cape	11 045	2	3
Free State	1 152	2	35
Gauteng	7 373	1	0
KwaZulu-Natal	8 640	2	8
Limpopo	777	14	44
Mpumalanga	635	11	72
Northern Cape	450	9	622
North West	1 053	8	58
Western Cape	5 363	2	1
National	**36 488**	**2#**	**16^**

Source: CRLR 2003e

*Average households and hectares per claim have been rounded off

#Total households from Table 5 (87 947) divided by total claims settled

^Total hectares from Table 5 (571 103) divided by total claims settled

Up to 2001, in most instances one settled claim corresponded with one lodged claim form. This was broadly the case for the Western Cape, Limpopo (Northern Province at the time),

Mpumalanga, Gauteng, Free State and the Northern Cape. In contrast, the Eastern Cape, KwaZulu-Natal and North West were splitting up claims as they were lodged into multiple claims for the purposes of settlement.

Table 4: Settled claims as lodged and as settled as at 31 March 2001

Province	Settled claims (as lodged)	Settled claims (as at settlement)
Eastern Cape	670	2 898
Free State	405	405
Gauteng	3 382	3 382
KwaZulu-Natal	17	419
Limpopo (Northern Province)	330	330
Mpumalanga	3	3
Northern Cape	408	409
North West	9	388
Western Cape	3 861	3 860
Total	**9 085**	**12 094**

Source: CRLR 2001a:21–46

By the end of March 2003, the CRLR reported that a total of 36 488 claims were settled, and 571 103ha of land had been restored. Approximately R440 million had been spent on buying land and R1 263 million was spent on financially compensating claimants.

Table 5: Claims settled as at 31 March 2003

Settled restitution claims	
Number of claims settled	36 488
Households involved	87 947
Beneficiaries	454 094
Land restored: Hectares	571 103
Financial details	
Land cost	R439 751 357
Financial compensation	R1 263 261 685
Restitution Discretionary Grant	R136 440 000
Settlement and Planning Grant	R48 111 342
Solatium	R6 196 000
Total award cost	**R1 893 760 384**

Source: CRLR 2003e

The shifting definitions used by the CRLR in its statistical reports makes it difficult to establish with any certainty what has actually been achieved in terms of numbers of claims settled, and how many claims remain unresolved. Of critical importance is to establish how many claims as lodged are represented by the reported number of claims as settled. If, as appears to be the case, the number of claims as settled does not represent an equal number of claims as lodged, but a considerably lower number (due to claim splitting), then it is imperative to establish the actual number of claims as lodged that have been resolved to date. Simply subtracting the number of claims as settled from the total claims as lodged, as some have done, will seriously underestimate the number of claims remaining. The shift in reporting from claims as lodged to claims as settled serves, perhaps unintentionally, to exaggerate the progress of the restitution programme, and to disguise the true scale of the task still outstanding.

Amount and cost of land

The amount of land restored to claimants differs widely across the provinces. Most land transferred has been in the more arid parts of the country, particularly in the Northern Cape where several large restitution claims account for nearly half of all land restored nationally. By June 2002, nearly a third of the 1.6 million hectares transferred through land reform had been through restitution.

Table 6: Cumulative totals of land transferred March 2001–March 2003

Province	Hectares		
	March 2001	March 2002	March 2003
Eastern Cape	7 029	27 101	29 577
Free State	5 339	5 339	40 665
Gauteng	9*	0	3 453
KwaZulu-Natal	5 980	61 691	70 603
Mpumalanga	3 720	18 504	45 817
North West	39 756	58 814	61 470
Northern Cape	189 490	221 759	279 759
Limpopo	26 657	28 874	34 504
Western Cape	5 246	5 255	5 255
Total	**283 226**	**427 337**	**571 103**

Source: CRLR 2001a; CRLR 2002a; CRLR 2003e
*This figure for Gauteng appears to be an error, since the cumulative total the following year is zero

The proportion of restitution budgets being spent on land also differs widely across the provinces. High-spending provinces like Gauteng and the Western Cape have not spent the most on land – the bulk of their expenditure has been on financial compensation and grants. Conversely, under-performing provinces like Free State, Limpopo and the Northern Cape have spent proportionately more on land. Overall less than a quarter of the capital expenditure in restitution has been spent on land.

Table 7: Expenditure on land and total capital expenditure as at 31 December 2002			
Province	**Expenditure on land**	**Total capital expenditure**	**Land as % of total capital expenditure**
Eastern Cape	R97 587 594	R560 146 796	17.4%
Free State	R7 549 367	R20 263 738	37.3%
Gauteng	R17 507 952	R244 370 827	7.2%
KwaZulu-Natal	R69 087 086	R476 659 486	14.5%
Limpopo	R84 506 088	R133 203 106	63.4%
Mpumalanga	R11 255 598	R43 453 718	25.9%
North West	R66 132 035	R125 395 720	52.7%
Northern Cape	R56 944 011	R72 206 217	78.9%
Western Cape	R20 254 974	R178 725 042	11.3%
Total	**R430 824 707**	**R1 854 424 650**	**23.2%**

Source: CRLR 2003e

The extent to which rural claims in particular have been settled with land is one indicator of restitution's success. Although restitution has made a meaningful contribution to the total transfer of land through land reform, this analysis demonstrates that most restitution is not about land.

Rural claims lodged and settled

Rural claims account for between 20% and 25% of all claims, but most of these are large group claims involving hundreds, if not thousands, of people. Urban claims are generally smaller, often involving individual families. For this reason, rural areas – where an estimated 90% of claimants are and where the bulk of the land is to be restored – are widely considered to be the 'backbone' of restitution (Lahiff 2001:3 and Mgoqi, pers. comm.). Provinces with predominantly rural claims are Mpumalanga, Limpopo and the Northern Cape; all others are predominantly urban, with over 90% of the claims in the Free State and Western Cape being urban.

