

Visions of justice and unequal realities:
A study of the prioritization of land claimants in the South
African Land Restitution Program

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Abstract

South Africa is one of the most unequal countries in the world. The issue of land ownership highlights racial and economic inequalities as the country fights to overcome the enduring legacy of apartheid. The Land Restitution Program seeks to redress victims of land dispossession, addressing both national development and individual justice. This paper investigates the prioritization of the processing of land claims from 2014 to 2019 by the Commission on Restitution of Land Rights through the program of Land Restitution. This is done through a qualitative content analysis, mixed with quantitative performance data. I argue that the changes in prioritization of program beneficiaries are mirrored by shifting theoretical standpoints, from rights, justice, and moral identity-based arguments, to utilitarian and instrumental development informed perspectives that seek to use land restitution as an instrument for wider agricultural and economic transformation. I argue that this affects the de jure and de facto prioritization of land claims, and by proxy the people that lodge them; seeking to engage in the complexities of tribal and community claims in rural areas through the restoration of land, but de facto preferring individual claims that result in financial compensation.

Key words: South Africa, Land Reform, Land Restitution, Human Rights, Instrumental Development

Words: 9989

Acknowledgments

I want to thank my dear friend Lungie who has guided me through my time in and exploration of the beautiful country of South Africa. My time as a study abroad student at the University of Cape Town, and as an intern with SLE-Farming would not have been the same without your support. This thesis would not have come to fruition without these experiences. I also want to thank every single South African that I have had the pleasure of getting to know in the past year and a half. Your perspectives have aided me in the selection of this research topic, and kept me grounded and nuanced throughout the research process.

List of Abbreviations

CRLR: Committee on Restitution of Land Rights

LRP: Land Restitution Program

RBA: Rights-based Approach

IDA: Instrumental Development Approach

RLRA: Restitution of Land Rights Act

ANC: African National Congress

EFF: Economic Freedom Fighters

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1 Introduction

The issue of land is one of the most politically contested issues in South Africa. In recent years the country has endured numerous protests, with some becoming violent, in response to the unequal distribution of land along racial lines (Harding, 2018). Over two decades after the fall of apartheid, the Land Audit of 2017 showed that white owners hold 72 percent of all of the registered land in the country used for agriculture and farming (Department of Rural Development and Land Reform, 2017) while amounting to only 7.8 percent of the population (Dube, 2019). Similar ownership patterns can be seen along land registered for other purposes, while some researchers urge that the unregistered land occupied by black people is both arable and great enough in volume to address economic disparities (Beinart and Delius, 2018).

One program which seeks to address the unequal land ownership question in South Africa is the Land Restitution Programme (LRP), headed by the Commission on Restitution of Land Rights (CRLR). The founding mission statement of the CRLR is “to promote justice in respects of all victims of dispossession of land rights as a result of racially discriminatory laws, policies and practices, by facilitating the process of restitution of such land rights as provided for in the Constitution and the Restitution of Land Rights Act” (RLRA) (Ramutsindela et al., 2016). The focus on justice and the very inclusion of “rights” in the name of the CRLR is mirrored in the constitution. This can be seen in the freedom charter, which states that the South African “*people have been robbed of their birth right to land, liberty and peace by a form of government founded on injustice and inequality*” (Committee on Restitution of Land Rights, 2015 p. 6). The unequal ownership of land is not only about the land itself, it’s a symbol of the painful and enduring legacy of apartheid (Bezerra, 2018).

Existing property rights are simultaneously entrenched in the constitution, which has caused conflicting interpretations of how to execute restitution in the form of redistributive justice (Hamilton, 2006; Zenker, 2015). A quote by a critic of the rights-based perspective highlights these legal tensions in reference to the constitution;

“The document is simultaneously of strict constitutional form and full of history and political goals and aspirations” (Hamilton, 2006).

Financial compensation is often awarded to a land claimant in place of the restoration of land. Then-President Zuma urged land claimants to reject money in favor of land in his Status of the Nation Address (Parliamentary Monitoring Group, 2017). He claimed that over 90% of claims were being settled through financial compensation, which he argued undermined long term economic empowerment. He went on to say that only eight million hectares of arable land had been transferred to black people, which was 9.8 percent of the 82 million hectares of arable land in South

Africa (Ibid.). Furthermore, the national development plan has highlighted restitution as a part of rural and agricultural development efforts (South African Government, 2018). This highlights the theoretical duality of the issue, as individuals are sought to see themselves as parts of instrumental development of the country while alluding to the principles and symbolism of racial justice in the country. This is the justification behind this content analysis, where I seek to discover to what extent these perspectives are already dualistically mirrored in the LRP. Furthermore, I will analyze the program's de facto and de jure prioritization of beneficiaries. Analyzing how different types of claims are prioritized can contribute to the research done on how justice is distributed in South Africa. Thereby, the research questions I seek to answer are, "How does the CRLR prioritize land claims and claimants, and how are the theoretical frameworks of a rights based approach versus an instrumental developmental approach mirrored in the implementation of the LRP?".

2 Background

2.1 What is Land Restitution?

"One of the underlying questions is whether restitution should act as a means of reversing the injury itself, knitting the bones of history together as if no fracture had ever occurred, or instead as a salve for an ever-gaping wound"

Van der Westhuizen J in Florence v Government of the Republic of South Africa,
2014 (6) SA 456 (CC)

Land redistribution and land restitution are two separate but at times conjoined acts of land reform. Land redistribution in a South African context refers to the act of redistributing land ownerships from white South Africans to black South Africans. Land restitution specifically refers to the act of returning historical lands to those who were dispossessed of them under racially biased laws and practices (Stickler, 2012). However, the LRP has also offered monetary compensation in place for physical land to victims of dispossession. Land redistribution can therein be done in the name of land restitution, while land redistribution does not directly imply restitution. Land reform, on the other hand, encapsulates these two issues and further includes development focused measures relating to infrastructural reforms (Moremedi, 2016; Ramutsindela et al., 2017).

The LRP is the only South African land reform program whose main purpose is restitution, as supposed to land development (South African Government, 2018). The land restitution program's mandate is set out in section 25 (7) of the Constitution which states that "*a person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent*

provided by an Act of Parliament, either to restitution of that property or to equitable redress.” (Committee on Restitution of Land Rights, 2015 p. 6). Also known as the Restitution of Land Rights Act, it provides the framework through which the right to restitution is given effect, which is now enacted through the LRP and the CRLR. The Act was a compromise between the liberation party African National Congress (ANC) and the apartheid government in the process of crafting a new constitution, known as the liberation bargain (Atuahane, 2011). The apartheid government did not want existing property rights to be entrenched upon, as it would mean that the white population would lose their land for redistributive purposes, and therefore settled on entrenching victim’s rights to redress instead (Atuahane, 2014).

The original deadline to lodge a claim was 1998, as the ANC (the party which is still in power) set out to redistribute 30% of the land owned by whites to black people by the new millennium (Atuahane, 2011). This goal was not met, so in 2014 the President assented to the Restitution of Land Rights Amendment Act, paving the way for the reopening of the land claims process for a period of 5 years (Committee on the Restitution of Land Rights, 2016 p. 16). However, in June of 2016, the act was deemed unconstitutional, which overnight stopped the ability for the lodgment of new claims (Ibid). By the end of 2019, no replacement of the act had been enacted (Commission on Restitution of Land Rights, 2019).

So who qualifies as a person or descendant which was dispossessed of land rights? In the CRLR’s guide to the lodgment of claims, they state the following:

“A land right is a registered or unregistered right in land, and includes the interests of labour tenants and sharecroppers, customary law interests or beneficial occupation for a period of more than 10 years. Individuals or communities must have occupied land OR must have proof in the form of a document, e.g. a title deed, permission to occupy, etc. for them to have a right in land.” (Commission on Restitution of Land Rights, 2016 p. 88).

A person needs to be able to prove the ability to their right to land. This can be done in collaboration with the CRLR, as one of their goals is to research lodged claims. Furthermore, the claimant can belong to one of the following groups; An individual dispossessed of a right of land, a direct descendant or spouse of a person who lost a right in land, a juristic person, e.g. a company or a trust, an executor or an administrator of an estate of a deceased person or a representative of a community (Commission on Restitution of Land Rights, 2016 p. 88). Once this has been established, the claimant can qualify for one of three forms of restitution; restoration of the land under the claim, granting of alternative land, or financial compensation (Lahiff and Li, 2012).

