



**9<sup>th</sup> (NINTH) LAMOSA REPORT  
TO THE ACTING JUDGE PRESIDENT OF THE LAND  
CLAIMS COURT**

**AS REQUIRED IN TERMS OF THE CONSTITUTIONAL  
COURT ORDER DATED 19 MARCH 2019 – LAMOSA II**

**JANUARY 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

LCC - Land Claims Court

MTEF – Medium Term Expenditure Framework

OVG – Office of the Valuer General

PFMA – Public Financial Management Act

SOPs – Standard Operating Procedures

## 1. INTRODUCTION

### 1.1. PURPOSE OF THE REPORT

The Chief Land Claims Commissioner (CLCC) submits this report to the Acting Judge President of the Land Claims Court (LCC) 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 8<sup>th</sup> Lamosa report submitted to the Land Claims Court in June 2023.

### 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 LCC 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 LCC may direct; until all old order claims have been processed.

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

### **1.3. OUTLINE OF THE REPORT**

The report follows on the 8<sup>th</sup> report that was submitted in June 2023. 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 8<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 LCC.

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

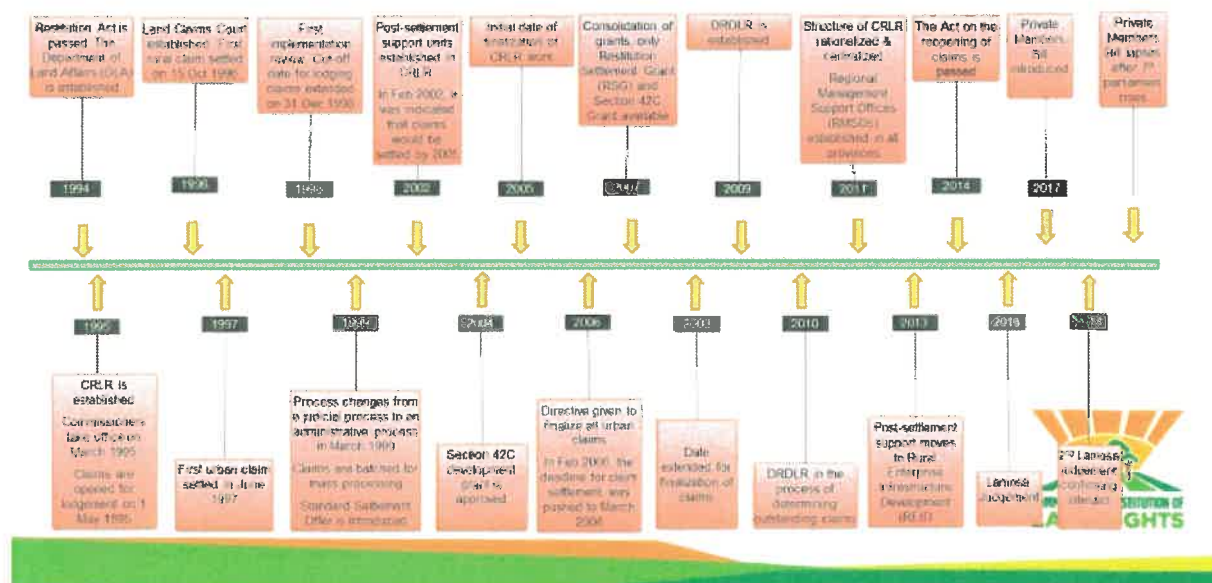


Figure 1- Restitution Timeline

### 3. OUTSTANDING CLAIMS

#### 3.1. CUMULATIVE NUMBER OF SETTLED CLAIMS FROM INCEPTION TO 30 SEPTEMBER 2023

The table below indicates claims settled since inception in 1995 up to 30 September 2023, the total claims are still at just over 83 000 with more than 450 000 households benefiting. Restitution awards to claimants are either financial or land restoration. In terms of the total awards, the ratio between financial and land compensation is more or less the same; 50:50 between Financial Compensation (R22.8 billion) and Land compensation (R25.7 billion). There is again a slight increase in financial compensation versus land compensation, however, this is not statistically significant. Over 3.87 million hectares of land have been acquired for Restitution beneficiaries.

Comparison between the 8<sup>th</sup> Lamosa reporting period and this reporting remains more or less the same across provinces.