Table 8: Rural and urban claims lodged as at 31 March 2001				
Province	**Rural**	**% of provincial total**	**Urban**	**% of provincial total**
Eastern Cape	804	11%	6 588	89%
Free State	101	4%	2 668	96%
Gauteng	2 035	17%	9 863	83%
KwaZulu-Natal	2 810	19%	11 997	81%
Limpopo	4 113	73%	1 494	27%
Mpumalanga	5 210	81%	1 226	19%
North West	1 472	37%	2 473	63%
Northern Cape	2 000	62%	1 200	38%
Western Cape	595	5%	11 343	95%
Total	**19 140**	**28%**	**48 852**	**72%**

Source: CRLR 2001a:14

In November 2002, the CRLR announced that it had settled 10 836 rural claims, and that the vast majority of the rural claims had been settled with land awards (9 764) and the remainder with financial compensation (1 072). These figures were far higher than many people expected. Previous information from the CRLR indicated that rural claims were being settled at a fraction of the rate of urban claims and organisations working on claims had the impression that very little headway had been made with settling rural claims. However, there are such major problems with data reported by the CRLR that this information is questionable.

Box 17: Information management and monitoring of restitution

The CRLR no longer distinguishes between the numbers of beneficiaries who had their land restored versus those who received financial compensation, nor is there a national project list available to demonstrate on what basis national statistics are generated. It has acknowledged that it does not have an effective monitoring and evaluation system and that all settled claims will need to be re-captured on a database. The CRLR has embarked on a project to clean and verify its data and its data system is due to be revamped by September 2003. This involves reviewing claim files and verifying the information. Once this has been done, the CRLR will be able to work out how many claims originally lodged have been settled, and how many are outstanding. This is likely to result in changes to existing data on settled claims.

Sources: CRLR 2003c; Barnard and Mkwaba, pers. comm.

According to the Chief Land Claims Commissioner, 4 715 rural claims were settled as at June 2003, of which more than 80% were settled with land awards. Piecing together data from different sources between March and June, the following is the most comprehensive picture of progress in settling rural claims available from the CRLR.

Table 9: Settlement of rural restitution claims as at 27 May 2003

Province	Rural claims lodged[#]	Rural claims settled	Rural claims settled with land	Rural claims dismissed	Outstanding rural claims[##]
Eastern Cape	804	276	Almost 70%	43	*
Free State	101	14	100%	0	*
Gauteng	2 035	2 829	100%	0	*
North West	1 472				*
KwaZulu-Natal	2 810	268	Almost 70%	*	*
Limpopo	4 113	13	More than 90%	26	*
Mpumalanga	5 210	297	100%	26	*
Northern Cape	2 000	19	90%	1	*
Western Cape	595	999	40%	0	*
Total	**19 140**	**4 715**	**More than 80%**	**96**	**11 338**

Source: CRLR 2003c except where otherwise indicated; [#]CRLR 2001a:14; [##]CRLR 2003d:10
* Not available

The CRLR national office has released statistics that are contradictory and do not correlate with project lists from the provinces. Overall, it appears that nearly half of all claims have

been settled and half of all rural claims have been settled, but there are such serious anomalies in how claims have been counted that even this conclusion is uncertain. The question of importance to this discussion is *how* have these claims been settled – how many involve the transfer of land, how much land, of what quality, where and to how many people?

Rural claims settled with land awards

The number of rural claims settled with land is a key indicator of the extent to which restitution is addressing racially skewed land ownership in rural areas. The CRLR does not have data on the number of rural claims settled with land in each province. The Programme for Land and Agrarian Studies (PLAAS) therefore conducted its own investigation. This investigation involved checking the last available national project list from March 2002 against project lists obtained from RLCCs, complemented with numerous interviews with information officers and project officers in the RLCCs. The outcome was then circulated to all regional commissioners for comment. In the process, numerous claims that were in fact not settled, not settled with land awards, or not rural, were weeded out. Detailed investigations in all RLCCs produced specific figures of settled rural claims (as lodged) that were settled with land awards for each province, but these added up to just 185 identifiable claims. The preliminary results of this exercise are in Table 10. (See Appendix A for the full list of claims).

Table 10: Estimate of rural claims settled with land awards as at March 2003

Province	Projects	Claims (as lodged)	Households	Hectares	Land cost
Eastern Cape	10	10	4 245	22 712	R17 327 318
Free State	4	4	245	41 608	R2 272 367
Gauteng	2	2	699	1 811	R17 507 952
KwaZulu-Natal	10	12	2 348	63 033	R64 541 724
Limpopo	10	13	8 800	56 734	R69 629 000
Mpumalanga	10	65	4 950	25 783	R34 823 000
Northern Cape	8	10	4 063	232 195	R47 438 134
North West	12	67	6 321*	54 222	R69 117 158
Western Cape	2	2	315	3 097	R4 439 974
Total	**68**	**185**	**31 986**	**501 195**	**R327 096 627**

Source: Derived from PLAAS research (see Appendix A)
* This figure is incomplete as data were not available for one of the claims.

Investigating how many rural claims have been settled with land elicited a number of definitional problems in the categories and concepts being used by the CRLR to record and report on its work. Despite previous agreements in the commission about how claims were to be counted, there are differences in how this is being done both within and between provinces.

- In Table 10, the *number of claims* reflects the number of original claim forms lodged with the CRLR, resulting in a figure far lower than the 10 836 announced in 2002 and the

4 715 announced in mid-2003. These discrepancies are due to different ways of counting claims but also might result from a significant – but unknown – number of rural claims that have been settled with financial compensation.