Much of the land that seeks to be restituted is owned by the state. In these cases, the purchasing of land and eventual restitution of land by the land claimant is easier than when the land needs to be purchased by the state, to then be given to the land claimant. The state pays a price for the identified land which is deemed reasonable according to current market prices (Hamilton, 2006).

When land cannot be restituted, financial compensation for the land claimants is often used. The calculation of the financial compensation is done through a market-based approach, determining the value of the land at the time of dispossession, and taking into account developments made on the land since (Moremedi, 2016; Ramitsundela et al., 2016). Damage done to the land after dispossession may also be included in the compensation calculation, but emotional, cultural, or spiritual damage is not addressed (Hamilton, 2006). Alternative land can also be granted as a substitute for the original land.

2.2 The sociopolitical background of Land Restitution

In the 2020 State of the Union Address (SONA), President Ramaphosa outlined a new set of prioritizations for land reform through a focus on the youth, women, and the disabled, and those working on communal land who are “ready” to turn to commercial farming (Parliamentary Monitoring Group, 2020). The focus on black smallholder commercial farms have gained more political focus over the last decade, shown through black economic empowerment schemes and as expressed by then-President Zuma in his 2017 SONA (Ndambala, 2019; Parliamentary Monitoring Group, 2017; Ponte et al., 2007; Richley et al., 2012). This shows a simultaneous focus on commercialization of black agriculture to address the inequalities between white and black farmers, while from a human rights perspective attempting to include the most vulnerable that may or may not be “ready” to be a catalyst for socio-economic development.

The ANC has furthermore branded its social programs as a form of nation-building with a strong allusion to the black consciousness movements, embracing the messages of the more radical party the Economic Freedom Fighters (EFF), who call for expropriation without compensation measures (Harding, 2018; Ponte, 2007; Rural Development and Land Reform, 2019).

The act of land redistribution carries both instrumental development and rights-based meaning. Some academics, particularly in studies from the beginning of the decade, argue that development based political priorities not in line with the rights-based legal framework of the constitution may have caused unstable performance of the CRLR and LRP (Hamilton, 2006; Hall, 2004). However, there is a limited number of researchers that have published research on land restitution in South Africa, especially using recent data. Therefore, this study seeks to explore how these theories are mirrored from the perspective of the CRLR, alongside an exploration of its effect on the prioritization of land claimants.

2.2.1 Logistical Challenges for the CRLR

Following an external evaluation, and internal and external pressure to speed up the process of settling land claims, some challenges facing the CRLR have already been identified. These are by and large organizational and logistic in nature, e.g. pertaining to the ill-defined responsibilities between the Department of Rural Development and Land Reform (DRDLR) and the CRLR, which led to inconsistently applied operating procedures (Commission on Restitution of Land Rights, 2019 p. 12). The DRDLR provides the budget for and has formal authority over the CRLR, but the CRLR is responsible for implementing every stage of restitution, and due to the ill-defined autonomy of the entity it has enacted individual strategies with little oversight (Buthelezi, 2007). This is further problematized by the evaluation that the CRLR sometimes uses ideology as opposed to legal frameworks when determining the validity of claims (Davis, Ramutsindela, and Sinthumule, 2017). Furthermore, the program has suffered from a lack of both human and monetary resources (OECD, 2011). This has limited the program's ability to implement its vision. These issues are further expanded upon from the perspective of the CRLR in the annual reports and will be discussed in the results section through its effects on *de jure* versus *de facto* priorities.

3 Theoretical Background

The following sections describe the two theoretical frameworks which are applied to the analysis of the Annual Reports by the CRLR, alongside relevant research on land restitution.

4.1 Theoretical Framework

In this study, I will adopt the environmental entitlements framework, which illuminates the complex relationship between institutional orders, practices, and their relationship to their “*de jure*” social reality (Cousins, 1997). This will allow for an analysis that differentiates and relates the legal framework of land restitution to its social symbolism, and its practical implementation. This is important as the study seeks to analyze both the instrumental and symbolic theoretical mirroring in the land restitution program's goals and challenges, through the RBA and IDA respectively. The prioritizations and goals of the program are seen not as rules set in stone, but rather as the prescription of rule for maneuver as theorized by Ostrom (1986). The idea of a “rule for maneuver” is prescribed similarly to the RBA and IDA in my analysis of their ideological mirroring on the implementation of the LRP. The

envisioned prioritization of claimants, the CRLR's values, vision, and rules of maneuver, can be analyzed in symbiosis with its instrumental prioritization, through its outcomes and actions.

3.2.2 The Human Rights Approach

The RBA is defined as “principles that justify demands against privileged actors, made by the poor or those speaking on their behalf, for using national and international resources and rules to protect the crucial human interests of the globally or locally disadvantaged” (Gauri and Gloppen, 2012). The approach is based on the International Bill of Human Rights, which highlights equality through rights which are “universal and inalienable”, and of equal importance such that “none can fully be enjoyed without the other” (United Nations General Assembly, 1984). These rights state that “all human beings, regardless of race, color, sex, language, religion, political affiliation, national or social origin, birth or other status, should be empowered to claim civil and political (CP) rights, and economic, social, and cultural (ESC) rights” (Tapscott, 2012). Furthermore, the necessity of humans being “empowered” to claim these rights is highlighted. In the context of land restitution claimants, the RBA would therefore necessitate the CRLR to empower beneficiaries and be tuned to local socio-cultural contexts through continuous discourse.

As both physical possessions and dignity were taken from the victims of land dispossession, some argue that the transfer of land is not enough to provide equitable redress. To restore dignity, one way would be to ensure that the claimant feels as if the process is fair (Atuahene, 2014). If citizens believe that the LRP is unfair, it could have negative effects on the stability of the nation at large (Atuahene, 2014). Justice is therefore subjective to each victim.

3.2.2.1 Justice and morality

A central theory to human rights is justice, and when applied to significant changes in a country can be referred to as transitional justice. Transitional justice is “the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes” (Teitel 2003, 69). The first phase of transitional justice is marked by the act of criminalizing the wrongdoings of the regime, which applied to this research is the Freedom Charter alongside the Restitution Act (Hamilton, 2006). It is also marked by holding the oppressor accountable, which is difficult in the South African case, as views of who the oppressor was differs. In the case of the LRP, the apartheid regime is named the oppressor, not white people as a group, as claims for redress are made against the state itself (Stickler, 2012).

The second phase necessitates proving the legitimacy of the new rule of law, as a transition is enacted. This is mirrored by the ANC's implementation of the Restitution Act into the LRP, and consulting with the public to reach a consensus that the transition is justified (Teitel, 2003 p. 73). If the first phase is the first stage of grief, marked by a passionate determinism to achieve justice, the second is marked by a peaceful and nuanced perspective on justice where the absolutism of human rights is met by the practical realities of enacting that law. This is where socio-cultural perspectives on ethics, identity, and morality come into play.

Social anthropologists such as Zenker have explored the deep moral and cultural questions which inform politics and public discourse surrounding land restitution (2015). These studies highlight the necessity for the LRP to mirror the moral identity of South Africa. He explores how cultural identity informs land rights, for example opposing the ability for white people to benefit from the LRP. He illustrates how psychological and cultural damage and justice are interlinked, informed by the painful history of apartheid. This highlights the cultural rights which the RBA entrenches. Therein, the RBA when applied to the LRP, necessitates the CRLR to consider culture as it relates to identity and morality, in its implementation of the program.

3.2.2.2 Subjective Justice

One study from 2014 looked at the LRP from the perspective of transitional justice. It concluded that conversation between the claimant and the officers was the biggest indicator to predict whether the claimant felt fairly redressed (Atuahene, 2014). This is reflected in the second stage of transitional justice, where conversation between the perpetrator and the victims are used as instruments for healing (Teitel, 2003 p. 80). However, the party of the ANC which is leading these discussions does not represent the apartheid regime nor the individual people who enacted these violent dispossessions. A study done by James Gibson in 2009 showed that 85% of the black people surveyed agreed that "most land in South Africa was taken unfairly by white settlers, and they therefore have no right to the land today". Furthermore, about two-thirds of this group believed that "land must be returned to blacks in South Africa, no matter what the consequences are for the current owners and for political stability in the country" (Gibson, 2009). 91% of the white respondents disagreed. Therein, the South African black population may still see the white landowning population as the oppressive group. One study found that only 35% of a random sample of urban claim beneficiaries who received financial compensation believed the process and outcome were fair (Atuahene, 2014).

Transitional justice is also marked by a non-linear correlation between justice and time. This can be seen in the UN Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (UN, 1968). This relates to the studies on procedural justice, which explores the importance of which justice is

administered, as opposed to the instrumental acts of redress (MacCoun, 2015). These indicate that victims of oppression care deeply about the way in which the crime against them is handled, even if that process is slow and costly.

