SUMMARY OF SUBMISSIONS TO PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES ON THE LAND COURT BILL; and

RESPONSE BY DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Table 1 reflects general comments and the DoJ&CD's response; and

Table 2 provides a clause by clause summary of the submissions and the DoJ&CD's response.

Table 1:

NAME OF INSTITUTION/INDIVIDUAL COMMENTS/RECOMMENDATIONS	DoJ&CD RESPONSE
Banking Association of South Africa (BASA) (a) The Bill raises questions regarding the financing of land where a land case is in progress before the Court. For instance, when a land case is being heard by the Land Court and at the same time, the bank is approached for finance by a party, who may or may not be aware that a case is in process, on the land that needs to be financed. How will the parties (including the bank) be made aware that the case is currently being heard by the Court so that the finance application can be placed on hold until the Court proceedings have been concluded?	(a) This is not a matter for legislation. The banks should make enquiries around the land in question. The application for finance may also require the applicant to declare if the land is not a subject matter of any litigation.
(b) Banks are currently required to contact the Land Claims Commissioner to determine if there is a claim on a particular parcel of land and if there is a claim, what the status thereof is. We are unclear if banks will be required to do the same going forward on all property transactions, to ensure that we place the finance application on hold, pending the outcome of a Court decision.	(b) The bank can also establish from the Land Claims Commission or a court with jurisdiction to ascertain if the land is not a subject matter of any litigation.
(c) If so, this will delay property transactions and place a burden on the bank to verify this, as there is currently a bottleneck that requires back-and-forth correspondence to determine the status of a claim before the bond can be registered. There is therefore the need for publicly accessible information to be stored in the deeds registry concerning all land claims and for lenders to be able to determine the status of all land claims at the Land Court.	(c) Section 3(1)(w) of the Deeds Registries Act, 1937 (Act No. 47 of 1937) requires the registrar of deeds to record all notices, returns, statements, or orders of court lodged with that registrar in terms of any law. Therefore, it is submitted that rules of the Land Court may make a specific provision that requires the sheriff to file with the registrar of deeds a return of service of any document issued by the Court to commence proceedings in the Court, to enable the registrar to record against the land in question the

	fact that there are court proceedings in relation to that land.
COSATU (a) Parliament is urged to consider further clarifying the jurisdiction and scope of the Court with regards the Extension of Tenure Security Act and evictions from farms of farm workers and their families. (b) The proposed establishment of the Land Court is supported, but there is a concern regarding the government's ability to adequately resource these courts so that they are able to fully fulfil their legal mandate. (c) Workers have painful experience with the under resourcing of Labour Courts and as a consequence, can wait up to 2 years for their cases to be heard and concluded. Government slashed the funding of the CCMA by R300 million over the current Medium-Term Expenditure Framework, resulting in it having to reduce services, retrench Commissioners and cases taking 3 months and no longer 1 month to be heard.	(a) It is not clear what should be clarified further on the Bill, but the Land Court will have exclusive jurisdiction in respect of ESTA and the Labour Tenant Act. (b) The necessary resources will be provided for the established Court. (c) Sufficient number of judges will be appointed to speedily deal with cases that come to the Court.
Land & Accountability Research Centre (LARC) (a) It is submitted that for people who have insecure tenure, particularly in South Africa's former homelands, no appropriate legislative framework properly exists, that adequately gives effect to their section 25(6) rights, for the intended Land Court to give effect to. There is currently a dearth of substantive legislation that adequately protects these rights to land, meaning that the Court will lack appropriate tools to legitimately protect and enforce these rights. (b) The Interim Protection of Informal Land Rights Act (IPILRA) is the only law that currently exists which is an interim law that provides important recognition for previously unprotected rights to land held in the former homelands. However, IPILRA provides no substantive rights or relief, beyond recognizing the existence of these rights and providing limited consent requirements for their dispossession, that are required in terms of section 25(6). This lack of substantive protection is exacerbated by IPILRA not being given effect to and not complied with by both the state and private individuals. People who hold rights in terms of IPILRA have been waiting for decades for a law that appropriately protects their rights.	(a) The Court will have exclusive jurisdiction on legislation contained in the schedule, and with sufficient number of the judges to deal with them the rights of people under those pieces of legislation will be given effect to. (b) The Bill covers matters what must be deal with at Court and not the substantive right contemplated in IPILRA. A law that provides permanent protection of land rights is a matter that falls within the Department of Agriculture, Land Reform and Rural Development and not DoJ.

