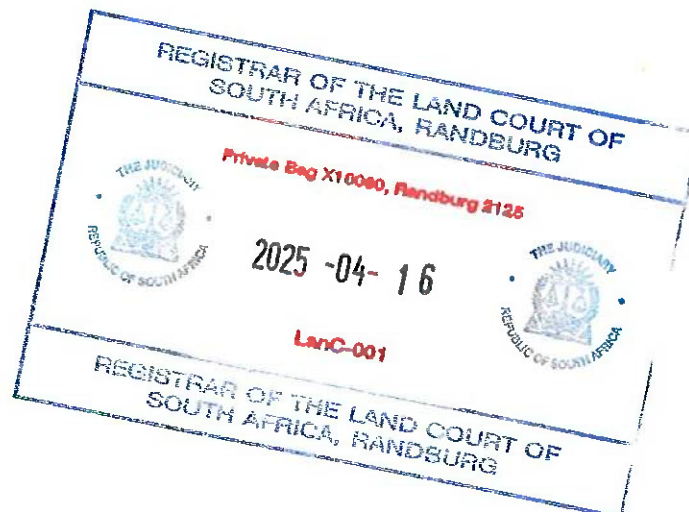




**10<sup>th</sup> (TENTH) LAMOSA REPORT**  
**TO THE JUDGE PRESIDENT OF THE LAND COURT**  
**AS REQUIRED IN TERMS OF THE CONSTITUTIONAL**  
**COURT ORDER DATED 19 MARCH 2019 – LAMOSA II**

**JULY 2024**



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## LIST OF ABBREVIATIONS

APP - Annual Performance Plan

CLCC - Chief Land Claims Commissioner

CRLR - Commission on Restitution of Land Rights

DALRRD - Department of Agriculture, Land Reform and Rural Development

ENE – Estimate National Expenditure

LC - Land Court

MTEF – Medium Term Expenditure Framework

OVG – Office of the Valuer General

PFMA – Public Financial Management Act

RLCC – Regional Land Claims Commissioner

SOPs – Standard Operating Procedures



## 1. INTRODUCTION

### 1.1. PURPOSE OF THE REPORT

The Chief Land Claims Commissioner (CLCC) submits this report to the Judge President of the Land Court (LC) on behalf of the Commission on Restitution of Land Rights (CRLR, hereafter referred to as the "Commission") in compliance with the Constitutional Court order dated 19th March 2019, *Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others* (CCT40/15) [2016] ZACC 22; 2016 (5) SA 365 (CC) (10) BCLR 1277 (CC) (28 July 2016) – commonly referred to as LAMOSA II Judgment.

This report follows on the 9<sup>th</sup> Lamosa report submitted to the Land Court in January 2024.

### 1.2. BACKGROUND

The Constitutional Court Order delivered on 19 March 2019 – also commonly referred to as LAMOSA II - requires the Commission to furnish the LC with the information itemised below at six monthly intervals starting from the date of the Order:

The Commission, thus, needs to appraise the Court with information regarding:

- The number of outstanding old order claims in each of the regions on the basis of which the Commission's administration is structured.
- The anticipated date of completion, in each region, of the processing of old order claims, including short-term settlement targets.
- The nature of any constraints, whether budgetary or otherwise, faced by the Commission in meeting its anticipated completion date.
- The solutions that have been implemented or are under consideration for addressing the constraints; and

- Such further matters as the LC may direct; until all old order claims have been processed.

In line with the Commission reporting requirements to the LC, this report also contains information on claims that the Commission has committed to refer to the LC as discussed in the on-going engagements between the Commission and the Judge President.

### 1.3. OUTLINE OF THE REPORT

The report follows on the 9<sup>th</sup> report that was submitted in January 2024. It follows a *standard report structure and it either confirms status quo or provides an update on a specific area*. Where appropriate, *progress on the areas reported on in the 9<sup>th</sup> report* is given.

The report starts with the standard re-affirming of the Commission's timeline and business process.

A detailed progress report is provided on the number of outstanding old order claims; setting out national and provincial breakdown with progress as well as indications of land use and land portions associated with the outstanding land claims. It is followed by progress against the Annual Performance Plan (APP), which addresses short term targets, and settling of outstanding claims based on the Medium-Term Expenditure Framework (MTEF).

The report provides an update summary on the Kuyasa Project which sets out the way in which the Commission is changing the way it conducts business.

The third section of the report focusses on the importance of the progress in terms of the Legal matters such as land claims referred to the LC.

Lastly the sections on challenges, interventions and Financial and Human Resources, have been updated or status quo retained.





## 2. HISTORY/TIMELINE OF THE COMMISSION

The key milestones in the Commission history are:

- the establishment of the LCC in 1995;
- the cut-off date for lodgement of claims in 1998;
- the initial date for finalisation of claims in 2005;
- the extension to finalise claims in 2008;
- the establishment of the Department of Rural Development and Land Reform in 2009 which led to hand over of Post Settlement Support to the Department of Agriculture, Land Reform and Rural Development (DALRRD) in 2013;
- the rationalisation of the Commission from 9 Regional Land Claim Commissioners to one Regional Land Claims Commissioner;
- the reopening of lodgement of claims in 2014 for a period of 5 years; and
- the Lamosa judgments in 2016 and 2018.

These key milestones defined and guided the Commission in the implementation of its duties, settlement of claims and directives for future operations.

