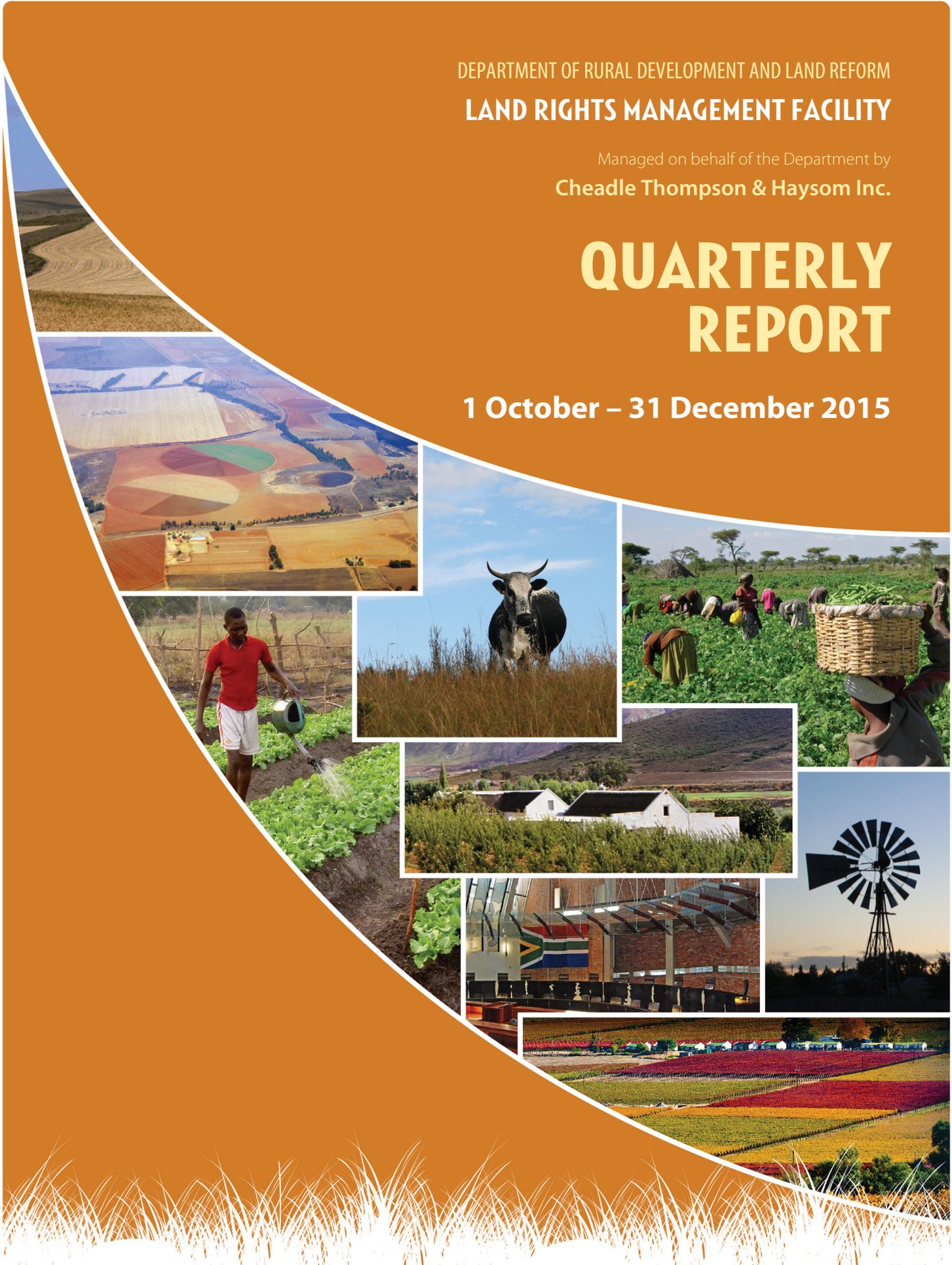


DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM  
**LAND RIGHTS MANAGEMENT FACILITY**

Managed on behalf of the Department by  
**Cheadle Thompson & Haysom Inc.**

# QUARTERLY REPORT

1 October – 31 December 2015



**rural development  
& land reform**

Department:  
Rural Development and Land Reform  
REPUBLIC OF SOUTH AFRICA



CHEADLE THOMPSON  
& HAYSOM INC.  
ATTORNEYS



1 October 2015 to  
31 December 2015

# LRMF DASHBOARD



**ACTIVE CASES**  
As at 31 December 2015

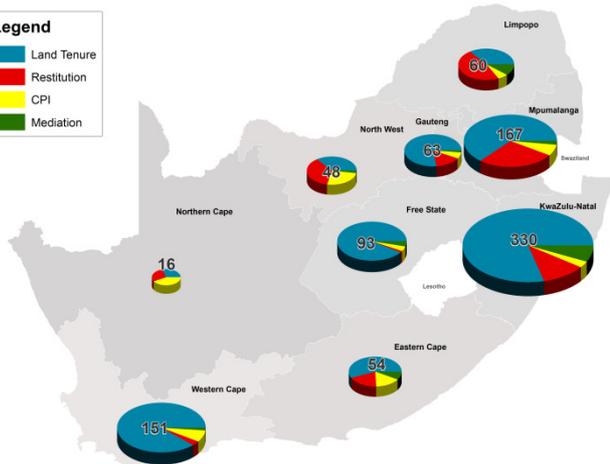


**NEW MATTERS**  
1 Oct 2015 – 31 Dec 2015

## LRMF CASE VOLUME & DISTRIBUTION

### Legend

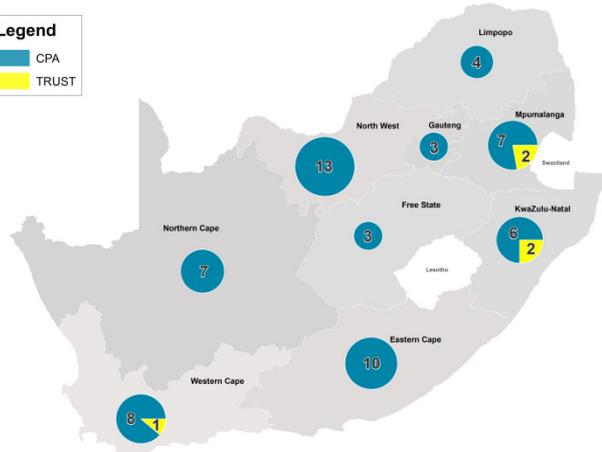
- Land Tenure
- Restitution
- CPI
- Mediation



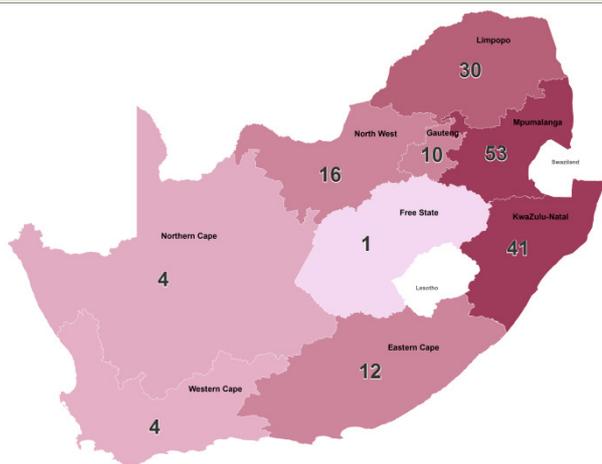
## CPI CASE VOLUME & DISTRIBUTION

### Legend

- CPA
- TRUST



## RESTITUTION CASE VOLUME & DISTRIBUTION



## LRMF CASE STATUS

	NEW MATTERS	CLOSED MATTERS	PENDING TOTALS
Land Tenure	59	47	706
Mediation	3	3	39
Restitution	6	5	171
CPis	9	8	66

## TENURE SECURITY CASE CATEGORIES

– LEGAL & MEDIATION SERVICES

- Threatened eviction – 32%
- Illegal eviction – 4%
- Eviction – 48%
- Livestock dispute – 7%
- Burial rights dispute – 3%
- Other – 6%



## LRMF PANEL COMPOSITION



- African – 62%
- Coloured – 12%
- Indian – 16%
- White – 10%

- Female – 29%
- Male – 71%



## PROJECT FINANCES

FUNDS DISBURSED TO DATE:

**49%**

**Land Tenure**  
R93 209 883

**11%**

**CPis**  
R21 775 537

**40%**

**Restitution**  
R75 611 477



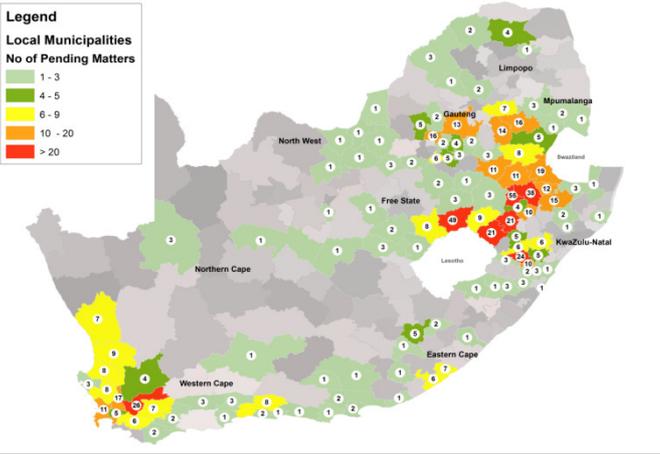
**ACTIVE CASES**  
Land tenure pending matters  
as at 31 December 2015



**NEW MATTERS**  
Land tenure new matters –  
1 Oct to 31 Dec 2015

### Land Tenure: Dispute Hotspots

1 OCTOBER TO 31 DECEMBER 2015



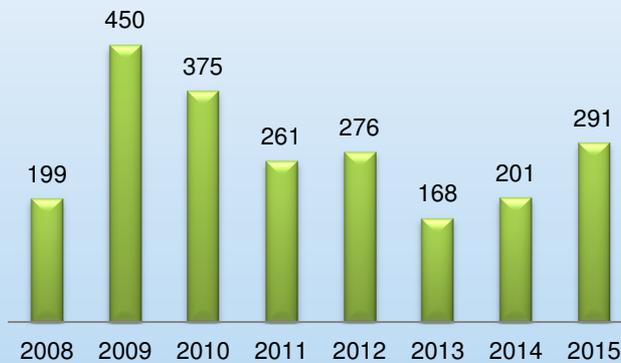
### Dispute Hotspots – Municipalities

Province	Municipality	Land Tenure
Kwazulu-Natal	Newcastle Local Municipality	55
Free State	Dijhlabeng Local Municipality	53
Kwazulu-Natal	Emadlangeni Local Municipality	37
Kwazulu-Natal	uMngeni Local Municipality	27
Kwazulu-Natal	Emnambithi/Ladysmith Local Municipality	20
Mpumalanga	Mkhondo Local Municipality	20
Western Cape	Breede Valley Local Municipality	20
Kwazulu-Natal	Okhahlamba Local Municipality	19
Mpumalanga	Emakhaseni Local Municipality	17
Western Cape	Drakenstein Local Municipality	17
Gauteng	Mogale City Local Municipality	16
Kwazulu-Natal	Abagulusi Local Municipality	13
Mpumalanga	Steve Tshwete Local Municipality	13
Western Cape	City of Cape Town Metropolitan Municipality	11
Kwazulu-Natal	eDumbe Local Municipality	11
Mpumalanga	Pixley ka Seme Local Municipality	11
Mpumalanga	Lekwa Local Municipality	11
Gauteng	City of Tshwane Metropolitan Municipality	11
Free State	Maluti a Phofung Local Municipality	10
Kwazulu-Natal	Endumeni Local Municipality	10
Western Cape	Cederberg Local Municipality	10

\* Municipalities that feature for the first time in the hotspot list.  
 † Municipalities that have moved up the list with more pending tenure security matters in this quarter as compared to the previous quarter.  
 ‡ Municipalities that have moved down the list with less pending tenure security matters in this quarter as compared to the previous quarter.