(c) A substantive legislative framework to give effect to tenure security is needed, otherwise an institution like the Land Court will find itself powerless to effect the change it was created to achieve.	(c) The Land Court will give effect to substantive rights that are available in terms of the applicable substantive legislation. Substantive rights cannot be contained in the Land Court Bill.
(d) There is an alarming scarcity of judges and lawyers with appropriate training and experience in the field of land rights matters. This will result in regressive judgments that fail to give effect to constitutional rights, and in cases brought before the court being litigated in such a manner as to result in jurisprudence that fails to give effect to constitutional rights. The problems faced with the pool of lawyers and judges available comes from the very nature of legal training provided for in law schools and beyond.	(d) Judges who will be appointed will be required to have expertise in the field of land rights matters and such expertise will enable them to hand down progressive judgments. Lawyers will have to up skill themselves through training, so as to be able to properly deal with on land matters.
(e) Clear mechanisms are needed to ensure that existing backlogs are not simply being moved over to a new court, making this Court ineffective.	(e) Only matters that are pending in the Land Claims Court will be moved over to the Land Court, but matters pending in other courts must, in terms of clause 51(1) of the Bill, be concluded in those courts as if the Land Court Bill has not been passed.
(f) The limitations of available state money and qualified representation must be dealt with.	(f) The comment is noted, and financial resources will be made available. Lawyers must up skill themselves on the field of land rights.
(g) Many people who live in the former homelands hold their rights to land in terms of customary law. The Bill does not explicitly contemplate the role of, and mechanisms for, the Land Court in the applications and development of customary law. It is important for customary law to be appropriately and specifically provided for, and recognised as a source of law that the Land Court must have appropriate respect for and mechanisms to properly ascertain, apply and develop as is required by the Constitution.	(g) The power of the courts to develop customary law is derived from section 39(2) of the Constitution, and therefore it is not necessary to specifically incorporate that provision in the Bill. The Land Court has the same powers as the High Court to develop customary law to be consistent with the Bill of Rights.
Corruption Watch (a) The Bill does not effectively place mechanisms that reduce the scope for corruption, therefore significantly impacting the effective determination of disputes regarding land in the country.	(a) It is not clear how it is proposed the scope of corruption could be reduced in the Bill. Any corruption is a matter of criminal law which could not be incorporated in the Bill.
(b) The Bill fails to clearly illustrate the manner in which the existing systemic hurdles that make it difficult for land claimants to obtain land	(b) The biggest hurdle in land restitution matters is the lack of permanency of the Land Claims Court and lack of permanent judges. The Bill aims to

restitution will be dealt with in adjudication processes and the implementation of the Bill.	remedy these hurdles by establishing a permanent court with sufficient capacity of judges to deal with all land related matters.
(c) There is concern that the Bill affords the Land Court and Land Court of Appeal greater jurisdiction than that presently enjoyed by the Land Claims Court, without any clarity regarding the change in processes and the monitoring required to ensure transparency to those most affected.	(c) The Land Court is being established to ultimately deal with all land related matters, hence it will replace the Land Claims Court which has limited jurisdiction. The rules would provide for case-flow management as it is the case in the High Court.
(d) It is imperative that the Bill puts in place transparency and accountability mechanisms to ensure oversight on the existing unresolved matters and the transition period. The corruption risks during this period are very high due to the existing weak administrative institutions, complex nature of the land matters and lack of information sharing to those most vulnerable such as members of rural communities with poor security of tenure and women.	(d) The case-flow management rules would promote oversight on all matters from when the Bill is enacted. As a transitional measure, cases that are in the Land Claims Court will be continued and concluded in the Land Court and land related matters in other courts will have to be concluded in those courts. The issue of corruption is not clearly articulated on the comment, but it is a matter for investigation by law enforcement authorities and adjudication in the criminal courts.
FW de Klerk Foundation (a) The Land Claims Court, which is mandated to adjudicate all contested land restitution claims, is unable to adjudicate such claims unless they are referred to it. The slow rate of processing and of referring land claims to the Court is therefore impeding the expeditious adjudication thereof.	(a) The Bill is intended to address the challenges that are experienced with the current dispensation of the Land Claims Court.
(b) It is submitted that it might perhaps be more practical to incorporate the Bill's proposals in a Bill amending the Restitution of Land Rights Act in terms of which the Land Claims Court is founded, rather than a Bill which will effectively remove and replace the Land Claims Court as a whole and the progress it has made.	(b) The Land Claims Court was established by the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) (Restitution Act) which was meant to deal with restitution claims, although it was mandated to deal with matters arising from the Labour Tenants Act and ESTA. That court was established as a temporary measure to deal with restitution matters, hence it was not established as a permanent court, with permanent judges. However, the Land Court is established as a permanent court under its own legislation to deal with all land related matters, rather that dealing only with restitution matters as does the Land Claims Court under the Restitution Act.
(c) If the institutional infrastructure created for the Land Claims Court could not make safeguard and promote significant progress with land claims and land rights, what guarantees are there that this new overhauled system will?	(c) The amendment of the Restitution Act as proposed was considered as an option. The preferred option (which was eventually approved) was to establish the Land Court and the Land Court of Appeal under a stand-alone legislation that will also give the court jurisdiction to deal with all