The diagram below indicates the major timeline events in the life of the Commission:

### RESTITUTION PROGRAMME TIMELINE

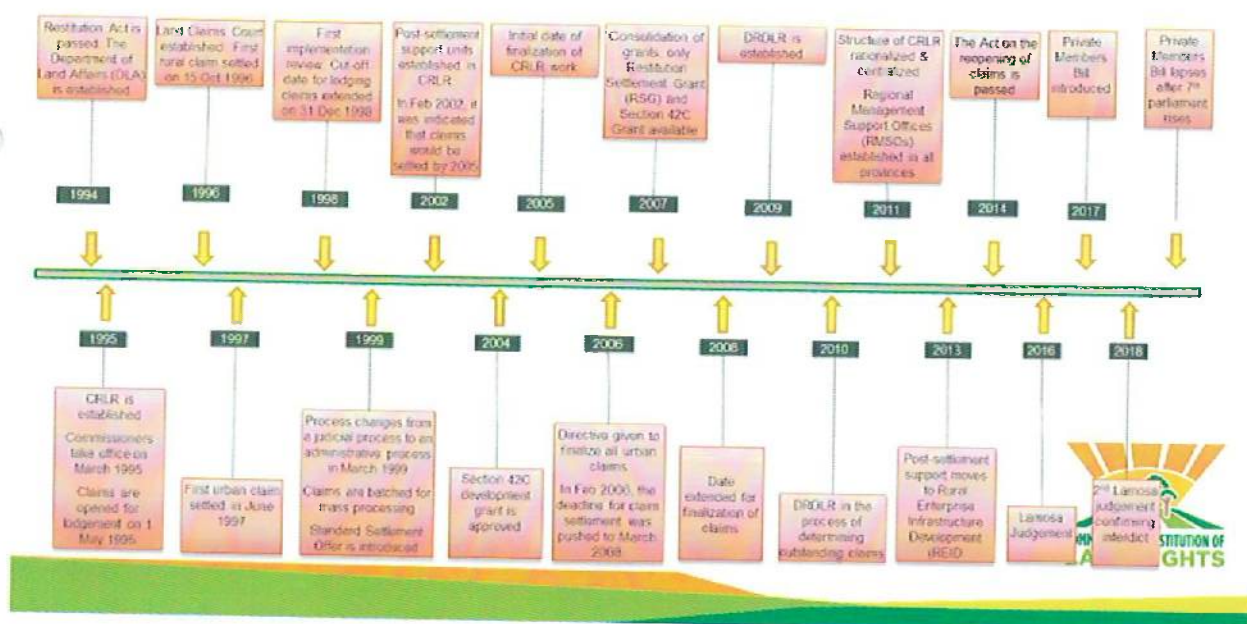


Figure 1- Restitution Timeline

### 3. OUTSTANDING CLAIMS

#### 3.1. CUMULATIVE NUMBER OF SETTLED CLAIMS FROM INCEPTION TO 30 JUNE 2024

The table below indicates claims settled since inception in 1995 up to 30 June 2024, the total claims are 83 234 with more than 460 000 households benefiting. Restitution awards to claimants are either financial or land compensation. In terms of the total awards, the ratio between financial and land compensation is more or less the same; 50:50 between Financial Compensation (R26.2 billion) and Land compensation (R26.4 billion). Land compensation has increased and in the last 6 months or so has for the 1<sup>st</sup> time overtaken the funds paid out for financial compensation. There is a slight increase in land compensation versus financial compensation during this period of reporting, however, this is not statistically significant. There was also therefore a slight increase in hectares acquired, from 3.87 million hectares of land reported in the previous report to 3.89 in this reporting period. EC, KZN, Mpu and NW contributed to the increase in land acquired.

Table 1 - Cumulative statistics

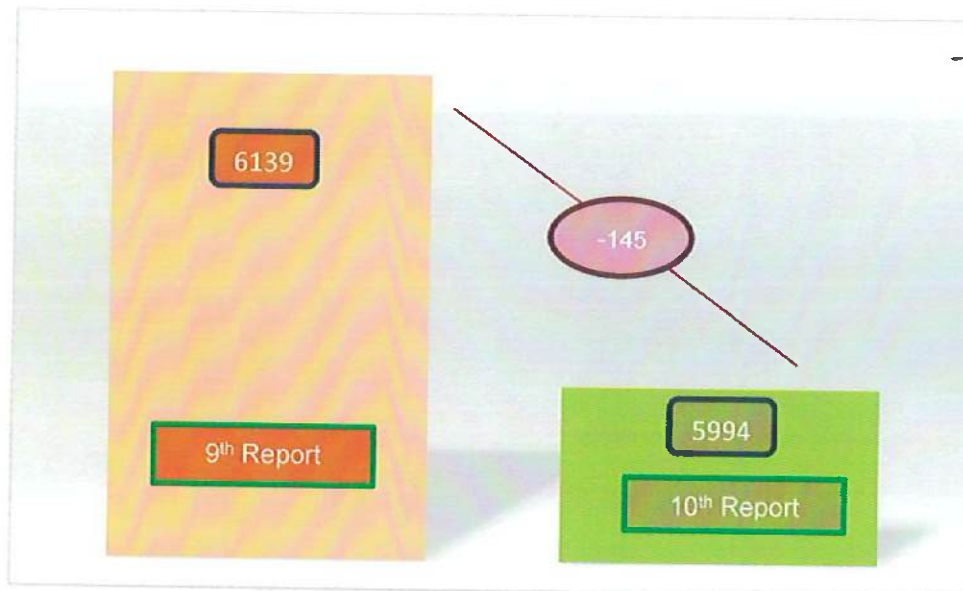
PROV	CLAIMS	HHs	BEN	HECTARES SETTLED	LAND COST	FIN COMP	TOTAL AWARD
EC	17269	96596	472193	152240	215 686 154	8 505 101 864	8 720 788 018
FS	2675	8735	52790	60561	93 522 832	469 109 644	562 632 476
GT	13277	21960	83186	23970	101 419 934	1 120 751 614	1 222 171 548
KZN	16179	99775	561849	885133	9 065 304 369	5 725 744 095	14 797 423 465
LIM	4835	70112	353045	763622	4 570 721 812	4 429 635 429	9 000 357 241
MPU	3457	62386	330768	558251	6 513 704 908	2 192 363 395	8 706 118 803
NC	4069	26202	142088	858267	931 414 836	1 258 353 731	2 189 768 567
NW	3981	45526	226838	583202	4 612 827 177	797 481 751	5 410 308 928
WC	17492	34196	155886	11267	305 049 751	1 774 576 102	2 079 666 853
<b>TOTAL</b>	<b>83234</b>	<b>465488</b>	<b>2378643</b>	<b>3896511</b>	<b>26 409 651 773</b>	<b>26 273 117 626</b>	<b>52 689 235 898</b>