- The *number of households* is a key indicator of the number of people benefiting from a settled claim. However, in some provinces this number appears to be an estimate, as is evident for instance in the round numbers of Mpumalanga claims. Also, some RLCCs estimate there to be six beneficiaries per household.
- The *number of hectares* should reflect the number of hectares restored to the claimants, but there are problems here too. In some cases, like Dysselsdorp in the Western Cape (Box 19), this refers to the number of hectares of which the claimants were dispossessed, and no land has yet been acquired for restoration (Waring, pers. comm.). In others, on state land, the figure refers to the number of hectares which the claimants currently occupy and over which their tenure is still to be upgraded.
- The *land cost* may over-represent how much money has been spent on purchasing land to restore it to restitution claimants, because included in these amounts are grants and other forms of compensation. At Sabokwe in KwaZulu-Natal, for instance, the 'land cost' includes the cash payments for the 423 families that opted for financial compensation as well as the land and grants for the 125 families which opted for an award of land. Where tenure rights are to be upgraded, as in the case of Chatha, the 'land cost' refers to an entire settlement agreement including financial compensation and development compensation. For this reason, betterment claims have been excluded from this list. It is not yet clear whether and how tenure upgrades and transfer of title will happen in these two claims. On the other hand, 'land cost' excludes state land transferred through an accounting entry, which does not cost the CRLR anything.

Box 18: Which claims are 'rural'?

The CRLR does not have a standard definition of what constitutes a 'rural' claim and it acknowledges that interpretation of what is 'rural' differs across the regions, especially when it comes to peri-urban land. For this reason, CRLR staff will be visiting the provinces to investigate each claim and possibly recategorise claims already settled. Currently, there are three different approaches being used to determine whether a claim is rural:

1. If the land use of the property claimed is agricultural or it is zoned for agriculture.
2. If the history of removals was in terms of the 1913 or 1936 land Acts rather than the Group Areas Act.
3. If the property size is larger than 3 000m^2.

Source: CRLR 2003a

In combination, the inaccuracies and ambiguities in how claims, households, beneficiaries, hectares and land cost are recorded call into question the meaning of all official statements by the CRLR regarding its achievements in settling rural claims and transferring land. The Western Cape provides an example (Box 19).

Box 19: Counting rural claims in the Western Cape

According to the RLCC, a total of 374 rural claims were lodged in the Western Cape, of which 61 have been settled (all with land awards), one was dismissed as invalid, and 313 are outstanding. The CRLR, however, reports that 999 rural claims have been settled of which 40% involved land awards. However, research indicates that land has been transferred in respect of only two rural claims in the province. Reasons for these discrepancies are that:

- Settlement agreements have been signed, but no land has been transferred. Dysselsdorp, outside Oudtshoorn, was cited as a rural claim settled with an award of land in March 2002, but a year later no land had been transferred. Most of the claimants opted for financial compensation, with about 20% holding out for land. The CRLR has reported the 'land cost' as just under R25 million – the total cost of the claim – even though no land has in fact been identified or bought and the land cost is only likely to amount to a quarter of this amount.
- Claims settled through financial compensation are reported as having been settled with awards of land. The Riebeeck Kasteel claim, involving 56 of the 61 claims, was settled through means of financial compensation and claimants then applied to DLA for redistribution grants in order to buy land. The RLCC was unable to explain why this has been cited as a rural claim settled with land.

Sources: CRLR 2003c; RLCC Western Cape 2003; Roberts, Bohlin and Waring, pers. comm.

4. Budgets and targets

The presidential deadline has resulted in increasing attention being paid to the budgetary needs of the restitution programme. This discussion shows how budgets have increased, but that the projected funds for the coming years may still be insufficient to settle outstanding claims. However, the lack of reliable information on how many claims are outstanding calls into question any estimate of the amount that would be needed.

Targets for delivery

The CRLR's strategic plan involves the settlement of 40 089 urban claims and 11 547 rural claims over three financial years (Table 11).

Table 11: Targets for settlement of rural and urban claims 2002–2006

Indicators	Targets			Total
	2003/04	2004/05	2005/06	
No. of claimants verified	10 200	15 504		25 704
No. of urban claims settled	9 469	7 872	7 591	24 932
No. of rural claims settled	1 507	5 102	4 938	11 547
No. of rural hectares claimed	150 000	160 000	170 000	480 000
No. of rural households benefited	363 000	301 200	290 500	954 700

Source: DLA 2002a:19; CRLR 2003b

Compared to performance to date, the number of hectares per year contained in these targets is not unreasonable. What is surprising is that in the future each rural household is expected to get an average of half a hectare, suggesting that a larger proportion of rural claims will be settled through remedies other than land awards, such as financial compensation. These targets imply an enormously increased pace of settling rural claims, which requires additional

institutional capacity, or reliance on settling claims earlier on in the project cycle, such as through partial settlement or the payout approach.

How much will it cost to deliver on these targets?

There are various ways to estimate the cost of settling outstanding claims. Here, three different approaches are presented.

The CRLR has estimated that each urban claim costs an average of R40 000 – the same level at which the SSO was set – and each rural claim costs R250 000 (CRLR 2002b). It is not clear how these averages were derived. However, taking these figures and assuming that claims will cost the same, on average, to settle as those in the past, then the total cost of settling the 11 547 rural claims, at an average of R250 000 each, will be R2.886 billion and the approximately 25 000 urban claims, at R40 000 each, will cost R1 billion. This indicates the need for at least R3.886 billion in the capital budget to settle outstanding claims.

The CRLR's own costing indicates a smaller amount of R1.435 billion over this period, including some non-capital costs (Table 12).

