1. **Draft Report of the Portfolio Committee on Rural Development and Land Reform on a fact-finding visit to the Nwandlamharhi Communal Property Association, dated 13 March 2019**

The Portfolio Committee on Rural Development and Land Reform, having undertaken a fact-finding visit on 14-16 November 2018 to ascertain the relevant facts relating to and elucidating a situation of maladministration or breach of policy in the settlement of Mhlanganisweni community land claim commonly known as Malamala and explored the post-settlement arrangements under the N’wandlamharhi Communal Property Association, reports as follows:

# **Introduction**

This report accounts for the fact-finding visit of the Portfolio Committee on Rural Development and Land Reform, henceforth referred to as the Committee, in the offices of the Department of Rural Development and Land Reform in Pretoria, the Board of Directors of Malamala, and the members of the Nwandlamharhi CPA. The N'wandlamhlarhi CPA is found in Lillydale village near Hazyview, Bushbuckridge Municipality in Ehlanzeni District of the Mpumalanga. It owns 13,184 hectares of land, including the Malamala Game Reserve, restored in terms of the Restitution of Land Rights Act, No. 22 of 1994.

Figure 1: Map for Malamala Game Reserve

## *The scope and key questions for the fact-finding visit*

The focus of the fact-finding visit was three-fold. Firstly, it sought to gather relevant information about the settlement of the land claim, in particular the determination, and payment, of compensation which is alleged to be in excess of the market value and not in line with notions of ‘just and equitable’ compensation provided for in Section 25(3) of the Constitution. Secondly, the committee intended to gather information about the establishment, and the dynamics, of the CPA as well as all the relevant factors that underpin alleged non-payment of benefits to the deserving members of the CPA. Given this scope, the visit sought to establish, interpret and communicate the central facts about settlement and the dynamics of ‘Malamala’ land claim. The Committee viewed this fact-finding as part of available mechanisms that could place the facts in a proper context and allow the Committee to provide independent and objective examination of the evidence in order to enable it to endorses, or not, the earlier resolution for institution of a forensic investigation on the entire Malamala settlement.

To be precise, the visit will seek to provide answers to the following key questions:

*Settlement of the land claim and payment of compensation to the landowners*

* What were the relevant factors leading to the withdrawal of the land claim from the Constitutional Court and payment of R1.1 billion?
* Is the figure of R1.1 billion a just and equitable? Did the Minister and the Commission on Restitution of Land Rights default to market-value in determination of compensation to the land owners?
* Was the process appropriate, reasonable and in accordance with the relevant legislation and policy?

*N’wandlamharhi Communal Property Association*

* Has the verification process (and its outcome) and membership of the CPA conformed or complied to the relevant applicable pieces of legislation?
* Given the complex dynamics around settlement of the land claim, are members of the CPA realising benefits from the land bought for them?
* What are the current land uses? What is the model pursued in management of enterprises? Have there been any tangible benefits?
* Do financial statements and reports attest to a successful land restitution case, a case seen as the most expensive since 1994?

*Co-management arrangement between the CPA and Malamala PTY (LTD)*

* What are the key principles governing the arrangement?
* How is the business being run and what are the benefits to the CPA as a whole?
* What are the arrangements regarding ownership and control of the business as well as the risks and rewards in this arrangement?

## *Composition of the delegation*

The fact-finding was conducted by a multi-party delegation of 10 members of the Portfolio Committee on Rural Development and Land Reform. The delegation was supported by parliamentary support officials.

**Table 1: Members of the Delegation**

|  |  |
| --- | --- |
| Names of Members of Parliament | Political Party |
| Ms PC Ngwenya-Mabila: Leader of the delegation  Mr PJ Mnguni  Mr EM Nchabeleng  Ms NW Magadla  Mr A Madella  Ms CK Matsimbi | African National Congress |
| Mr TCR Walters  Mr K Robertson | Democratic Alliance |
| Mr NS Matiase | Economic Freedom Fighters |
| Mr MLW Filtane | United Democratic Front |
| Parliamentary officials who accompanied the Committee  Ms P Nyamza (Committee Secretary)  Dr T Manenzhe (Content Adviser)  Ms C Maledu (Committee Assistant)  Ms T Pepeteka (Researcher)  Mr N Mjenxana (Parliamentary Legal Advisor)  Mr S Mbata (Aid Assistant) | |

## *Structure of the report*

This report proceeds as follows: firstly, it discusses the guiding principles and methodological issues; secondly it presents an overview of the background to Malamala and then discusses the observations of the Committee. Thirdly, it presents the insights from the fact-finding and recommendations.

# **Guiding principles and approach**

The Portfolio Committee is an extension of the National Assembly. Its function, amongst others is to hold the Executive accountable through a range of oversight mechanisms as envisaged in sections 43(3) and 55(2) of the Constitution. These sections respectively enjoin Parliament to scrutinise and oversee executive action as well as ensuring accountability of all executive organs of state in the national sphere of government. Fact-finding is one of available methodological approaches available to the Committees in order to enhance their oversight function.

In enforcing accountability, the fact finding visit places a particular emphasis on accountability as it has a real purpose to ensure that the Committee establishes the facts in order to hold the executive accountable. The fact-finding visit at Malamala was the beginning of the process to establish if there was any breach of policies and procedures set out by the Commission on Restitution of Land Rights and applicable policies and legislation. As will be discussed in the next section, the Committee has raised concerns about the payment of R1.1 billion in settlement of Mhlanganisweni land claim and the little or no benefits accruing to deserving members of the CPA. It is alleged that it is far above the market-value of the property and thus not meeting the standard of ‘just and equitable’ as envisaged in the Constitution.