When connected with the subjective feeling of fairness previously discussed, the RBA connects to the morality of actions as rights are inalienable and never subject to suppression, even if the suppression of rights could lead to a better quality of life (Tapscott, 2012). The third phase of transitional justice is also marked by the integration of these inalienable rights as universal and moral parts of the rule of law (Teitel, 2003 p. 90). The third and final phase of transitional justice is however difficult to reach and maintain, as the timeline of justice is not seen as linear. The first phases of consolidation are rarely completed promptly, and efforts to reach and maintain peace are therein marked by constant consolidation, negotiation, and conflict. Social disruption is from beginning to end a part of creating true justice for its citizens, even if a brief period of peace follows the first phases of consolidation.

3.3.3 The instrumental development approach

The instrumental development-based approach in this study will be informed by theories of instrumentalist political economy as it relates to development efforts, alongside the idea of utilitarianism. Development, as defined by the UN Agenda for Development, is “the multidimensional undertaking to achieve a higher quality of life for all people” (1997). While the definition of development has changed over time and continues to become more holistic through changing development discourse, the overall focus of “quality of life” is generally informed by the achievement of basic needs. Instrumentalism is a philosophical way of looking at knowledge, judging it by its practicality in enhancing the quality of human existence (Shuklian, 1995). The means of an action, in this context the LRP, is only justified if it leads to a desired end. When applied to the political economy approach, land claimants and contested land are seen as instruments in achieving growth in the political economy (Hall, 2004). Economic ideas are then applied to the LRP, viewing its implementation as relating to transaction costs for achieving the end goal of a more prosperous South Africa, in quantifiable terms. In this paper, I will abbreviate the Instrumental Development Approach to IDA.

Utilitarianism is a philosophical theory that calls for acts that lead to maximizing pleasure, and minimizing pain for oneself and others, regardless of if these actions are “good” or “evil” (Pilkington, 2017). When applied to development and public policy, considerations of complex, human intricacies are opposed in lieu of quantifiable and material factors that either cause pain or pleasure. The idea of utilitarianism has informed social welfare economists that are proponents of a “practical rationalism” approach to evaluating public policies, connecting this to economic concepts of cost-benefit analysis (Dardi, 2010). The most ethical purpose of a social program is

therefore to increase the quality of life in clear, practical, and universally recognized ways. Development institutions' overwhelming focus on meeting individuals' basic needs is therefore of much importance.

The problem that restitution seeks to solve is defined very differently depending on whom you ask. From a political economy perspective, anchored in IDA, the problem at hand is largely concerned with the unequal agricultural sector;

“South Africa’s agrarian structure is ‘dualistic’ in the sense that it comprises, in the former ‘white’ rural areas, a capital-intensive commercial farming sector engaged in large-scale production and strongly linked to global markets and, in the former ‘black’ homelands, an impoverished sector dominated by low-input, labour intensive forms of subsistence production as a key source of livelihood along with migrant remittances and state pensions.” (Hall, 2004)

Recommendations that adhere to IDA include those from development institutions such as the World Bank, that argued for market-led land reform in South Africa with a new class of black commercial farmers (Hall, 2004). To solve the problem at hand, the goal is to replicate the white population's use of land in the black population. As there is evidence that commercial farming has led to economic development, this approach prioritizes land restitution in the name of commercial agriculture (Hall, 2004; Hall, 2007). This is further supported by the finding that secure land tenure in the form of land ownership has been shown to increase the productivity of the land itself (Beinart and Deinus, 2018).

Instrumentalist development perspectives often avoid a rights-based approach due to the potential political barriers it carries (Gauri and Gloppen, 2012). As discussed in the background section, the LRP is highly political, emotional, and controversial in nature. However, from the perspective of the IDA, these tensions are to be overcome as they cause instability and tension which complicates the implementation of development efforts. While they are not ignored, they are seen as instruments that affect social, political, and economic progress. Engaging with them, through symbolic actions that have no effect on beneficiaries' quantifiable quantity of life, is only worth it if the transaction cost is low enough, and the tensions are problematic enough to the political economy.

An evidence-based development approach to the effect of redistribution efforts on livelihoods is difficult, as there is a lack of data available (Hall, 2007). The available data is not very positive. The scholars Beinart and Deinus believe restitution to be an inefficient way to develop the country, as most of the land owned by black people is not used for agriculture (2018). Another evaluation of land redistribution indicated that the transferred land was very rarely used for agricultural pursuits, and when it was used it was underutilized or used unproductively (Hall, 2007). A study from 2012 furthermore found no significant evidence that land reform (not specifically restitution) has made any improvements on agricultural efficiency, income, employment, or economic growth (Lahiff and Li, 2012). The restitution act is seen as

a symbolic or political project by the ANC, implemented poorly, carrying little instrumental value in changing the black population's quality of life (Beinart and Deinus, 2018; Ponte, 2007). The government nonetheless sees land restitution as a crucial step in the National Development Plan, from both a symbolic and instrumental perspective (Commission on Restitution of Land Rights, 2020).

The IDA when applied to the LRP would support financial compensation above land redistribution, even if it is not the first choice of the land claimant if it infers a lower transaction cost for a potentially stronger household and community economy. On the other hand, persuading a land claimant to move, inhabit a new piece of land, and use that land for agriculture, mining, or other commercial ventures that benefit the nation's overall development would be another option with utilitarian benefits. If the household itself can make a livelihood, while using previously unproductive land, employing more of the nation's citizens, and contributing to growing a specific sector of the economy.

4 Method

The research question which I aim to answer in this research is how the CRLR prioritizes land claimants, and to what extent the theoretical perspectives IDA and RBA are mirrored in the CRLR's work. Furthermore, I seek to explore how IDA and RBA relate to the CRLR's priorities and strategies.

This is a mixed-method study, but is based in qualitative content analysis. The focus on a qualitative method is informed by the complexity of the issue of land reform in South Africa, as it allows for a deeper understanding of the social context (Bryman, 2012). The quantitative data is used for the purpose of triangulation, to aid greater validity to an otherwise more subjective method, and contribute to the findings' completeness by filling in knowledge gaps (Bryman, 2012 pp. 635-638).

To address the bias inherent in thematic analysis and classification of themes in my research, the concept of the "hermeneutical circle" was used (Mayring, 2014 p. 27). This aims to address pre-conceptions of the research at the beginning, and throughout the research, as the researcher's views change when faced with new material and results (Mayring, 2014 p. 11). The coding categories were adjusted, and passages were re-coded as a result of these changes to address newfound perspectives and to limit the biased influences of hypothesis driven research (Ibid). The horizon structure of hermeneutical understanding has been adopted in the content analysis, theorized as the idea that "specific text passages can only be understood on the basis of the whole text and its context as background" (Mayring, 2014 p. 28). This approach further addresses the ideological duality which can exist in a specific goal, underlining that coding remains a complex act of interpretation (Ibid.).

Furthermore, the content analysis is informed by both the latent and manifest functions of the text. This means that the context in which a statement is made carries weight in the analysis (Tashakkori and Teddlie, 1998 p. 121). The context is in these reports the section in which a statement is written. This analysis is done with the belief that theory is informed by complex interwoven social interactions, therefore a thematic analysis requires the exploration of latent meaning (Saldaña, 2013 pp. 80-81). The manifest function of the test is however also important, as it shows how the writer chose to relay the message. Its use is more important in analyzing the technical aspects of the reports.

4.1 Material

The Annual Reports from the Commission on The Restitution of Land Rights from years 2014 to 2019 were chosen as the basis of the content analysis. These years were chosen as the CRLR had created a clearer strategy to follow by 2014, aiding a greater transparency and suggested follow through of strategy (Commission on Restitution of Land Rights, 2015 p. 10). The reports of previous years therein did not show a clear directive and were therefore deemed unfit for analysis. The annual reports are the main documents that outline both strategy and performance, which relating back to the environmental entitlements framework allow for a greater differentiation between *de jure* and *de facto* prioritization of claims. They were furthermore chosen for analysis as they comprehensively cover the implementation of the LRP from a micro-level in a way which evaluation documents by external entities do not. The majority of studies done were focused on broader results and visions of land reform, and while resource inefficiencies within the CRLR have been identified, how they affect the prioritization of land claimants has not.