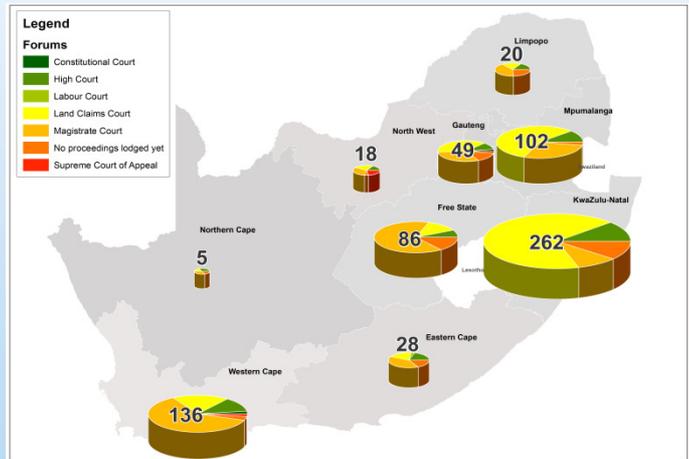
### Land Tenure

NUMBER OF MATTERS PER YEAR OF INSTRUCTION



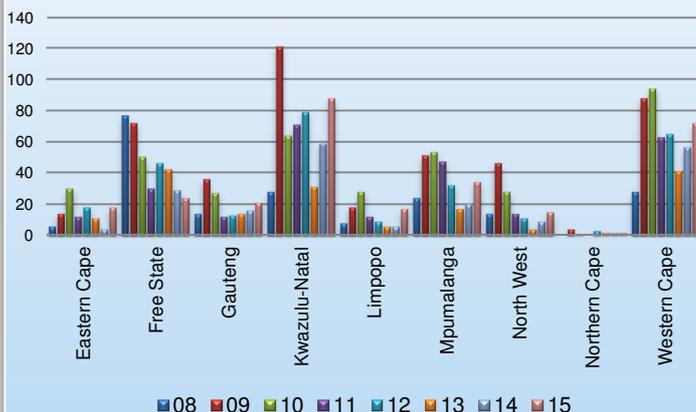
### Land Tenure: Forums

PENDING MATTERS AS AT 31 DECEMBER 2015



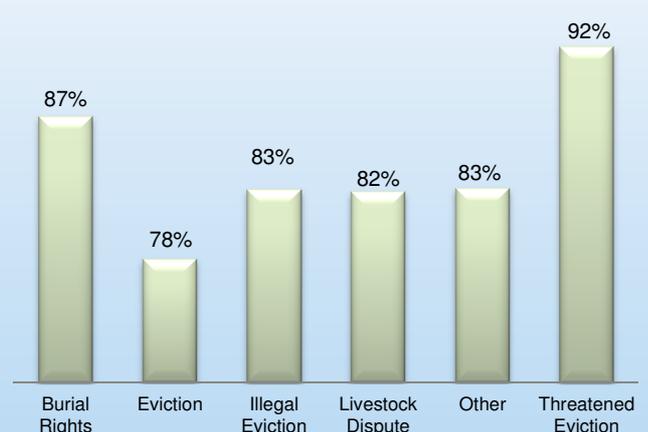
### Land Tenure

NUMBER OF MATTERS PER PROVINCE PER YEAR OF INSTRUCTION



### Land Tenure: Matter Outcomes

PERCENTAGE SUCCESS RATE PER CATEGORY



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**GLOSSARY OF TERMS**

<b>Commission</b>	Commission on Restitution of Land Rights
<b>CPA</b>	Communal property association
<b>CPA Act</b>	Communal Property Associations Act 28 of 1996
<b>CPI</b>	Communal property institution
<b>DRDLR</b>	Department of Rural Development and Land Reform
<b>ESTA</b>	Extension of Security of Tenure Act 62 of 1997
<b>LRMF</b>	Land Rights Management Facility
<b>LTA</b>	Land Reform (Labour Tenants) Act 3 of 1996
<b>MIS</b>	Management information system
<b>RLRA</b>	Restitution of Land Rights Act 22 of 1994

## INTRODUCTION

### 1. Background

Cheadle Thompson & Haysom Inc. (CTH) was appointed by the Department of Rural Development and Land Reform (the Department) under Bid No RDLR-0038 (2012/2013) to manage the Land Rights Management Facility (LRMF) established to provide legal and mediation services to labour tenants, farm dwellers, communal property institutions, restitution claimants and other land reform beneficiaries in 9 provinces for a period of three years. The contract period is from January 2013 to December 2015. This report covers the period October to December 2015.

The LRMF was initially established by the DRDLR in 2008, motivated by the need to remedy evictions, threats of eviction and human rights abuses in rural areas. The establishment, management and co-ordination of the LRMF represented an innovative and concrete strategy by the Department to improve access to justice in rural areas. The key rationale of the Department was to provide dedicated state-funded panels of specialist land rights lawyers and mediators in order to provide legal and mediation services to poor, marginalised and indigent people in rural farming areas, to support land tenure reform and to contribute to stabilising and improving social relations in rural farming communities.

### 2. Objectives of the LRMF

The objectives of the LRMF are:

- 2.1 to facilitate the provision of specialised legal and mediation services to individuals and communities who are faced with the violation of their rights and livelihoods;
- 2.2 to regularise and support dysfunctional CPIs;
- 2.3 to administer legal and mediation assistance approved by the Chief Land Claims Commissioner in terms of the Restitution of Land Rights Act 22 of 1994;
- 2.4 to build a network of human rights lawyers and mediators who specialise in the field of land rights; and
- 2.5 to promote the rule of law and strengthen democracy.

### 3. Key deliverables

Key deliverables of the project include:

- 3.1 Maintaining and updating the panels of lawyers and mediators;
- 3.2 Receiving legal and mediation case referrals from the Department;
- 3.3 Receiving legal representation and mediation matter referrals contemplated in sections 9, 13 and 29(4) of the Restitution of Land Rights Act from the Chief Land Claims Commissioner;
- 3.4 Referring cases and matters to members of the legal and mediation panels on the instructions of the Department;
- 3.5 Monitoring the progress of cases referred, the performance of panel members and the outcome of cases in relation to the objective of providing adequate legal and mediation services to indigent land reform beneficiaries;
- 3.6 Administering the panel funds provided by the Department for this purpose and assessing and paying the accounts of members of the panels on behalf of the Department;

- 3.7 Designing and conducting an appropriate training programme to educate panel members to improve their skills and capacity and an appropriate skills transfer programme for officials of the Department;
- 3.8 Providing legal opinions as requested by the Department or Commission on matters relating to the LRMF.

#### 4. Project focus areas

##### Project focus areas

##### 4.1 Land tenure

The core work of the LRMF involves the provision of legal and mediation services to vulnerable farm workers and farm dwellers, providing critical access to justice in order to protect and promote their land tenure security.

##### 4.2 Communal property institutions (CPIs)

This focus area concentrates on the provision of assistance to dysfunctional communal property institutions (communal property associations and land reform trusts) to become legally compliant and sustainable.

##### 4.3 Restitution

The restitution focus area is directed at administering legal and mediation services approved by the Chief Land Claims Commissioner regarding restitution of land rights.

### KEY DEVELOPMENTS

#### 5. Provincial reviews

CTH held a series of provincial review meetings during this quarter. The review meetings provide a useful platform for panellists and officials to discuss matters, raise areas of concern and share experiences and best practices.

Provincial reviews		
CPIs	<b>Northern Cape provincial review meeting</b>	The Northern Cape provincial review meetings were held in Kimberley on 21 and 22 October 2015.
	<b>Kwazulu Natal provincial review meeting</b>	The Kwazulu Natal review meeting was held in Durban on 30 September and 1 October 2015.
	<b>Mpumalanga provincial review</b>	The Mpumalanga review meeting was held in Witbank on 1 and 2 December 2015.
	<b>Free State provincial review</b>	The Free State provincial review meeting was held in Bloemfontein on 3 December 2015.

<b>Western Cape provincial review</b>	The Western Cape provincial review meeting was held in Cape Town on 4 December 2015. .
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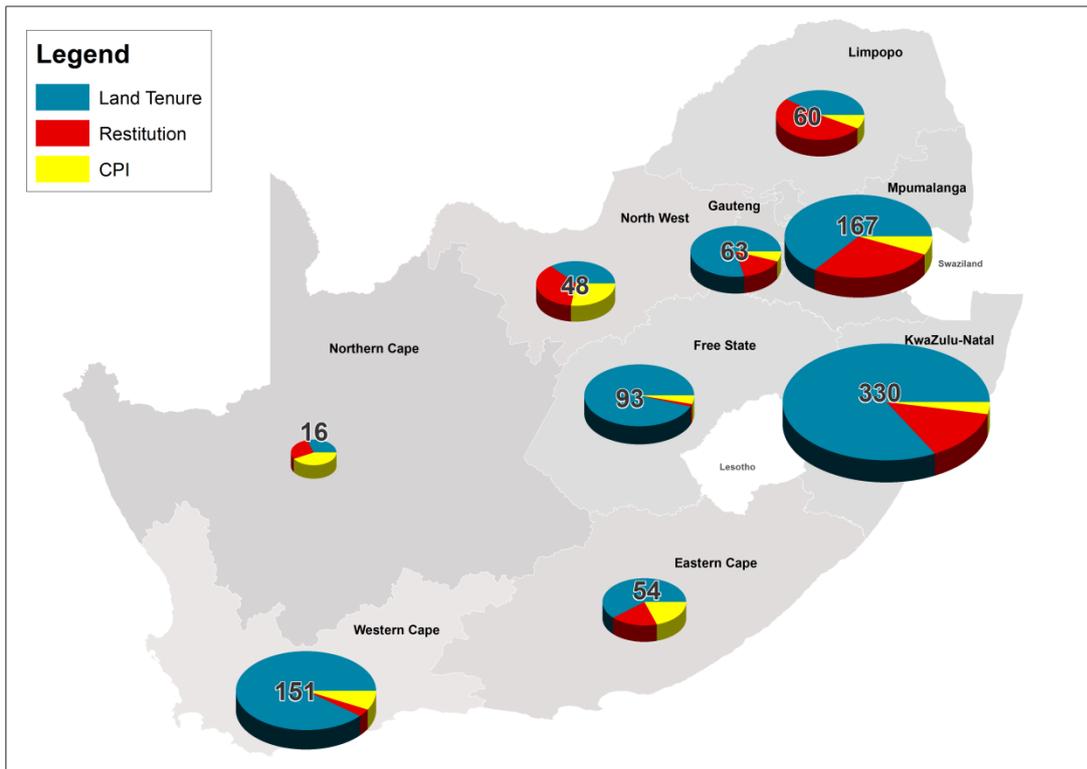
**6. DRDLR / CTH meetings**

Several meetings were held between CTH and DRDLR officials during the quarter. These are set out in greater detail below.

<b>DRDLR / CTH meetings</b>		
<b>Restitution</b>	Restitution quarterly meeting	The fourth quarterly restitution meeting was held on 3 December 2015 at the OR Tambo Premier Hotel in Kempton Park. There were 31 participants including national and provincial officials.
<b>CPI's</b>	CPI bi-monthly meeting	The CPI bi-monthly review meeting between CTH and DRDLR officials was held on 5 November 2015. The meeting discussed CPA progress, specific CPA matters, case trends and analysis, and strategic issues related to CPA management, agreement on the closure of provisional CPAs, TRANCAA matter budgets that require DRDLR approval, categories of CPA matters as well as pending matters that needed further instructions. There were 5 participants including national officials and CTH.
<b>Executive Committee</b>	Quarterly EXCO meeting	The quarterly EXCO meeting was held on 13 November 2015 at the DRDLR offices in Pretoria. CTH presented the key developments from the previous quarter, case trends and analysis, project finances and strategic issues regarding the LRMF.
<b>Executive Committee</b>	Project close out EXCO meeting	The project close out EXCO meeting was held on 15 December 2015 at the CTH offices in Braamfontein. The meeting discussed the current case load, project finances, the contract closeout process, handover options and communication with LRMF panelists regarding the contract expiry and status of the DRDLR tender process.