The Committee interacted with relevant stakeholders and affected parties through focus group discussions, presentations by government officials and documentary review. The activities can be summarised as follows:

* 1. *Group discussions (leadership structures and community meeting):* The Committee convened meetings of Executive Committee for the CPA, Board of Directors for Malamala, Monzo and Community Development Trust, and general community meeting of CPA members where an opportunity for open discussion with the Committee was afforded to those in attendance.
  2. *Presentations:* The Committee received presentations from the Commission on Restitution of Land Rights and the Department of Rural Development and Land Reform. The Malamala Board of Directors also had an opportunity to make a formal presentation to the meeting. Other stakeholders such as the local municipality, tourism department and relevant entities also made inputs.
  3. *Observations:* The Committee also spent half a day at the National office of the Department of Rural Development and Land reform visiting the CPA registry and with a view to observe the workings of the registry and make observations regarding the administration of, support to, CPAs.
  4. *Documentary review:* The documents reviewed include CPA membership lists, financial statements of CPA, and Section 42D memorandum and agreements signed by the Minister. Although the Committee had requested the research reports and valuation reports, these documents were not yet made available to the Committee by the time this report was written.

The approach adopted by the Committee, and the activities as outlined in Table 2 of this report, generated empirical evidence that the Committee worked with to arrive at emerging insights and conclusions presented in the concluding sections of this report. As Table 2 demonstrates, the absence of the Minister and the Interim Committee of the CPA meant that some engagements which the Committee would have liked to have could not materialise. The Committee received apology from the Minister. With regard to the CPA committee, the Committee learnt that the CPA committee’s term expired, and an interim Committee was set up to facilitate verification and election of the new Committee. However, the Interim Committee communicated through their attorney that they did not want to meet the Committee alongside the concerned groups.

**Table 2 Report on scheduled activities**

|  |  |  |  |
| --- | --- | --- | --- |
| Dates | Time | Activities | |
| 14/11/2018 | 11:00 | 1. Visit the CPA registry in the Department of Rural Development and Land Reform | * 1. The Committee met with the Acting Director General, Ms R Sadiki.   2. Mr Jeff Sebape and Mr Ramogaswa briefed the Committee on CPA registration, challenges in relation to verification.   3. The Committee toured the CPA registry, observed the how it works and noted some of the challenges and areas of improvement required. |
| 15/11/2018 | 09:00 | 1. Setting the scene and context: | * 1. The Minister of Rural Development and Land Reform sent an apology to the Committee. |
| 1. Overview – Settlement of the land claim, and settlement agreement implementation. | * 1. The CLCC , Ms N Ntloko-Gobodo who led a team of officials from the CRLR and RLCC, presented the status report on the settlement of the land claim, challenges and successes as well as CPA status and co-management enterprise.   2. The Provincial Office of the DRDLR made inputs on activities to support the CPA, the status quo with regard to the dynamics of the CPA |
| 1. Stakeholders’ inputs | * 1. The Bushbuckridge Municipality addressed the Committee in relation to local economic development and the centrality of tourism.   2. Mpumalanga Tourism and Parks Agency addressed the Committee on the threats and risks posed by the existing CPA dynamics   3. Representatives CPA concerned groups – Mavuraka and Malamala |
| 14:00 | 1. Community meeting with CPA members | * 1. The Committee held an open meeting for CPA members where about 20 community members spoke expressing their challenges |
| 16/11/2018 | 09:00 | 1. Meeting with the Board of Directors and CPA Executive Committee | * 1. Interim CPA Committee could not participate. An Attorney addressed a letter to DRDLR stating its non-participation at the meetings.   2. The Board of Directors for Malamala briefing on the structure and the operations of the Malamala Game Reserve and the financial report. |
| 07/03/2019 | 09:30 | 1. Meeting interim CPA Committee | * 1. Meeting CPA leadership, and other entities, to discuss the affairs of the CPA, financial reports and related issues. |
| 13/03/2019 | 10:00 | 1. Consideration of the Final Report | * 1. The Committee deliberated and adopted the report with recommendations |

Given the limited time and resources available, the fact-finding was based on a qualitative investigation of the facts. On the basis of qualitative observations, the Committee documented a descriptive report with explanations that point to a need for further inquiry. As will be shown, this report makes causal inferences that link observations on breaches to practise and policies guiding research and verification of land claimants.

# **Observations of the Delegation**

The following sections draw on discussion between the delegation and government officials, members of CPAs and concerned groups. As discussed above, the Interim Committee did not honour the meeting of the Committee, this report therefore does not include their contribution. Further, the Committee expressed willingness to engage with the Attorney working with the interim committee.

# **Land Claiming and establishment of the Communal Property Association**

# *Settlement of the Mhlanganisweni Land Claim*

By 31st December 1998, a claim on 21 properties including 9 farms owned by Malamala Game Ranch PTY(LTD) was lodged. This claim covered 63 farm portions measuring 65000 hectares. As Table 3 indicates, 21 different land claims were lodged but the RLCC facilitated a merger of these claims into Mhlanganisweni Community Land Claim due to overlapping rights. Having established the validity of the land claim, the RLCC published government gazette in 2002 and 2010 for interested and affected parties to express their interest in the settlement of the land claim.