### 3.2. GENERAL PERFORMANCE

For the reporting period under the 9<sup>th</sup> Lamosa report, the total number of outstanding old order claims was 6139.

For the 10<sup>th</sup> Lamosa reporting period, the 6-monthly period is from January 2024 – June 2024; quarter 4 of the 23/24 financial year and quarter 1 of the 24/25 financial year. The number of claims settled during the 4<sup>th</sup> quarter was 129 and during the 1<sup>st</sup> quarter of 24/25 was 16, total claims settled under the period of review 145. This means that the total number of outstanding old order claims are now at 5994.



$$\begin{array}{r} 6139 \\ - 129 \\ - 16 \\ \hline 5994 \end{array}$$
$$\begin{array}{r} 6139 \\ - 145 \\ \hline 5994 \end{array}$$

Figure 2 - Claims outstanding June 2024



The Diagram below indicates the movement of outstanding claims settled per provincial breakdown for the 4th Quarter, January 2024 – March 2024 and the 1<sup>st</sup> Quarter, April 2024 – June 2024.

Table 2- Outstanding old order land claims movement per province

Output Indicator	PROVINCE	9th Report Total	Q4 23/24	Q1 24/25	TOTAL Q1 & Q4	10th Report Total
Number of outstanding land claims settled	EC	573	26	4	30	543
	FS	2	0	0	0	2
	GT	346	6	0	6	340
	KZN	2001	49	0	49	1952
	LIM	1226	15	1	16	1210
	MPU	1497	14	7	21	1476
	NC	31	0	0	0	31
	NW	205	2	0	2	203
	WC	258	17	4	21	237
	<b>TOTAL:</b>	<b>6139</b>	<b>129</b>	<b>16</b>	<b>145</b>	<b>5994</b>

The chart below shows the overall movement of claims per province from January 2024 to end of June 2024, with an indication of slow (red), neutral (orange) and high (green) movement of settlement of claims across the provinces in relation to the reporting periods.



Figure 3 - Settled vs outstanding claims per Province

The total outstanding Claims per province as of June 2024 are as follows:



Figure 4 - Outstanding old order claims per province

- KwaZulu Natal, Limpopo and Mpumalanga still have the highest number of outstanding old order claims.
- KwaZulu Natal still has the highest number of outstanding claims at 1952 claims. Although the majority of these claims are found in the Ethekweni Municipality, a large number of claims are in the rural District Municipalities, mostly rural in nature and have the largest concentration of claimants per claim. These claims are a combination of communal land, state land and privately owned land.
- The Provincial office must travel long distances to far flung areas to address both the outstanding claims as well as dealing with those claims that have been settled but have community disputes or where finalisation of the claims is still outstanding.
- KwaZulu Natal has contestation between labour tenancy, traditional leadership authority over the land as well as the current land owners, at times all contesting the rights to claimed land. As a result, KwaZulu Natal also sees a higher number

of matters referred to the Land Court for adjudication, creating further delay in settling the claims.

- Mpumalanga follows with 1476 outstanding claims. Most of these claims are found in Nkangala District Municipality and are also mostly rural and a combination of both communal land and formal farming land. Mpumalanga has several claims that are found on land that is either being mined or earmarked for prospecting approved by Department of Mineral Resources. This often creates contestation between the claimants and the private mining right holders.
- Some outstanding claims in Mpumalanga is land that is under conservation or tourism and requires careful negation between the Parks Management Authorities and the claimants.
- Limpopo follows with outstanding claims at 1210 claims. These claims are mostly rural in nature and large claims comprising of many property parcels and large number of claimants. The districts that have the greatest number of outstanding claims in Limpopo are Sekhukhune and Vhembe. Furthermore, the issue of mining also impacts on the settlement of the claims in this province. The province also has outstanding claims in the Sekhukhune region where there is historic contestation because of Proclamations that were issued in the past to certain Traditional leaders and or communities.
- Eastern Cape has 543 outstanding claims to settle. Most of these outstanding claims are found in the Municipal districts of Amathole and Sarah Baartman. A lot of these claims are found on communal rural lands. The Restitution Mobile offices have been earmarked to travel across the Eastern Cape Province to consult directly with the claimants in their own villages.
- The Eastern Cape also has a commitment of several financial compensation claims which have historic backlog payments that are outstanding but are receiving priority attention for payment. The Mobile bus office initiate will assist in the verification of beneficiaries for final payment.
- Western Cape has 237 claims outstanding. The highest number of claims outstanding are Registered rights and Urban Tenancy Claims, mostly located in the City of Cape Town. One of these claims is the famous District 6 where the Commission has made significant progress. A lot of these claims are in the urban area which are often ached with the struggle to find appropriate alternative land to





be released to the claimants. Some of the land that is available has challenges of land invasions.