Table 12: Restitution budgets projected for 2002–2006

Outputs	Budget (in R'000)			Total
	2003/04	2004/05	2005/06	
Claimants verified	2 000	2 000	2 000	6 000
Claims settled	265 000	305 000	856 000	1 426 000
M&E system to monitor post-settlement support	1 000	1 000	1 000	3 000
Total	**268 000**	**308 000**	**859 000**	**1 435 000**

Source: DLA 2002a:23

The CRLR's projected budget, including the verification of claims and the establishment of a monitoring and evaluation system to monitor post-settlement support, is less than half of the amount implied by the CRLR figures.

The cost of settling rural claims has been far higher than the CRLR's estimate. An average of R1.723 million has been spent on 'land cost' per rural claim settled with land.[1] In the future some rural claims might be settled more cheaply, with cash compensation, but settling just half of the 11 547 rural claims would cost in the region of R10 billion. To this should be added budgetary provision for the rest of the rural claims settled through other remedies, RDGs and SPGs, and the cost of urban claims – not insignificant amounts. To this, a further 25% operating budget for the CRLR would need to be added. This analysis, based on past performance, indicates that the commission has seriously underestimated its own budgetary needs.

How much is available to fund these targets?

The budget for restitution has been greatly increased and this is set to continue. A total budgetary allocation of R2 857 743 is projected to fund the costs of settling restitution claims from 2003/4 and the subsequent two years of the Medium Term Expenditure Framework (MTEF)

(Table 13), though this is subject to change. These allocations include the operating costs of the national office and the RLCC offices, as well as the capital costs of land purchase, financial compensation and other payments to claimants.

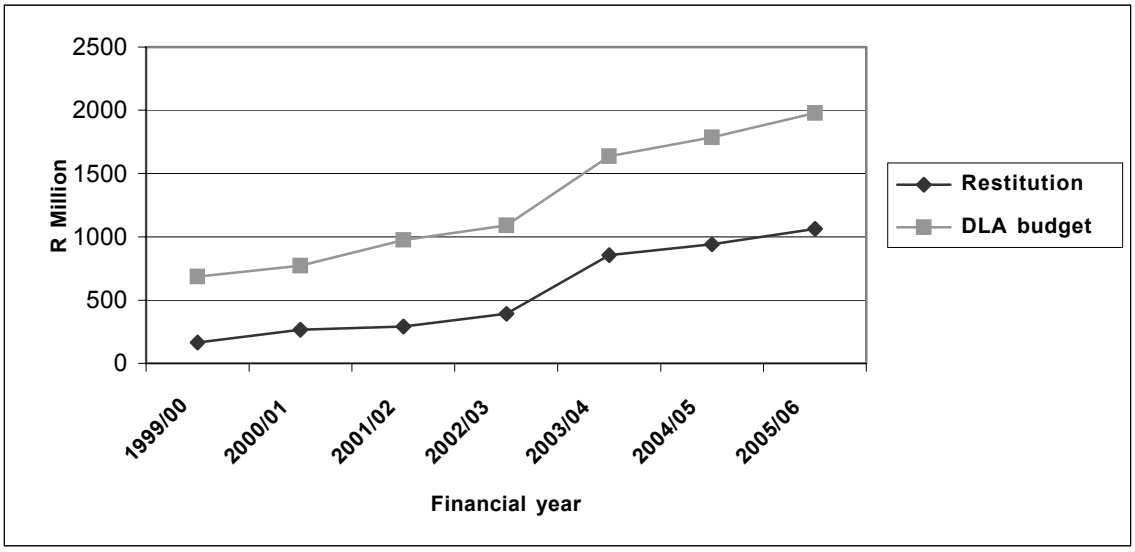
Table 13: Budget allocations and MTEF projections for restitution 1999–2006 (R '000)

	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06
Restitution	164 090	265 138	290 981	391 301	854 914	939 797	1 063 032

Source: National Treasury 2003

The restitution budget has grown 521% over the past four years, compared to 46% for the rest of land reform, but together they still account for less than 0.4% of the national Budget. The changing size of the restitution budget is depicted in Figure 1, together with the budget for DLA as a whole. This shows how the restitution budget has increased in absolute terms but also as a proportion of DLA's budget – from 24% in 1999 to 52% in 2003.

Figure 1: Budget trends in restitution and total DLA budget 1996–2006



Source: National Treasury 2003

Another marked shift in the budget is the significant increase in the operating budgets for regional offices of the CRLR, from R26 million in 1999/00 to R152 million in 2005/6. Although new offices have been established and the staff complement of some of the regional offices has been increased, this increase also funds the outsourced work of processing and negotiating claims. The capital budget allocation is set to increase alongside the total allocation to restitution, remaining at about 75%–80% of the total budget.

The CRLR has requested R1.4 million, its own figures imply that R3.89 billion would be needed, and this analysis of its spending patterns indicates a need for a budget significantly higher than R10 billion. In total, the National Treasury's capital allocation to restitution over the current financial year and for the coming two years amounts to R2.372 billion. This analysis

indicates that the MTEF does not allocate sufficient funds to settle the outstanding claims. Amounts requested by the CRLR and amounts envisaged by the National Treasury do not appear to allow for even half of the rural claims to be settled with awards of land.

5. Conclusion

The restitution programme is an icon of the new South Africa, providing redress for injustices in the past at both a symbolic and material level. This report has highlighted its achievements: the rapid increase in settling claims, the adoption of a more developmental approach, the priority placed on integrating post-settlement support into pre-settlement planning, and the restoration of some large portions of land. Thousands of South Africans have benefited from restitution but more are waiting for their claims to be addressed and their land restored, and there have been some signs of impatience with the process. This report moves from the premise that while financial compensation is a legitimate form of redress, and might be considered a 'success' for restitution, it does not necessarily contribute towards land reform or agrarian transformation. For this reason, in addressing the specific question of what the restitution programme has contributed to the larger national project of land and agrarian reform, the focus has therefore fallen on the restoration of rural land to claimants. Within these parameters, a number of conclusions can be drawn.

