

### PRESENTATION OUTLINE

- Introduction
- Summary of the Findings of the SAHRC
- Strategic Plan of the Commission
- Responses on each Finding and Recommendations of the SAHRC



### INTRODUCTION

- The South African Human Rights Commission ("SAHRC") conducted an investigation in November and December 2013 on systemic challenges affecting the land restitution process in South Africa.
- Its report, titled "Report of the SAHRC Investigative hearing: Monitoring and Investigating the Systemic Challenges affecting the Land Restitution Process in South Africa", was published on 30 July 2014.
- Various findings were made and a report in this regard was presented to the Portfolio Committee on RDLR on 19 November 2014.



### INTRODUCTION

- The SAHRC report made recommendations that were similar to those of the Department of Performance Monitoring and Evaluation ("DPME") in its Evaluation of the Restitution Programme.
- The purpose of the DPME Evaluation was to assess whether the Restitution Programme has been implemented *efficiently* and *effectively*, and to identify how the programme can be improved in time for the next phase of the restitution process.
- The findings and recommendations of both the SAHRC and DPME reports informed the Strategic Plan of the Commission for the period 2015-2020.



- 1. The Commission is under-staffed, lacks technical skills, and has inadequate research capacity.
- 2. The role of the Commission is not clear the Commission is not impartial to and independent of the DRDLR.
- 3. The Commission has a poor research methodology.
- 4. The Commission has difficulties on the recording and capturing of current claims as a result of documents and files being lost.
- 5. The Commission does not address losses faced by communities from their exclusion from benefiting from mineral resources in and under their land.



- 6. Restitution is a judicial process and cannot be contingent on DRDLR Policies that undermine the need for just and equitable and remedy of past rights violations as envisaged in the Constitution.
- 7. The backlog of unresolved restitution claims raises concerns that claims filed under the new restitution period might further undermine fulfilment of existing claims.
- 8. Significant challenges in relation to the calculations and determination of the value of land from which individuals and communities were historically dispossessed, but which today have to be seen in the context of subsequent developments and uses.



- 9. Absence if capacity with the Chief Surveyor General to do historical research work, to provide complete register of all land owned by different spheres of government and parastatals to help communities develop plans for the future.
- 10. The cadastral surveys of million hectares of land have not been undertaken and the plans and resources necessary for this do not appear to be in place. Sub-divisions and title deeds have not been finalized and registered.
- 11. The additional period for submission of claims may create a possible resurgence of new land claims, with the DRDLR expecting approximately 397,000 claims.



- 12. New claims will undermine the backlog unresolved claims
- 13. The Amendment Act opened a space for claims by traditional leaders to clash with existing community-constituted structures
- 14. The Amendment Act will also open the space for claims, for example by traditional leaders, which may be in conflict with existing claims by other community-constituted structures. In addition, the Act intends to ban Communal Property Institution from owning redistributed land. This removes an option to existing claimants without their concurrence.



- The Strategic Plan sets out a programme to improve:
  - the efficacy of the Commission's operations;
  - the pace of the settlement of claims; and
  - the quality of those settlements.
- As part of business unusual the Commission will particularly ensure a continued focus on:
  - the speedy investigation and finalisation of claims lodged before 1998 cut-off date;
  - the improvement of its communication with all stakeholders, particularly those who claimed land before 1998 cut-off date, using new technologies;
  - the improvement of the quality of the settlements; and
  - the definition of the role of sector departments and other spheres of government in development projects resulting for the settlement of claims.



#### STRATEGIC GOALS

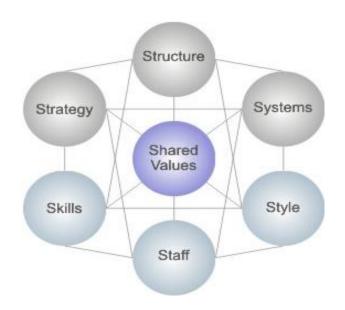
- Land rights restored in order to support land reform and agrarian transformation by 2020
- Lodgement of restitution land claims re-opened for people who did not meet the 1998 deadline
- Organisational change management

#### **STRATEGIC OBJECTIVES**

- 4.1 Land rights restored
- 4.2 Redress land rights lost after 1913
- 4.3 Improved governance and service delivery
- 4.4 Improved customer satisfaction and communication
- 4.5 Clear organisational mandate and business processes supported by resources
- 4.6 Improved information and project management



- The focus of the Programme is the Commissions' strategy, structure, systems, shared values, style, staff, and skills.
- The approach is informed by McKinsey's 7s Framework



 The programme of operational effectiveness will address all the findings and recommendations of the SAHRC.