Table 1 - Cumulative statistics

PROVINCE	CLAIMS	HHs	BEN	HA SETTLED	LAND COST	FIN COMP	TOTAL AWARD
E CAPE	17193	93906	452667	147162	215 686 154,29	7 230 596 585,31	7 988 817 182,09
F STATE	2674	8735	52790	60561	93 522 832,05	469 109 644,12	618 092 700,88
GAUTENG	13474	21664	82621	23970	101 419 933,57	1 100 414 546,87	1 287 494 466,82
KZN	16106	98073	554456	879022	8 932 848 264,38	4 951 417 894,62	14 903 160 581,28
LIMPOPO	4799	68821	342155	763357	4 565 196 812,04	3 717 525 827,31	9 311 387 460,39
MPLANGA	3412	61475	321866	557626	6 505 105 408,41	1 600 046 292,75	8 836 150 447,93
N CAPE	4064	26059	140541	857025	930 284 836,39	1 219 846 050,49	2 434 793 983,48
N WEST	3981	45475	226438	577672	4 095 299 026,46	797 814 592,14	5 648 366 022,07
W CAPE	17449	33978	153614	11212	305 049 750,52	1 724 387 378,41	2 888 696 037,95
<b>TOTAL</b>	<b>83152</b>	<b>458186</b>	<b>2327148</b>	<b>3877605</b>	<b>25 744 413 018,11</b>	<b>22 811 158 812,02</b>	<b>53 916 913 882,89</b>



### 3.2. GENERAL PERFORMANCE

For the reporting period under the 8<sup>th</sup> Lamosa report, the total number of outstanding old order claims was **6302**.

For the 9<sup>th</sup> Lamosa reporting period, the 6-monthly period is from July 2023 – December 2023; quarters 2 and 3 of the 23/24 financial year. The number of claims settled was 163. This means that the total number of outstanding old order claims are **6139**.

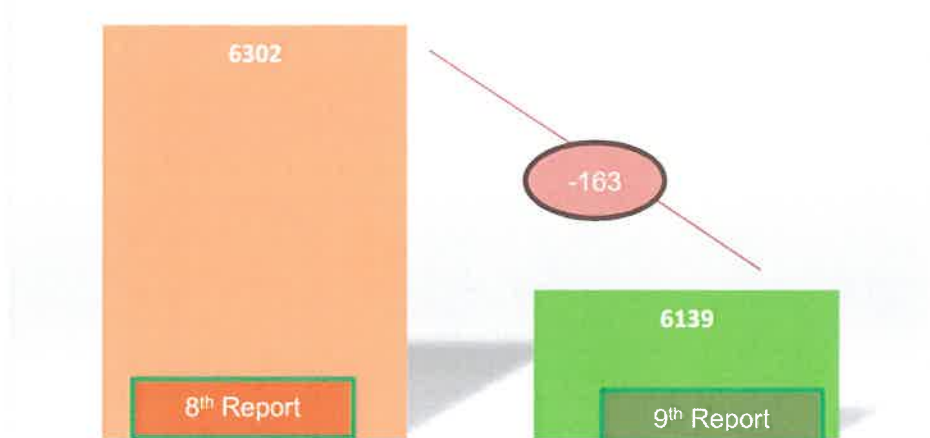


Figure 2 - Claims outstanding January 2024

The Diagram below indicates the movement of outstanding claims settled per provincial breakdown for the 2<sup>nd</sup> Quarter, July 2023 to September 2023 and the 3<sup>rd</sup> Quarter, October 2023 – December 2023.

Table 2- Outstanding old order land claims movement per province

Output Indicator	PROVINCE	8th Report Total	Q2 23/24	Q3 23/24	TOTAL Q2 & Q3	9th Report Total
Number of outstanding land claims	EC	602	11	18	29	573
	FS	4	2	0	2	2
	GT	358	6	6	12	346



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KZN	2035	10	24	34	2001
LIM	1247	2	19	21	1226
MPU	1529	9	23	32	1497
NC	34	0	3	3	31
NW	205	0	0	0	205
WC	288	8	22	30	258
<b>TOTAL:</b>	<b>6302</b>	<b>48</b>	<b>115</b>	<b>163</b>	<b>6139</b>

The chart below shows the overall movement of claims per province from July 2023 to end of December 2023, 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.