The structure of the reports is very similar from year to year, which lends a greater degree of validity in the analysis, allowing differences to shine through. The annual reports outline the performance, strategy, challenges, values, and goals of the CRLR in implementing the Land Restitution Programme. They give a general overview of the year under review and then focus on individual provinces.

4.2 Coding method

The main coding method being used is structural coding and was chosen for its ability to “quickly access data likely to be relevant to a particular analysis from a larger data set” (Saldaña, 2013 p. 84). The research question therein guides the coding and categorization of the data. This is appropriate as my analysis is specifically to look for the prioritization of land claimants, and specific theoretical concepts in order to answer the research questions. A thematic analysis of structural coding is also

appropriate, and further justifies the chosen coding method (Ibid.). Furthermore, structural coding is suited for a content analysis that acknowledges the latent functions of the text (Bryman, 2012 p. 297). The overarching method secondary and simultaneous to structural coding is thematic coding, connecting codes to categories “that appears to have the greatest explanatory relevance” (Saldaña, 2013 p. 223). The hermeneutical circle of reassessment of the researcher’s biases was also enacted in this process, as themes of explanatory relevance are subjective.

The content was strategically coded by strategy, goal, challenge, or land claim as being mirrored in either an IDA or RBA theoretical framework. When an approach did not mirror one of these theories or did so ambiguously, they were nonetheless coded if they carried relevance in explaining the prioritization of land claimants. The suggested remedies and challenges were similarly analyzed, while only those pertaining to the prioritization of land claimants are shown in my results. Some sections of the report are analyzed in relation to its section, relating them to their context and purpose. This is made possible as the annual reports have a similar or close to identical structure, and a minister’s foreword may carry greater symbolic meaning than that of a summary of performance would. As individual provinces are in charge of reporting on their performance, the writing style and information is slightly different. This also changes from year to year. This is an obstacle in analyzing the coding, as provinces that provided more information may be overrepresented in the research. Furthermore, some provinces handle a greater number of claims, but may not provide more information. These provinces may therefore be underrepresented.

This is a subjective method, and it must be addressed that the researcher’s biases may influence cases such as these in particular.

To illustrate how the text was coded, take the following statement from the summary of the Northern Cape Province’s performance and the consequent coding as an example:

“The claimed properties are in the John Taolo Gaetsewe District of the Northern Cape Province, declared as one of the 27 poorest districts in the country. The settlement of this claim will contribute to the reduction of poverty in that community members will be farming land that they own.” (Commission on the Restitution of Land Rights, 2015 p. 59).

This statement indicates positive performance by the program.

This statement refers to a specific province’s highlighted claims.

This statement contains 1 RBA indicator; the poor as beneficiaries.

This statement contains 2 IDA indicators; poverty alleviation, land used for livelihoods

4.3 Quantitative data

4.3.1 Data selection

Quantitative data was chosen to triangulate the content analysis for de facto meaning. The quantitative data was extracted from the annual reports, where performance data is strewn throughout the reports. Throughout the hermeneutical cycle of data collection, quantitative data was selected to represent the themes that appeared through the strategic coding. The chosen performance data is highlighted as it relates thematically to the arguments of the qualitative content analysis. This also informed how I processed and organized the data, as I did so strategically and thematically to aid the explanatory relevance of the qualitative results.

It was furthermore represented visually in charts to provide the reader with a deeper instrumental context of the implementation of the LRP. It was grouped by themes that were unearthed through the content analysis, which are discussed in the results section.

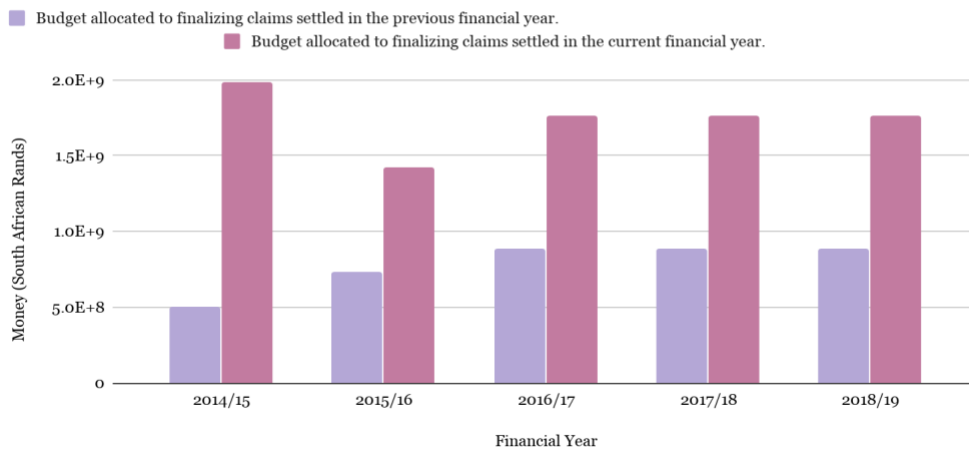
4.3.2 Data analysis

To aid the reader in understanding the data, I will explain the basic performance indicators which the CRLR use to track their performance.

A claim that is settled indicates that the CRLR and the land claimant have come to an agreement surrounding the given land claim. However, this does not mean that the land claimant has been given the award agreed upon. A finalized claim indicates that the agreed-upon award has reached the land claimant, with no significant outstanding obligations on the CRLR. As shown in Figure A, claims from previous financial years versus claims from the current financial year are finalized at a ratio of circa 1 to 2, shown through the allocation of the budget towards old versus new claims.

Figure A: Allocation of budget for the finalization of claims: Old versus new claims

Using data from the CRLR Annual Reports 2014/15, 2015/16, 2016/17, 2017/18, and 2018/19.



4.4 Limitations

4.4.1 Qualitative research

Classification of theoretical perspectives carries analytical problems, as no one theory or ideology can solely inform any one action of program implementation. This, however, is recognized by the researcher and informs the analysis of results. Furthermore, this is reflected in the theoretical duality of the land restitution program which is discussed in the background section of the research.

4.4.2 Reliability of data

All of the data in this study stems from the self-reporting of the CRLR. While the literature review includes other perspectives, and external evaluations occur on a continuous basis, there may be discrepancies in the CRLR's reporting. The country is ranked at a 44 out of 100 in the Transparency Index by Transparency International, with 43 being the world average (2019). This mediocre score coupled with the fact that corruption has been identified as a persistent problem by scholars and citizens alike, does influence the reliability of the data (Munzhedzi, 2016; Ndalamba, 2019; Salahuddina, 2019).

4.4.3 Ethical considerations in regards to race

The issue of land inequality and overall inequality is a sensitive topic. The topic of race is not thoroughly addressed in every part of analysis in this research, as there is already a plethora of relevant research on race and inequality in South Africa. I did not see a way in which I could contribute to this discourse, other than from a place that is not directly focused on race. That being said, the issue of race permeates into every aspect of South African life, as the memory of apartheid is still alive and well in the minds of many. This research should not be seen as a complete rendition of the prioritization of claimants from a race perspective. This is especially true as it focuses on black versus white racial categories, and does not explore the perspectives of the other main racial groups; “Coloured” and “Asian/Indian” (Nwosu and Ndinda, 2018).

5 Qualitative Analysis and Results

The following sections display the results of my content analysis and chosen quantitative performance data. Analysis is woven throughout to aid the reader in understanding the results. I start by exploring the overarching strategic outcome goals. Then I will delve into thematic trends and changes as it relates to the prioritization of land claimants and its theoretical significance.

5.1 Strategic outcome goals

The strategic outcome goals are a representation of the direction of the LRP, and were the same in all years recorded. A strategic outcome goal is made to guide the outcome of the program, as to match the strategy of the CRLR. They are the basis for how it measures its success, therein guiding the prioritization of land claims. The three goals are; 1. Land rights restored in order to support land reform and agricultural transformation by 2020, 2. Lodgment of restitution claims reopened for those who missed the 1998 deadline, and 3. Organizational change management.

Goal number 1 lays out a developmental perspective on land restitution, where its purpose is to transform and develop the nation at large. It is however expanded upon in its statement, where “equitable redress” is added as an alternative to the restoration of land. This implies bringing justice to victims of land dispossession. However, the goal description still ingrains the purpose of bringing justice, as a form of development, or for development purposes. This narrows the scope of what redress of the loss of rights can entail.