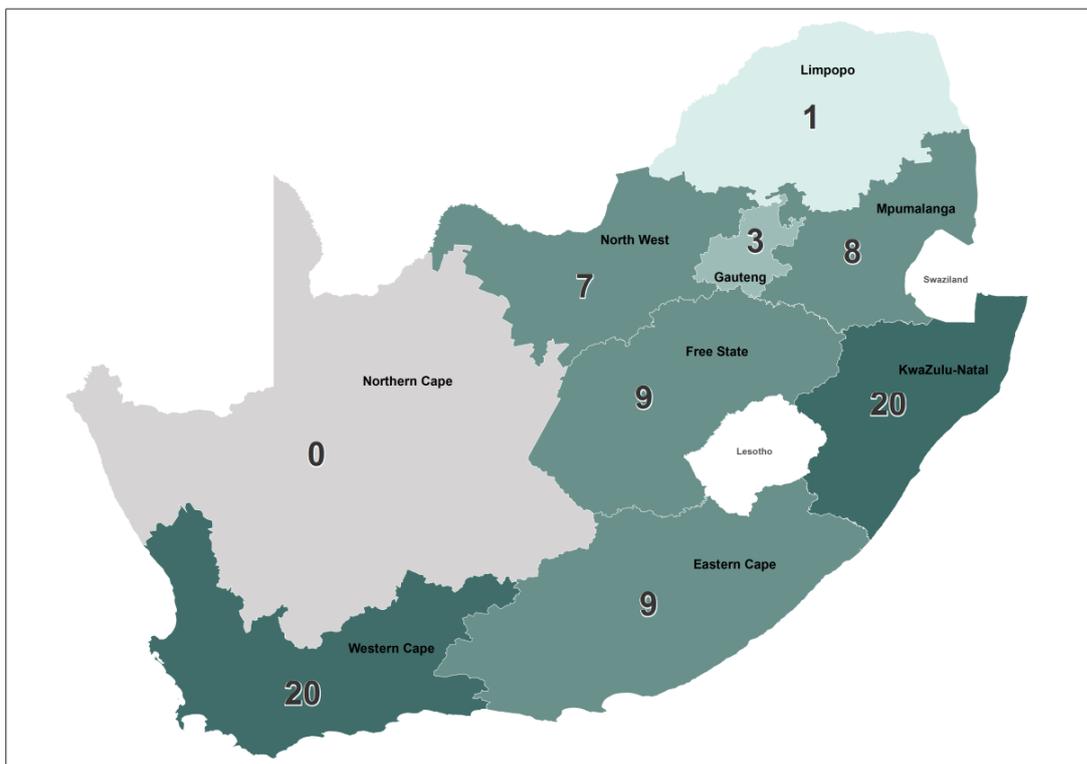
## CASE TRENDS AND ANALYSIS

There are currently 982 pending matters across all focus areas.



**Figure 1: LRMF case distribution by focus area and province**

During the quarter 77 new referrals were received across all focus areas.



**Figure 2: New LRMF referrals by province**

During the quarter 63 matters were finalised across all focus areas.

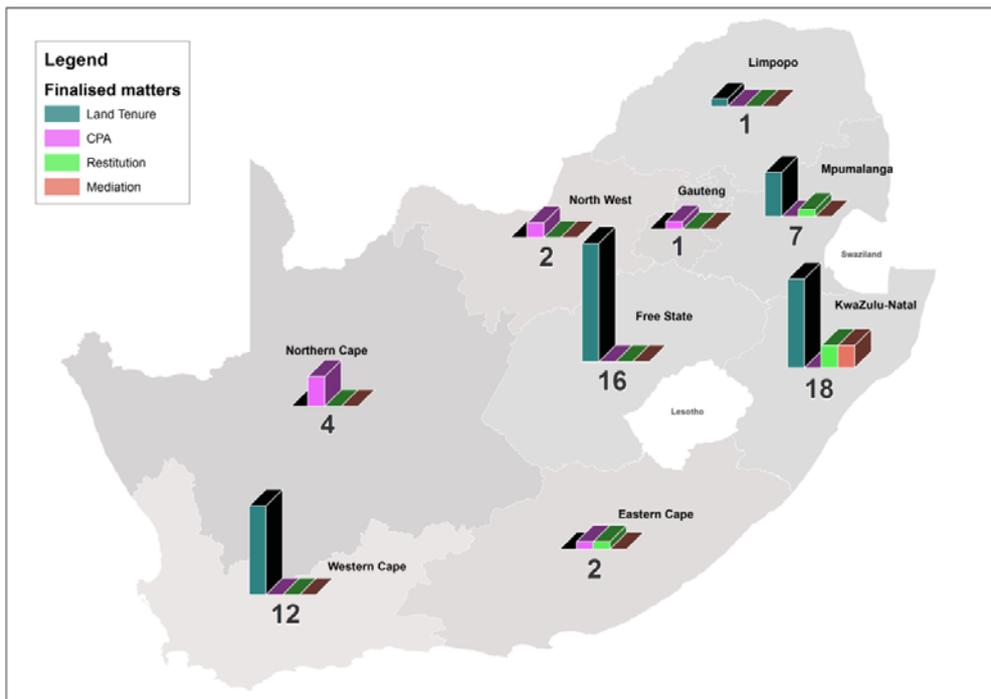


Figure 3: LRMF finalised matters by focus area and province

## 7. LAND TENURE LEGAL

### 7.1. Land tenure case status

There are currently 706 pending legal service matters administered under the LRMF. 59 new land tenure cases were referred to the LRMF during the period October to December 2015. We are in the process of closing 47 matters. 7 matters were re-opened over the period, where further instructions were received from the DRDLR.

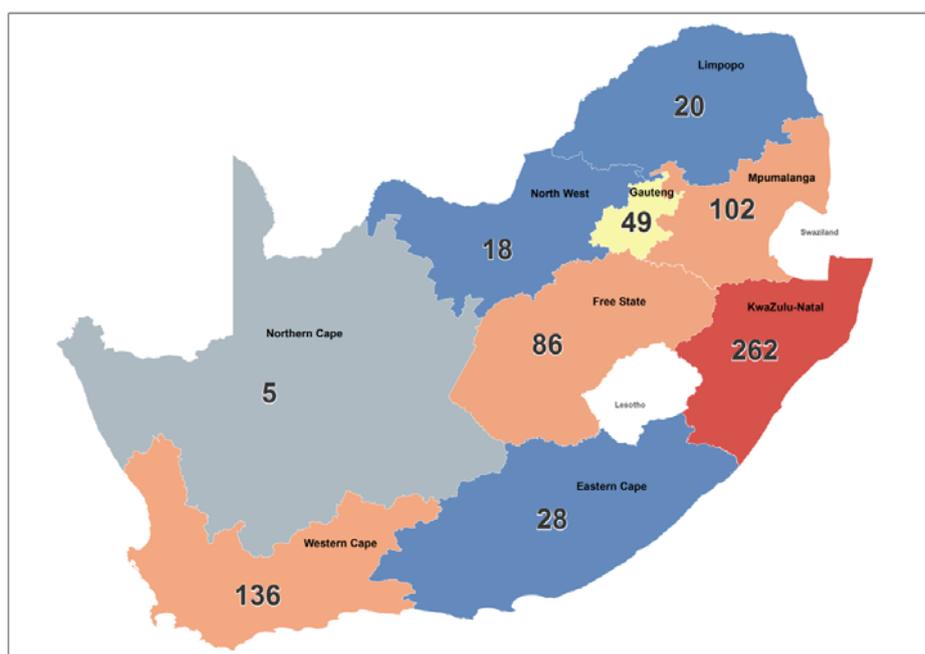
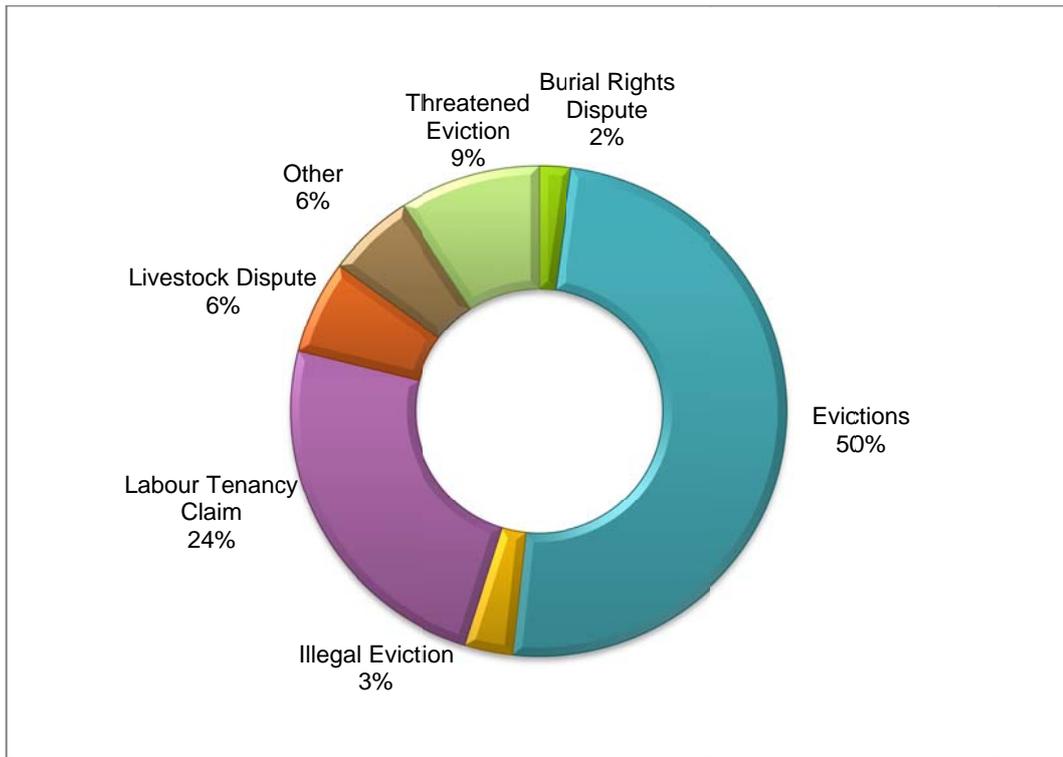


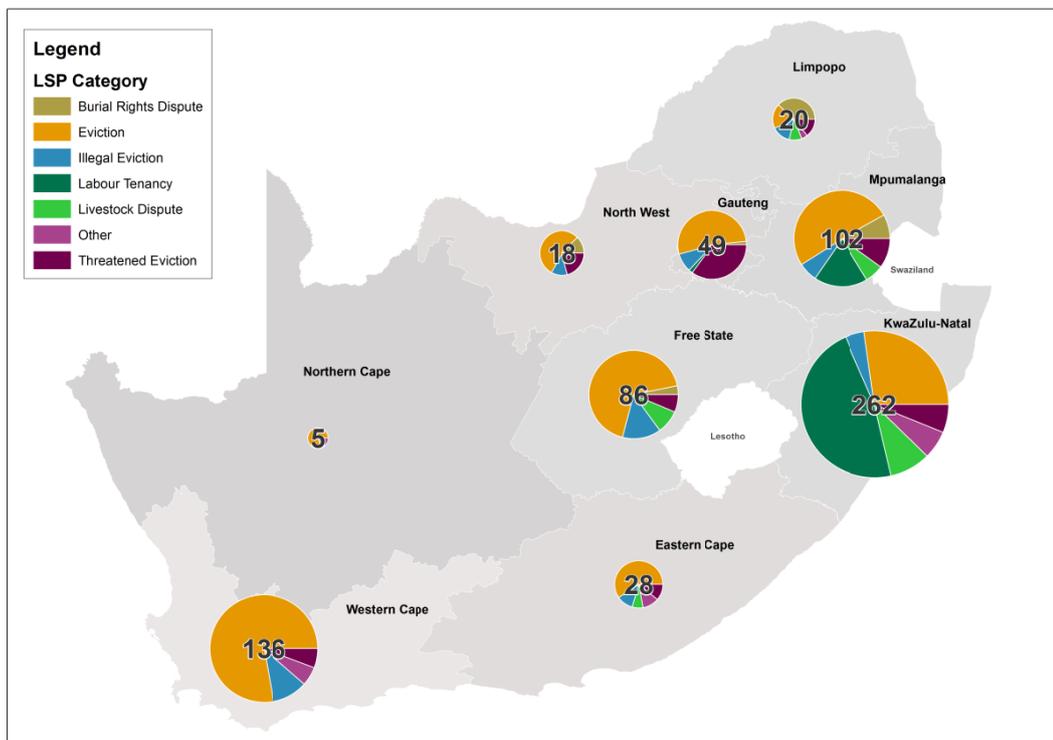
Figure 4: Land tenure case distribution - pending matters

### 7.2. Case categories



**Figure 5: Land tenure case categories – pending matters**

The provincial distribution of the 706 pending matters per case category is presented below.



**Figure 6: Land tenure case categories – pending matters per province**

### 7.3. Forums

The forums in which LRMF legal service matters are currently located are set out below.