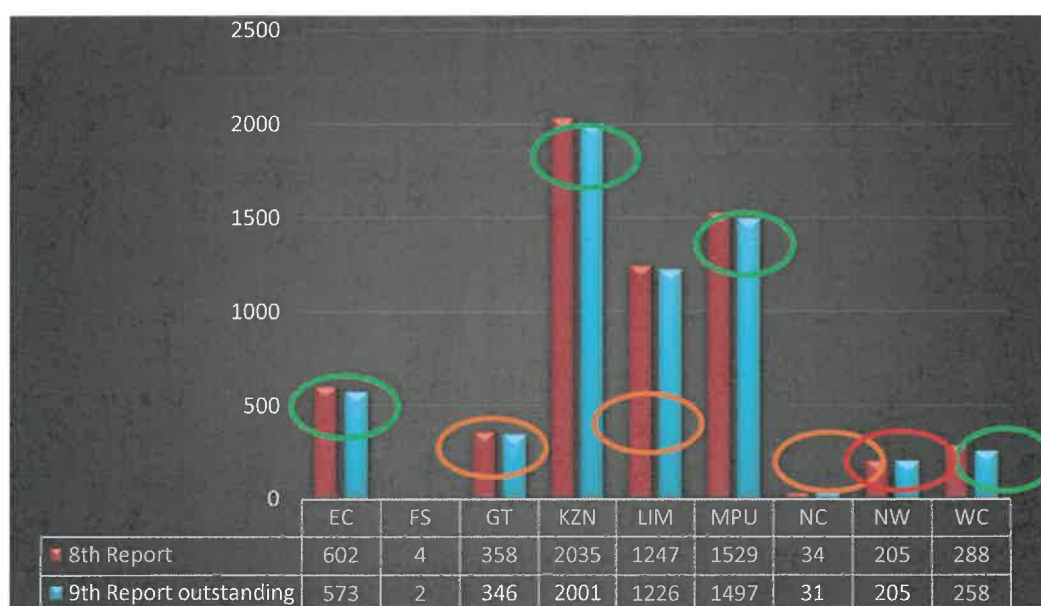


Figure 3 - Settled vs outstanding claims per Province

The total outstanding Claims per province as of 31 December 2023 are as follows:

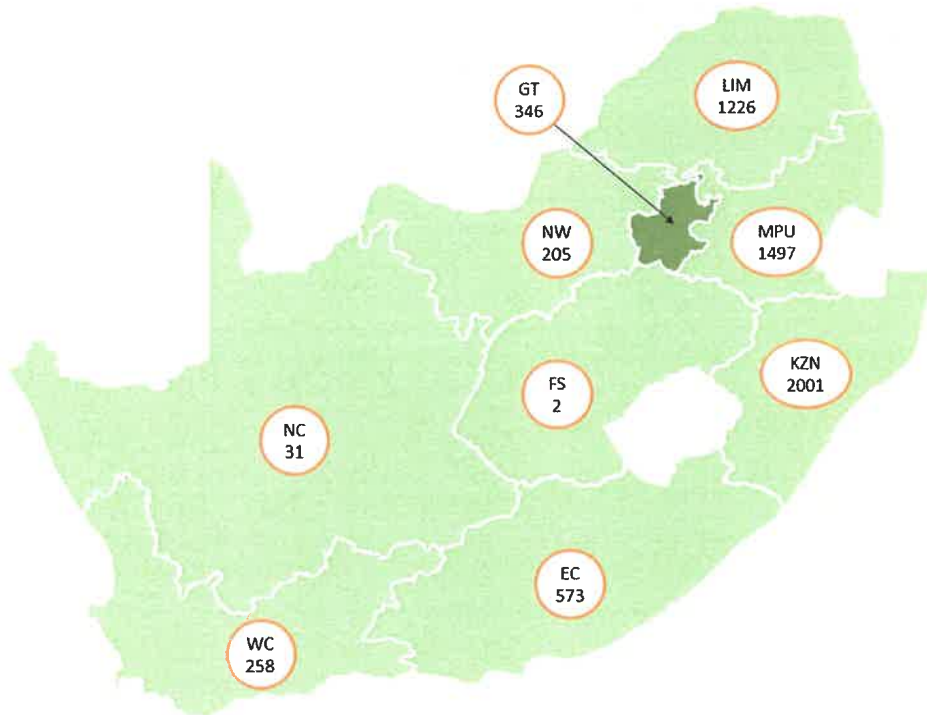


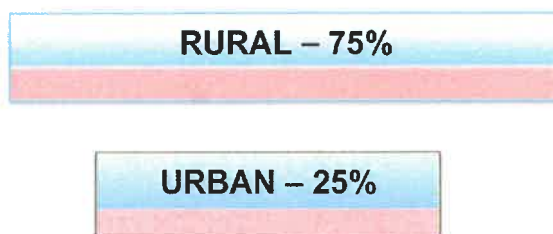
Figure 4 - Outstanding old order claims per province

- 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 2001 claims. Although the majority of these claims are found in the Ethekeweni 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 the claimed land. As a result, KwaZulu Natal also sees a higher number of matters referred to the Land Claims Court for adjudication, creating further delay in settling the claims.