	land related legislation.
Agri SA (a) Agri SA has a strong stance on the role of the courts in dealing with land and compensation related disputes. A landowner whose land is expropriated should always have recourse to the courts. Agri SA stands firm on the principle of full access to the courts to adjudicate on the merits of expropriation, as well as the amount of compensation should there be any dispute.	(a) In terms of section 34 of the Constitution everyone has right to approach the courts for resolution of any dispute that they may have. The Expropriation Act, 1975 (Act No. 63 of 1975) and the Expropriation Bill currently before Parliament do have provisions that provide for recourse to courts.
(b) The court should also finally determine any disputes on the validity of restitution and labour tenant claims and any ESTA disputes, where mediation attempts have failed.	(b) The Land Court Bill grants the Land Court exclusive jurisdiction to adjudicate on restitution and labour tenants' matters.
(c) Given the fact that there already is a Land Claims Court which has jurisdiction over restitution claims, labour tenant matters and matters arising from the ESTA, creating a new court will be an expensive exercise.	(c) It would equally be expensive to beef up the Land Claims Court to resolve the challenges it currently experiences. However, it was approved that the Land Claims Court be replaced by the Land Court which will deal not only with restitution claims but all land related matters and be governed by its own legislation.
(d) It is important to be clear about the failings of the Land Claims Court, and the reasons for that. It needs to be recognised that the slow pace of land reform is not caused by the Land Claims Court, but rather by poor implementation, inadequate budgets and corruption of land reform programmes.	(d) The reasons for the challenges experienced by the Land Claims Court were attributed to the initial stance that the court will have a short life span, hence it was not made permanent. It turned out that the restitution was in fact a complex and protracted process and hence the resolution to resolve the current challenges through the Bill.
(f) It is submitted that the preamble should not create the impression that a Land Court itself will ensure speedy and sustainable land reform. Various reports, such as the High-Level Panel Report on Key Legislation, have also pinpointed the problems causing the slow pace of land reform and these have little to do with the courts.	(f) The Land Court is established to remove the challenges experienced by the Land Claims Court through capacitating the judicial officers of the Land Court. The Land Court will accelerate the process of land reform in relation to matters that are before the court, created by the backlogs which were caused by the lack of sufficient judges to deal with many land matters that are before the Land Claims Court.
Agbiz (a) Agbiz have a substantial interest in the success of the Land Court as it forms an integral part of the institutional framework required to drive land reform in South Africa.	(a) – (c) Noted.