Goal number 2 refers to the Land Restitution Amendment, which in 2014 allowed the possibility for more individuals to submit land claims. It resulted in education and awareness programs across the country, intending to empower citizens to claim their rights. In 2015/16, the CRLR had begun processing and lodging new land claims. There was a simultaneous focus on lodging claims while processing claims which had

been lodged before 1998. The CRLR's mission is to finalize claims as soon as possible following their settlement. However, the Restitution Amendment Act contained a clause which necessitated the prioritization of old claims, those lodged before the original deadline in 1998, before those lodged after 2014. Old claims were still being researched as of 2018, whereafter the remainder of claims were outsourced to be researched by service providers. In 2016, the Constitutional Court deemed the act unconstitutional, so the goal was dropped. De facto, victims who had not lodged their claims by then were by 2019 still not able to receive redress, while old claims continued to be prioritized.

Goal number 3 seeks to create a more efficient restitution program through the reorganization of the CRLR. This is following evaluations outlined in the literature review that identified inefficiency, organizational inefficiencies, lack of transparency, and unclear responsibilities between departments as issues. To engage with criticism from the public is an important accountability measure of the RBA, while acting according to scientific evidence is aligned with the IDA. This goal is largely logistical in nature.

In the "Minister's foreword" and "Overview by the Chief Land Claims Commissioner" sections, these goals are thematically expanded upon. In the 2016/17 report, the Minister of Rural Development and Land Reform says that one of the goals of the LRP is to "reverse" the legacy of land dispossession, along with its painful consequences (p. 9). This is one example of ambitious visions which serve as preambles to the more technical parts of the reports. To reverse the legacy of land dispossession is quite a big feat, and arguably impossible as most of the land claimants receive financial compensation as redress. However, the vision is in line with an absolutist approach to human rights but does not fit within a practical implementation.

5.2 The limits of redistribution without expropriation

This section explores how the LRP attempts to avoid social disruption to the best of their ability, which mirrors the IDA. This is antithetical to the idea of justice through the lens of the RBA, which cannot be met without the expropriation of land owned by white people.

During the years under review, the LRP operated under a legal framework that does not allow for forced expropriation. What this means in practice, is that a current white owner of land, whose land was owned or occupied by e.g. a native tribe following 1913 and was then dispossessed of that land, is not forced to sell the land to the state for redistribution. The CRLR can provide documentation that proves the validity of a land claimant's dispossessed land rights, along with an offer to buy the land from the

current owner, but they cannot force the landowner to give up the land. The struggles of this process are exemplified in the following passage:

“The biggest challenge in settling land claims is that the majority of land owners have declined offers to purchase made by the Regional Land Claims Commissioner (RLCC)... Moreover, the land owners are disputing the validity of the claims despite the overwhelming evidence that is disclosed to them regarding the research that has been conducted.” (Commission on Restitution of Land Rights, 2016 p. 48).

Throughout the reports, landowners have been identified refuting the validity of some land claims, arguing that the land claimant never had a right to the land in the first place. Furthermore, landowners have changed their minds about selling the land, refuted offers, or engaged in long negotiation battles. This undermines the redistributive aspect of the LRP, and both negates and highlights the rights-based perspective. Property rights as protected under the constitution protect landowners' right to do what they please with their land. On the other hand, victims of land dispossession have a right to reclaim their land or to be provided with equitable redress. This is an instance where the vision of the LRP is riddled with rights-based arguments, but in practice boils down to a utilitarian or developmental approach.

As explained, disagreements between stakeholders are common. However, the CRLR argues that social disruption is antithetical to the LRP, as it seeks long term socio-economic transformation. An example of where these ideas clash is exemplified below:

“The land claimant opted for financial compensation as the property cannot be restored to her as it is currently occupied by another family as restoration could cause social disruption which is against the mandate of the land restitution policy. The land claimant indicated that she wants no other property except the originally dispossessed therefore an alternative property could not be sought hence she opted for financial compensation.” (Commission on Restitution of Land Rights, 2015 p. 27).

The argument is that the rights of one family cannot be infringed upon in the redress of a land claimant's land rights. However, if the land occupant is white, the land claimant is black, and the land claimant sees said occupant as part of the system which dispossessed them of their rights, justice from the perspective of the RBA is not met. Social disruption is a part of the transitional justice process, which necessitates the perpetrator who infringed upon the victim's rights to be held accountable. Given the large number of black citizens that do not believe white citizens have right to the land they own (see section 3.2.2.2), restitution without forced expropriation does therefore not meet justice by an RBA perspective. It can however meet the standards for the IDA if basic needs of the land claimant are met through the financial compensation award, and increased social tension does not cause barriers to national development.

5.3 The use of financial compensation

The analysis revealed that financial compensation was used for numerous purposes and its analysis demanded context specificity. Furthermore, it shows varying explanatory relevance in its effect on the prioritization of land claimants. On the one hand, a major goal of the CRLR is to discourage financial compensation in place of land ownership, to address the inequality of land ownership along racial lines. However, in practice, financial compensation awards are quicker to process and have been prioritized in order to increase CRLR's performance and to address more claimants quicker.

In the 2015/16 Annual Report, the CRLR indicates that poor performance in Q1 of said year pushed them to focus on individual financial compensation claimants. This is provided as a reason for overperforming in terms of settling claims (Commission on Restitution of Land Rights, 2016 p. 24). This indicates that financial compensation claims are easier or quicker to process and that individual claims are prioritized to raise performance numbers. This can also be a utilitarian approach that is used when resources and time are scarce. However, the performance data does not show an increase in budget allocated towards financial compensation claims [See Figure B], nor an increase in beneficiaries [See Figure C].

Figure B: Budget allocated to purchasing land and payed out financial compensation awards by year

Using data from the CRLR Annual Reports 2014/15, 2015/16, 2016/17, 2017/18, and 2018/19.

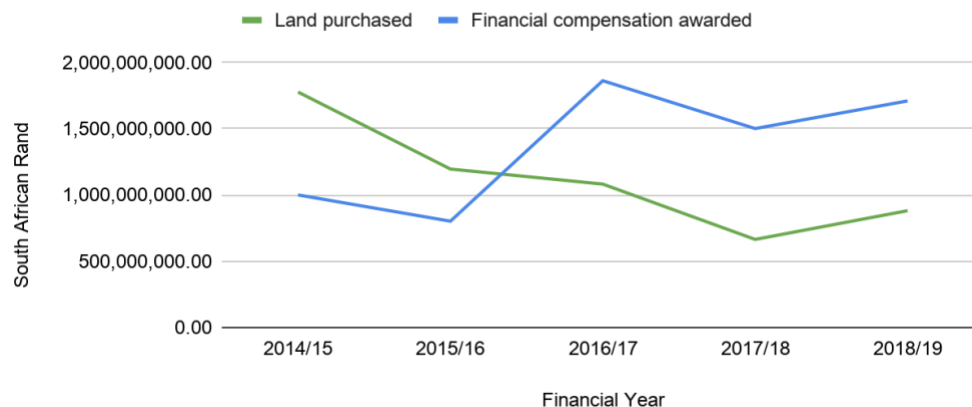
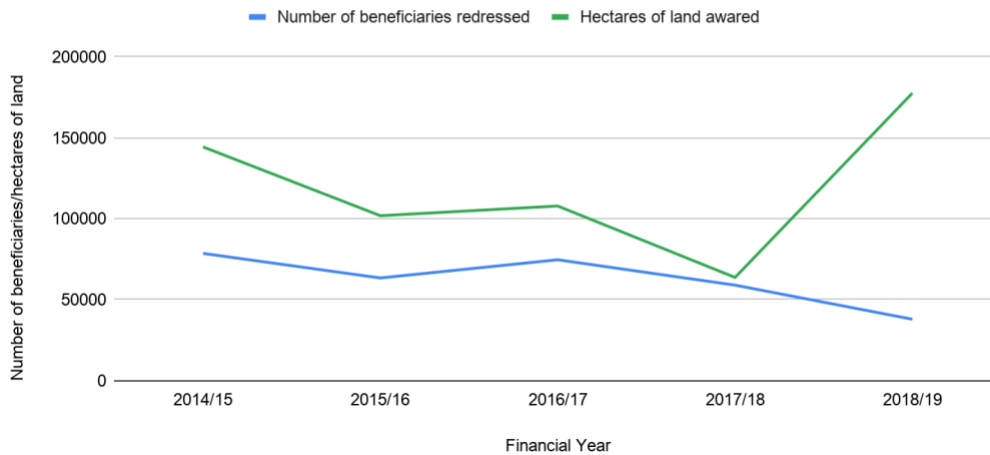


Figure C: Changes in beneficiary numbers and hectares of land awarded

Using data from the CRLR Annual Reports 2014/15, 2015/16, 2016/17, 2017/18, and 2018/19.