- Gauteng has 340 outstanding claims. These consist mostly of rural Labour Tenancy Claims as well as large Urban Claims that were historically partially settled e.g., Alexandra township located in the City of Johannesburg. Other large outstanding settlements in Gauteng include jurisdictional claims by traditional communities that are in court, where vast tracts of the province are under claim. The district that has the highest number of outstanding claims in the province is the City of Tshwane.
- North West has 203 outstanding claims. Most of the outstanding claims are in the Bojanala district with the 2<sup>nd</sup> highest number of outstanding claims in the Ngaka Modiri Molema district. As previously stated, these outstanding claims involves vast tracks of land for each community claim, this has resulted in the province settling the claim in phases. This includes the Mmabatho Town claims with a claim that effects most of the city. Some of these claims have had to be referred to the Land Court for adjudication an even validity.
- Northern Cape has only 31 outstanding claims to settle, and these are mostly rural claims. The Commission is focusing closely on the province to ensure that there is a target strategy to settle these outstanding claims as quickly as possible. The highest number of these claims are found in the Namakwa District. Traveling to claimant beneficiaries can also be a challenge in this province because of the distances that officials must travel to get to the claimants.

The breakdown between urban and rural claims, indicates that the bulk of the outstanding claims are rural, with a few claims still to be determined. The Rural claims have increased slightly to 77% and Urban claims decreased slightly to 23% as per the latest Kuyasa M&E report.

**RURAL – 77%**

**URBAN – 23%**

As per the previous report, the number of outstanding portions and land parcels per province is still quite significant and are also some of the more complex of claims with overlapping and competing rights in land, resulting in the delay in settling of these claims.

The high number of outstanding portions in the North West as depicted by the table below is peculiar to the North West. There is peculiarity because the number of claims outstanding in the province are relatively low at 203 land claims. However, the high number of land portions still outstanding reflects the high number of hectares under claim by various communities. These claims are vast and are owned by multiple private land owners and in some instances state owned. Some of these claims have had to be referred to the Land Court for the determination of the extent of validity of the claim.

Gauteng Province also appears to have a higher number of portions outstanding as opposed to the number of outstanding claims. These portions outstanding relate to some of the Jurisdictional claims by some Traditional leaders as already referenced above.

The Commission continues to monitor and analyse the movement of both claims' hectares and portions restored to the beneficiaries each financial year.

### **3.3. LAND USE LINKED TO SETTLEMENT MODELS**

Position in so far as it relates to the land use of the land restored to claimants remains as per the previous reports.

The Settlement models developed per sector are aimed at expediting and improving the sustainability of the settled land claims. As a result, it is necessary to also breakdown outstanding land claims per land use. This assists with engaging the relevant sector players to ensure the sustainability of the settlement of outstanding claims and to ensure that the economic activities are not interrupted, and job opportunities are created.

From the chart below, the indication is that most claims are characterised by residential and mixed land use. Although the chart below indicates that the sectors



such as Conservation; Sugarcane and Forestry are in the lower percentiles, these claims are complex and require a coordinated approach involving the sector experts thus affecting the swiftness at which these claims are settled.

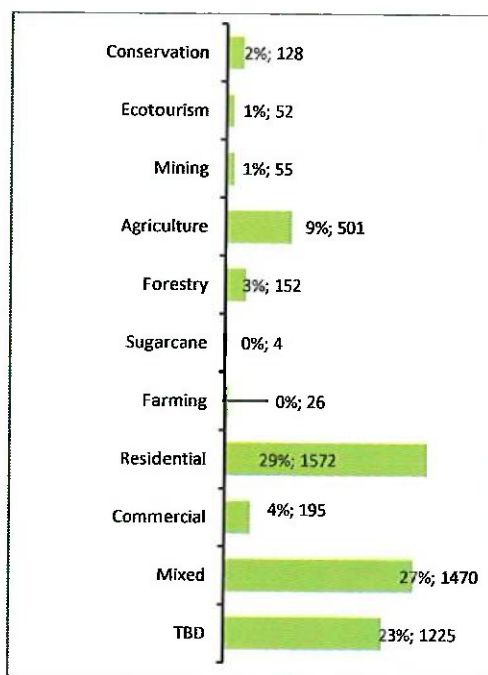


Figure 5 - Land Use per Settlement models (Ha; %)

### 3.4. PROGRESS AND PERFORMANCE AGAINST APP TARGETS FOR 2023/2024, 2024/2025 AND MTEF ALLOCATION

The reporting period for the 10<sup>th</sup> report spans over two financial years; the 4<sup>th</sup> quarter of 23/24 and the 1<sup>st</sup> quarter of 24/25. Targets are directly linked to the allocated budget and staff complement.

The Commission had set itself a target of **settling a total of 349** claims and **finalising a total of 406** claims in the 2023/2024 financial year. The final performance in the 203/2024 financial year for settled claims was 361 and 641 for finalised claims, thus overachieving on both APP targets.