(b) The Bill is supported as it is vital to capacitate the judiciary with sufficient specialist judges to adjudicate on land matters. Access to justice is a vital component of land reform. (c) Many land restitution and labour tenant claims cannot move forward unless disputes are settled in a specialist court. Matters which the Land Court will adjudicate on are specialist areas of the law that require a purposive interpretation of the Constitution.	
LAMOSA (a) The prescribed SEIAS report that comprehensively motivates for the Bill from a human rights perspective and goes beyond a superficial costing exercise should be prepared. (b) A concern is raised about the failure of the Department to properly motivate for progressively increasing the jurisdiction of the Land Court over 9 statutes to 33 statutes. (c) A proposal is made for the insertion of an expression in the preamble to read: "AND SINCE our Courts have recognised customary property rights, customary land and resource governance, and customary rules of evidence.".	(a) A SEIAS report was prepared and approved by the Presidency. A final SEIAS certificate is attached. (b) At least 33 Acts of Parliament dealing with land matters have been identified. Only 9 Acts are listed in the schedule for immediate placement under the jurisdiction of the Land Court once in becomes operational. The motivation for this is stated in paragraph 2.11 of the Memorandum on the Objects of the Bill as being to not inundate the Land Court with many land related Acts of Parliament, especially when it is so newly established. However, an incremental approach is being adopted in terms of which other pieces of legislation will be promoted by the respective Departments for placement under the jurisdiction or exclusive jurisdiction of the Land Court. (c) The first paragraph of the preamble makes reference to section 25 of the Constitution which obliges the State to take reasonable legislative and other measures to foster conditions which enable citizens to gain access to land on an equitable basis. This recognizes the need to ensure access to land in general, and will include customary property rights. Also the second paragraph makes reference to section 7 of the Constitution which obliges the State to respect, protect, promote and fulfil the rights in the Bill of Rights, and this includes protection of the right to customary land.
Legal Academics (a) Do not believe that the Court will necessarily accelerate the land reform process.	(a) The Land Claims Court was not intended to be a permanent court. Due, among others, to the pace of land reform it was recommended that that court should be replaced with a permanent court.

(b) The delayed process of land reform is not the fault of the Land Claims Court, but rather the failure of supporting Government structures to fulfil their duties. (c) The proposed Bill could accelerate some aspects of land reform if it is granted extended jurisdiction. The pre-amble only refers to "land reform in its entirety" and re-distribution and not tenure security. The legislation identified in its jurisdiction does not encompass all the legislation relevant to redistribution, for example, the State Land Disposal Act and the Land Titles Adjustment Act.	(b) Noted. (c) It is envisioned that the Court will eventually have a very wide jurisdiction to deal with "land reform in its entirety". However, the concern is that extending the Court's jurisdiction while it is being created may initially overburden the Court.
Natural Justice Lawyers Consideration should be given as to how the two institutions, namely, the Land Claims Commission and the Court, should collaborate more closely and effectively. Community members have frequently complained about the restitution process, particularly the lack feedback and engagement following the submission of their claims.	This is something that will have to be dealt with administratively. Care must be taken not to allow for a situation where the line between the judiciary and the executive becomes blurred as a result of legislative obligations.
Rand Water Recommends inclusion of a provision that excludes National Key Points infrastructure from restitution.	This is a matter which should be dealt with in the legislation dealing with restitution.
Western Cape Government (a) Titles of headings should be in sentence case, e.g. Part 4 of Chapter 4. (b) Inconsistent wording: some headings refer to Court (cl 43) and others to Land Court (cl 45) (c) It is not entirely clear whether the Land Court is a new court, or the Land Claims Court in an amended form. Clearly indicate in the Bill whether the current Land Claims Court continues to operate, but in an amended form in terms of the Bill, if enacted. If not, add transitional arrangements e.g. relating to the current officers of the Land Claims Court, current rules, etc. (d) It is recommended that the scope of the Land Court be explicitly	(a) The format of the Superior Courts Act was followed. (b) Where the word "Court" is used it refers to the "Land Court" the wording in connection with the "Land Court of Appeal" is used consistently in the Bill. (c) The Land Court is intended to be an entirely new court. In the schedule to the Bill the proposed amendment of the LRLA will, among others, have the effect that the Land Claims Court will cease to exist after the commencement of the Bill. (d) It is envisioned that the Court will eventually have a very wide

extended to include the adjudication of disputes over property rights arising from the historical backlog in title transfer in subsidised properties triggered by administrative initiatives to resolve the backlog.	jurisdiction to deal with "land reform in its entirety". However, the concern is that extending the Court's jurisdiction while it is being created may initially overburden the Court.