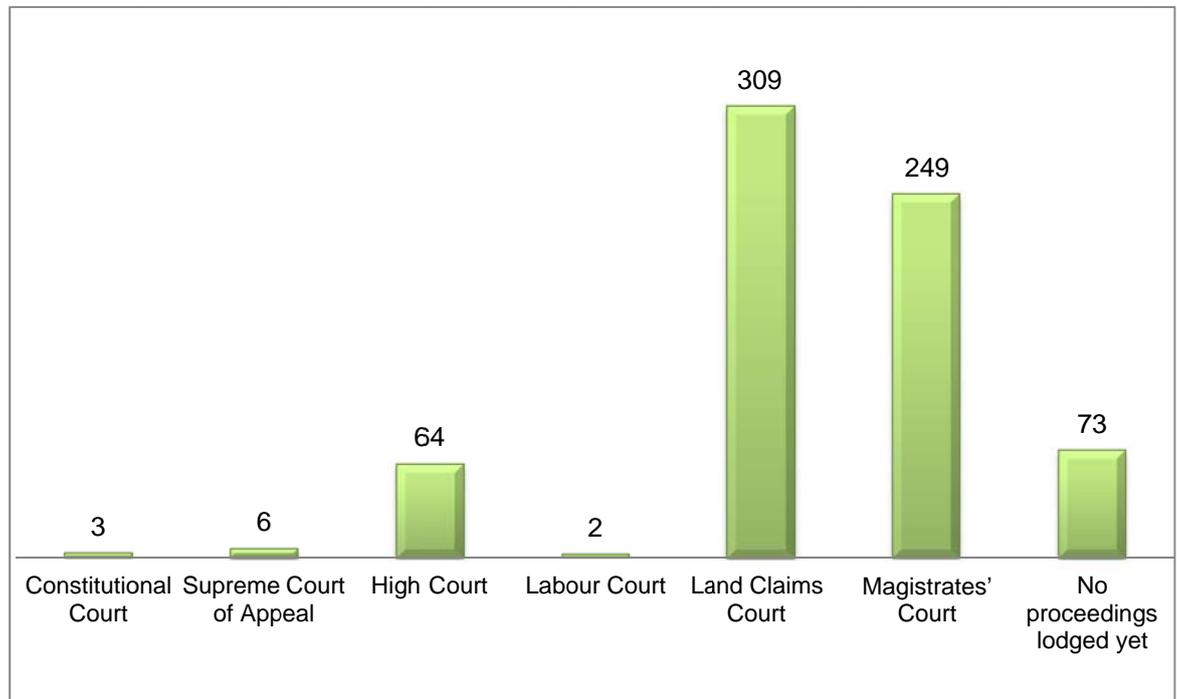


Figure 7: Land tenure case forums

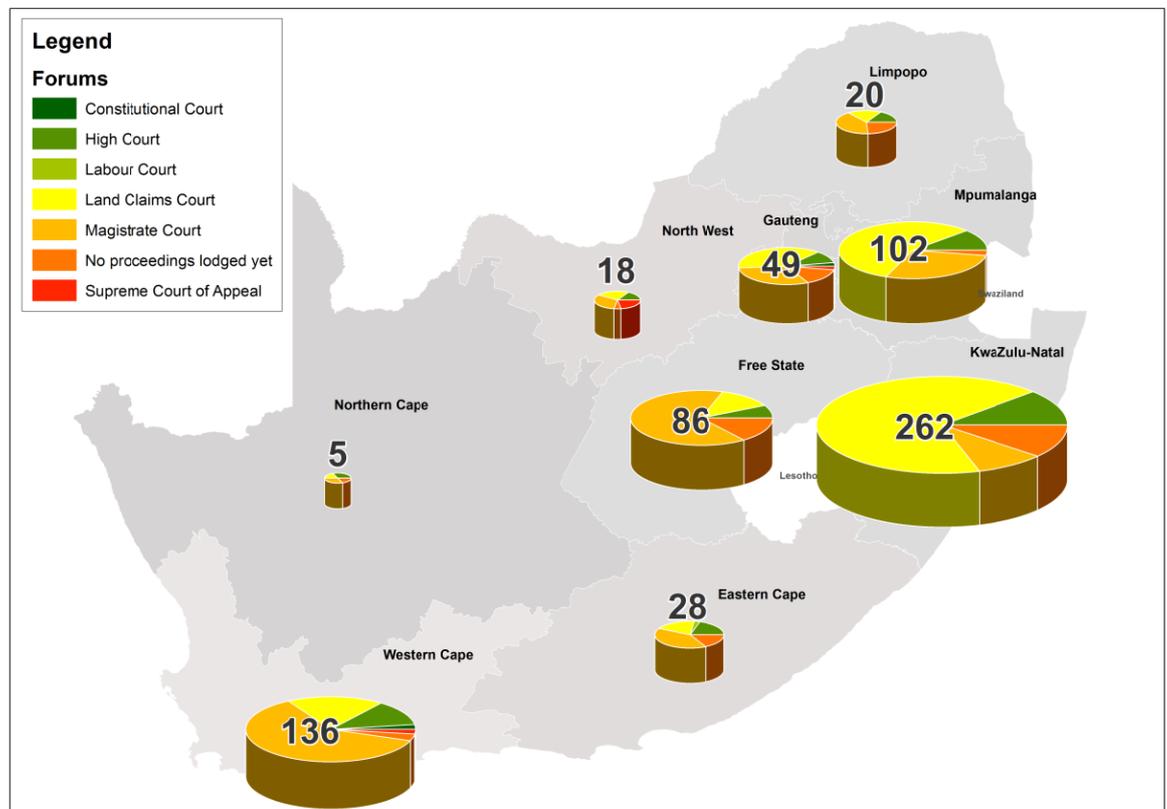


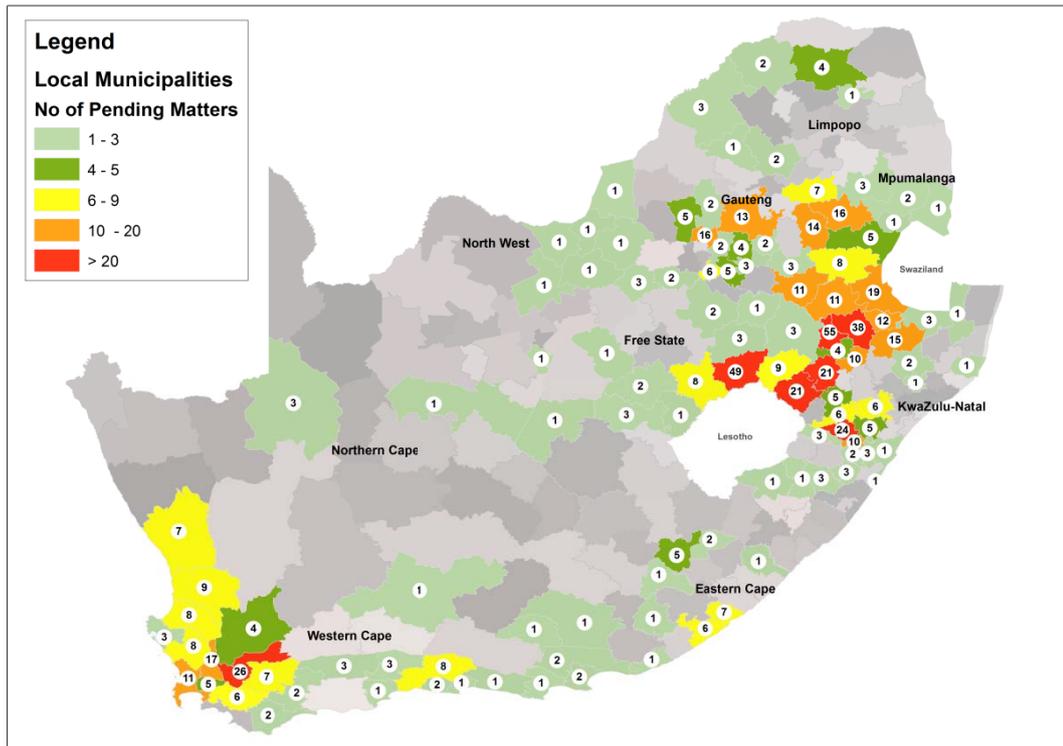
Figure 8: Land tenure case forums per province

#### 7.4. Municipal hot spots

We continue to analyse trends within the key municipal dispute hotspots. The municipalities with 10 or more pending land tenure disputes are set out below:

Province	Municipality		Land Tenure
Kwazulu-Natal	Newcastle Local Municipality		55
Free State	Dihlabeng Local Municipality		53
Kwazulu-Natal	Emadlangeni Local Municipality		37
Kwazulu-Natal	uMngeni Local Municipality		27
Kwazulu-Natal	Emnambithi/Ladysmith Local Municipality		20
Mpumalanga	Mkhondo Local Municipality		20
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Kwazulu-Natal	eDumbe Local Municipality		11
Mpumalanga	Pixley ka Seme Local Municipality		11
Mpumalanga	Lekwa Local Municipality		11
Gauteng	City of Tshwane Metropolitan Municipality		11
Free State	Maluti a Phofung Local Municipality		10
Kwazulu-Natal	Endumeni Local Municipality		10
Western Cape	Cederberg Local Municipality		10
* Municipalities that feature for the first time in the hotspot list;			
↑ Municipalities that have moved up the list with more pending tenure security matters in this quarter as compared to the previous quarter;			
↓ Municipalities that have moved down the list with less pending tenure security matters in this quarter as compared to the previous quarter.			

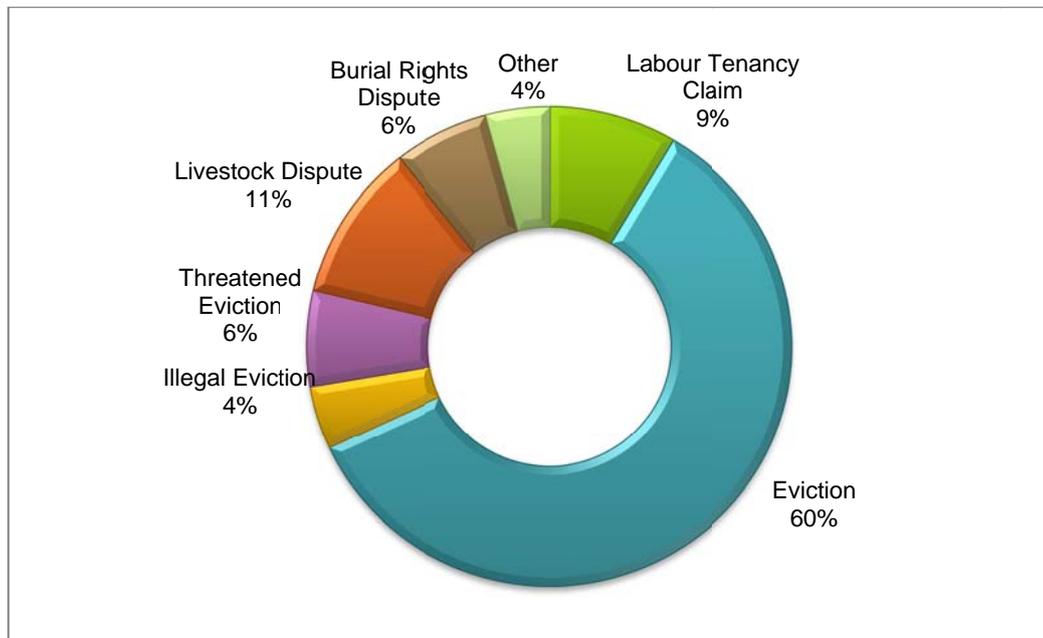
The map below indicates a colour coded distribution of pending tenure security matters per municipality in municipalities with 10 or more pending matters.



**Figure 9: Municipal hotspots**

**7.5. Closure of matters**

During the last quarter, 47 matters were finalised and are in the process of being closed. The LRMF is in communication with the Department and panellists regarding these files. These matters relate to the following case categories:



**Figure 10: Land tenure case categories – matters to be closed**

**7.6. Case outcomes and impact**

Set out below is an illustrative selection of case outcomes relating to land tenure matters finalised during the period October to December 2015.

### SOME SIGNIFICANT MATTERS

#### **Alexander Werner Zybrands N.O. and others & the Occupants, Remainder Portions 2 and 9, Farm 143, Division Paarl Rd, Western Cape (LSP50498)**

This matter concerns an eviction of 23 families from a farm which was bought on behalf of a Trust at a public auction on 26 October 2011. The Trust is the owner of farm Soetendal (“the farm”) and the first to third applicants are the trustees of the Trust. The farm was previously owned by an entity which was placed into final liquidation. The occupiers are approximately 115 in number. The majority of the occupiers, who were employed by the previous farm owner, are now employed at different farms.