5.3.1 Limits of financial compensation

As explored in the previous section, financial compensation is seen de jure as a utilitarian tool towards settling more claims, but its de facto implication is not definite. Financial compensation can serve further utilitarian purposes beyond increasing efficiency, as the RBA's definition of justice is broad and context specific, and could necessitate more comprehensive efforts. Furthermore, the choices of the claimants are difficult to interpret due to the power differentials between the low trusted government and their poor citizens.

Some claims have been highlighted in the annual reports by the individual provinces, where claimants have opted for financial compensation, with no indication that this decision was influenced by the (non)availability of the claimed land. Take the following claim description as an example;

"One (1) land claim which was lodged on 30 November 1998 on behalf of the Griqua, Korana and the San communities in the Postmasburg area... The Methodist Church ran a Primary School in the area which everyone attended... Oral accounts by claimants indicate that the municipality arrived with trucks and tractors pulling trailers and instructed the community to load their belongings. The claimant's further state that when they returned the next day to salvage what they could of their belongings and livestock, the area had been cleared and their livestock impounded... Phase 1 settlement of this claim was approved... This approval catered for 92 claimant households that opted for financial compensation as their preferred settlement option" (Commission on the Restitution of Land Rights, 2015 pp. 62-63).

From an RBA perspective, there are many rights that have not been restored through financial compensation, such as the right to land, place of worship, property, and livelihood. Financial compensation in place of restoration of these rights could therein be seen as a utilitarian approach, as the resources demanded to address all of these rights could outweigh the positive developmental effects of justice. Furthermore, there are no symbolic amends outlined in the text. On the other hand, RBA necessitates to provide justice to victims according to their demands, and if the victims feel they have been brought justice, the case is closed. As explored in the literature review, studies from previous years show that the majority of land claimants did not feel that their settlement was fair. It is possible that the choice of the land claimants comes from a place of pragmatism, where weak communication and low trust between the CRLR and the land claimants alongside the low negotiating power of the land claimants may have pushed land claimants to accept any offer given to them.

In the reports, the complex relationship with poor land claimants and financial compensation were highlighted. The CRLR has identified the main reason behind claimants opting for financial compensation as poverty. A negative perspective on claimants' choice to be redressed through financial compensation by the CRLR is highlighted in the following quote;

“This trend is likely to continue as 94% of claimants of the 143 720 new claims that have been lodged since the re-opening of lodgement of new claims, have indicated a preference for their claims being settled through payment of financial compensation. This is an indication of the severity of the challenges that our people are faced with, including the absence of alternative sources of income, which again, is a consequence of the Natives Land Act.”
(Commission on Restitution of Land Rights, 2016 p. 11)

It is unclear to tell whether accepting a financial reward in this context is aligned with the RBA as bringing justice on the terms of the victim due to the vulnerability of the poor victim.

5.4 Highlighted claims and the CRLR's Vision

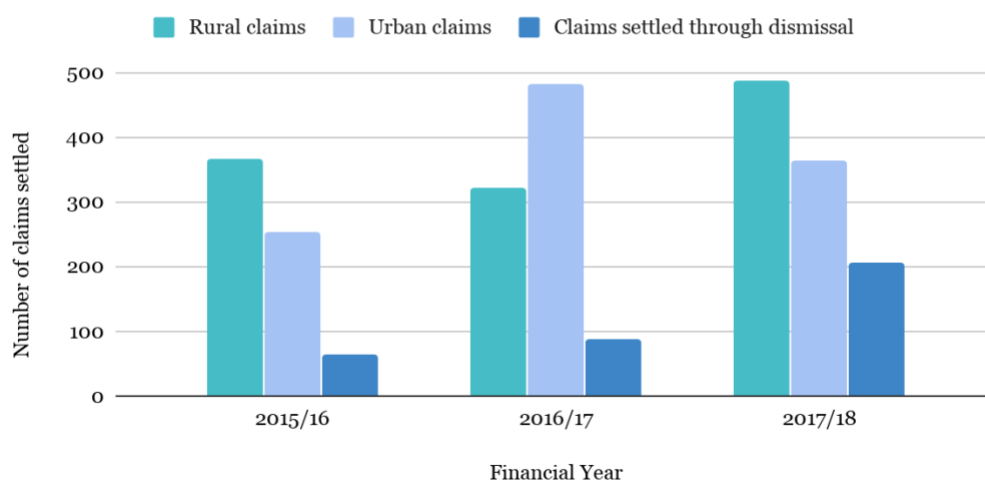
As mentioned previously, each province gets an opportunity to highlight its performance in the Annual Reports. They provide a rundown of their performance quantitatively and choose a select few claims to describe in-depth. However, every single province, from 2014 to 2019, overrepresent claims resulting in land restoration in their overview. These are often claims from rural areas, community claims, or claims that resulted in difficult legal battles. In the case of limited cases of land restoration, a great focus is put upon the developmental results of the compensation, describing how the money was put towards education or housing.

Highlighted claims also often mention if the claim benefitted female-headed households, which are on average poorer than its male-headed counterparts (Nwosu and Ndinda, 2018), or people with disabilities. This focus on the vulnerable is aligned with an RBA vision of justice. However, the performance data indicates that female headed households account for just under half of the total households affected by the program, which closely resembles the ratio shown in the general population. Between 39 to 49% of total households were led by women as of 2017 (Ibid).

The choice of highlighting these claims mirror the CRLR’s strategic outcome goals, and Zuma’s and Ramaphosa’s calls to prioritize land restoration. However, it does not mirror the de facto implementation of the program. Whether it is due to individual claimants’ choice, external factors, or the CRLR’s internal priorities, the vast majority of claims are settled through financial compensation. Furthermore, the number of urban versus rural claims settled from 2015-2018 (the only years this data was made available for all provinces in the reports) are near equal [See Figure D]. The de jure and de facto priorities are therein shown to oppose, or at the very minimum be inconsistent with each other.

Figure D: Changes in settled claims by type

Using data from the CRLR Annual Reports 2015/16, 2016/17, and 2017/18



5.5 Turning underperformance into overperformance

This section explores how ambitious goals which when they cannot be met, result in an abandonment of the explicit strategy and goal of the LRP. The results yielded suggest that the CRLR emphasizes the difficult work they’re doing, with little staff and resources. It suggests that changing their strategy and being committed yields higher numbers, without sometimes explaining what the change in strategy is. A common thread while analyzing the performance overviews, is how low-performance

numbers in Q1 and Q2 are cited as the catalyst for change, which does not only lead to meeting the set target for the financial year but exceeding it.

Underperformance in one goal does not always yield a new strategy, but causes CRLR to shift its focus to an attainable goal. For example, in the 2017/18 report (p. 18), the “perceived difficulty in settling claims” was cited as a reason for overperformance in finalizing claims. When put under pressure, my review indicated that the CRLR did not act according to their vision. As a result of increasingly high targets set due to external pressure, the CRLR earnestly wrote in its 2016/17 report;

“The reality of the matter though is that it is, generally, quicker to settle individual claims compared to community claims. Due to the increase in the number of new claims that we had to settle in the past financial year, we prioritised, mostly, the settlement of individual claims as opposed to community claims” (Commission on Restitution of Land Rights, 2017 p. 69).

This suggests that community claims are neglected when pressure to meet the set targets is high.

5.6 Focus on attainable goals

A similar theme was shown in the reoccurring challenge faced by the CRLR; the complexity of land claims and the socio-cultural context of the claimants themselves. For example, they reasoned that underperformance in settling claims in 2018 was due to the reluctance of claimants to accept offers of compensation (p. 42). In no instance did the CRLR identify that the offers may have been of poor quality or unsatisfactory; that the root cause could be unsatisfactory work which does not redress acts of dispossession properly. Furthermore, a reluctance of land claimants to provide their bank details was attributed as an act of protest, as the awards were too low for the claimants (2018 p. 42). These claimants have qualified as victims of land dispossession as an offer was presented, and are by mandate entitled to equitable redress. The same financial year was marked by a 134% increase in dismissed claims compared to the preceding year, as can be seen in Figure D. As no other year had as many dismissed claims, while the focus on uncooperative land claimants was heightened, it is possible that the rights of the land claimants were not respected. This furthermore supports the idea that the CRLR acts through utilitarian measures when faced with difficult claims.