In May 2008, the RLCC made an offer of R751,737,492, including the improvements to the value of R66, 169,492. This value was based R52 000 per hectare for 13184 hectares. The valuation included about 329 hectares that were initially not included in the gazetted. At the time, the Minister rejected the offer on the basis that it was excessive and unaffordable for the State. The negotiations collapse and the matter was referred to the Land Claims Court in 2009.

Table 3: Overview of the Settlement of Mhlanganisweni Land Claim

|  |  |
| --- | --- |
| Claimants | Mhlanganisweni Community |
| Location | Bushbuckridge, Mpumalanga |
| No. of claims lodged | 21 (Sabi Sands, incl. 2 duplicates) |
| Who lodged the claim | Z.L. Mhlongo and 20 others |
| The value of land as per valuation | R939, 360, 000.00 |
| Asking price by landowner | R939, 360, 000.00 |
| Value of improvements (excl. movable assets) | R73, 169, 492.00 |
| Land use | Conservation and Eco-tourism |
| Total number of properties claimed | 21 farms; 9 farms for Phase I |
| Total hectares claimed | 65 000 |
| Total hectares be restored (Phase I) | 13 184 |
| No. of households | 960 |
| No. of beneficiaries | 5760 |

The Land Claims Court was to deal with the question of feasibility of restoration of the land in the context of Section 33 (cA) of the Restitution of Land Rights Act, Act No.22 of 1994. Section 33 deals with factors to be taken into account by Court in considering its decision in any particular matter. Section 33 (a) – (d) is as follows:

“(a) The desirability of providing for restitution of rights in land to any person or community dispossessed as a result of past racially discriminatory laws or practices;

(b) the desirability of remedying past violations of human rights;

(c) the requirements of equity and justice;

(cA) if restoration of a right in land is claimed, the feasibility of such restoration;

(d) the desirability of avoiding major social disruption;”

In the matter of Mhlanganisweni Community v The Minister of Rural Development and Land Reform & Others, whose judgement was handed down by Gildenhuys J on 19 April 2012 in the Land Claims Court of South Africa, the Land Claims Count found that it would not be in the interest of the public to pay such an exorbitant amount because the claimants have only been dispossessed of a living space, grazing rights and cropping land. Restoration of the property to them would amount to over compensation. Having been declined leave to appeal by the Supreme Court of Appeal, the claimants approached the Constitutional Court seeking leave to appeal against the judgement and order of the land claims court.

Whilst the matter was set down for hearing on 13 August 2013, the Minister of Rural Development and Land Reform, as the first respondent, filed an affidavit stating that he was no longer opposing the application but willing to purchase the land. The negotiations began immediately, led by the Chief Land Claims Commissioner herself. The final settlement agreed with the landowners was R939,360,000.00 for 13 184 ha. This amount to R71,250.00 per hectare. Further, the parties agreed to the acquisition of the improvements at the cost of R73,168,492.00 as well as R7million for movable assets. In total, government settled the claim at R1.1 billion for 1 community claim. It is important to note that in 2007, the land was valued at R725,120,000 and that the position of the Department then was that it was an exorbitant cost to pay. However, the change of heart in the department, as reported by the Commission, was that the Minister did not want the court to set a precedence on the matter of compensation. Further, he was concerned because of the failures at the Land Claims Court and the Supreme Court of Appeal.

Over the last three years, the Committee has noted with concerns reports about exorbitant costs of land acquisition. One of the cases of concern was the settlement of Malamala land claim at the value of R1.1 billion in 2014. It raises fundamental questions about the meaning of ‘just and equitable’ compensation, reflecting an equitable balance between the public interest and the interests of those affected, as provided for in the Section 25(3) of the Constitution. This cost makes it the single most expensive land claim to be settled by the Commission on Restitution of Land Rights since December 1998[[1]](#footnote-1).

Given the cost of settlement discussed above, a logical question to follow relates to the impact of the settlement to the claimants who were to enter into co-management or partnership agreement to sustain land use and productivity. Publicly available reports show that the intended beneficiaries are alleging that there is mismanagement and hoarding of profits by the CPA leadership. The section below describes the CPA operations and dynamics.

# *The establishment and functionality of the N’wandlamhlarhi Communal Property Association*

Having negotiated the settlement of the land claim, the RLCC and the Department facilitated legal entity workshop which resulted in the formation of the Communal Property Association (CPA) named N’wandlamharhi. The CPA was duly registered in the CPA registry of the Department of Rural Development and Land Reform as per the Communal Property Associations Act. The CPA Constitution stipulates that the function of the CPA is to acquire and hold land on behalf of members (i.e. 960 land claimants in the verification list which is discussed elsewhere in this report).

The CPA Committee comprising 15 members was elected in accordance with the Constitution. This Committee would function as a governance structure responsible for land administration. In support of the CPA Committee, there are 4 sub-committees; namely, Social Cohesion Committee, Technical Committee, Economic Committee and the Governance Committee consisting of 4 members each. The Committee noted that CPA was experiencing internal strife to a state of paralysis. The key concerns were: governance (abuse of power, nepotism and corruption by the leadership), verification lists, distribution of benefits).

1. *Collapse of CPA governance and poor support systems*

The Provincial Rural Development and Land Reform Office reported that the N’wandlamharhi CPA has not been reporting as required in terms of the CPA Act. Despite a number of interventions, the CPA has continued not to comply. As a result, there are serious deficiencies in terms of accountability of the Committees. Further, the financial reports have not been prepared in line with the required standards. The Interim Committee has made it impossible for the Department to make intervention that could improve the state of compliance.