The second respondent is the Drankenstein Municipality (“the Municipality”), whose area of jurisdiction is where the farm is situated. Only two of the occupiers and a retiree took up employment with the applicants and the applicants sought eviction of the other occupiers. Following an extensive engagement process, the Municipality made an initial proposal in terms of which the occupiers would be moved to a property known as Erf 3889 – 8394 Vlakkeland. The applicants agreed to allow the occupiers to remain on the farm pending their relocation to Vlakkeland upon an agreed date. The applicants also proposed a contribution of R50 000.00 to the occupiers in order to assist in securing a pre-paid electricity supply to their dwelling units. These proposals by the applicants found favour with both the occupiers and the Municipality.

At the hearing of the eviction proceedings, the court issued an order that the occupiers shall vacate the property by no later than 31 July 2015 and that upon the occupiers vacating the property, they shall relocate to temporary/emergency housing units to be erected by the Municipality. In the event that emergency housing is not developed by 31 July 2015, the parties may by agreement approach the court for an order of extension of the date, failing which the Municipality may apply to the court with notice to all the parties, for an extension.

The Municipality, acting in terms of the order, launched an application for an extension of the eviction date and the date for the provision of emergency alternative accommodation until 13 August 2015. On 31 July 2015, the court granted the order prayed for in the application (“the 31 July 2015 order”). Pursuant to the 31 July 2015 order, the parties held a meeting at which the Municipality informed the parties that:

- Vlakkeland was no longer available to house the occupiers;
- An alternative emergency housing development would be available for occupation by the occupants on or before April 2016; and
- It did not have any other alternative serviced land available to house the occupiers as a group.

The applicants opposed any further extension of the eviction date beyond 13 August 2015.

The Municipality launched the present application for the extension of the eviction date and the date for provision of emergency accommodation until 30 April 2016. The application was opposed. Although the Municipality was entitled in terms of the 31 July 2015 order, to apply for a variation of the November 2014 order, the Municipality did not apply for variation.

In dealing with the occupiers’ first argument, the court held that throughout these proceedings, the occupiers have done nothing to regularise their own position. They refused to be moved to housing which is smaller than the ones they are currently occupying despite having no right to occupy same. They refused to be moved if such a move would result in them being split as a group. They are employed elsewhere and it does not appear from the papers what effort they have made to get alternative accommodation either where they are currently working or with

relatives or friends. The court was of the view that in this instance the scale of justice favours the applicants.

In dealing with the occupiers second argument, the court held that it is trite that a final order can only be amended in limited instances (see *Zondi v MEC Traditional and Local Government Affairs 2006 (3) SA* at para 28 and 29). This common law rule finds expression in section 35(12)(b) of the Restitution of Land Rights Act 22 of 1994 which entitles a court to correct patent errors in a judgment or order and in the rules of the court which allows the court to rescind or vary an order which contains an ambiguity or patent error or omission in order to clarify same.

The court further held that it is not the Municipality's case that the impugned order suffers from any of the criteria for varying or amending an order. Rather the Municipality's case is mostly for financial reasons and issues related to bulk services, it is not in a position to house the occupiers until April 2016.

Therefore based on the above, the court held that it is *functus officio* and found that it is unable to vary the November 2014 order.

The court rejected the Municipality's application for an extension until 30 April 2016 and reasoned that the fact that Vlakkeland might currently not have electricity is not, by itself, an insurmountable obstacle. It is quite possible for the Municipality to provide the occupiers, when relocated, with portable generators for electricity and water tanks should there be no running water. Also the fact that no funding was set aside for such relocation is no excuse. The Municipality can find emergency funding. The Municipality had enough time to anticipate this eventuality and to make the necessary provisions. Application for leave to appeal was refused by the Land Claims Court.

#### **Du Randt / Khaka and others (LSP10861)**

This matter concerns an application for eviction which was heard in the Magistrate's Court. The application for eviction was resolved by mutual consent between the parties. The Magistrate's Court made the settlement agreement an order of court.

The first respondent occupied the property of the applicant since 1980. He was employed by the late father of the applicant. The third to seventh respondents are the children and grandchildren of the first respondent and reside in the property through the first respondent. The applicant claimed that the first respondent was retrenched from his employment during September 2003 and that based on this, the applicant alleged that none of the respondents had any further rights thereafter to reside on the farm and they became illegal occupiers on the farm. The applicant further alleged the occupiers had contravened section 6(3) of the Extension of Security of Tenure Act 62 of 1997 ("the Act") on account of having caused harm to other persons, causing damage to property, threatening other occupiers and establishing and assisting unauthorised persons to erect new structures and dwellings on the property.

The respondents denied all the allegations and pointed out that although the first respondent had been retrenched from the employment of the applicant, such retrenchment did not comply with section 189 of the LRA. It was in these circumstances that the settlement agreement was reached.

The issue which was before the Magistrate's Court was whether the eviction of the occupiers is justified in terms of the Act. The settlement agreement recorded that the applicant, the owner of the farm, undertakes to build an alternative house for the respondents, in exchange for their agreement to vacate the property; and that the applicant will provide transport for the respondents on the appointed date of the vacation from the property.

The matter was referred to the LCC pursuant to the provisions of section 19(3) of the Act. The LCC had to confirm the order for eviction issued by the Magistrate's Court.

In making its decision, the LCC considered the Constitutional Court judgment of *Eke v Parsons* [2015] ZACC 13 in which the CC laid down the threshold requirements for the validity of a settlement agreement to be made an order of court. The CC stated that a settlement agreement must satisfy three requirements, namely:

- It must relate to an issue in dispute between the parties. Thus, an agreement resolving matters not related to the dispute between the parties cannot be made an order of court;
- The agreement must “accord with both the Constitution and the law. Also, it must not be at odds with public policy”; and
- The agreement must hold some practical and legitimate advantage.

Although the court found that the agreement meets the test postulated in *Eke v Parsons*, the court pointed out the following difficulties with the agreement:

- The court foresaw some difficulties with the practical implementation of the agreement. Firstly, the site on which the property is to be built has not been identified;
- The agreement does not provide for a mechanism to resolve any dispute regarding whether the property in fact satisfies the specifications of the new house that will be built for the occupiers. The occupiers might refuse to vacate if they are of the view that the property built for them falls short of the standards agreed between the parties.
- However, the court found that these reservations are not sufficiently weighty to prevent the agreement from being made an order of court; and
- Section 12(1)(a) and (b) of the Act provide that any court granting an eviction must determine the just and equitable date for the eviction, and the date when the eviction may be carried out, in the event of non-vacation of the land. The agreement fails to state the date by which the occupiers can be evicted in the event they have failed to vacate the land by the set date, of 15 days.

Due to the above concerns, the court found it appropriate to vary the order issued by the Magistrate so as to provide that in the event that the occupiers have failed to vacate the land within the 15 days contemplated in the settlement agreement, the Sheriff shall be authorised to affect their eviction within 7 days thereafter. The court confirmed the balance of the order and the terms of the settlement agreement in terms of section 19(3)(a) of the Act.

#### **Karel and Sofia Snyders / Louisa Frederika de Jager (LSP10412)**

This matter is currently on appeal in the Constitutional Court. The matter involves an eviction granted by the Magistrate's Court and confirmed by the Land Claims Court (LCC) in terms of section 19(3) of the Extension of Security of Tenure Act (ESTA). Following confirmation of the order by the LCC, appellants applied for leave to appeal to the Supreme Court of Appeal, which leave was granted by the LCC. The SCA struck the matter from the roll with costs.

In striking the matter from the roll, the court considered whether an appeal against an order of the LCC confirming an eviction order of the Magistrates' Court lies with the SCA. The court relied on the judgment of the LCC in the matter of *Brummer and another v Joostenberg* (LCC) unreported

case no 16R/20-13(20 February 2015). In the Joostenberg matter, the LCC stated that despite the confirmation of the eviction order by the LCC on automatic review, an appeal against the Magistrate's decision lies to the LCC, but that when the LCC substituted its decision for that of the Magistrate, an appeal lies from the LCC to the SCA.

The appellants have applied for further leave to appeal to the Constitutional Court. Coupled with the further leave to appeal the appellants obtained an interim order compelling the farm manager to restore the appellants' rights of occupation pending the appeal. The farm manager has not complied with the order and contempt proceedings have been instituted. The matter is on the roll for 2 February 2016 in the Constitutional Court.

#### **Mathimbane & Others / Normandien Farms (LSP10559)**

Applicants in this matter were declared labour tenants in April 2015. An application for acquisition of land was pending before the LCC when the respondent (the farm owner) brought an application for the removal of all of the livestock belonging to the applicants from the farm.

The application was brought in the LCC in terms of the Conservation of Agriculture Resources Act (CARA). The LCC granted the order for the removal of the livestock from the farm. It further granted a cost order against the applicants. The Court's reasoning in granting the cost order was that the applicants own expert conceded that the land was overgrazed and the livestock had to be removed.

The applicants have launched an application for leave to appeal, which application is pending before the LCC. One of the grounds on which leave to appeal is the jurisdiction of the LCC to hear matters brought in terms of CARA.

#### **FXT Investments (Pty) Ltd / Mokgaetsi Selinah Naidoo (LSP50746)**

This matter is currently on appeal in the High Court Gauteng Division, Pretoria. The appellant, Mrs Naidoo lived on the respondent's property with her late husband since 1980. During this period Mr and Mrs Naidoo tried to buy the farm from the previous owner. The full purchase price was never paid and the sale agreement was cancelled. In 2006 the previous farm owner tried to evict the appellant but never pursued the matter in the Middleburg Magistrate's Court.

The farm was subsequently sold and the new owner, FXT Investments, instituted eviction proceedings against the appellant in terms of the Prevention of Illegal Evictions Act (PIE). In the Court *a quo*, the appellant raised a point *in limine* that the property on which she resides is agricultural land and that PIE was therefore not applicable. She submitted that the eviction proceedings should be brought in terms of the Extension of Security of Tenure Act (ESTA). The point *in limine* was dismissed. Appellant applied for leave to appeal the judgment and leave was granted to appeal to the full bench of the High Court.

#### **Maje Maditihong Lenah and 17 Others / City of Johannesburg and 4 others (LSP50692)**

The applicants sought a declaratory order and ancillary relief that the first respondent, (the City of Johannesburg) is obliged to provide them with temporary emergency accommodation or alternative accommodation. They contend that continuing construction on the farm where they live constitutes constructive eviction and that they face the threat of imminent eviction.

The applicants represent 18 households resident on the farm known as Riversands farm. The claim arises out of a development by Century Riversands Development (Pty) Ltd (Century) the owner of the farm. When the development started the applicants launched proceedings against Century. The first application against Century was settled on the basis that Century would not evict the applicants without due process of law, will comply with the provisions of ESTA for each

occupier, will not exhume graves and will assist with the relocation of the applicants.

In support of their contention that they are being evicted the applicants complain that they find themselves in the path of a huge development and have suffered intrusive incidents such as flooding of houses, soil and rubble accumulation which could collapse their houses, water cuts, massive excavations and falling pit toilets. Most of the complaints raised were resolved through negotiations with Century.

The application for the declaratory order was dismissed. The Court held that the applicants have not demonstrated that they were evicted or face imminent eviction.

**Yolanda Daniel / Theo Scribante and Chardonne Properties CC (LSP50620)**

This matter is currently on appeal in the Supreme Court of Appeal. The issue before the Court is whether an occupier’s rights in terms of ESTA, extend to allow such an occupier the right to improve the home without the owner’s consent.

The appellant is a domestic worker who has lived on the property since approximately 2000. She moved out of the home temporarily to effect improvements. When she wanted to move back the respondents had locked the gate to her house. The aim of the improvements was to render the dwelling fit for human occupation. The appellant wanted to install a window, water supply and a wash basin. The respondent did not respond to the notice given by the appellant for the improvement. The Court *a quo* found that ESTA did not give the occupier the right to effect improvements without the owner’s consent. On appeal to the Land Claims Court, the appeal was dismissed on the same ground.

The appellant has applied for leave to appeal to the SCA. In her application for leave to appeal the respondent contends that the improvements were necessary, that the right to residence in terms of ESTA incorporates the right to live in conditions consistent with human dignity and access to water. Judgment on the application for leave to appeal is pending.

## 8. MEDIATION

### 8.1 Mediation case status (restitution, land tenure and CPIs)

As reported in the previous quarter, the LRMF has streamlined reporting on mediation matters to report per focus area: namely land tenure mediation, restitution mediation and CPI mediation. This allows for the transition from mediation to litigation or regularization to be easily monitored.

During the period October to December 2015 there were 3 new land tenure mediation referrals. 3 land tenure mediations were finalised during this quarter. Confirmation of closure has been sent to the relevant officials in the provinces. This leaves 39 active mediation matters at the end of December 2015.