Table 2:

NAME OF INSTITUTION/INDIVIDUAL COMMENTS/RECOMMENDATIONS	DoJ&CD RESPONSE
Clause 1: Definitions	
Banking Association of South Africa (BASA) Reference is made throughout the Bill to 'interested and affected parties' but neither is defined. It is therefore recommended that these terms be defined to avoid any misinterpretation or out of context use.	These terms bear their ordinary meaning and need not be defined. They are used in various other legislation without being defined.
Council for the Advancement of South African Constitution (CASAC) (a) The definition of "claim" includes "any application lodged with the registrar of the Court for the purpose of claiming restitution of a right in land". There is no corresponding definition of what "a right in land" is. It would seem that "a right in land" would cover any right in land, whether originating in land reform legislation, other legislation, customary law or the common law. (b) If this is so intended by the Bill, it would constitute an ouster of the High Court's ordinary jurisdiction over property or land disputes that are not under the jurisdiction of the current Land Claims Court. If that is the intention, it should be properly explained and motivated.	(a) There is no need to define the expression "a right in land" as it carries its ordinary meaning. (b) The jurisdiction of the High Court would not be ousted, unless the Act in question gives the Land Court exclusive jurisdiction.
Land Claims Court (b) The definition of "rules" should read: "means applicable rules of the Land Court.".	(b) The submission is not supported as clause 41 of the Bill requires the making of rules for the Land Court of Appeal.
Agri SA (a) It is submitted that the definition of Act should not include "regulations".	(a) The submission is not supported as it is intended that where reference is made to the Act, that should be read to include the regulations, depending on the context.

(b) The definition of "rules" should be amended to mean rules made for the Court by the Judge President and/or the Rules Board.	(b) The submission is not supported as the intention to have only the Rules Board making the rules.
Agbiz (a) It is submitted that the definition of a "dispute" should not include an "alleged dispute". The substantive provisions of the Act require that formal court procedure as set out in chapter 4 must be followed when instituting action in the Land Court. (b) It is submitted that the challenge with an "alleged dispute" is that it may open the door for the court to adjudicate on matters which has not followed the correct procedures. In other words, a dispute will exist even where the formal processes were not followed as long as there are allegations. This undermines procedural fairness and may prejudice litigants, and it is therefore proposed that the definition be amended to remove the words "*…, and includes an alleged dispute.*".	(a) The proposal is not supported as that would exclude an allegation which would arguably not be classified as a dispute in a certain context. The Labour Relations Act also defines "dispute" in the same manner. (b) To exclude an "alleged dispute" may result in an unintended consequence where a legitimate matter is excluded from adjudication by the Court on the basis that is as an alleged dispute.
Rand Water Recommends insertion of definition of— (b) "land" in order to assist the Court and claimants as to the jurisdiction of the Court; (c) "right in land" in order to ensure that the Court is able to determine which disputes may be adjudicated. (d) "public land" to provide clarity on which land may be claimed.	 (b) the jurisdiction of the Court is determined in other pieces of legislation where it will be clarified that "court" means the Land Court. (c) see answer under paragraph (b). (d) legislation dealing with land claims deal with the eventuality when there is a claim against public land.
Legal Academics (a) "this Act" should not include "regulations" – Acts and regulations are legislation. (b) There is not clear definition of "land reform" including such a definition will present a clear indication of the Court's jurisdiction.	(a) it is essential to refer to "regulations" in order to clarify the term "Act" wherever it appears in the provisions of the Bill. (b) The Court's jurisdiction will be determined by separate pieces of legislation. It is therefore not necessary to define "land reform"
Clause 2: Purpose and objects of Act	
AfriForum The new ADR structure to be created will increase legal costs and efforts to the parties. Mediation and arbitration have proven to be unsuccessful in a land rights setting.	Not all cases are resolved at ADR stage. Some cases have been resolved at this stage and thereby reducing the costs of going to court.