For the 2024/2025 Financial year, the Commission has set itself a target of **settling a total of 319** claims and **finalising a total of 339** claims. During the 1<sup>st</sup> Quarter of this financial year, the target for settlement of claims was 59; the Commission over this

period managed to settle only 16 claims. However, this is still only the beginning of the financial year, and the Commission is confident that it will achieve the overall targets set for this financial year. Below is the progress against the 24/25 APP targets.



Figure 6- Progress against APP Targets

Based on the current MTEF allocations the Commission intends to settle some of the outstanding land claims as follows:



Figure 7- MTEF Baselines

The challenge remains that the budget allocation does not match the outstanding claims to be settled and a considerable increase in MTEF budget allocation would be required to settle and finalise the old order claims in line with the Backlog Reduction Strategy.

#### 4. PROGRESS ON PROJECT KUYASA

As reported in the previous Lamosa reports, the Commission has developed a turnaround strategy on its current operating model, making use of the project named "Kuyasa".

Project Kuyasa was designed on the five (5) outcomes that emanated from Operation Phakisa. Project Kuyasa consists of several organisational improvement objectives such as the development and implementation of improved business processes and systems, the development of a claims backlog reduction strategy, development of financial and settlement models options including a fit for purpose structure. The Commission can report that all the above objectives have been mostly achieved.

##### 4.1. AUTONOMY AND THE INTERIM STRUCTURE

***No further progress has been made regarding Autonomy and the interim structure as well as the fit for purpose structure as per the previous reports that can be referred to.***

The establishment of the Commission as an autonomous entity, (see diagram below), is linked to the approval of a business case and the processing of the Restitution of Land Rights Amendment Bill. ***To date no final approval has been obtained.***

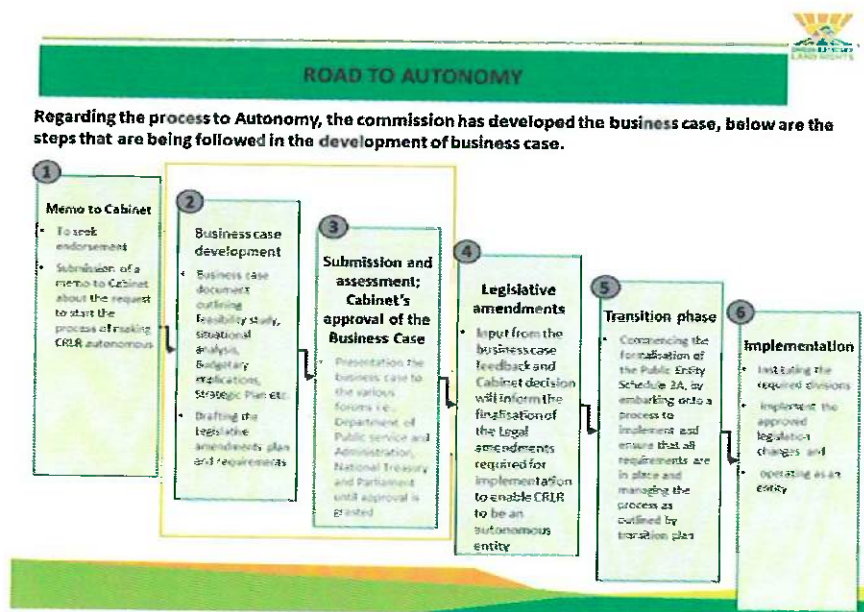


Figure 8- Road to Autonomy

## 4.2. RISKS ASSOCIATED WITH THE ABOVE MATTERS

*The risks reported in the 9<sup>th</sup> Lamosa report remain.*

Failure of processing the Interim Structure towards approval by DALRRD now compels the Commission to review commitments raised in the Strategic plan and Annual Performance plan.

Failure to mitigate the risks identified will further negatively affect the the pace within which the Commission can deal with the remainder of the old order claims.

## 4.4 POLICY MATTERS

*The status as per the 9<sup>th</sup> Lamosa report remains.*

The Commission is implementing the new policies to mitigate risks identified and create uniformity across provinces; however, the issue of human capacity remains a serious concern as the policies and SOPs were developed with a specific structure and capacity in mind that has not been met (as reported under Kuyasa progress).



In addition to the implementing of the developed policies, the Commission maintains compliance with existing policies and addresses audit findings to ensure efficient and effective service delivery through a documented restitution process. To name a few examples, the current Approved Financial Compensation Policy requires that the Chief Land Claims Commissioner requests approval for the annually adjusted Housing Quantum, also known as the Standard Settlement Offer for the payment of financial Compensation. This is done in line with the Minister of Human Settlements' annual adjustment of housing subsidy fees.

The proposed Sector-Specific Settlement Models have not yet been approved. Continuous engagement with various department and sector experts are ongoing.

Finally, the National Policy Unit and Policy Forum have aided the Commission in ensuring a central repository for policy specific matters, prompt responses with policy interventions wherever needed. This also assists in guiding Provinces with the interpretation of policies and SOPs, central fora responsible for policy development, reviews, and advising the Commissioners as and when required, to name a few.

## 5. LEGAL REPORT

### SECTION 14 REFERRALS

During 2024/2025 financial year, the Commission had targeted **24** claims to be referred to the Land Court for adjudication as provided for by section 14 of the Restitution Act. Thus far a total of **3** cases have been approved by the Regional Land Claims Commissioner, but not yet issued at the Land Court with the balance of **21** matter that are outstanding, and provincial Legal officers have provided reasons for variance and budding recovery plans. See the table below for the breakdown of the targets in quarters:



Table 3- Section 14 Referrals – targets and performance for 2024/25

Performance indicator	Current litigation cases	Annual Target	Quarter 1 Target	Achieved	Quarter 2 Target	Achieved	Quarter 3 Target	Achieved	Quarter 4 Target	Achieved	Performance against Annual Targets
Section 14 Referrals as per LAMOSA 2 Judgement	24	3	2 (1)	4	8	8	-22				

- One achieved (1) – The matter was approved by RLCC enroute to be issued at the Land Court.