	New matters	Closed matters	Pending matters
Land tenure	2	3	28
Restitution	1	0	4
CPI	0	0	7
	<b>3</b>	<b>3</b>	<b>39</b>

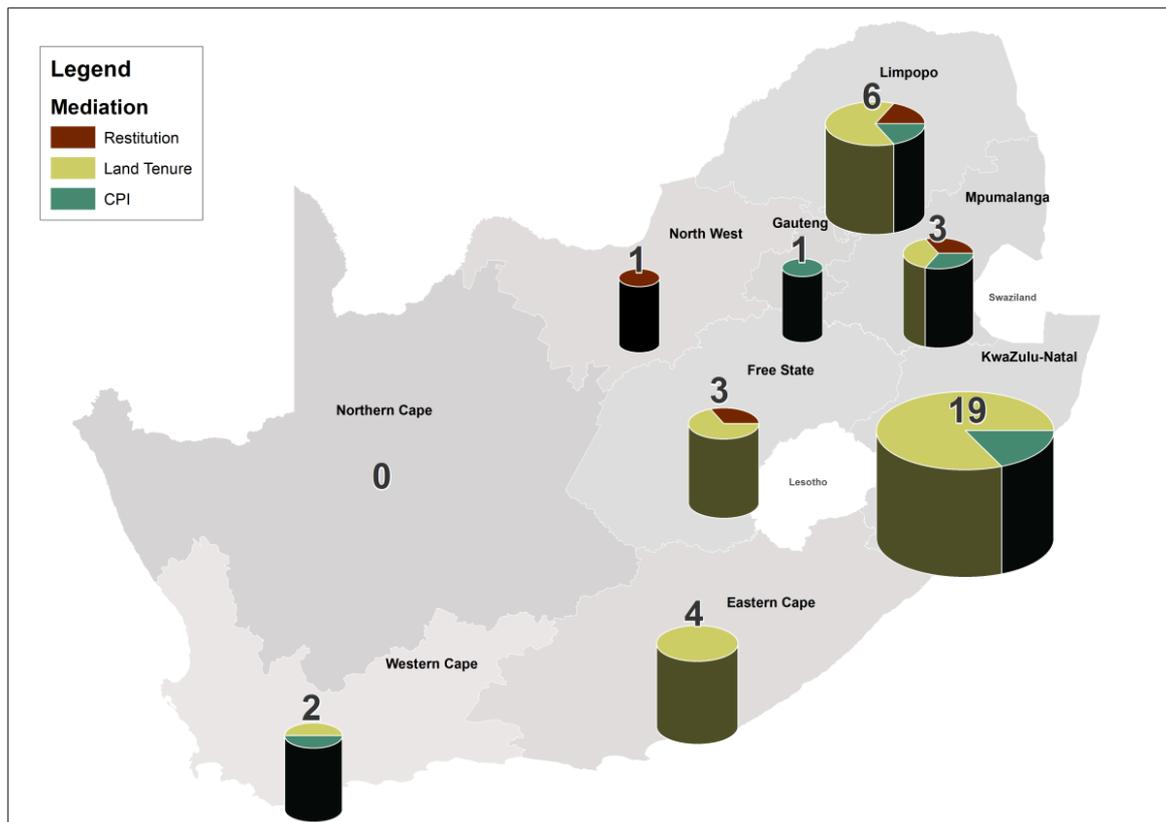


Figure 11: Mediation case distribution - pending matters

### 8.2 Case categories

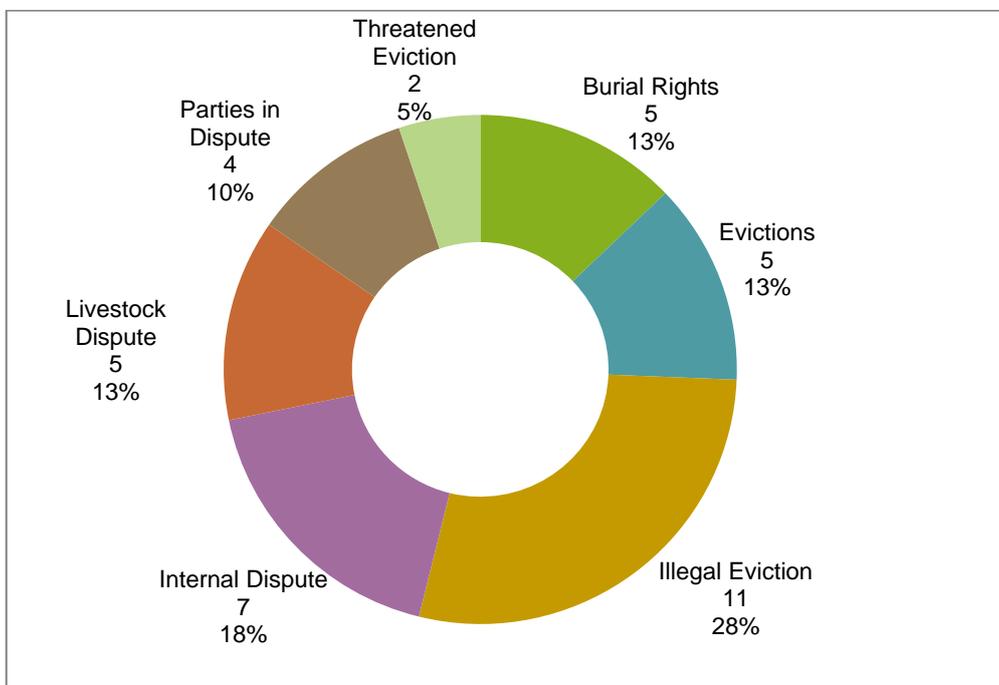


Figure 12: Mediation case categories – pending matters

## 9. Communal Property Institutions

The national distribution of CPI matters is set out below:

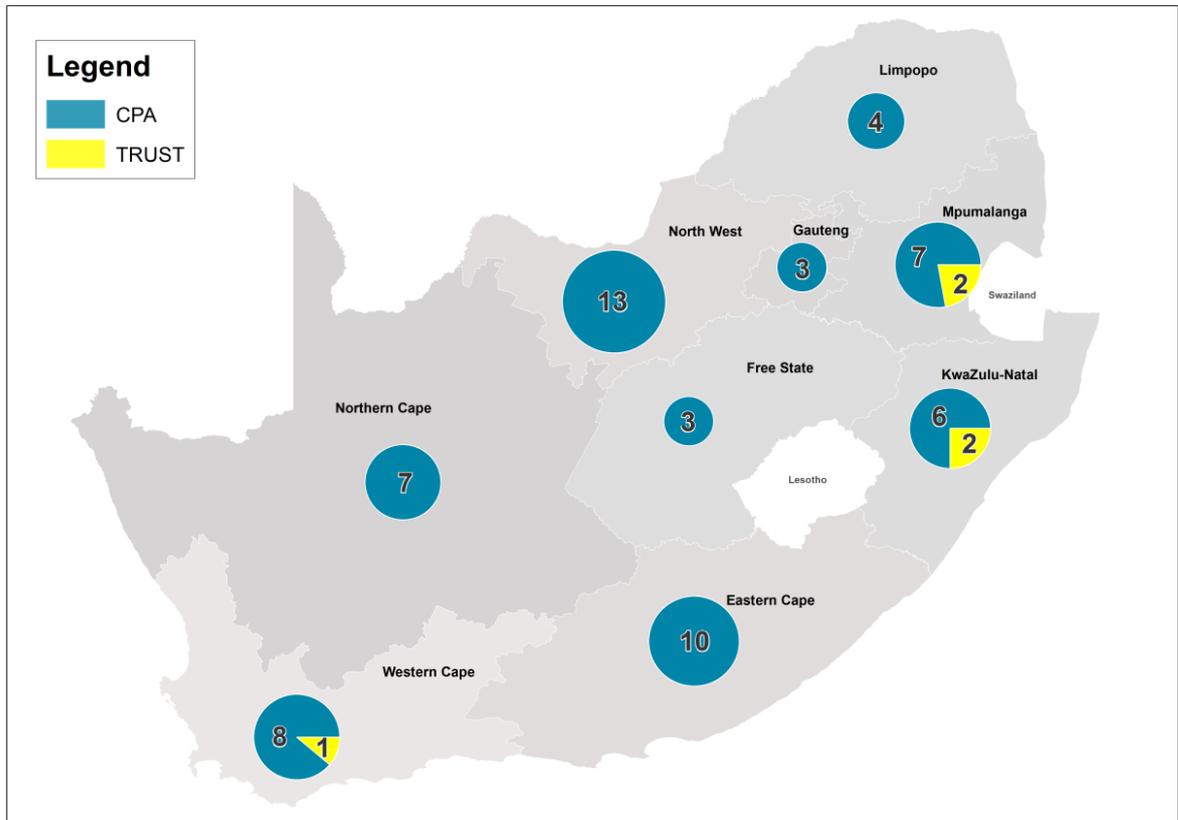


Figure 13: CPI case distribution

### 9.1 CPAs

There are 61 pending CPA matters as at the end of the quarter. 8 matters were closed during the quarter and 9 new CPA matters were referred. The provincial distribution of the 61 pending matters is as follows:

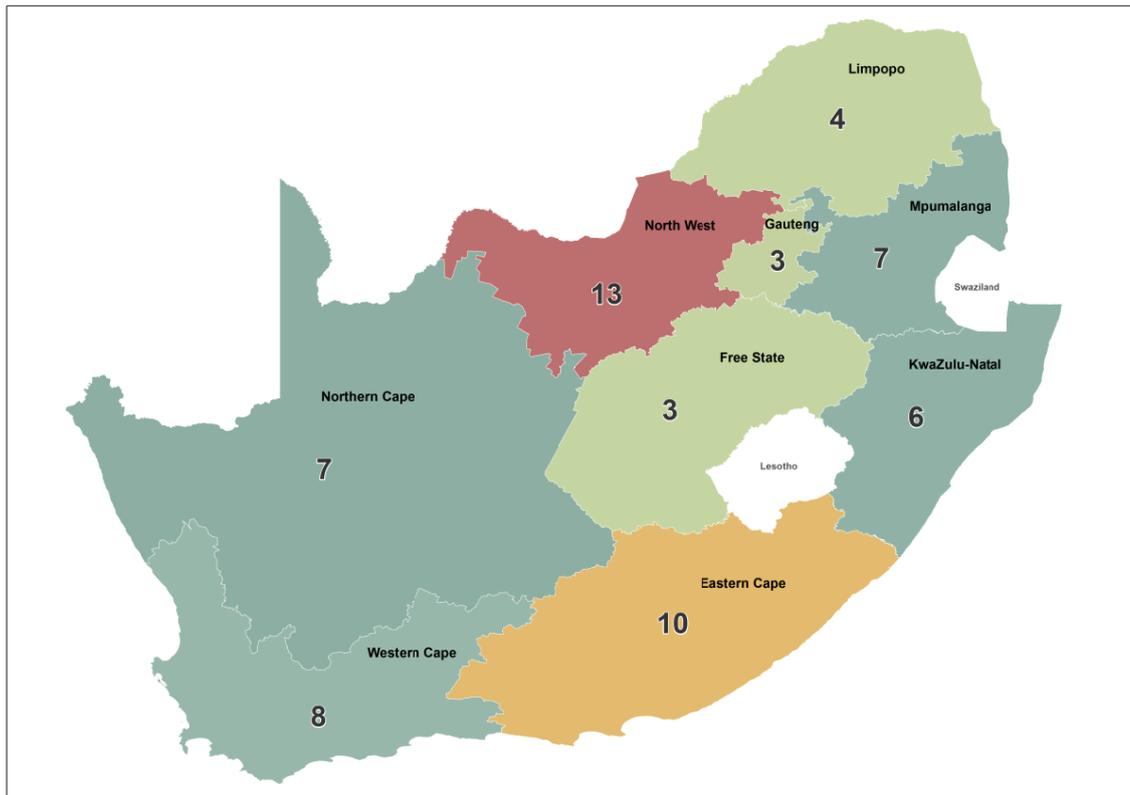


Figure 14: CPA provincial distribution

### 9.1.1 Categories of CPA matters

We have categorised the 61 pending matters in the graph below:

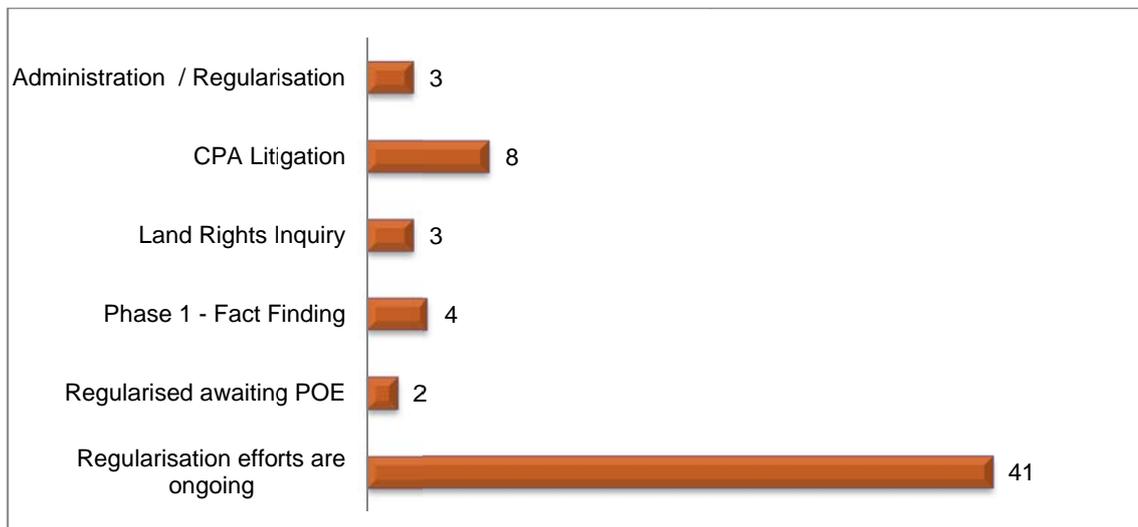


Figure 15: CPA categories

### 9.1.2 Closed matters

The 8 finalised matters are categorised below.