The CPA has different structures attached to it. For example, Mondzo Trust, and Community Equity Trusts. Different streams of funds flows into the two entities and the CPA as the sole shareholder. The Committee found that there were no clear mechanisms of accountability of the Boards of these structures to the CPA as the shareholder. Further, many members of communities alleged that the entities are run by one of two families, brothers and sisters, leading to abuse of power, nepotism and corruption. For example, a certain family has a member as leading Board member representing the CPA in the Malamala Board of Directors, his brother is the chairperson of the Interim Committee of the CPA, and their sister is the treasure of Mondzo PTY (LTD).

At the time of the visit of the Committee, the term of the CPA committee had expired. There was no constitutionally and democratically elected the Committee to run the affairs of the CPA. Various efforts to elect the CPA committee collapsed due to problems of CPA membership and questions about rightful claimants and beneficiaries. This, as observed during the meetings, emanates from bundling of 21 land claims. Now what was once a single claim during facilitation of the land claim is divided because some believe that Mavuraka should not have a share because their land was not yet restored.

1. *Verification lists as a source of conflicts and tensions within CPA*

The tensions and conflict within the CPA, as discussed above, are a result of verification lists (i.e. CPA membership) which is being disputed. The Committee noted that there are disputes regarding membership. The question that remains unanswered is whether the list was inflated with people who are not claimants? Whether it was members of community with valid rights in terms of restitution. The process of verification which had not been concluded at the time of the visit was meant to resolve this problem.

The Commission on Restitution of Land Rights reported that at the time of the settlement of the land claim, there was one community of Mhlanganisweni which agreed to the settlement of the land claim and transfer of the land to N’wandlamharhi CPA which is inclusive of all the 21 claims, 960 members and 5760 beneficiaries. There was never a stage where there was conflicts about membership and that some of the people were not part of the community. Due to allegations for exclusion of some members of the CPA, the RLCC decided to conduct second verification of CPA members. It further appointed a service provider on 7 April 2018 with an 8-months assignment. The service provider has encountered challenges with the verification, especially at Mavuraka, the most vocal group that has complained about exclusion.

1. *Lack of distribution of benefits*

A meeting held by the delegation with members of the CPA, mainly from the Mavuraka claimants, overwhelmingly demonstrated high levels of discontentment among beneficiaries. Almost everyone that addressed the committee reported that they either have not received any reward either from the dividends paid into Mondzo or lease fee paid to the CPA. Equally, the educational benefit from the community tourism levy deposited into the Community Equity Trust has benefited only a few. They also reported that there were no clear criteria used for the selection of educational fund beneficiaries or tenders at Malamala. They further allege that the benefits that were meant to accrue to beneficiaries have not been realisedbecause some of the beneficiaries were eliminated from the beneficiary lists, depending on which group of the CPA you belong to. What has become quite clear at the end of the visit was that there was a problem regarding distribution of benefits among members. It is unclear how much has been distributed to date.

# **Co-management of the Malamala Game Reserve**

From the date of transfer of the land in October 2013, the property was leased to MalaMala Ranch (Pty) Ltd under a Transitional Agreement until 28 February 2015, pending the conclusion of phase 2 of the settlement agreement by the parties. As illustrated in Table 4 below, the shareholders in joint venture operating company are MalaMala Ranch (Pty) Ltd and the CPA. The parties agreed that the shareholding will alter progressively over time, ultimately resulting in the dilution of the MalaMala Game Reserve (Pty) Ltd stake in favour of the CPA until such time as the Community holds a majority share. It is important to note the distinction between the Malamala Game Reserve and the operating company known as Malamala Game Reserve (PTY) Ltd which operates eco-tourism on Malamala Game Reserve (the land and buildings). The agreement is based on a 20-year lease with shareholding is illustrated in Table 4 below. Despite the commitment to empower the CPA for full ownership of the business, the Committee was concerned that there was not exit strategy, the terms of agreement ended at year 20 with parties holding 50/50 shares. It would appear that the idea of dilution to an extent that the CPA is the majority shareholder is not envisaged within the first 20 years of the agreement.

Table 4: Shareholding over 20 years period

|  |  |  |
| --- | --- | --- |
| **Years** | **MalaMala Ranch (Pty)** | **CPA** |
| 0 - 5 | 70% | 30% |
| 5-10 | 60% | 40% |
| 11 - 20 | 50% | 50% |

As illustrated in Figure 2 below, the framework agreement entailed creating employment for community members, investment in the development of Malamala, rental payment, tourism levy, distribution of dividends and financing education through community tourism levy. In terms of the agreement, the CPA had three income streams; namely, property rental, dividends and community levy.

Figure 2: Corporate Structure - Malamala



The following paragraphs explains the revenue streams illustrated in figure 4 above.

4.1 *Property rental:* the operating company pays a monthly rental to the CPA for the lease of the property on terms agreed to between MalaMala Ranch (Pty) Ltd and the CPA. The rental fee is based on percentage of turnover. By December 2017, R36.2 million had been paid in leases to the CPA.