The Provincial breakdown is captured in the Table below:

### PROGRESS AND QUARTERLY PROVINCIAL REFERRAL TARGETS FOR FINANCIAL YEAR 2024/2025

#### ACHIEVEMENT AGAINST 2024/2025 OPERATIONAL TARGETS UNIT LEGAL ALL PROVINCES: 01 APRIL 2024– 31 MARCH 2025

Performance indicator	Province	Annual Target	Quarter 1 Target	Achieved	Quarter 2 Target	Achieved	Quarter 3 Target	Achieved	Quarter 4 Target	Achieved
Section 14 Referrals as per LAMOSA 2 Judgement	Eastern Cape	1	0		0		1		0	
	Free State	1	-	-	-	-	1	-	-	-
	Gauteng	1	-		-		1		-	
	KwaZulu-Natal	6	1	1	2		2		1	
	Limpopo	3	0	0	1	-	1		1	
	Mpumalanga	8	2	1	1		2		3	
	North West	1	0		0		0		1	
	Northern Cape	1							1	
	Western Cape	1							1	

Table 4– Progress on referrals

During the years 2021/ 2022 the Land Court through the then Acting Judge President gave several directives regarding incorrectly issued referrals. The following issues were raised in most of the matters brought to court:

- No clear dispute between the parties.
- There was no compliance with Directive 15 of the Land Court in that the claimants were not well represented. The Commission was informed to ensure claimants are represented before claims are filed for issuing at the LC.
- Poor research which did not outlines strong merits for the land claim which justified the publication of the claims. Further research required for matters to be trial ready.
- In addressing these the Commissioners have developed:
  - (a) A Kuyasa backlog strategy to appoint researchers to update all the rule 3 reports to rule 5 reports.
  - (b) The internal National Research Directorate is conducting inhouse research trainings for all the officials responsible for land claims investigations.
  - (c) The development of Standard Operating Procedures to ensure that the issues raised by the then Acting Judge President are attended to accordingly.

## **IMPACT OF THE REPEAL AND AMENDMENT OF THE RESTITUTION ACT 22 OF 1994**

On 27 September 2023, through Government gazette No 3744, the President of the Republic, effectively assented Act No. 06 of 2023: The Land Court Act. To provide for the establishment of a Land Court and appeals against decisions of the Land Court; to make provision for the administration and judicial functions of the Land Court; to provide for the jurisdiction of the Land Court and Magistrates' Courts for certain land related matters; to provide for mediation procedure; to amend certain laws relating to the adjudication of land matters by other courts; and to provide for matters connected therewith.

The enactment and effective major impact of the above legislation to the, is the repealing and amendment of Chapter III of the Restitution Act No. 22 of 1994,



specifically s29(4), wherein the Chief Land Claims Commissioner was mandated to take necessary steps to arrange legal representation for any party who cannot afford to secure one through the State legal aid, or if necessary, the Commission was compelled to make funds available from its budget. It is during the enactment of the Land Court legislation that the two political heads of DALRRD and the Department of Justice and Constitutional Development, through the respecting accounting officers, effectively from the 01 April 2022, put a system in place to transfer this function to the Legal Aid South Africa, using Legal Aid regulations and the Memorandum of Understanding, which effectively allowed the Land Right Management Facility aspect of legal representation to be transferred to Legal Aid South Africa.

Considering the identified challenges with the internal processes of Legal Aid South Africa, the Office of the CLCC, led by the Deputy Land Claims Commissioner, is ongoingly working on ensuring that a more accommodative interpretation of the erstwhile, s29(4) can deal with the challenges faced from the Legal Aid South Africa, especially on matters falling outside their internal processes. Currently there are direct negotiations to explore a signing of a Co-operation Agreement between the two organisations, to expedite the legal representation aspect of parties and ensure that all matters are trial ready. These developments will entail consultation with all the parties and comprehend the Department's position of ensuring that we focus on the core mandate of the Commission.

Paragraph 4.5 of the Memorandum of Understanding signed by the Director General: Department of Justice and Constitutional Development on 29 April 2022, Director General: DALRRD on 4 May 2022, and the Chief Executive Officer: Legal Aid South Africa on 19 May 2022 states that: the DALRRD and Legal Aid South Africa must work in collaboration to ensure that the constitutional rights of farm occupiers, labour tenants and restitution claimants are realised.

Due to the obligations placed by legislations (Extension of Security of Tenure Act No. 62 of 1997, The Land Reform (Labour Tenants Act No. 3 Of 1996 and Restitution of Land Rights Act No. 22 Of 1994)) on DALRRD and the Commission, the bulk of the referrals to Legal Aid South Africa will come from DALRRD and the Commission.



It is also important to note that whilst the legal representation was given to Legal Aid South Africa, the other important aspect of the fund remained with the Department, being mediation. In terms of S13 (2) (b) of the Restitution Act, the Chief Land Claims Commissioner is empowered to appoint a mediator, hence the panel of Mediators. The Department advertised calling on all mediators to form part of a panel through which all future appointments will be made. This will also contribute to the Backlog Reduction strategy of old order outstanding land claims, identification of matters before court where parties agree to mediate and enter into settlement negotiations.