- **Mpumalanga** follows with 1497 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 1226 claims. These claims are mostly rural in nature and large claims comprising of a number of 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 573 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 as part of fast-tracking settlement.
- 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 258 claims outstanding. The highest number of claims outstanding claims 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. The urban claims in the city are faced with 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** The position has not changed significantly and still has 346 outstanding claims. These consist 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 205 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 claims in phases. This includes the Mmabatho Town claim which is a claim that effects most of the city. Some of these claims have had to be referred to the Land Claims Court for adjudication on even validity.
- **Northern Cape** has only 35 outstanding claims to settle, and these are mostly rural claims. The Commission is focusing closely on the province to ensure that there is a targeted 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. This was reported in previous reports.



As per the previous report, the number of outstanding portions and land parcels per province is still quite significant. These 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. There is peculiarity because the number of claims outstanding in the province are relatively low at 205 land claims. However, the high number of land portions still outstanding sitting at 2183 reflects the high number of hectares under claim by various communities. These claims are vast in size and are owned by multiple private land owners and in some instances by the state. Some of these claims have had to be referred to the Land Claims Court for the determination of the extent of the hectares that have been validly claimed.

Gauteng Province also appears to have a higher number of portions outstanding at 2893 as opposed to the number of outstanding claims at 346. 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.

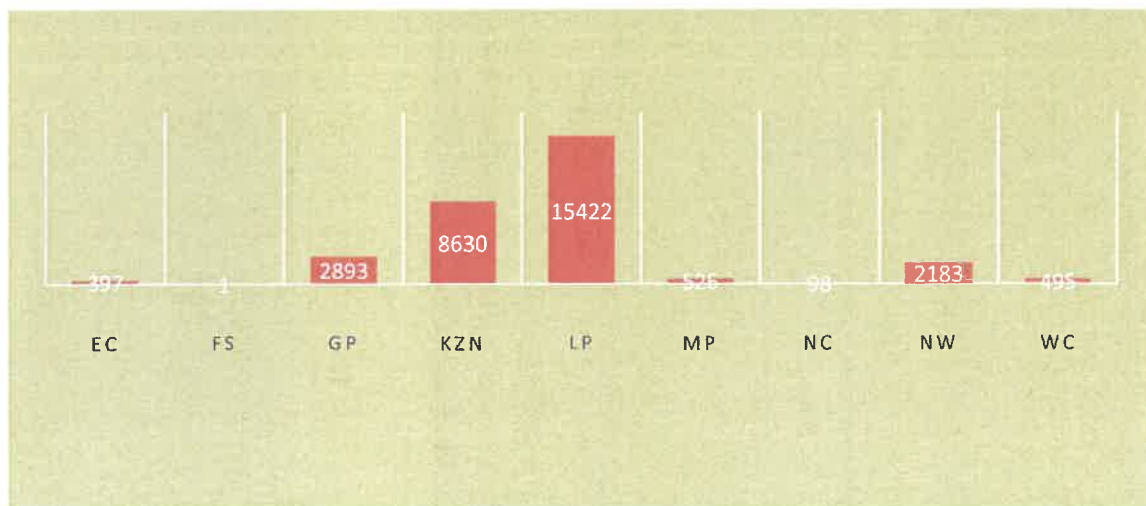


Figure 5 - Outstanding Land Portions per province



### 3.3. LAND USE LINKED TO SETTLEMENT MODELS

The position in so far as it relates to the land use of the land restored to claimants remains as per the previous reports. Also refer to Section 4.4 for further information.

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.