4.2. *Dividends:* The operating company pays annual dividends comprising no less than 50% of operating profit after tax to Mondzo PTY(LTD). This company is 100% owned by the CPA. As discussed above, it then transfers a percentage of the dividends to the CPA for distribution to the members. The company paid dividends of R40 million to shareholders. Mondzo received about R12 million which is 30% of the profit in line with the shareholder agreements. Mondzo in turn paid R6 million to the CPA.

4.3. *Community Tourism Levy:*  The operating company pays a Community Tourism Levy of R125 per bona fide tourist, at the time of the visit it was estimated at R145.00 per tourist, who occupied bed night. The fund is channelled to the “Community Equity Trust”. As discussed the funds are used to fund education in ecotourism. By November 2014 about R5.5 million had been paid in tourism levy.

Table 5 below illustrates the amount of funds already paid by Malamala (PTY) LTD to the CPA, Mintirho Community Trust and Mondzo (PTY) Ltd. The Executive Directors however reported that Malamala has paid R73.5 million to community structures by 31st October 2018. About R 53.4 million of payments were made since the inception of the new business in March 2016. The Committee is yet to verify to whom the difference was paid to.

Table 5: Payments made CPA structures

|  |  |  |
| --- | --- | --- |
| Income Stream to CPA | Period | Total Amount |
| Lease fees | 01 March 2016 – 31 October 2018 | R26.1 million |
| Dividends | 2017 FY | R10.2 m |
| 2018 FY (to 31 October 2018) | R8.1 m |
| Community Tourism Levy | February 2014 – 31 October 2018 | R7.2 m |
| TOTAL | | **R51.6 M** |

In line with the terms of reference, the Committee was interested in understanding progress made in the implementation of the framework agreement. The Committee noted that Malamala Game Reserve (PTY) Ltd has met and exceeded its obligations in so far as implementing the key milestones. However, its successes were marred by the complaints of CPA members regarding nepotism in the recruitment of labour and lack of involvement of the CPA members in key decisions. The Committee further noted that most of these issues are external to the operating company, yet they impact the reputation of the company negatively such that the company might need to consider steps it can take to support the CPA without involving itself into its dynamics.

**Table 6: Assessing implementation of the framework agreement**

|  |  |
| --- | --- |
| Agreed Milestones for Malamala Joint Venture | Achievements by November 2018 |
| Employment of community members | * 84 permanently employed at MalaMala. * Additional 27 members were employed on short-term contract during the refurbishment of the Main and Sable Camps. |
| Redevelopment of MalaMala: R20 m invested by the end of year 8. | * By June 2018, R34 million was already spent on redevelopment of Main Camp and Sable Camp. |
| Payment of lease fee to the CPA: R700,000.00 p/m in the interim; and R560,000.00 p/m with annual escalation thereafter. | * Between November 2014 and December 2017, R36.2 million in lease rentals was paid to the CPA. |
| Payment of Community Tourism Levy of R125 per guest (for education and training of Community members in eco-tourism and conservation) | * Between November 2014 and November 2018, R5.5 million in Community Tourism Levy has been paid into the Community Equity Trust. * The fund has supported 15 members enrolled at various institutions so far. |
| Distribution of 75% of net profit yearly by payment of a cash dividend to shareholders | * 2017 FY: MalaMala joint venture paid a dividend of R40 million (i.e. 83% of 2017 FY’s profit after tax). R12 millions (30% of the R40 million) was paid to Mondzo Community Investment (Pty) Ltd. * Mondzo paid out R6 million of the R12 million to the CPA. |
| MalaMala to spend R50 million in the development of a 42 bed Charleston Camp | * Phase 1 Development: Establishment of an 18-bed luxury tented camp of R60 million. Drawings have already been completed and the Environmental Impact Assessment (EIA) process is at an advanced stage. |
| MalaMala is to pay a minimum annual lease fee of R2.4 million in respect of the new Charleston Camp as from 1 March 2019 | * Commencement date for payments has not yet been reached. 1 March 2019 was agreed upon as the date in order to allow for approval and construction processes to be completed. |

# **Voices of the people**

This section highlights some of the issues raised by the people to demonstrate their concerns and frustration.

**Representative of the side-lined Mavuraka group.**

1. *“At N’wandlamharhi, there is one CPA under one management. When we had the Annual General Meeting, we resolved to commence with verification within 6 months. But to date, it has not been started. They are verifying people that are not from N’wandlamharhi, people that are not known by the claimants” he further said, “… the Annual General Meeting did not include the people, they just collected signatures”*

Concern around the verification process and criminality around it was echoed by many speakers during community meeting.

**Speaker during the community meeting**

1. *“One family has usurped the powers of the CPA and is running it down. It has shut the Department out. This family is behind the dysfunctionality of the CPA… There is disbursement of funds without approval through the resolution of the CPA”*

**Speaker during the briefing session**

1. *“we do not know who the co-management partners are. The people who agreed to the partnership did not have the authority to do so. They gave the Ratters 70% stake in the business. But why was it not 50/50? Those people sat with the documents until the last day, we are now suffering the consequences”*

**A representative of group that regards itself as the rightful owners of Malamala and not the Mhlanganisweni Community, which in his view is artificial community.**

1. *“Government only bought Malamala, formerly owned by the Ratters family, which is an extent of 13184 ha. They did not buy the entire Sabie Sands which has many people who have claimed the land. What happened is that, just as KNP has many people who claimed, government put all the people on Sabie Sands in one basket. The reason that it was joined is because there were clever people who ensured that it should be one. They brought in people who were not meant to be there. It is misrepresentation of history. These people must stop claiming benefits from Malamala and push for the restoration of their land”.*