The ongoing discussions between the Commission and Legal Aid South Africa to find each other with a proposal for parties to conclude a Co-operation Agreement are at an advance stage.

## CHALLENGES

- The entire process is in the hands of Legal Aid South Africa without consultation with the Commission, as the means test is an internal Legal Aid South Africa document, which is used to audit their matters.
- The quarterly meetings between Legal Aid South Africa and the Commission, have been helpful in terms of identifying who is handling Restitution matters on the side of Legal Aid South Africa at their national and the Regional Land Claims Commission offices.
- There is still no clear appeals process after claimants' request for legal representation are declined on the side of the Legal Aid South Africa. It is however hoped that ongoing negotiations and around the service level agreement will address this issue.
- The issue of Legal Aid South Africa taking long to process and settle payments of Land Reform Management Facility invoices which result in panellist threatening not to attend court on matters which are set down for trial or hearing.
- The intervention of the Deputy Land Claims Commissioner in facilitating focused sessions in resolving of all bottle necks, between senior Legal Aid South Africa and Commission's Provincial heads of legal has improved the relations and thus allowing parties to unblock the areas of conflict.



## STATUS OF UNTRACEABLE AND DISMISSAL/DEFERRALS

- The Gauteng Regional Land Claims Commission has submitted a referral on four lodged land claims affected by the above and the exchange of pleading is unfolding.
- These matters have been referred 'Exparte' to the Land Court, and the Commission awaits the necessary guidance in terms of dealing with all similar matters in various Provinces.
- On the 23 April 2024, the matter was postponed to 21 October 2024, in court, and directives were issued to the effect that the Commission must file a supplementary affidavit dealing with the following issues:
  - a. Provide statistical information from all the provinces affected by the untraceable claims.
  - b. To provide the budgetary constraints in relation to filling substituted service nationwide.
  - c. To serve Home Affairs, IEC and SASA.
  - d. The directive allowed any interested parties to join the proceeding as friends of the court.

## LITIGATION STRATEGY TO DEAL WITH CHALLENGES

- The Statutory meeting of the Commission has approved the appointment of a service provider to conduct a structural review of the current establishment and assist with an integrated litigation management strategy.
- The National Director Legal in the office of the Chief Land Claims Commissioner is also reviving monthly meetings with the Office of the Registrar to ensure that the Commission is up to date and ready to deal with all matters on the court rolls.
- In addressing the issue of training of the newly appointed legal officers within the Commission, internal seminars on critical Restitution principles is unfolding. Further, there is a plan to invite certain Judges of the Land Court and Advocates and experience restitution Practitioners to deliver papers to the Commission's legal officers and operational staff.
- Finally, the Commission is in talks with the State Attorney to secure services of candidate attorneys to assist in the drafting and identification of referrals.



## 6. CONSTRAINTS, CHALLENGES, INTERVENTIONS AND SOLUTIONS

### 6.1. INTERNAL CHALLENGES AND CONSTRAINTS

*Most of the challenges and constraints remain the same and the Commission continues to address these as best as possible.* A brief update where relevant follows.

The risks associated with the settlement of outstanding land claims linked to the possible impact of audit findings on the **number of claims outstanding** remain. The Commission will report on the audit findings and when updated verification of data has been finalised, with reasons for possible fluctuation in baselines and upwards or downwards adjustments of data.

Progress on **research** is slow and remains more or less the same as per the 9<sup>th</sup>. However, in terms of poor quality of research, the implementation of the standardised formats and checklists are resulting in an increase in the quality of research reports. An intensive training programme that focusses on Documentary research such as Archival and Deeds and Historical Participatory rural research has been developed and rolled out. Further specialised training in Survey reporting and Map reading is being rolled out to the provincial offices. In depth discussions are also being held with the Chief Surveyor General to assist with the mapping of and determining the exact extent of land rights lost for example labour tenants.

In line with the Property Valuation Act, **Valuations** remain a challenge as reported in the previous report. The Commission has standard meetings and constant discussions with the Office of the Valuer General (OVG) on possible solutions.

The Rejected offers remain as a serious challenge as they slow down the pace of settling of land claims and therefore impacts negatively on the achievement of the APP targets. The Commission is engaging the Office of the Valuer General on whether the turnaround times for Historical valuations Certificates can be subjected to a shorter timeline as the 50-day turnaround time also has an impact.

### **Human Capacity Implications (Skills and capacity)**

Historically, the CRLR had an overall no. of 1442 positions on the approved version 2.9 Departmental structure. A total of 750 positions were approved and funded on version 2.9 Departmental structure. The version 2.9 structure has since ceased to exist, with the advent of the approved DALRRD structure dated 11 December 2020, as concurred by Minister of Public Service Administration.

The staff establishment in line with the approved structure dated 11 December 2020 is 757 with the total number of filled positions being 699 with 58 vacant positions. This constitutes a vacancy rate of about 8% slightly below the ideal vacancy rate of 10% as prescribed by National Treasury.

In the month of October 2023, the Department of Agriculture Land Reform and Rural Development issued a directive on implementation of cost containment measures aimed at assisting Executive Authorities in managing fiscal sustainability during the process of creating and filling of vacant positions within the Department. This implied that all positions that are vacant and require appointments, shall be reviewed for prioritization and funding against a set criteria. The total number of filled positions for levels 12 and below, prior to the moratorium is 50, nationally.