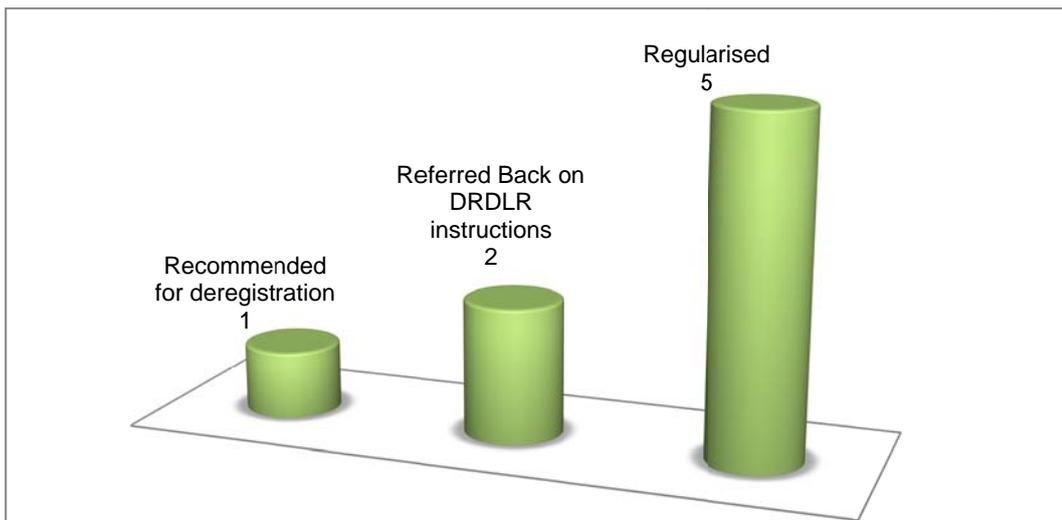


Figure 16: CPA closed matters

### 9.1.3 CPA beneficiaries

Beneficiary data for the CPAs managed by the LRMF was obtained from the DRDLR’s CPA files, DRDLR officials and LRMF panellists but is not available for all CPAs dealt with by the LRMF. In this regard, reliable data is not available for 12 CPAs. Taking this into account, there are **137 044 beneficiaries** in CPA matters as set out below.

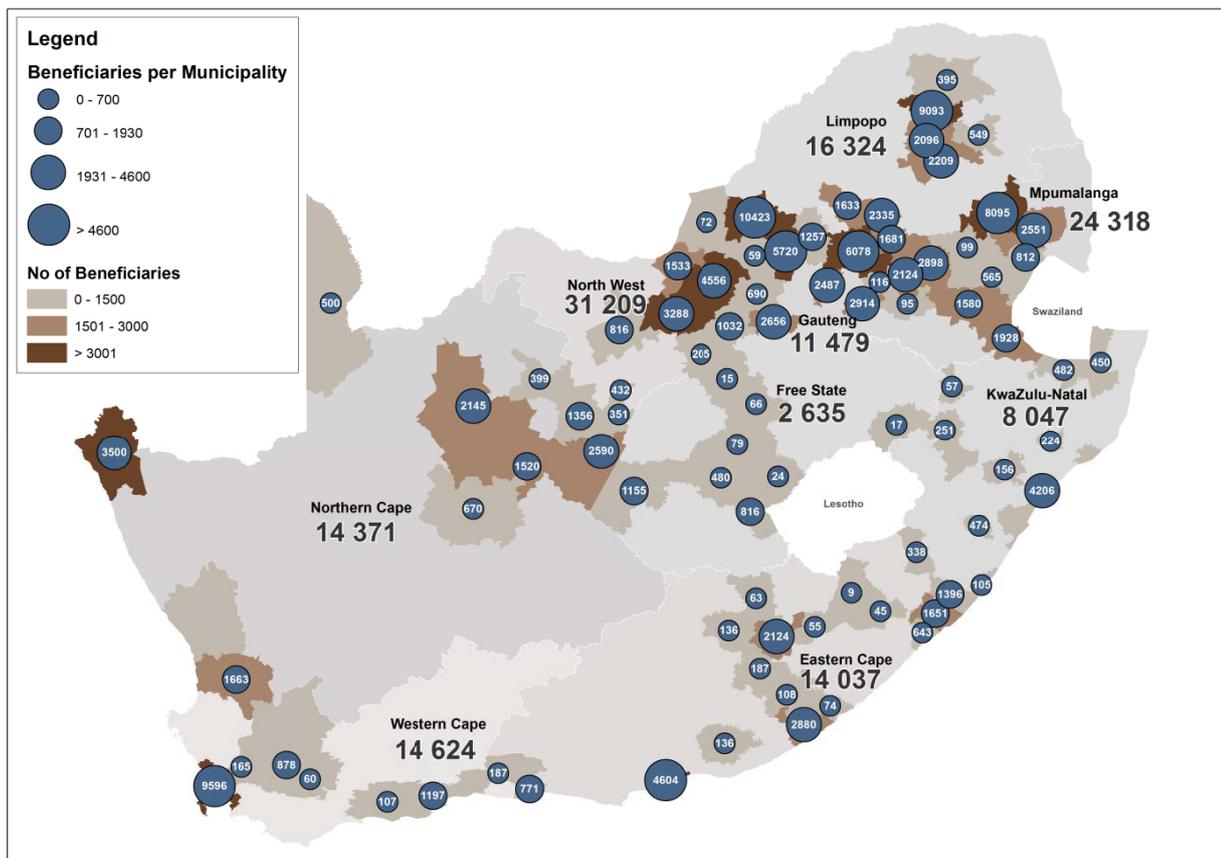


Figure 17: CPA beneficiaries

### 9.1.4 Bi-monthly meeting with DRDLR

The bi-monthly CPI meeting between CTH and the DRDLR took place at the CTH offices in Braamfontein on 5 November 2015. The meeting discussed CPA progress, specific CPA matters, case trends and analysis, and strategic issues related to CPA management, agreement on the closure of provisional CPAs, TRANCAA matter budgets that require DRDLR approval, categories of CPA matters as well as pending matters that needed further instructions.

### 9.1.5 CPA provincial review meetings

CTH convened a series of provincial review meetings during this quarter. The first day of each meeting involved the responsible officials and the purpose thereof was to discuss the status of matters, overall CPA trends, portfolios of evidence, to agree on the further action to be taken on matters and to discuss challenges. The panellists joined the review on the second day to provide an update on their matters and to discuss challenges experienced. The memorandum on the limited mandate was discussed and feedback on the further conduct of matters was provided to panellists. These review meetings provide a useful opportunity for panellists and officials to share experiences and explore new approaches to challenges.

## 9.2 TRUSTS

There are 4 pending Trust matters as at the end of the quarter. 1 matter was reopened in this period, where further instructions were given by the DRDLR. The provincial distribution of the 5 pending matters is as follows:

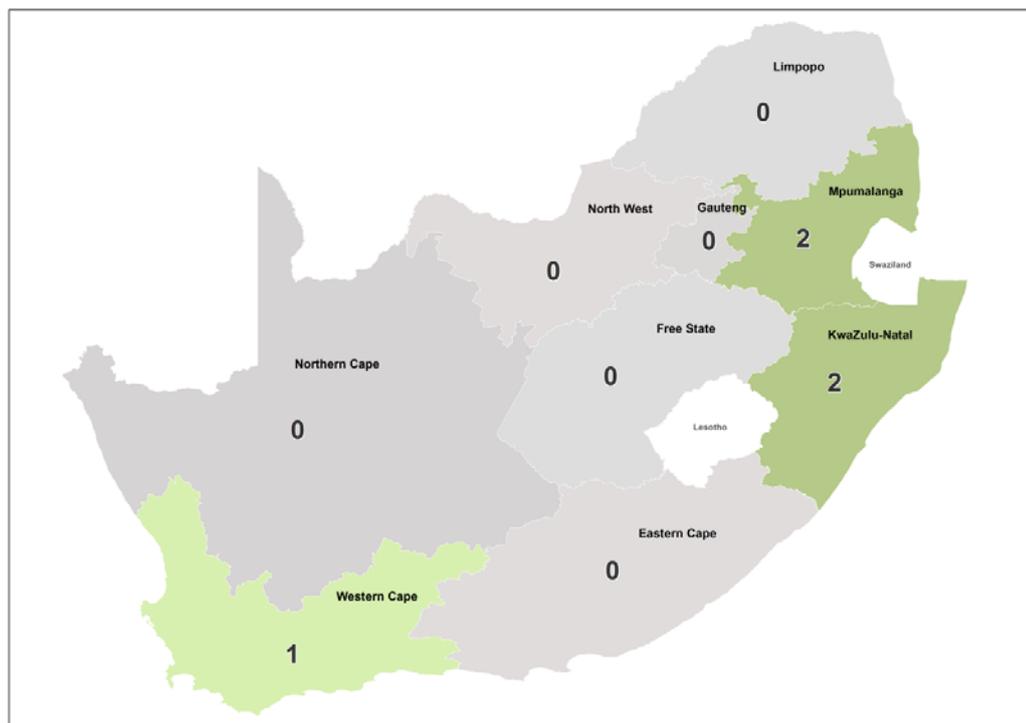


Figure 18: Provincial distribution of Trusts

## 10. RESTITUTION

### 10.1. Restitution referral volume and distribution

There are currently 171 pending restitution matters administered under the LRMF. There were 6 new matters referred to the LRMF during the period October to December 2015 and 5 matters were finalised.

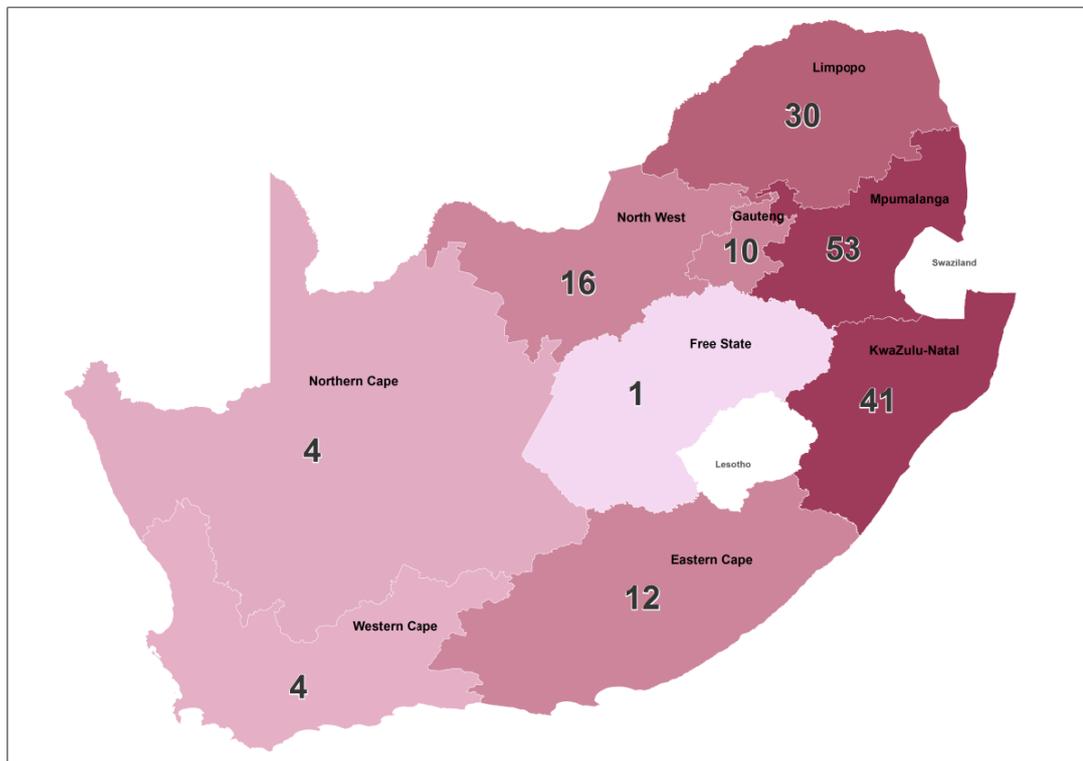


Figure 19: Provincial distribution of pending restitution matters

### 10.2. Case forums

The courts in which LRMF restitution matters are currently located are set out below.