Progress with restitution has accelerated rapidly. After a slow start at the launch of the programme, the rate at which claims have been settled increased exponentially. Large numbers of claims have been settled through the administrative route, while the Land Claims Court still attends to cases that cannot be settled through negotiation. The adoption of this administrative approach has represented a major improvement in the process.

Restitution is largely not about the restoration of land. Restitution is an important political project, but its potential to transform the urban and rural legacies of spatial apartheid has been curbed by problems in acquiring land and overwhelming pressure to accept financial compensation, particularly in urban claims. Despite real progress in the rate at which claims have been settled, the majority of the large, complex rural claims that hold most potential to address racial imbalances in land ownership and economic opportunities in South Africa's countryside remain unresolved.

The acquisition of land remains a stumbling block. There is an inherent contradiction between the rights-based claims of restitution and the reliance on negotiated land purchase. The CRLR has at times been unable to negotiate reasonable prices for claimed land. Private owners of land have refused, or even colluded to prevent, the sale of agricultural land in settlement of restitution claims, forcing claimants to opt for alternative land, financial compensation or other remedies. Expropriation is one strategy that could be employed to address such situations but, thus far, the state has not actively pursued this route. Its reluctance to use the powers it already has means that it has not built up experience that could help to streamline the process. Proposed legal amendments could go some way towards making expropriation a viable option, and a credible threat, but whether or not this happens remains a question of state policy.

There have been conflicts between the paradigms of rights and development. While restitution was conceived as a form of historical or restorative justice, allegations that it relegated people to 'dumping grounds' without resources for development prompted the CRLR to adopt a more developmental approach. In doing so, restitution has adopted many of the trappings of the discretionary redistribution programme. Claimants are being required to present business plans, development plans and land use plans to demonstrate how they intend to use the land that is rightfully theirs. While the planning approach has the merit of leveraging in additional support from other government departments and support from the private sector, it is important not to lose sight of the rights of claimants to use their land as they see fit. The restoration of land rights cannot be contingent on the willingness of claimants to conform to the development planning priorities of the state.

Restitution has not been used as a basis for comprehensive solutions to local land needs. In parts of the country, particularly in Limpopo and KwaZulu-Natal, widespread dispossession of land occurred after 1913. Some claims are for several properties; in other cases, a single property may have overlapping claims on it. This provides a strong case for dealing with claims as a group, rather than on a claim-by-claim basis. Given the amount of land under claim, however, it is also important that demands for redistribution and tenure reform are addressed at the same time. It is, after all, often the same communities and the same land that is in question. Restitution, as a rights-based programme, has the potential to serve as a lever for comprehensive area-wide solutions to multiple land needs. The failure to use restitution in this manner has been a major opportunity lost for the land reform programme.

Post-settlement support has been recognised as a central challenge. The CRLR has an interest to see that its work is sustainable and improves the livelihoods of claimants, yet its mandate does not extend to development support. Institutions playing a role in restitution have 'passed the buck' of post-settlement support back to the CRLR, which is itself constrained by limited staff capacity, high staff turnover and dependence on outside service providers. The inability of municipalities or provincial departments of agriculture to take the lead in co-ordinating post-settlement support remains a problem that should be addressed.

Restitution has not been adequately monitored. Monitoring and evaluation information on the restitution programme is characterised by a lack of detail, including a lack of disaggregated data and baseline information. There is, at present, no national project list from which such data can be regularly and reliably extracted. Because no system exists to monitor projects in the post-transfer phase, little or nothing is known about the contribution of restitution to the livelihoods of claimants.

Additional institutional capacity is required to increase the pace of restitution without sacrificing quality. As political attention to restitution has increased, increased pressure has been exerted to complete the process, with the attendant risk that restitution can be reduced to a bureaucratic problem. While outsourcing claims to private service providers holds some potential, there are already signs that the CRLR lacks capacity to effectively manage such service providers. The main way identified by officials to speed up restitution without sacrificing the quality of the process is to make massive investments in the capacity of the CRLR, including the size and skills base of its staff. However, this is unlikely, given that the

lifespan of the CRLR is likely to be limited. If the institutional challenges are not addressed, there is a danger that the CRLR will try to meet the presidential deadline for settling claims before 2005 by increasingly resorting to partial settlement or financial compensation instead of buying land for claimaints.

Restitution is an important political symbol, but lacks real political support. The relative success of the CRLR in speeding up the rate of claims settlement is seen as the success story of land reform. Restitution has therefore taken on political importance to stave off criticism, specifically allegations that South Africa lacks the political will to address rural transformation through land reform. There are signs that restitution has genuinely been prioritised: additional funds have been allocated to partially address the problem of an under-resourced CRLR and President Thabo Mbeki has set a deadline for the settlement of claims. However, this attention has not, to date, translated into political support for the large-scale acquisition or expropriation of private land, and it has not ensured that all spheres of the state are supportive in making state land available for restoration.

What happens after the deadline? The presidential deadline applies to the settlement of claims, but has also been understood to mean the date when the CRLR will be disbanded. Already it is clear that the deadline will not be met. Among those claims that are settled, many are only partially settled and will need to be revisited, while implementation of settlement agreements can be expected to take years. Other, more complex, claims may be addressed through protracted court processes, during which claimants will require the support of the CRLR. For these reasons, the CRLR should continue to exist well beyond the 2005 deadline. It must also face the challenge of handing over some of its functions, particularly in the area of post-transfer support, to other institutions.