**The following are some of the speakers that presented their case during the open community meeting in Lillydale.**

1. *“People are not being held accountable. The CPA has been captured by one family. The Committee is not elected by the people”*
2. *This CPA committee is a corrupt and illegitimate CPA… It must be dissolved, illegal and fraudulent activities must be investigated and people must be sent to jail.*
3. *“people have been removed from membership lists. This claim is led by wrong people. I was paid twice but when I started to question some of the decision of the Committee, I no longer received any stipend (from dividends”.*
4. *“Parliament must just freeze the account so that this illegitimate CPA committee cannot transact. We have been calling for government to come and assist. But government came too late and the thieves have embezzled our funds. These people must be jailed. Government must recover our moneys by attaching their properties and auction them.”*
5. *“there is structure that is reportedly built at a cost of R18 million. I invite the committee to visit the structure before it leaves so that the Committee can see for itself that moneys are being wasted. We recommend that the CPA must be put under administration and conduct a forensic investigation”.*

# **Emerging insights**

The fact finding visit has given platform for engagement to members of CPA who alleged that no one in government was willing to listen to their grievances. The Committee noted that there are other important players that it could not engage with for various reasons. For example, an Attorney representing the CPA Committee who is alleged to have transferred funds to an CPA Committee without the CPA resolution, and an Interim Committee that has written to the Department through their Attorney that they were not comfortable to meet in the presence of different concerned groups.

Given the recognised need for further engagement by the Committee, and further witnesses required to appear before the Committee, no recommendations have been made at this stage. The following paragraphs summarise emerging insights from the first leg of engagements on Malamala.

# ***Settlement of land claim by the Commission on Restitution of Land Rights***

1. *The CRLR operates outside its statutory mandate by involving itself in post-settlement support arrangements*.

Participation of the Acting Deputy-Chief Land Claims Commissioner sits in the Board of Directors for Malamala Game Reserve as a minister’s representative raises critical questions about the role of the Commission on Restitution of Land Rights after the claim has been settled. It is also indicative of the blurred lines between the Department of Rural Development and Land Reform and the Commission on Restitution of Land Rights. The Commission is deeply involved in Malamala than the Department of Rural Development and Land Reform. It is not surprising that when there are problems in CPAs, the Department expected the Commission to intervene and resolve the disputes and conflicts. Unless the Commission is autonomous, it will continue to be a challenge for the Commission is reportedly operates with limited staff

1. *The Minister’s withdrawal from the Constitutional Court resulted in settlement of the most expensive land claim since 1994*

What the Constitutional Court would have said remains anybody’s guess. However, if all the outstanding claims around the Kruger National Park were to be settled in this manner, restitution could be unaffordable. Failure to test the issue of compensation, as envisaged in Section 25(3) of the Constitution, denied the State opportunity to set Constitutional Court’s precedence on the interpretation of ‘just and equitable’ compensation. The Committee also noted the Minister’s concern regarding the outcomes of the Land Claims Court and the Supreme Court of Appeal on the question of feasibility of restoration. In the event that the Constitutional Court found it not feasible to restore the farms, the judgement could have set a precedence that would potentially affect the remain restitution claims. Whether the payment of compensation of R1.1 billion (including the improvements) is a fair one is beyond the capacity of the Committee. The Committee does not have skills in property valuation and this could be a subject of further investigation, with the assistance of state entities with the requisite skills and capacity.

1. *The CRLR’s reliance on few individuals, as the face of the land claim, could potentially results in lack of transparency and entrenching skewed power relations.*

Appointment of two individuals who acted as the face of the land claim, interfacing with the Commission and Malamala, involved in negotiations and elected as in the leadership of the CPA resulted in the Commission proceeding with the claim and settling it under the assumption that they were consulting with the general membership of the community. The Commission never picked up the underlying tensions and divisions within Mhlanganisweni community, hence the Chief Land Claims Commissioner reported that “it came as a surprise that within Mhlanganisweni community there are different groupings and they do not identify themselves as a single community”.

1. *Bundling of different land claims into single community claim risks creating artificial communities*

Mhlanganisweni community land claim is an amalgamation of 21 land claims lodged individually. During the investigation of land claims, the Commission found that the claimants had overlapping rights and had a shared history. It was agreed that these should be merged into a community claim. Whilst it helped to fast track the settlement of the land claim without having to deal with boundary resolution and resolving conflicts that stage of the facilitation of the land claim, the CPA was at the time of the visit hamstrung the identity politics within the CPA. These manifest in the verification process, discussed below, and determining who qualifies for benefits from the land. As the Committee heard, certain groups do not believe that Mavuraka group deserve a share in the benefits because the farms on which they lived were not yet restored.

# ***Claimant verification and CPA membership***

1. *CPA registration relies on verification lists done by the RLCC*

CPA registry does not have mechanisms to test the validity of the lists submitted for registration of lists. It depends on lists generated as claimant verification lists with assumption that the RLCC verified the claimants. In the event that there are problems with the lists, the Department refers the problem back to the Commission to redo verification of claimants. The blurred divide between the role of the Commission as mandated in terms of the Restitution of Land Rights Act and that of the Department as mandated in terms of the Communal Property Associations Act is again amplified by the CPA challenges as seen at Malamala. However, what Malamala shows is that verification process, if not done appropriately, may affect the functionality of the CPA or Trust.