#### STRATEGY

- The defining of the legal and operational mandate, including the defining of business boundaries (post settlement issues)
- Delegations (Restitution Act, PFMA, Public Service Act) and SLAs with DRDLR Corporate Services
- Operational Policy development (labour, performance management etc.)
- Listing as a Public Entity in terms of the PFMA

#### SYSTEMS

- Business processes and SOPs
- Information and Project Management Systems

#### STRUCTURE

 Flowing from business processes, the development of an organisational structure (also dependent on corporate functions brought into the Commission)



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#### STYLE

- Need to "look" distinct e.g. Commission logo corporate image
- Communication (internally & externally)
- Move of Commission to own building

#### STAFF

- Performance management system
- Upward mobility (incl notch 8 issues) to be addressed

#### SKILLS

- Development of custom made restitution course
- Skills audit (preceding development of organogram)
- Training of human resources (also related to upward mobility)



- 1. The Commission is under-staffed, Lacks technical skills, and has inadequate research capacity.
- The projects listed under Structure, Staff, and Skills are aimed at addressing the above finding.
- The current staff complement of the Commission (Provincial Offices) is as follows:

Province	No of District	No of Project officers	No of Project Managers	No of Corporate Staff	Total (PO&PM)
Eastern Cape	7	36	2	31	69
Free State	5	7	1	17	25
Gauteng	6	14	2	40	56
KwaZulu Natal	11	60	3	41	104
Limpopo	5	54	5	37	96
Mpumalanga	3	62	5	50	117
Northern Cape	5	11	2	18	31
North West	4	18	2	41	61
Western Cape	6	21	2	43	66
Total	52	283	24	318	625



- 1. The Commission is under-staffed, Lacks technical skills, and has inadequate research capacity; and 3. The Commission has a poor research methodology.
- The backlog on outstanding land claims in 2014/2015 was 6691
- The APP target for 2014/2015 was 1445
- By financial year end, a total of 1525 claims were researched
- The current outstanding land claims to be researched are at 5152
- A total of 2660 claims will be investigated in 2015/2016
- Provinces with high backlog of land claims have been targeted (E. Cape, Limpopo, Mpumalanga and KZN)



- Research strategy consists of the following elements
  - Investigate simple and intermediate land claims internally
  - Outsource complex land claims to institutions of higher learning and research institutions (incl skills transfer)
  - Utilization of Section 12(4) for competing land claims to maximize the resources of the Commission and process new claims simultaneously
- In December, a request for proposals on research was issued
- Proposals were received from 33 service providers and 9 were selected on the basis of qualification
- Panel of service providers includes institutions of higher learning and research institutions to research complex land claims

- Another request for proposals will be issued in June to broaden the panel of researchers.
- An official from Belgian Technical Co-operation is working with the Commission to develop an IT based mobile application tool to manage the process of researching land claims.
- Project register system has been set up to monitor project progress on research



- 2. The role of the Commission is not clear the Commission is not impartial to and independent of the DRDLR.
- The projects listed under Strategy are aimed at addressing the above finding. The Commission will become autonomous, meaning:
  - It will be listed as a National Public Entity (Schedule 3A of the PFMA).
  - The DRDLR will remain as the transferring or parent department.
  - It will have its own accounting authority (CLCC or CEO).
  - It will have its own CFO and effective, efficient and transparent system of financial and risk management and internal control.
  - It will have its own audit committee
  - It will have its own SCM and HRM Policy & Processes;
  - It will be guided by applicable legislation and policy prescripts.
  - It shall remain accountable to the Minister, as the Executive Authority, and Parliament.