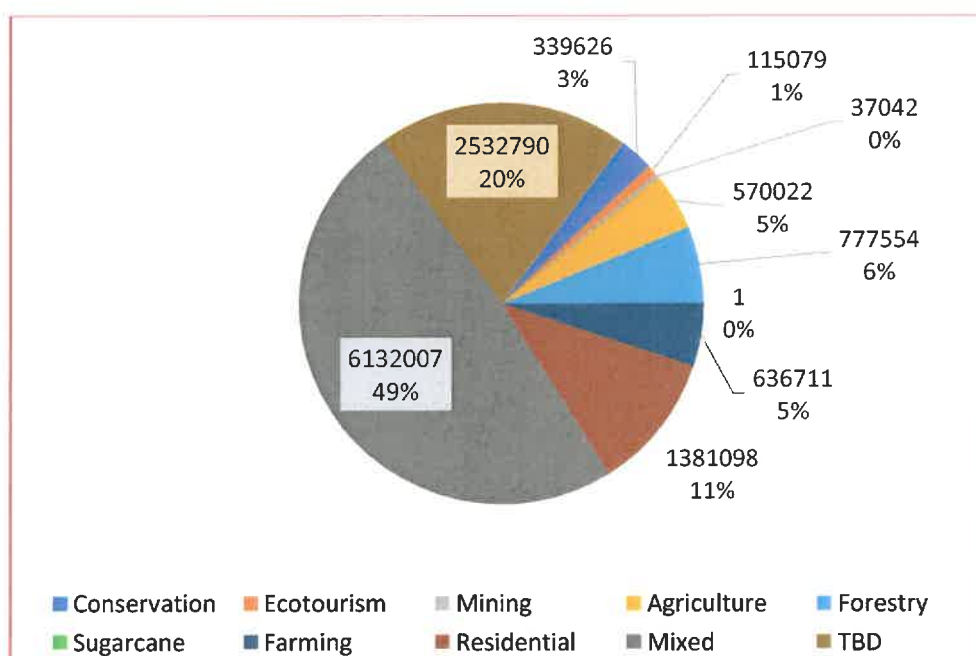


Figure 6 - Land Use per Settlement models (Ha; %)

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

The Commission has set itself a target of **settling a total of 349** claims and **finalising a total of 406** claims in this financial year (2023/24). This is directly linked to the allocated budget and staff compliment.

During the 2<sup>nd</sup> Quarter, the target for settlement of claims was **111**; the Commission over this period managed to settle only **48** claims, the target for Quarter 3 was **127** and **115** claims were settled, this means that we have an additional **74** claims still to be settled for the remaining Quarters. The Commission is confident that it will be able to make up for the 74 claims and achieve the overall targets set for this financial year.