In conclusion, the limited achievements of restitution in contributing towards the transformation of rural South Africa are due to a combination of factors. Firstly, restitution is inherently difficult and has turned out to be more complex than expected. Secondly, there has been limited mobilisation by groups of claimants to exert political pressure on the state, or on landowners, to expedite their claims. Thirdly, restitution is a radical idea that is, in some respects, contrary to the fundamentals of national economic policy in that its success requires some degree of interference with property markets and the vested interests of landowners, the transfer of significant assets to the poor, and the provision of ongoing public support in order to support livelihoods. For these reasons, restitution has come to be seen by government as a special interest programme and as a bureaucratic problem, rather than as an opportunity to confront and transform social and economic relations and the racially-skewed pattern of landholding in the countryside. There can be little doubt that the challenges of landlessness and injustice that gave rise to restitution will continue beyond the lifetime of the current programme, and will continue to demand attention well into the future.

Endnote

[1] This average is derived from the list of claims in Appendix A, as supplied by the CRLR. It includes community claims and claims by individual plot owners. It also includes claims settled with the provision of state land. The costing for restitution therefore assumes (a) that state land will continue to be made available in respect of some claims, (b) that the proportion of community to individual claims will remain stable, and (c) that the spread and value of rural claims still to be settled is similar to those already settled.

Bibliography

Business Day. 2002. Boomplaats farmer packs the kitchen sink. 11 January. www.bday.co.za

Carte Blanche. 2001. An African farm. 25 March. www.mnet.co.za/CarteBlanche/Display/Display.asp?Id=1625

Contact Trust. 2003. *Minutes of the Portfolio Committee on Agriculture and Land Affairs meeting, 25 March*. Unpublished document.

CRLR (Commission on the Restitution of Land Rights). 1999. *Annual report April 1998 to March 1999*. Pretoria: Government Printer.

CRLR (Commission on the Restitution of Land Rights). 2001a. *Annual report April 2000 to March 2001*. Pretoria: Government Printer.

CRLR (Commission on the Restitution of Land Rights). 2001b. *Policy guidelines: Determining a restitution package: Principles to consider*. Unpublished policy paper, CRLR Restitution Policy Unit.

CRLR (Commission on the Restitution of Land Rights). 2002a. *Annual report April 2001 to March 2002*. Pretoria: Government Printer.

CRLR (Commission on the Restitution of Land Rights). 2002b. *Settled restitution claims as at 31 October 2002*. Unpublished documents received from the office of the Chief Land Claims Commissioner, 15 November 2002.

CRLR (Commission on the Restitution of Land Rights). 2003a. Statement by CRLR Policy Office, 7 March 2003.

CRLR (Commission on the Restitution of Land Rights). 2003b. *Honouring the promise of our Constitution: Strategic Plan 2003/4–2005/6*. Unpublished CRLR document, February 2003.

CRLR (Commission on the Restitution of Land Rights). 2003c. *Letter from Acting Chief Land Claims Commissioner Thozamile Gwanya*. 27 May 2003.

CRLR (Commission on the Restitution of Land Rights). 2003d. *Validation report*. http://land.pwv.gov.za/restitution. 18 February 2003.

CRLR (Commission on the Restitution of Land Rights). 2003e. *Restitution statistics*. http://land.pwv.gov.za/restitution. April 2003.

DLA (Department of Land Affairs). 1997. *White Paper on South African Land Policy*. Pretoria: Government Printer.

DLA (Department of Land Affairs). 1999. *Policy and procedures for expropriation of land in terms of Act 126 and ESTA*. DLA Land Reform Policy Committee document PC Doc 48/1999, Pretoria.

DLA (Department of Land Affairs). 2000. *Memorandum: Chatha land claim, Keiskammahoek, Eastern Cape: Request for ratification of negotiations framework and mandate to negotiate a settlement of the claim*. Regional Land Claims Commission, Eastern Cape, 4 February 2000.

DLA (Department of Land Affairs). 2001a. *Annual report April 2000–March 2001*. Pretoria: Government Printer.

DLA (Department of Land Affairs). 2001b. *Landinfo,* 8(1).

DLA (Department of Land Affairs). 2002a. *Medium term strategic and operational plan 2002 to 2006*. Pretoria: Government Printer.

DLA (Department of Land Affairs). 2002b. *Annual report April 2001–March 2002*. Pretoria: Government Printer.

DLA (Department of Land Affairs). 2003. *Communal property associations register*. Unpublished document, Tenure Directorate, DLA, Pretoria.

Du Toit, A, Makhari, P, Garner, H & Roberts, A. No date. *Report: Ministerial review of the Restitution Programme*. Unpublished.

Gerardy, J. 2002. Land award an 'irreversible policy shift'. *Daily Dispatch,* 17 June.

Lahiff, E. 2001. *Land reform in South Africa: Is it meeting the challenge?* Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape. (Policy brief; no. 1.)

LCC (Land Claims Court). 1998. *Farmerfield Communal Property Trust v. The Remaining Extent of Portion 7 of the Farm Klipheuvel No 459*. Case no. LCC35/97, 23 November 1998.

LCC (Land Claims Court) 2002. *Information about the Land Claims Court.* http://wwwserver.law.wits.ac.za/lcc/about.html

LCC (Land Claims Court). 2003. *Mahlangu v. Minister of Agriculture and Land Affairs and Others*. Case no. LCC116/99, 6 February 2003.

LRC (Legal Resources Centre). 2002. *LRC Briefs,* 2(3), July.

MALA (Minister of Agriculture and Land Affairs). 2001. *Answer to a question in the National Council of Provinces, 2 March*.

National Treasury. 2003. Land Affairs Vote 30, in *Estimates of national expenditure*. Pretoria: Government Printer.

News24.com. 2001. Farmer scores in cash, but loses Mpuma farm. 31 May. www.news24.com/News24/South_Africa/Mpumalanga

Pienaar, K. 2000. *Why urban restitution*? Unpublished paper presented at the Restitution Indaba: Developmental Restitution, 13 July 2000.

Platzky, L & Walker, C. 1985. *The surplus people: Forced removals in South Africa*. Johannesburg: Ravan.