5.7 Complex and challenging claims

As previously explored, community claims are deemed difficult, and individual financial compensation claims are deemed easier. “Complex” claims could also entail rural claims, the difficulties of which are exemplified in the following quote;

“One of the main challenges experienced during this period was the settlement of rural claims. These claims have over the years proven to be complex to settle, as the land is unregistered and unsurveyed, thus making the processes that accompany successful restitution difficult to complete on time. Further complicating settling of claims, is the fact that most rural claimants leave their homes in search for employment and better opportunities in urban areas, and this results in the accumulation of even more untraceable claimants as most of them never bother to update their details.” (Commission on Restitution of Land Rights, 2016 p. 26)

Furthermore, rural claims often intercept with land which is under the authority of customary law or chieftaincies. These claims have furthermore been described as difficult, shown in the following excerpt;

“Sekhukhune district is clouded by many difficult land claims which cut across chieftainship issues as well as complicated proclamations, which makes it difficult to settle land claims in the same district” (Commission on Restitution of Land Rights, 2016 p. 111).

The described difficulties in dealing with tribal chiefs are problematic from a cultural rights perspective. This has the possibility to both affect the tribal communities and the land claimants.

As the CRLR has shown a tendency to move away from difficult tasks to boost performance, difficult rural claims may be neglected in place of urban claims. However, the data available from the reports on the ratio between urban and rural settled claims does not indicate large discrepancies between the two. As seen in Figure D, the ratio between rural and urban claims only favors urban claims in the 2016/17 financial year. This is the same year as the CRLR indicated that it focused on individual claims over community claims, as they were easier to settle. Furthermore, in 2016/17, the budget allocated towards purchasing land decreased and the budget allocated to financial compensation awards increased more than two-fold [See Figure B]. There is therefore data to support that this year prioritized “easier” claims.

5.7.1 Utilitarian choices under pressure

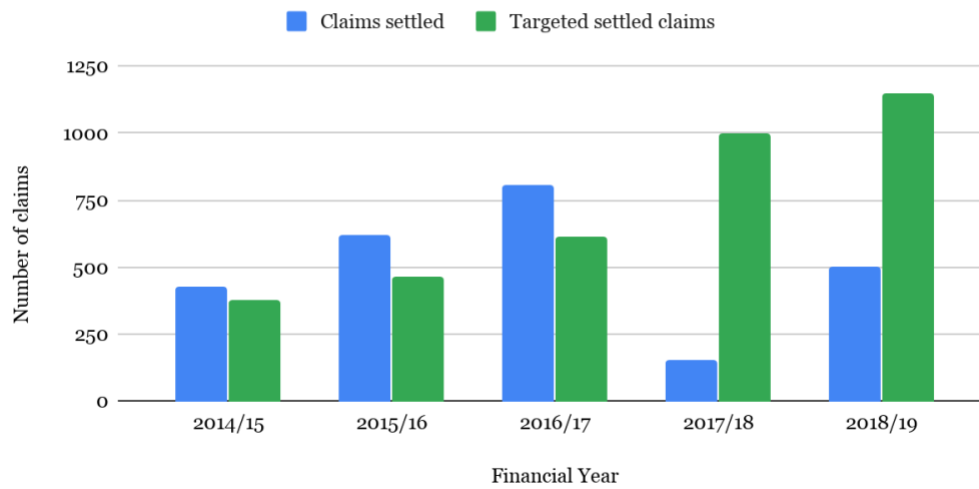
Individual provinces have made individual priorities without an explanation of how it may relate to the CRLR’s general strategies. To recap; claims which have been identified as challenging are often rural, community, or chieftaincy claims that result in land restoration. On the other hand, small claims are described as less expensive and quicker to settle, as exemplified by the following quote, explaining a change in priorities towards small claims;

“At the beginning of the 2016/2017 financial year, the office took a decision to prioritise small land claims (less expensive). This enables us to settle more claims with the limited budget and resources that are allocated for this purpose.” (Commission on Restitution of Land Rights, 2017 p. 110)

In the 2016/17 financial year, more claims were settled than the year before [See Figure E] and the net number of beneficiaries also increased [See Figure C]. While the hectares of land awarded increased slightly [See Figure C], the budget allocated to purchasing the land decreased [See Figure B]. It is therefore not conclusive whether this provincial strategy is indicative of a wider CRLR strategy, but it does confirm the theory that utilitarian theories are adopted due to resource constraints.

Figure E: Settlement of claims over time - Actual versus target

Using data from the CRLR Annual Reports 2014/15, 2015/16, 2016/17, 2017/18, and 2018/19.



Another province, Limpopo, made an individual choice the previous year without the input from the CRLR as a wider structure, shown in this excerpt;

“The main focus was to prioritise claims where no land was previously acquired for communities” (Commission on Restitution of Land Rights, 2016 p. 50)

There was no explanation for the reasoning behind this approach, however, it can be implied that it stems from a utilitarian philosophy. A logic which mirrors this is to spread out the benefits of the program across communities when resources and time is scarce, to create the most net-benefit. It could also be in an attempt at calming down the qualms of communities that have yet to benefit from the program, which could be for the benefit of the program’s public perception, or an RBA which seeks to engage with its beneficiaries. These two cases represent how individual provinces are able to make individual prioritizations, which often end up being utilitarian.

5.8 Results

The previous sections of analysis have highlighted how the vision of the LRP is inclusive of community and rural land restoration claims claims that benefit vulnerable populations such as women, as well as tribal communities. This is shown

through the strategic outcome goals, the choice of highlighted goals, and the overall mission of the CRLR. This is supported by the fact that there's an overrepresentation of female headed households in highlighted claims versus total beneficiaries.

However, the department is often under much pressure, and therefore results to making utilitarian choices that favor small, individual, financial compensation claims that cause little to no social disruption. The vision and goals of the LRP is heavily mirrored in the RBA's idea of justice, identity, and holistic growth, but the implementation is often more utilitarian.

The quantitative data support this to varying extents, however most strongly during the year of 2016/17, as explained in Section 5.7. On the other hand, as shown in Section 5.3, an indicated shift in priorities does not always produce a clear result in terms of performance data or implementation. This is underlined by how individual provincial offices creates their own priorities, which affects the CRLR's overall performance (See Section 5.7.1).

6 Conclusion

A content analysis of the implementation of the LRP, triangulated with performance data from its annual reports confirms previous studies' identified issues related to resource inefficiency. Furthermore, it shows the CRLR's vision as overwhelmingly rights-based, but strategic goals and implementation as instrumental developmental. Their vision is overwhelmingly symbolic and community and rural oriented, but its implementation is utilitarian. Their vision is to help the poor, the rural, and the otherwise vulnerable, but their implementation, when faced with difficulty, favors individual, cooperative claimants that seek financial compensation. Despite this pattern, aspects of IDA and RBA exist simultaneously within all aspects of the LRP. More research and policy must be directed to address dismissed claimants, those who find their redress as unfair, and those that have yet to be given the chance to lodge claims in order for justice as defined by the RBA to be met. Furthermore, the developmental aspects of the program are still inconclusive at best.

References

- Atuahene, B., 2011. South Africa 's Land Reform Crisis: Eliminating the Legacy of Apartheid. *Foreign Affairs*, [online] 90(4). Available at: <https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1034&context=fac_schol> [Accessed 29 May 2020].
- Atuahene, B., 2014. The Importance of Conversation in Transitional Justice: A Study of Land Restitution in South Africa. *Law & Social Inquiry*, [online] 39(4), pp.902-937. Available at: <https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=3382&context=fac_schol> [Accessed 29 May 2020].
- Beinart, W. and Delius, P., 2018. Smallholders and land reform: A realistic perspective. Centre for Development and Enterprise: Viewpoints, [online] (5). Available at: <<http://www.cde.org.za/wp-content/uploads/2018/11/Viewpoints-Smallholders-and-Land-Reform-A-realistic-perspective-CDE.pdf>> [Accessed 29 May 2020].
- Bezerra, J., 2018. *Land Claims In South Africa: It's About The Meaning Of The Land, Not Just Money*. [online] The Conversation. Available at: <<https://theconversation.com/land-claims-in-south-africa-its-about-the-meaning-of-the-land-not-just-money-100259>> [Accessed 29 May 2020].
- Borras Jr., S. and Franco, J., 2010. Contemporary Discourses and Contestations around Pro-Poor Land Policies and Land Governance. *Journal of Agrarian Change*, 10(1), pp.1-32.
- Buthelezi, N., 2007. The Impact Of The Land Restitution Programme On Poverty. Ph.D. University of Pretoria.
- Commission on Restitution of Land Rights, 2015. *Annual Report 2014/15*. Annual Report. [online] Commission on Restitution of Land Rights. Available at: <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/151014CRLR_AR.pdf> [Accessed 29 May 2020].
- Commission on Restitution of Land Rights, 2016. *Annual Report 2015/16*. Annual Report. [online] Commission on Restitution of Land Rights. Available at: <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/CRLR_ANNUAL_REPORT_2015-16_CD.pdf> [Accessed 29 May 2020].
- Commission on Restitution of Land Rights, 2017. *Annual Report 2016/17*. Annual Report. [online] Commission on Restitution of Land Rights. Available at: <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/Commission_on_Restitution_of_Land_Rights_Annual_Report_2017.pdf> [Accessed 29 May 2020].