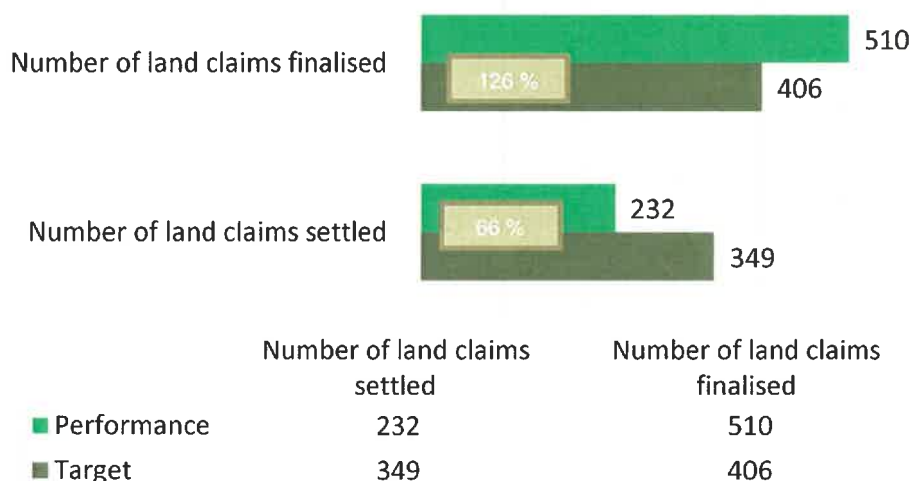


Figure 7- Progress against APP Targets

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



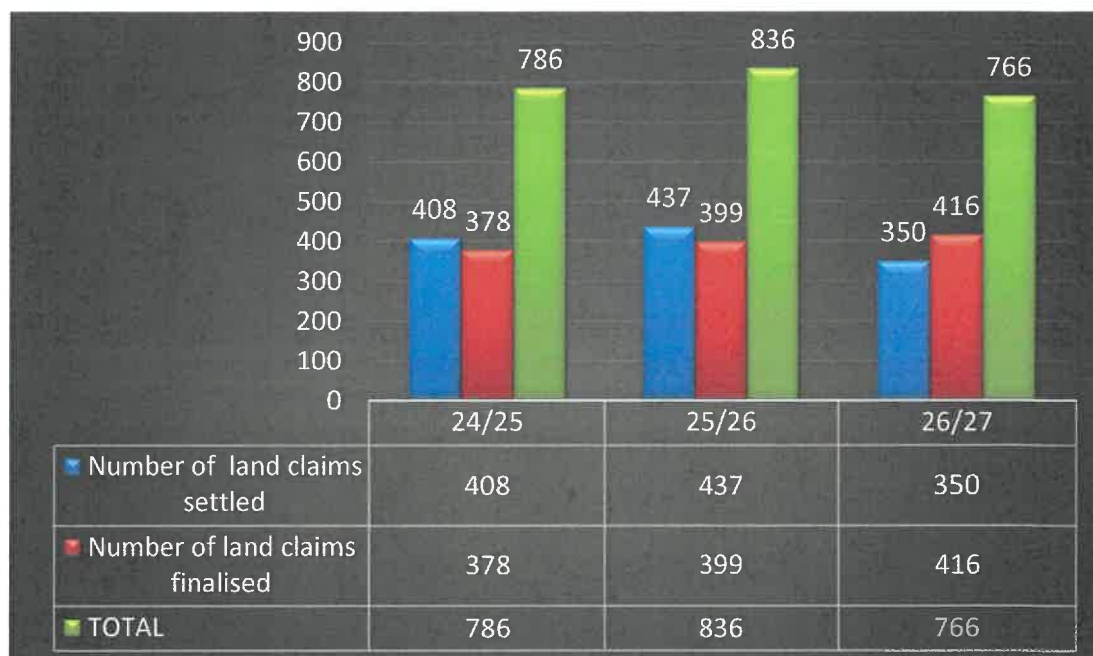


Figure 8- MTEF Baselines

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.*

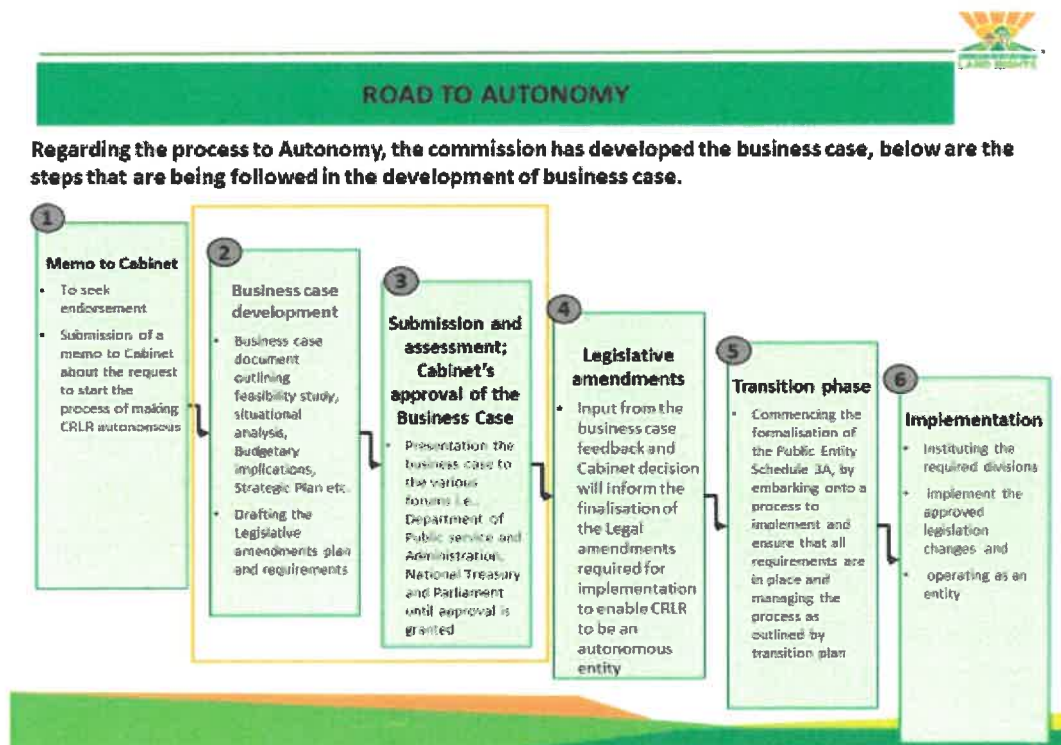


Figure 9- Road to Autonomy

#### 4.2.PROGRESS ON THE AUDIT REPORT 2021

*The status as per the 8th Lamosa report remains.* The independent audit established the outstanding claims baseline. The report also identified 27 key findings. The Commission has also commenced with resolving these findings which should be

completed by March 2024 and an intense exercise to analyse the ORI audit report is ongoing.