RLCC (Regional Land Claims Commission), Eastern Cape. 2002. *Keiskammahoek Claim: Hand over on June 16th.* http://land.pwv.gov.za/restitution/Keiskammaino.htm

RLCC (Regional Land Claims Commission), Western Cape. 2003. *Letter from Acting Regional Land Claims Commissioner Blessing Mphela*, 2 April 2003.

SAIRR (South African Institute of Race Relations). 2000. *South Africa survey 1999/2000*. Johannesburg: SAIRR.

Appendix A: Rural claims settled with land awards

Table 14 contains details of settled rural claims where land has been transferred, or is sufficiently close to being transferred that it is possible to indicate the number of hectares and the land cost. These exclude claims where a settlement agreement has been signed without land having been identified. For the purposes of this table, 'rural' is land zoned for agriculture, regardless of the intended land use (that is, it includes land to be used for settlement). Although every effort has been made to ensure that this information is comprehensive, this must be treated as a work in progress, presenting the best available information as at March 2003.

Table 14: Rural claims settled with land awards

Province	Project	Claims	Households	Beneficiaries	No. of hectares	Land cost
Eastern Cape	Bosch Bok Koppen	1	210	*	129	R695 000
	Breidbach	1	10	*	223	R200 000
	Dwesa-Cwebe	1	2 382	*	5 000	R1 600 000
	Farmerfield 1@	1	56	*	253	R363 328
	Gwiji	1	9	*	731	R957 545
	Lower Blinkwater	1	140	*	3 000	State land
	Luswazi	1	7	*	625	R365 445
	Makhoba	1	1 400	*	10 986	R11 675 000
	Mankanku	1	6	*	571	R480 000
	Ndunge	1	25	*	1 194	R991 000
Free State	Andriesfontein	1	12	40	409	R275 000
	Bethany	1	81	502	5 339	R1 865 000
	Oppermansgronde	1	150	900	34 000	State land
	Palmietfontein	1	2	2	1 860	R132 367
Gauteng	Ellison & Steinberg	1	99	594	431	State land
	Rama community	1	600	*	1 380	R17 507 952
KwaZulu-Natal	Baynesfield	1	24	*	264	R548 949
	Cremin	1	85	694	624	R407 256
	Esibongweni	1	31	186	2 094	R1 512 739
	Gujini	3	517	3 102	10 231	R10 901 739
	Kameelkop	1	53	282	58	R447 320
	Mabaso	1	200	*	3 500	R5 833 625
	Mangete	1	199	*	987	R14 120 071
	Mbangweni	1	114	*	1 262	R1 262 000
	Mbila	1	1 000	*	43 952	R22 008 025

Province	Project	Claims	Households	Beneficiaries	No. of hectares	Land cost
	Sabokwe	1	125	*	61	R7 500 000^
Limpopo	Gertrudsberg	1	1 030	6 180	674	R3 400 000
	Kranspoort	1	120	1 280	1 543	R1 000 000
	Makuleke	1	2 570	15 934	25 000	State land
	Mavungeni	1	200	500	1 489	State land
	Mamahlola	1	2 000	9 000	1 597	R33 548 000
	Makotopong	4	379	1 895	3 600	R11 381 000
	Munzhedzi	1	161	383	12 038	State land
	Pheeha	1	1 500	3 500	6 900	R16 800 000
	Reboile	1	474	2 370	3 174	R3 500 000
	Ximangi	1	366	500	719	State land
Mpumalanga	Boomplaats	1	600	*	1 893	R2 300 000
	Botshabelo	1	700	4 200	5 908	R8 435 000
	Doornkop	1	500	*	859	State land
	Frischgewaard	1	400	*	2 732	R6 254 000
	Kafferskraal	1	400	*	2 321	R2 500 000
	Kalkfontein	1	600	3 600	2 183	R6 254 000
	Kromkrans	56~	600	*	2 146	R1 500 000
	Leidenberg	1	400	*	1 515	R3 740 000
	Lissabon	1	350	*	1 542	R1 540 000
	Steelpoortpark	1	400	*	4 684	R2 300 000
North West	Bakolobeng	1	1 000	6 000	5 828	R13 777 907
	Dithakwaneng	1	50	310	6 144	R2 100 000
	Doornkop	2	300	1 860	1 148	R1 420 000
	Kaffirskraal – Magokgoane	1	*	*	3 939	R4 520 000
	Kinde Estate	1	50	600	5 553	R4 840 300
	Klipgat	1	1 350	8 100	872	R950 000
	Mogopa	1	316	1 959	7 908	State land
	Mooiland – Zamenkomst	1	800	4 800	2 506	R7 513 155
	Mosita	1	612	3 794	4 043	R540 000
	Putfontein	55&	64	384	5 915	R15 248 870
	Ratsegai	1	1 429	8 859	4 131	R4 350 000

Province	Project	Claims	Households	Beneficiaries	No. of hectares	Land cost
	Vryburg – Kleincwain	1	350	2 100	6 235	R13 856 926
Northern Cape	Groenwater / Skeifontein	2	1 022	5 000	24 807	R8 624 950
	#Khomani San	1	200	1 240	36 891	R8 775 294
	Kono	1	479	2 874	10 672	R6 666 669
	Majeng	1	500	*	10 685	R3 405 842
	Mier	1	180	1 694	42 500	R5 965 379
	Riemvasmaak	1	207	1 283	74 000	State land
	Ronaldsvlei	1	75	465	371	State land
	Schmidtsdrift	2	1 400	4 200	32 269	R14 000 000
Western Cape	Cyster	1	7	42	9	R439 974
	Elandskloof	1	308	1 909	3 088	R4 000 000
TOTAL	**68 projects**	**185**	**31 986**	**113 117**	**501 195**	**R327 096 627**