The Commission reported, in February 2019, that the second verification process which mainly affected the Mavuraka group was to be completed by end of February 2019. The Interim Committee also voiced their unhappiness with the verification process, firstly because they do not believe that Mavuraka people should have a stake at Malamala and secondly because there was allegedly never a verification for the Mavuraka group. Therefore, according to them this is an initial verification. The Commission was adamant that there was verification process which members of the CPA signed it off. The list that came from that process because the basis upon which CPA was registered and the land claim was settled for the entire group.

1. *Lack of transparency and objectivity during claimant verification stage might negative affect functionality of legal entities.*

The Committee noted that the list of members is 960 yet there are disputes about who is a member and who is not. What is unclear is whether the RLCC just inflated the lists with people who should not have been on this list in first place, thus impacting on the amount of grant funding available to the community. The final list that will emerge from the verification process underway will shed some light into this. The existing tensions that are visible today can be squarely traced back to the bundling of the land claim and the verification process. In the meantime, the agreement includes all the 960 members and are entitled to benefits therefore the Department and the Commission, which is involved on the basis of their verification and involvement in the Board of Directors for Malamala, should without delay ensure that the legally binding agreement and CPA constitution are implemented in favour of all the 960 members.

# ***Governance in the Communal Property Association***

1. *Enforcement of the CPA constitution in relation to election of office bearers and general functions*

There appears to be general lack of CPA constitution enforcement and the DRDLR’s support has not resulted in meaningful progress to ensure a functional CPA. The term of office for the executive expired and it has not been possible to elect a new committee. As a result, the interim committee runs the affair of the CPA. The Department, which is mandated to intervene when there are challenges, has not been able to successfully resolve the problems despite protest by some members of the CPA. The Department and the RLCC appear to believe that problems will be resolved by verification as discussed above. However, the Committee believe that resolving the challenges require much more than verification, especially adherence to the Constitution and ensuring that everyone understands the Constitution so that those in leadership could be held accountable.

1. *Maladministration by the Executive Committee is enabled by the lack of capacity within the Department to provide support as envisaged in the CPA Act.*

The problems observed suggest deficiencies in corporate governance, both from CPA leadership and general membership. Lack accountability has resulted in the interim committee operating outside its scope, i.e. to facilitate claimant verification. It transacts on CPA account without authority to do so. For example, the allegation that funds were disbursed without a resolution and not all members and beneficiaries have received their share of the funds distributed. The role of the Minister’s representative in both Mondzo and the Malamala should be questioned. When Mondzo transfers money to CPA, and an interim CPA disburses funds, should not a Director representing the minister warn the Department for urgent attention? However, the Committee noted that all officials of the Department reported that they did not know how the funds were transferred from the Trust Account of an Attorney to the CPA account. There is no evidence that the Department attempted to stop the interim committee to transact illegally, despite the CPA submitting annual financial statements. To this end, the visit by the Committee could not go into depth around these allegations. These would require further investigation by institutions with capacity to do so. For example, the SIU could assist with forensic investigation about all the CPA funds, the role played by different players in the CPA, Mondzo and the Community Equity Trust.

Other observations are as follows:

* The Interim Committee allege that it was given a mandate to transact on behalf of the CPA. This view is disputed by the Department of Rural Development and Land Reform as well as the Commission on Restitution of Land Rights. The Interim Committee could not produce a CPA resolution to prove CPA decision in this matter.
* The Treasurer for the CPA, the Mintirho Trust and the Mondzo Trust were not able to present their financial reports during the scheduled meetings. Similarly, an Attorney who had worked with the CPA on these matters, deliberately did not bring the financial reports on the Trust Account as requested.
* The CPA has an organisational development advisor and the legal adviser. The cost of the advisory services could not be established because the CPA representative and the legal advisor would not divulge the cost of legal service.
* Location of legal advice and legal representation in a single law firm raises critical question about the conflict of interest, especially where alternative dispute resolution mechanisms are not explored in favour of court which legal representation is required.

1. *Interface of Malamala Game Ranch (operating company), Mondzo PTY(LTD) and Community Equity Trust*

The Malamala Game Reserve (PTY) Ltd is managed professionally it is well on course to achieve key milestones agreed to during negotiations of the framework agreements. Notwithstanding the outstanding performance of the business, interface of the business with the CPA, Mondzo and Community Equity Trust risk impacting negatively on the brand Malamala. Increased incidences of Rhino poaching were allegedly linked to CPA disputes, whilst the operating company has been transferring funds to Mondzo and the Community Equity Trusts, CPA members that appeared before the Committee made serious allegations of corruption against some of the directors representing the CPA in the Board of Directors for Malamala. Further, the fact that members of a single family appear to occupy strategic positions such as chairpersonship (CPA committee), director (Malamala) and treasury (Mondzo) raises concerns in possibility of nepotism and predetermined outcomes of CPA structures as family members discuss CPA matters outside formal structures. For example, allegations that friends and family are beneficiaries of the bursaries awarded through the Community Equity Trust. It appears these institutions are not accountable to the CPA. Therefore, the Department should put in place mechanisms that would ensure that they account to the CPA. The CPA report to the Minister should therefore include the dynamics of these entities.