Due to the moratorium on filling of vacant positions, the Branch Restitution embarked on an initiative to create opportunities for temporal assignment in business units where there were dire capacity gaps.

### **Challenges and Remedial Action:**

The DALRRD issued cost containment measures in line with a directive issued by the Department of Public Service Administration aimed at assisting Executive Authorities in managing fiscal sustainability during the process of creating and filling of vacant critical vacant positions. A moratorium was placed on filling of vacant positions, and this necessitated the re-prioritisation of the vacant positions which will be presented for approval before an oversight committee set up to evaluate the available Compensation of Employees budget and the service delivery requirements, linked to

the prioritised positions. Through this exercise specific focus has been placed by the Commission on positions which form part of the core business as well as the critical support functions such as legal services, policy, and finance.

### Financial Implications

As previously reported, the budget constraints continue to have a direct impact on the goals set to accelerate settling of outstanding old land claims. The cost containment measures implemented by Government puts a further strain on the settlement of claims. The budget allocation of Restitution has been reduced in the past few years. Although the budget was augmented with fund virements within the department, is there still an overall reduction in the budget. The 2024/25 budget was reduced with an amount of R288 million from the previous financial year to R3,7 billion. The project budget for 2023/04 was R3,1 billion, but this was further reduced to R2,6 billion in 2024/15. As previously indicated in the reports, at the current settlement rate, the Commission will need approximately 30 years to settle claims at a cost of R172 billion.

The financial performance for the current fiscal year as at July 2024 is as follows:

*Table 5 - Financial Breakdown and Expenditure*

TOTAL	BUDGET	EXPENDITURE	COMMITMENTS	AVAILABLE BUDGET	% EXP
Compensation of Employees	475,745,000	147,198,656	0	328,546,344	31%
Goods and Services	403,018,000	58,341,777	33,628,808	311,047,415	14%
Theft and losses	0	0	0	0	
Municipality	8,225,000	2,836,357	0	5,388,643	34%
Social Benefits	344,000	119,544	0	224,456	35%
Capital Assets	120,510,000	5,817,517	6,929,521	107,762,962	5%
Interest on land	0	0	0	0	
Sub Total	1,007,842,000	214,313,850	40,558,329	752,969,821	21%
Land and sub soil	229,325,000	392,191,142	0	(162,866,142)	171%
Households	2,464,173,000	1,091,538,716	0	1,372,634,284	44%
Subtotal	2,693,498,000	1,483,729,859	0	1,209,768,141	55%

Total	3,701,340,000	1,698,043,709	40,558,329	1,962,737,962	46%
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## 6.2 EXTERNAL CHALLENGES

Most of the external challenges as reported on in the 9<sup>th</sup> Lamosa report remain and will be challenges that the Commission will need to continually engage with.

The settlement of claims involves just one of the objectives of the Restitution process. The Commission is mandated to acquire land and pay financial compensation as part of the redress to those communities who were dispossessed in line with the Restitution Act. However, as part of the Restitution process government has a responsibility to provide support to these communities who receive their land back through directed support through grants from various departments in the State. This is part of the post settlement support that is to be coordinated by DALRRD.

Finalisation of land claims is the second target measured in the Commission's Annual Performance Plans. The **Finalisation of claims** target is defined as finalised when the settlement, as contained in section 42(D), or a Land Court order has been affected, i.e., the property has been transferred to the beneficiary or financial compensation has been paid. This means that the grants allocated towards the development of that land as well as the land that has been allocated to the community has been transferred to the beneficiaries. Each claim cannot be considered as finalised until all the land that was approved by the Minister under section 42D or a court order is transferred to their land holding entity and all the grants that have been approved and allocated by the government has been disbursed.

The provision of post settlement support is a mandate that sits outside the Commission although the Commission has a responsibility to assist in the coordination of the support.

The commission therefore anticipates that the Backlog Reduction Strategy can only target the **settlement of claims** and not the finalisation stage as this is not within the domain and control of the Commission.



Therefore, in seeking to meet the directives of the Constitutional Court in the Lamosa II Court Order, the Chief Land Claims Commissioner will be compelled to approach the Land Court for a directive on the correct understanding of when the Commission can consider having effectively dealt with the **old order** claims to be able to commence with the **new order** claims and thus dealing with the distinctive separation between **settlement** and **finalisation** of claims.

## 7. CONCLUSION

The 10<sup>th</sup> Lamosa report demonstrates that the Commission is still making steady progress in settling of land claims. The 2023/2024 performance indicates that the Commission is committed to settling land claims as a priority.

The performance under review further demonstrates that the Kuyasa project continues to have a positive impact on the business and the performance of the Commission with the view of settling and finalising land claims in the shortest period as possible. The review and standardisation of current policies has had a positive impact on processing claims overall.

The fund allocation and budget cuts by Treasury remains a challenge to the idea of upscaling the performance of the Commission and the Backlog Reduction Strategy. The cost containment measures by National Treasury will also have a negative impact on delivery.

The Commission is still waiting for guidance and confirmation on autonomy as reported in the previous reports.

The uncertainty of the placement of post settlement support remains an issue, with the Commission playing a dual role where needed and guidance has been sought from the Director General of the Department.

Despite these challenges, the Commission anticipates that it will settle and finalise 319 and 339 claims respectively by the end of March 2024.



This Tenth Lamosa report is hereby submitted to the Land Court as per the Constitutional Court Order of 2019.

**SUBMITTED BY:**

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**MS NOMFUNDO NTLOKO**  
**CHIEF LAND CLAIMS COMMISSIONER**  
**DATE:**