- Commission on Restitution of Land Rights, 2018. *Annual Report 2017/18*. Annual Report. Commission on Restitution of Land Rights, pp.http://pmg-assets.s3-website-eu-west-1.amazonaws.com/Commission_on_Restitution_of_Land_Rights_AR_2018_-_Friday_1_June_2018.pdf.
- Commission on Restitution of Land Rights, 2019. *Annual Report 2018/19*. Annual Report. [online] Commission on Restitution of Land Rights. Available at: <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/CRLR_ANNUAL_REPORT_2018-2019_rev_4_Complete.pdf> [Accessed 29 May 2020].
- Cousins, B., 1997. How Do Rights Become Real? Formal and Informal Institutions in South Africa's Land Reform. *IDS Bulletin*, [online] 28(4), pp.59-67. Available at: <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/9189/IDSB_28_4_10.1111-j.1759-5436.1997.mp28004007.x.pdf?sequence=1> [Accessed 29 May 2020].
- Dardi, M., 2010. Marshall on welfare, or: the 'utilitarian' meets the 'evolver'. *The European Journal of the History of Economic Thought*, 17(3), pp.405-437.
- Department of Rural Development and Land Reform, 2017. Land Audit Report. Phase II: Private Land Ownership by Race, Gender and Nationality,. [online] Department of Rural Development and Land Reform. Available at: <https://www.gov.za/sites/default/files/gcis_document/201802/landauditreport13feb2018.pdf> [Accessed 29 May 2020].
- drdlr.gov.za. 2020. *Commission On Restitution Of Land Rights*. [online] Available at: <<https://www.drdlr.gov.za/sites/Internet/AboutUs/commission-restitution/Pages/default.aspx>> [Accessed 29 May 2020].
- Gauri, V. and Gloppen, S., 2012. *Human Rights Based Approaches To Development: Concepts, Evidence, And Policy*. Policy Research Working Paper 5938. [online] The World Bank Development Research Group. Available at: <<https://openknowledge.worldbank.org/bitstream/handle/10986/3223/WPS5938.pdf?sequence=1>> [Accessed 29 May 2020].
- Gibson, J., 2009. Land Redistribution/Restitution in South Africa: A Model of Multiple Values, as the Past Meets the Present. *British Journal of Political Science*, 40(1), pp.135-169.
- Gov.za. 2018. *Land Reform | South African Government*. [online] Available at: <<https://www.gov.za/issues/land-reform>> [Accessed 29 May 2020]. Hall, R., 2004. A Political Economy of Land Reform in South Africa. *Review of African Political Economy*, 31(100), pp.213-227.
- Hall, R., 2007. The Impact Of Land Restitution And Land Reform On Livelihoods. Programme for Land and Agrarian Studies research report no. 32. University of the Western Cape in collaboration with Department of Land Affairs, Commission on Restitution of Land Rights and Belgische Technische Coöperatie (BTC).

- Hamilton, L., 2006. Human needs, land reform and the South African constitution. *Politikon*, 33(2), pp.133-145.
- Harding, A., 2018. South Africans' anger over land set to explode. BBC Africa, [online] Available at: <<https://www.bbc.com/news/world-africa-44278164>> [Accessed 29 May 2020].
- Lahiff, E. and Li, G., 2012. Land Redistribution In South Africa -- A Critical Review. [online] World Bank. Available at: <<https://openknowledge.worldbank.org/bitstream/handle/10986/27168/808740WP0South0ox0379822B00PUBLIC0.pdf?sequence=1>> [Accessed 29 May 2020].
- MacCoun, R., 2005. VOICE, CONTROL, AND BELONGING: The Double-Edged Sword of Procedural Fairness. *Annual Review of Law and Social Science*, 1(1), pp.171-201.
- Mayring, P., 2014. *Qualitative Content Analysis: Theoretical Foundation, Basic Procedures And Software Solution*. Klagenfurt.
- Moremedi, L., 2016. *The Evaluation Framework For The Land Restitution Programme In The Northern Province*. Ph.D. North-West University.
- Ndalamba, K., 2019. An exploration into the problematic public policies and the leadership challenge for socio-economic transformation in South Africa. *International Journal of Excellence in Government*, 1(1), pp.37-47.
- Nwosu, C. and Ndinda, C., 2018. Female household headship and poverty in South Africa: an employment-based analysis. *Economic Research Southern Africa: Working Papers*, [online] (671). Available at: <https://econrsa.org/system/files/publications/working_papers/working_paper_761.pdf> [Accessed 29 May 2020].
- OECD, 2011. *Agricultural Policy Monitoring And Evaluation 2011*. OECD Publishing.
- Ostrom, E., 1986, *An agenda for the study of institutions*. *Public Choice*, 48: 3-25
- Parliamentary Monitoring Group, 2017. President Jacob Zuma: 2017 State Of The Nation Address. [online] Available at: <<https://pmg.org.za/briefing/23929/>> [Accessed 29 May 2020].
- Parliamentary Monitoring Group, 2020. State Of The Nation Address By President Ramaphosa. [online] Available at: <<https://pmg.org.za/briefing/29783/>> [Accessed 29 May 2020].
- Pilkington, P., 2017. Utilitarian Economics and the Corruption of Conservatism. *American Affairs*, [online] 1(3), pp.58-74. Available at: <<https://americanaffairsjournal.org/2017/08/utilitarian-economics-corruption-conservatism/>> [Accessed 29 May 2020].
- Ponte, S., Roberts, S. and van Sittert, L., 2007. 'Black Economic Empowerment', Business and the State in South Africa. *Development and Change*, 38(5), pp.933-955.

- Ramutsindela, M., Davis, N. and Sinthumule, I., 2016. *Diagnostic Report On Land Reform In South Africa Land Restitution*. Commissioned report for High Level Panel on the assessment of key legislation and the acceleration of fundamental change, an initiative of the Parliament of South Africa. [online] South African Parliament. Available at: <https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/Commissioned_Report_land/Commissioned_Report_on_Land_Restitution_Ramutsindela_et_al.pdf> [Accessed 29 May 2020].
- Richey, L., Ponte, S., Abrahamsen, R., Harrison, G., Mercer, C. and Brockington, D., 2012. Brand Africa: multiple transitions in global capitalism. *Review of African Political Economy*, [online] 39(131), pp.135-150. Available at: <<https://www.jstor.org/stable/23145893>> [Accessed 21 May 2020].
- Salahuddin, M., Vink, N., Ralph, N. and Gow, J., 2019. Globalisation, poverty and corruption: Retarding progress in South Africa. *Development Southern Africa*, pp.1-27.
- Stickler, M., 2012. Brief: Land Restitution In South Africa. [online] Focus on Land in Africa. Available at: <<http://www.focusonland.com/fola/en/countries/brief-land-restitution-in-south-africa/>> [Accessed 29 May 2020].
- Tapscott, R., 2012. Maximizing Achievements in Human Rights Development: Arguments for a Rights-Based Approach to Land Tenure Reform. *The Fletcher Journal of Human Security*, 27, pp.26-43.
- Tashakkori, A. and Teddlie, C., 1998. *Mixed Methodology: Combining Qualitative And Quantitative Approaches*. Thousand Oaks, California: Sage.
- Transparency International. 2019. *Corruption Perceptions Index 2019 - South Africa*. [online] Available at: <<https://www.transparency.org/country/ZAF#>> [Accessed 21 May 2020].
- United Nations, 1970. *Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity*. [Online]. In accordance with article VIII, UNTS Volume number 754, p.73, Adopted November 11, 1970 [Accessed 29 May 2020]. Available from: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.27_convention%20statutory%20limitations%20warcrimes.pdf
- Van der Westhuizen J in Florence v Government of the Republic of South Africa*, 2014 (6)SA 456 (CC). Available at: <http://www.saflii.org/za/cases/ZACC/2014/22.html>
- Zenker, O., 2015. South African Land Restitution, White Claimants and the Fateful Frontier of Former KwaNdebele. *Journal of Southern African Studies*, 41(5), pp.1019-1034.