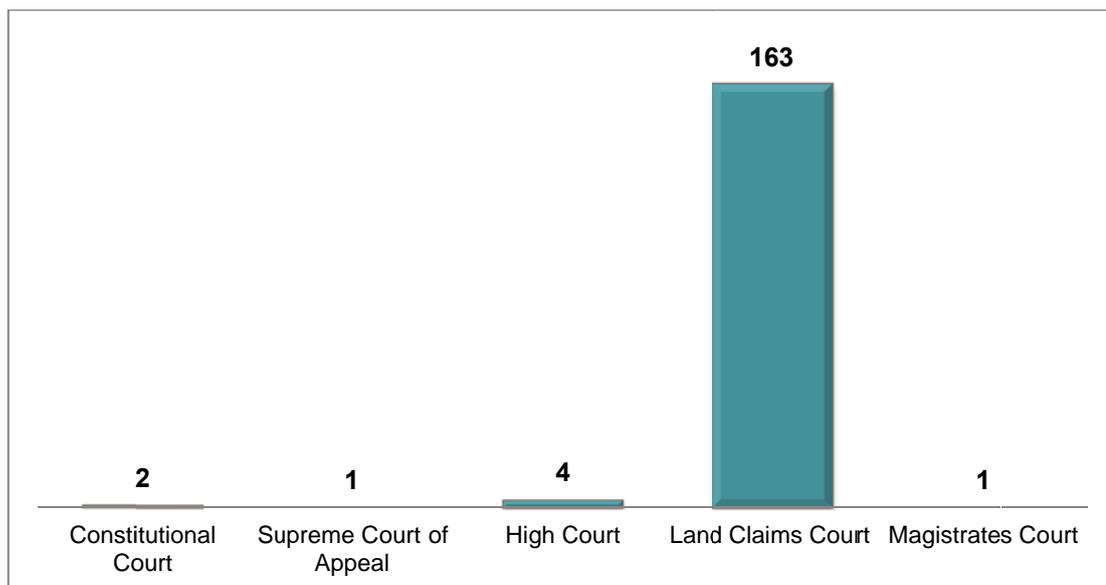


Figure 20: Case forums – restitution matters

### 10.3. Closed Matters

During the last quarter, 5 matters were finalised and are in the process of being closed. The LRMF is in communication with the Department and panellists regarding these files. These matters relate to the following cases:

- **Makhukhuza Land Claim (RES50097)** – The claimed land was successfully transferred to the claimants. The panellist assisted the community with issues regarding the community trust. The LRMF was requested by the Commission to close the file as the matter now involved post restitution issues.
- **Magidela Land Claim (RES50098)** – The LRMF was instructed by the Commission to close this matter because the claim by the community was de-gazetted. The matter has been referred back to the Commission.
- **Nwandlamhari CPA (RES50170)** – The LRMF was instructed to close this matter following a training intervention.
- **Daantjie-Mhola Shongwe Community Claim (RES50125)** - The land claimed by the community was successfully transferred to the trust set up by the community. Certain community members appear to have been left out of the restitution process. A verification process was undertaken and this dispute was resolved in that those members will lodge a new claim. The LRMF was requested by the Commission to close the file.
- **Mgungundlovu Community Claim (RES50184)** – A settlement agreement was reached in that the land was successfully restored to the claimants. In addition, certain payments and other benefits will also accrue to the claimants. As a result the LRMF was requested to close this file.

### 10.4. Quarterly restitution meeting

The fourth quarterly restitution meeting was held on 3 December 2015 at the OR Tambo Premier Hotel in Kempton Park. There were 31 participants including national and provincial officials.

## PROJECT FINANCES

### 11. Legal and mediation panel funds

A statement of income and expenditure with respect to the legal and mediation panel funds for the period December 2012 to December 2015 is set out below:

Income and expenditure items	December 2012 to December 2015
Opening balance	<b>1,140,552</b>
Income	<b>193,523,048</b>
<b>DRDLR fund transfers</b>	189,958,837
<b>Interest received</b>	3,564,211
Expenditure	<b>194,034,147</b>
<b>Expenditure from legal and mediation panel funds</b>	190,596,896
<b>Interest paid to DRDLR</b>	3,437,250
Balance at 31 December 2015	<b>629,454</b>
<b>Fund portion</b>	555,140
<b>Interest portion</b>	74,314

### 12. Monthly breakdown of funds disbursed

A monthly breakdown of funds disbursed over the contract period is provided below. The amount of R683.153 for December 2012 and R457.400 of the January 2013 payment involved the balance of funds from the previous contract. R3.834.543.00 from the January 2013 payment and the balance of the payments to December 2015 involved new contract funds.

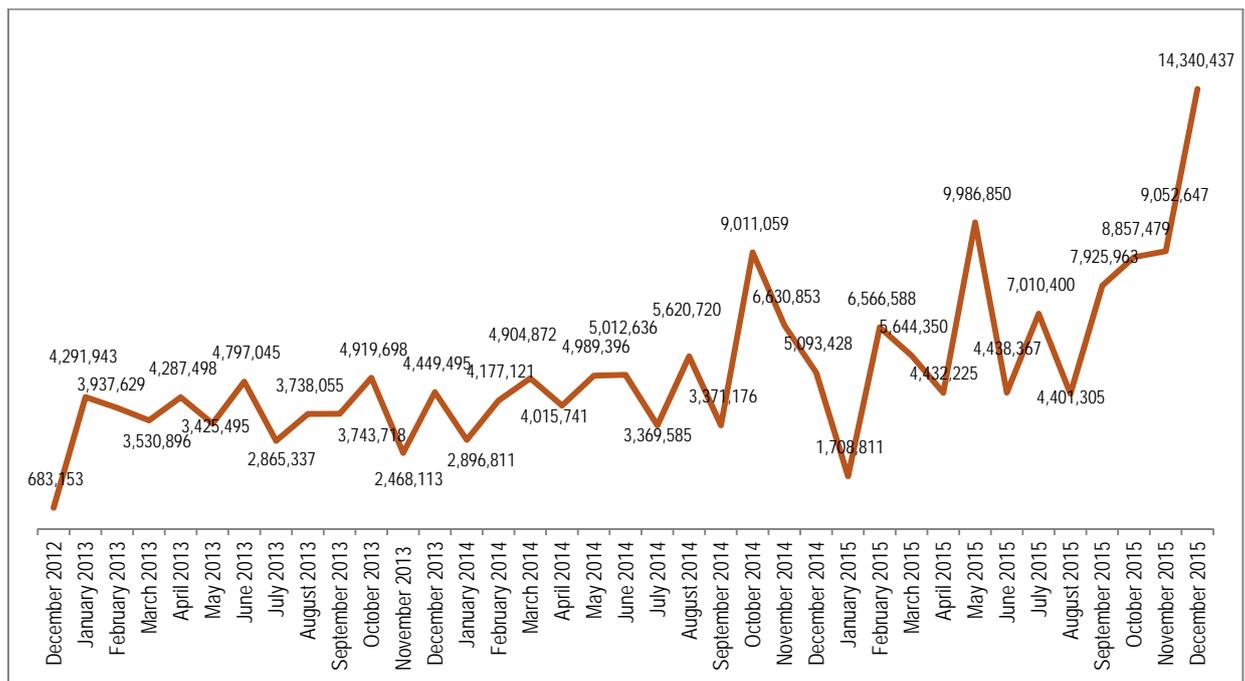


Figure 21: Breakdown of funds disbursed per month

### 13. Financial trends and analysis

Since commencement of the new contract period, 49% of funds were disbursed with respect to land tenure legal services (R93 209 883); 11% (R21 775 537) was disbursed in relation to communal property institutions; and 40% (R75 611 477) in relation to restitution matters.

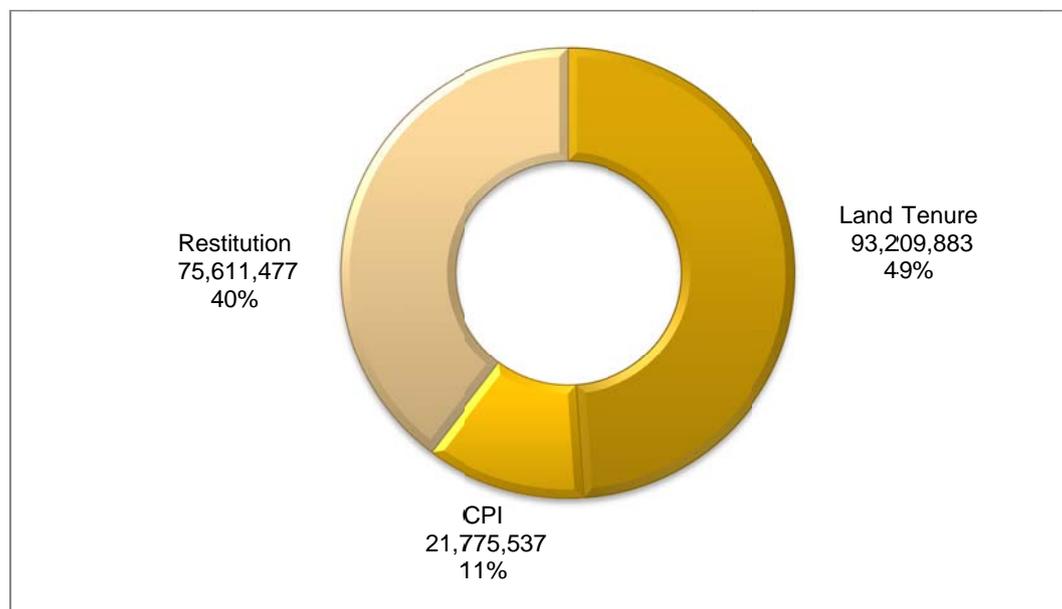


Figure 22: Disbursements per focus area

### 14. LRMF panel fund expenditure projection

The projection contained in the table below is based on the average monthly disbursement of funds from October to December 2015 (the final quarter of the LRMF contract) and on the assumption that no further funds are made available by the DRDLR following expiry of the current contract on 31 December 2015, indicating a projected Fund deficit of –R31, 621,108 as at 31 March 2016.

Date	Land tenure	Mediation	CPI	Restitution	Fund expenditure	Fund balance
<b>Balance as at 31/12/2015</b>	88,596,284	4,613,597	21,775,536	75,611,476	190,596,893	629,453
<b>31/01/2016</b>	5,162,466	145,485	921,990	4,520,242	10,750,187	-10,129,734
<b>29/02/2016</b>	5,162,466	145,485	921,990	4,520,242	10,750,187	-20,870,921
<b>31/03/2016</b>	5,162,466	145,485	921,990	4,520,242	10,750,187	-31,621,108
<b>Total</b>	<b>104,083,682</b>	<b>5,023,152</b>	<b>24,541,506</b>	<b>89,172,202</b>	<b>222,847,454</b>	<b>-31,621,108</b>

### 15. Contingent liability assessment

The contingent liability assessment with respect to pending matters as at 31 December 2015 is set out below:

<b>Contingent Liability Assessment: 31 December 2015</b>	
Land tenure	R68,650,173
CPI matters	R7,029,422
Restitution matters	R44,961,727
<b>Total</b>	<b>R120,641,322</b>