- 4. The Commission has difficulties on the recording and capturing of current claims as a result of documents and files being lost.
- Interventions to address this finding are set out under Systems.
- The Commission has developed and approved a File Management Plan that complies with legislation. Where space for storage of documentation is a challenge off-site (secure) storage opportunities are being explored.
- The Commission has developed an electronic lodgment system to receive and manage new claims. Documents are scanned into the system to curb document losses.
- The Commission is constantly reviewing its statistical information regarding outstanding land claims. Details relating to outstanding claims are as follows:



	Phase One	Phase Two	Phase Three	Phase Four	Total outstanding
Province	Lodgement & Registration	Screening and Categorisation	Determination of Qualification in terms of Section 2 of the Restitution Act	Negotiations	
Eastern Cape	-	545	0	363	908
Free State	-	0	0	7	7
Gauteng	-	192	4	61	257
KwaZulu Natal	-	1134	141	784	2059
Limpopo	-	254	55	410	719
Mpumalanga	-	1976	150	514	2640
Northern Cape	-	40	0	83	123
North West	-	5	0	72	77
Western Cape	-	1034	0	211	1245
Total		5152	350	2533	8035

A business case is currently being drafted with the financial implications for the 2533 claim forms at the negotiation stage.



- 5. The Commission does not address losses faced by communities from their exclusion from benefiting from mineral resources in and under their land.
- Claims are lodged for rights in land, defined as "any right in land whether registered or unregistered, and may include the interest of a labour tenant and sharecropper, a customary law interest, the interest of a beneficiary under a trust arrangement and beneficial occupation for a continuous period of not less than 10 years prior to the dispossession in question"
- There is precedent for the payment of compensation for loss of mineral rights (in the Richtersveld land claim) following a successful land claim. In the case of Richtersveld land claim however, there had been mining operations by the claimants prior to dispossession, although there was no mining licence or equivalent as the claimants occupation was regulated by indigenous law and that law did not require any permission from the state to anduct mining activities.

- 6. Restitution is a judicial process and cannot be contingent on DRDLR Policies that undermine the need for just and equitable and remedy of past rights violations as envisaged in the Constitution.
- The role of the Commission is to receive land claims, investigate them and attempt to resolve them through mediation and negotiation.
- Policies of the DRDLR that are applicable to the restitution process are to guide the Commission in facilitating the resolution of claims through mediation and negotiation.
- Such policies are determined to be applicable to the restitution process by the Minister in terms of section 42D (1) (e) as the conditions upon which the Minister will settle claims.
- When claims are referred to Court, the Minister presents own position on the claim informed by the DRDLR policies.



- 7. The backlog of unresolved restitution claims raises concerns that claims filed under the new restitution period might further undermine fulfilment of existing claims.
- The prioritisation of claims is informed by s6 (1) (g) read with 6 (2) (d)
- The Commission distinguishes between claims lodged before 1998 cut-off date(old claims) and those lodged from 1 July 2014 to 30 June 2019 (new claims).
- It treats old claims as more important and more urgent than new order claims, and deploys resources to the expeditious processing of old claims.
- It ordinarily processes new claims only to the point of data capture after lodgement.
- New claims are only processed with the old if they overlap.



- 8. Significant challenges in relation to the calculations and determination of the value of land from which individuals and communities were historically dispossessed, but which today have to be seen in the context of subsequent developments and uses.
- This matter has been resolved by the Constitutional Court in the matter of Florence v Government of the Republic of South Africa (CCT 127/13) [2014]
   ZACC 22; 2014 (6) SA 456 (CC); 2014 (10) BCLR 1137 (CC) (26 August 2014)
- The case concerned whether it is appropriate to use the Consumer Price Index (CPI) to convert past loss of land into present-day monetary terms for the calculation of financial compensation.
- The majority judgment stated that it was proper for the Commission to opt for the CPI to measure "changes over time in the value of money."



- 9. Absence if capacity with the Chief Surveyor General to do historical research work, to provide complete register of all land owned by different spheres of government and parastatals to help communities develop plans for the future.
- The Chief Surveyor General ("CSG") conducted the State Land Audit.
- State Land is defined in the audit as "Land that is owned by the State (National, Provincial, Local Municipalities and Parastatals").
- In terms of the report 14% or 96,550,791 hectares of land is owned by the State (with 7% or 8,360,527 hectares not accounted for).
- The Chief Surveyor General is presently conducting surveys and the unaccounted land will be vested in terms of legislation.
- The CSG always supports the Commission. For example, he made People Geomatics Officers available to the Commission to assist claimants lodging their claim identify the land that is being claimed. He also assists with the search of claims, when required.