In addition, the Restitution Act and PFMA is not aligned in terms of the submission dates for the Annual reports and the financial statements. The Commission will aim to either amend the Restitution Act to be in line with the PFMA guidelines or adjust the financial year (i.e., 31 Jan 2023) which is not in line with the departmental financial year.

#### **4.3. RISKS ASSOCIATED WITH THE ABOVE MATTERS**

***The risks reported in the 8<sup>th</sup> Lamosa report remain.***

Failure to process the Interim Structure towards DALRRD now compels the Commission to review commitments raised in the Strategic plan and Annual Performance plan. We continue to engage the department on this issue.

The implementation of the audit findings will have a 5 (five) to 8 (eight) percent impact on the number of claims outstanding.

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

#### **4.4 POLICY MATTERS**

As per the 8<sup>th</sup> Lamosa report, the Commission is gradually 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 resuscitation of 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 2023/2024 financial year, the Commission had targeted **49** claims to be referred to the Land Claims Court for adjudication as provided for by section 14 of the Restitution Act. Thus far a total of **13** cases have been issued at the Land Claims Court with the balance of **36** matter that are outstanding, and provinces have provided recovery plans. See the table below for the breakdown of the targets in quarters:

*Table 3- Outstanding old order land claims movement per province*

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	49		11	8	11	1	17	4	10		-36

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The Provincial breakdown is captured in the Table below:

**PROGRESS AND QUARTERLY PROVINCIAL REFERRAL TARGETS FOR FINANCIAL YEAR 2023/2024**

*Table 4– Progress on referrals*

Performance indicator		Annual Target	Quarter 1 Target	Achieved	Quarter 2 Target	Achieved	Quarter 3 Target	Achieved	Quarter 4 Target	Achieved
Section 14 Referrals as per LAMOSA judgement	Eastern Cape	1	-	0	-		-	0	1	
	Free State	0	-	0	-		-	0	-	
	Gauteng	3	0	0	1		1	0	1	
	KwaZulu-Natal	11	3	3	2	1	4	0	2	
	Limpopo	4	1	0	1		1	0	1	
	Mpumalanga	15	5	5	5	0	4	4	4	
	North West	1	0-	0	0		1	0	0-	
	Northern Cape	1	-	0	-		1	0	-	
	Western Cape	14	2	0	4		6	0	2	

During the years 2021/2022 the Land Claims Court through the 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 Claims 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 LCC.





- Poor research which did not outline strong merits for the land claim which justified the publication of the claims. Further research required for matters to be trial ready.

The Commission continues to address the concerns as raised by the Court.

## **LEGAL AID SOUTH AFRICA VS LAND RIGHTS MANAGEMENT FACILITY**

In terms of S29(4) The Chief Land Claims Commissioner is 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 must make funds available from its budget. The Legal Aid South Africa formally accepted this function from the 1 April 2022. 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 working on ensuring that a more accommodative interpretation of 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 Service Level 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.

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 Service Level Agreement are at an advance stage.

## STATUS OF UNTRACEABLE AND DISMISSAL/DEFERRALS OF CLAIMS

The Gauteng Regional Land Claims Commission has submitted a referral for 4 lodged land claims for Court to guide on the above concept of deferrals for those claims where the Commission is unable to locate the original claimants or beneficiaries and the exchange of pleading is unfolding. These matters have been referred 'Exparte' to the Land Claims Court, and the Commission awaits the necessary guidance on how to deal with all similar matters across the Provinces.

## 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** has not changed since the previous report. 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.

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)**

There have been notable achievements in relation to provision of human capital since the submission of the 8<sup>th</sup> report.