# **Business on the N’wandlamharhi CPA land**

# *Ownership* (who owns what?)

The separation of the CPA and business helps to ensure that the property of the CPA is protected in the event that the business collapses. The success of the co-management arrangement will be largely determined by the amount of capacity building given to CPA members in preparation of eventual takeover. However, the Committee noted that at year 20 of the partnership, the ownership of the business will be on 70:30 bases. Whether the CPA will be ready to be a sole shareholder in the business is unclear.

# *Power relations*

Given the shareholding arrangement, the day-to-day management decisions are the domain of the Executive of Malamala Game Reserve. General stake and powers are determined by the shareholding agreement as discussed above. The Board is a high level structure which is not involved. Due to the dysfunctional CPA, as CPA members reported, general membership is far removed from the operations and has no full information about the operations on their land. As some stakeholders suggested, it poses risk to the enterprise. For example, increase in Rhino poaching. Keeping everyone informed about the business and instilling sense of ownership of the business might help strengthen the brand of Malamala among the local communities.

# *Risks*

As discussed above, the land and buildings are the property of the CPA and are not part of the business. The business leases the land from the CPA, therefore the exposure lies with the business rather than the CPA. Their exposure is in terms of the time they committed to the partnership and use of their restitution discretionary grants in the project. In the unlikely event of the collapse of the project, workers may lose their jobs. But the case shows further that the dynamics of the CPA, especially conflicts and tensions, might affect cause reputational damage to the business entity hence a need for speedy resolution of the existing challenges.

# *Rewards (who gets what?)*

This model guarantees that the shareholders benefit in terms of profit sharing in line with the shareholder agreement, i.e. from 70/30 to 50/50 shareholding by year 20, deposited to Mondzo. Further, the CPA receives rental fee and Community Trust receives the tourism levy. Further, CPA members receive education and skills training, progressive job creation, community development. The business would be progressively transferred to the CPA over time. All these ideas could be reduced to naught if the CPA conflicts were not resolved.

# **Recommendations**

In view of the observations and insights documented in this report, the Portfolio Committee on Rural Development and Land Reform recommends that –

* 1. **The Minister must institute forensic investigation on the settlement of Malamala claim, including the verification of members and the affairs of the Nwandlamhari CPA.** During the fact-finding activities by the Committee, it was quiet evident that Parliament does not have sufficient capacity to conduct investigation of magnitude and complexity of Malamala and the Nwandlamharhi CPA. The terms of reference for the investigation, amongst others as the Minister may deem it necessary, should include the following:
     1. The just and equitableness of the final cost of settlement of Malamala land claim, especially in light of the decision of the Minister of Rural Development and Land Reform to withdraw from the Constitutional Court.
     2. The authenticity of the 950 members as opposed to 250 that the interim committee suggests is an authentic number of beneficiaries of the settled land claim. Did the DRDLR inflate the numbers? Is there a connection between an increase of the number of beneficiaries (ultimately CPA members) and the justification for the cost of settlement of land claim?

* + 1. The flow of funds from Malamala Game Reserve to Mondzo PTY (LTD) and the CPA, and further flow from CPA to various accounts of members of CPAs or disbursement. Analysis of the financial reports of the CPA Accounts, Mondzo PTY (LTD) and Mintirho Trust in order to track all expenditure and purpose. The extent to which the Interim Committee followed the CPA constitution in relation to decision-making around various transactions and use of CPA resources.
    2. Access Section 86 Trust Account and track funds of the CPA. Where funds have been transferred to other accounts such as of the CPA or any other account, the recipients of the funds and the purpose for the funds must be clarified. Further, back up documents such as CPA resolution must be sought.
    3. All affairs of the CPA must be in line with the CPA Act and the CPA Constitution. Against these documents, assess the legality of transactions, financial and/or otherwise, of the interim CPA
  1. **The Commission on Restitution of Land Rights should reconsider the merging of different land claims as a means to speed up settlement of overlapping land claims. Often, the settlement is unsustainable because different groups may find it difficult to cooperate under the CPA or any other communal ownership legal entity.**
     1. Adequate research should be done in order to ascertain land rights lost, interrogate notions of communities which often suggest homogenous groups whereas in practice there are differences and subsets which do not cohere.
  2. **The Commission should, as a final attempt to the resolution of the problem, facilitate conflict resolution between the Mavuraka and Mhlanganisweni groups, ensure that there is equitable distribution of dividends to members of Mavuraka group who did not receive their share of dividends. In the event that agreement is not reached, the Commission should consider approaching the relevant Courts to unbundle the settlement.**
     1. The process should be managed in a manner that does not put the business in danger. The process may entail putting the CPA under administration for the duration of the process to allow the Commission to find most appropriate settlement.
     2. The Commission should, without delay, research and settle the remaining portions of land that were claimed by the Mavuraka group. Further, adequate resources should be made available to assist the group to proper verification, setting up of legal entities, and capacity building of members of the legal entity and the leadership structures.
  3. **The Minister of Rural Development and Land Reform, working together with relevant departments such as Tourism and Environmental Affairs, must consider relooking at the manner in which claims on parks are settled and ensure adequate support is provided in order to avoid the repeat of Malamamala.** 
     1. The Minister must, within a month after the adoption of this report, submit a detailed plan of action around the forensic investigation, terms of reference and by when the investigation will be concluded.
     2. The Minister must make available the report to the Portfolio Committee on Rural Development and Land Reform.

**Report to be considered.**

1. The Restitution of Land Rights Act (1994) as amended provides that all claims must be received by the Commission on Restitution of Land Rights by no later than 31st December 1998. [↑](#footnote-ref-1)