- 10. The cadastral surveys of million hectares of land have not been undertaken and the plans and resources necessary for this do not appear to be in place. Sub-divisions and title deeds have not been finalized and registered.
- As indicated above, the CSG is currently undertaking this exercise.



- 11. The additional period for submission of claims may create a possible resurgence of new land claims, with the DRDLR expecting approximately 397,000 claims.
- 12. New claims will undermine the backlog unresolved claims

Refer to prioritisation criteria in slide 23 above



- 14. The Amendment Act opened a space for claims by traditional leaders to clash with existing community-constituted structures
- 15. The Amendment Act will also open the space for claims, for example by traditional leaders, which may be in conflict with existing claims by other community-constituted structures.
- The institution of traditional leadership is recognised by, and is subject to, the Constitution.
- Traditional Leaders may lodge claims as principals or in a representative capacity on behalf of their communities.
- In the former case, they must show that
  - they, as principals, were dispossessed of a right in land, after 19 June 1913, as a result of past racially discriminatory laws and did not receive compensation that is just and equitable;

- alternatively they must show that they are the direct descendant of such a person who died before lodging a claim, and who does not have an ascendant.
- In the latter case, the provisions of section 35 (2) and (3) and 42D (2) apply.
  - This means that the restoration of the right in land, will be subject to democratic principles being adopted and the Minister must ensure that the land is restored to the community and there is equal access to all the beneficiaries of that community.
  - This will also apply to cases where land is restored through a court order in terms of section 35(2).



In addition, the Act intends to ban Communal Property Institution from owning redistributed land. This removes an option to existing claimants without their concurrence.

- There are no provisions in the Restitution of Land Rights Act, 1994 (Act No 22 of 1994) as amended that seeks to ban Communal Property Institutions from owning land.
- As stated above section 35 (2) and (3) and 42D (2) require the Minister and Court to ensure that the restoration of the right in land, will be subject to democratic principles and there is equal access to all the beneficiaries of that community.



### **Improving Operational Effectiveness**

Structure 6 - 18 Months

 Governance – King 3 Structure NO & Province Delegations – Internal-External (Roles & Responsibilities clear) - Org Structure Supports Business Strategy 6 – 18 months - Reporting lines clear CRLR Mandate Clarified - 5-10 Year Bus Strategy Style 12- 60 Months -Stakeholder Focus Defined Visible Culture (Parliament, Minister Leadership Style Treasury, DG, Others) Management Style "Law Firm or Metro FM" Shared Values 12 – 48 Months - Internal delivery centred People focused Innovative External Customer centric Stakeholder focused Innovative

Skill 12 – 36 Months

- Research
- Legal
- **Document Management**
- **Project Management**
- Human Capital Management coaching & Mentoring
- Financial Management
- Leadership

**General Management Quality Management** 

Communication & Stakeholder Managament

Staff 12 - 18 Months

Systems 12- 18 Months

 Business Processes (Defined, Documented

Implemented)

X-functional)

(High-Tech, SOPs,

Bus Operating Model

Automation

Value Chain

- Policies

Business Tools

- Performance Management Linked to strategy
- Effective Recruitment
- Retention
- Motivation
- Reward Systems
- Training

CRLR - "TO - BE" AUTONOMY



- **Programme Management**
- Change Management
- **Quality Management**
- **Change Control**
- Benefits Realisation

Legal & Policy

- Review implication of autonomy (policies & legislation)
- Strategic
- Develop strategy model, develop new KPIs and M&E system

External & CRLR Resources

- Hardware, software and mobile applications
- Business Process Engineering
  - Map value chain, performance management & reporting, personal performance
- Organisation design
  - Shared values, organisation structure, culture
- **Facilities**

CRLR "AS - IS"

- DPME Report
- Treasury Report
- SAHRC Report
- Ministers Budget Policy Speech
- Constitution
- Positive Tension

### **THANK YOU**