- The Commission was granted approval to fill 59 priority positions for levels 1 – 12 on 01 April 2022, and all 59 positions were filled.
- Further to this a total of 66 cumulative positions were filled. A total of 28 positions which were advertised and are in process to be filled but have however been affected by a moratorium of the filling in of posts placed on the 21<sup>st</sup> of October 2023 by National Treasury. Furthermore, 24 positions have since had to be frozen due to unavailability of funds in the Department for further allocation for Compensation of Employees.
- A total of 5 vacant SMS positions initially prioritised were all filled. Cumulatively, additional 3 positions became vacant and only 1 was filled.

Critical to the appointments is the appointment of the Deputy Land Claims Commissioner which was finalised by the Minister in April 2023 and Mr Francois Beukman joined the Commission on the 1<sup>st</sup> of June 2023. The appointment plays a

significant role of overseeing and coordinating the policy unit, development of SOPs and ensuring alignment with broader processes around Land Reform. One of the key responsibility areas attached to the appointment of the Deputy Land Claims Commissioner, relates to coordinating the policy unit, and this presented an opportune moment to (i) maintain momentum in respect of the review of the existing policies; (ii) address the audit findings which have marred the Commission's operating model / business process over time, regarding the dissimilar ways of procedures applied in provinces and (iv) to enforce compliance with the SOPs adopted and approved in line with Project Kuyasa.

The capacitation of the National Research Unit towards the end of the second quarter of the current financial year, through the appointment of two officials; one at Middle Management and the other at Junior Management is envisaged to bring about the much-needed progression to ensure monitoring and evaluation of land claims at research, achieving the set targets and rolling out training to provincial offices to ensure production of high level quality research reports.

Lastly, the appointment of the Director Operational Management: Eastern Cape province in the third quarter of the current financial year, was an additional highlight in terms of the appointments at Senior Management level.

#### 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 ENE budget allocation has been reduced with a further R688 million from R4,173b to R3,484b. 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 and at end of December 2023 is as follows:

*Table 5 - Financial Breakdown and Expenditure*

<b>TOTAL</b>	<b>BUDGET</b>	<b>EXPENDITURE</b>	<b>COMMITMENTS</b>	<b>AVAILABLE BUDGET</b>	<b>% EXP</b>
Compensation of Employees	426 843 000	280 095 999	0	146 747 001	66%
Goods and Services	311 622 000	148 512 011	33 855 069	129 254 920	48%
Theft and losses	0	0		0	
Municipality	7 349 000	11 331 368	0	-3 982 368	154%
Social Benefits	421 000	338 691	0	82 309	80%
Capital Assets	12 594 000	13 329 223	3 857 813	-4 593 035	0%
Interest on land	0	28 666	0	-28 666	
Sub Total	758 829 000	453 635 958	37 712 881	267 480 161	60%
Land and sub soil	158 882 000	198 091 802	0	-39 209 802	
Households	2 821 208 000	1 588 908 663	0	1 232 299 337	56%
Subtotal	2 980 090 000	1 787 000 465	0	1 193 089 535	60%
<b>Total</b>	<b>3 738 919 000</b>	<b>2 240 636 422</b>	<b>37 712 881</b>	<b>1 460 569 696</b>	<b>60%</b>

## 6.2. EXTERNAL CHALLENGES

Most of the external challenges as reported on in the 8<sup>th</sup> Lamosa report remain and these are challenges that the Commission will need to continually engage with.

The settlement of claims involves just one of the objectives of the Broader Land Reform process. The Commission is mandated to acquire the land and receive, investigate and or 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 Post settlement support to those communities who receive their land back. This through directed support through grants from various departments in the government. This Mandate is part of the post settlement support that is to be coordinated by DALRRD.

As a result, finalisation of land claims is the second target measured in our Annual Performance Plans. The **Finalisation of claims** target is defined as finalised when the settlement, as contained in section 42(D), or a Land Claims Court order has been effected, i.e. the property has been transferred to the beneficiary or financial compensation has been paid. This requires 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 of claims 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 Claims Court for a directive on the correct understanding of when the Commission can consider itself having effectively dealt with the **old order** claims. This to allow us to be able to commence with the **new order** claims as per Court order. A distinctive separation between **settlement** and **finalisation** of claims is important to understand.

## 7. CONCLUSION

The 9<sup>th</sup> Lamosa report demonstrates that the Commission is still making steady progress in settling of land claims. The current 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 is on track to settle and finalise 349 and 406 claims respectively by the end of March 2023.

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

**SUBMITTED BY:**

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**MS NOMFUNDO NTLOKO**  
**CHIEF LAND CLAIMS COMMISSIONER**  
**DATE: 23/01/2024**