Sources: DLA 2001a; DLA 2002b; RLCC Western Cape 2003; Khama, Serumula, Sebati, Seboka, Chaane and Modiba pers. comm. (Gauteng); Steyn, Modise, Manong, Oganne and Tsogang pers. comm. (Northern Cape); Van Schalkwyk, Makipi, Mokone, Semenya, Tatelo, Modiba and Blauw pers. comm. (North West); Ngonyama, Molepu and Roberts pers. comm. (Western Cape); Parks and Boyce pers. comm. (KwaZulu-Natal), Luthuli, Williams and Gilfillan pers. comm. (Mpumalanga); Mohuba, Mokono and Wegerif pers. comm. (Limpopo); Phage and Mokotle pers. comm. (Free State); Zonyana, Westaway, Saki, Mabuntana, Mesatywa and Tuswa, pers. comm. (Eastern Cape).

* = information not available

@ The Farmerfield claim was split into two as there were two properties – one where the sale went through (referred to here) and the other which was expropriated and has not been transferred to the claimants (see Box 6 on page 9).

^ This figure includes the financial compensation paid to the majority of claimants, in addition to RDGs and SPGs and the land cost.

& At Putfontein there was one community claim, plus 27 individual plotowners in Putfontein and another 27 individual plotowners in nearby Vogelstruisknop.

~ At Kromkrans, labour tenants claimed individually plus there was a community claim.

Appendix B: List of key informants

Alida Barnard	CRLR, Pretoria
Dawid Bestbier	CRLR, Pretoria
Angela Blauw	North West RLCC
Anna Bohlin	Goteborg University, Sweden
Brendan Boyce	KwaZulu-Natal RLCC
Maylene Broderick	Limpopo RLCC
Bianca Chaane	Gauteng RLCC
David de la Harpe	Nettleton's Attorneys, Eastern Cape
Ria de Vos	CRLR, Pretoria
Lisa Del Grande	Association for Rural Advancement, Pietermaritzburg
Jean du Plessis	Centre on Housing Rights and Evictions, Switzerland (ex-CRLR)
William Ellis	PLAAS
Lindinkosi Fadana	Eastern Cape Department of Agriculture
Durkje Gilfillan	Legal Resources Centre, Johannesburg
Thozamile Gwanya	Eastern Cape Land Claims Commissioner, RLCC
Moray Hathorn	Legal Resources Centre, Johannesburg
Deborah James	London School of Economics
Piet Jonas	Director, Setplan
Mike Kenyon	Director, DLA Provincial Land Reform Office, Eastern Cape
Elias Khama	Gauteng RLCC
Tom Lebert	NLC, Johannesburg
Xolani Luthuli	Mpumalanga RLCC
Vasco Mabunda	Nkuzi Development Association
Fikiswa Mabuntana	Eastern Cape RLCC
Bradley Makipi	North West RLCC
Gauta Malotane	Nkuzi Development Association
Mercia Manong	Director, Association for Community and Rural Advancement
Nomonde Mesatywa	Eastern Cape RLCC
Wallace Mgoqi	Chief Commissioner, CRLR
Themba Mkwaba	M&E Directorate, DLA, Pretoria
Motlanalo Mmako	Nkuzi Development Association
Yoliswa Mniki	Eastern Cape RLCC
Suzanne Modiba	Gauteng RLCC
Steven Modise	Northern Cape RLCC
Constance Mogale	Land Access Movement of South Africa
Mashi Mohuba	Limpopo RLCC
Tebogo Mokone	The Rural Action Committee (TRAC)-North West

Mashile Mokono	Land Claims Commissioner, Limpopo RLCC
Monami Mokotle	Free State RLCC
Sam Molepu	Western Cape RLCC
Koleka Ngonyama	Western Cape RLCC
Phila Nkayi	Eastern Cape Provincial Legislature, Portfolio Committee on Agriculture and Land Affairs
Orapeleng Oganne	Association for Community and Rural Advancement
Carrin Parks	KwaZulu-Natal RLCC
Refilwe Phage	Free State RLCC
Kobus Pienaar	Legal Resources Centre, Cape Town
Alan Roberts	Land Claims Commissioner, Western Cape RLCC
Monty Roodt	Sociology Department, Rhodes University (ex-RLCC)
Johan Roos	Attorney, Grahamstown
Gawie Rousseau	Land Bank, Eastern Cape
Susanna Saki	Eastern Cape RLCC
Chris Schalkwyk	Director, Public Land Support Services, DLA, Pretoria
Japhthalene Sebati	Gauteng RLCC
Tumi Seboka	Policy Development Directorate, DLA
Zanele Semane	Border Rural Committee
Japhter Semenya	North West RLCC
Thabo Seneke	CRLR, Pretoria
Sarah Sephton	Legal Resources Centre, Grahamstown
Amos Serumula	Gauteng RLCC
Thabi Shange	Land Claims Commissioner, KwaZulu-Natal RLCC
Busi Sithole	M&E Directorate, DLA, Pretoria
Carina Steyn	Northern Cape RLCC
Itumeleng Tatelo	North West RLCC
Jane Thupana	Limpopo Department of Agriculture
Tsogang wa Tsogang	Limpopo RLCC
Mlungiselelo Tuswa	Eastern Cape RLCC
Feroza van der Merwe	Umhlaba Development Associates
Roberta van Schalkwyk	North West RLCC
Cherryl Walker	Human Sciences Research Council; former KwaZulu-Natal Land Claims Commissioner
Lauren Waring	Western Cape RLCC
Marc Wegerif	Director, Nkuzi Development Association
Ashley Westaway	Director, BRC
Chris Williams	Director, The Rural Action Committee (TRAC)-Mpumalanga
Zodidi Zonyana	Eastern Cape RLCC