Agri SA It is submitted that clause 2(1) is misleading and should be deleted or amended, as a court cannot enhance and promote access to land. This legislation should focus on the establishment, powers and functions of the court, which is to adjudicate land disputes in an equitable manner (Legal Academics).	The proposal is not supported as access to land is intended to be enhanced and promoted through the Land Court. By being a dedicated permanent Court, the Court will adjudicate and resolve disputes and thereby contributing towards the ideal or goal of access to land.
Socio-Economic Rights Institute (a) The Bill places more emphasis on contested land claims and does not refer to eviction proceedings under the PIE Act and ESTA. To address this the Bill could specifically outlaw evictions that lead to homelessness. (b) Clause 28(3) could be amended by referring, among others, to participation of local authorities in eviction proceedings, the process of relocation where an eviction order is granted and the need for alternative accommodation to be consistent with human dignity.	(a) The Bill which is aimed at establishing the Land Court is not the ideal vehicle to outlaw evictions which is a matter that is dealt with in another separate piece of legislation. (b) The Court's powers are to be determined in terms of legislation dealing with evictions.
Clause 3: Establishment	
AfriForum The Land Court should not be a court of equity, and for legal certainty it should only be a court of law (Land Claims Court, Agri SA).	Land issue is a matter that requires equity considerations in some instances, as is the case with section 33*(c)* of the Restitution of Act which requires equity to be a factor to be taken into account by a court when making a decision. Therefore, the court should not be confined to being a court of law, but must follow equitable considerations where necessary.
CASAC (a) Clause 3(2)*(a)* designates the Land Court as "a High Court" and that it possesses the powers equal to those of "a Division of the High Court of South Africa". It is submitted that this is a confusion in concepts and terms that must be corrected. The Land Court should be designated as a "superior court" as defined in the Superior Courts Act, 2013.	(a) The provision is not confusing and the Labour Relations Act also has similar provision.
Agri SA It is submitted that the proposed Land Court is not a High Court. It is doubtful whether national legislation can bestow "inherent powers" on it.	The words "High Court" will be replaced by the words "Superior Court". The Land Court has a status similar to that of a High Court as contemplated in section 166(e) of the Constitution, and has inherent powers as a High Court as contemplated in section 173 of the Constitution.

Legal Resources Centre (a) Subclause (1) refers to the Court as a court of "law and equity" which formulation creates the impression that "law" is something opposed to "equity". Section 39 of the Constitution provides that legislation must be interpreted in line with the values of the Constitution. (b) It is recommended that reference to "equity" be removed and rather be replaced with the Court is intended to enhance the courts' ability to heal past injustices.	(a) The interpretation of section 39 of the Constitution is correct, but that does not preclude the Legislature to emphasise the intended character of the Court. (b) The concern with the phrase is that if the Court's jurisdiction is extended in terms of other legislation then the phrase might soon become outdated.
Western Cape Government There is no cross-reference to the Superior Courts Act. Add a cross-reference(s) to the Superior Courts Act.	It is not necessary to refer to the Superior Courts Act in this provision because section 166 of the Constitution mandates the establishment of the Court in terms of an Act of Parliament.
Clause 4: Composition of Court	
Legal Academics Clause 4(1)(c) presumably refers to the Judge President (Natural Justice Lawyers).	The term "President" is defined in clause 1 as the "President of the Republic".
Natural Justice Lawyers The phrase "as many other judges as may be" is not supported because it is too broad. In the case of the Land Claims Court the lack of a specific minimum number of judges that court went from having five judges to only having acting judges.	It should be kept in mind that the Court's jurisdiction will be extended in future with a concomitant increase in the workload of the Court. To provide a minimum threshold of the number of judges will serve no useful purpose.
Clause 6: Seat of Court	
AfriForum The court dealing with land-related matters should rather be situated Pretoria where all relevant Ministers' offices are also located.	The Bill follows the seat of the Land Claims Court as it currently stands. The seat of the Court is not dependent on the location of Ministers' offices.
Land Claims Court It is submitted that it is not clear why this section is required or precisely what it means. It is a matter that is in any event attended to by a presiding judge or the court management in any court, and therefore the section should be deleted.	The clause is self-explanatory and necessary. The Judge President is empowered to determine that a matter may be heard elsewhere than at the seat of the Court.

Agri SA It is unclear what is intended by clause 6(2) regarding the reference to "may sit in many different courts". This sub-clause should be deleted, as clause 6(1) already provides for sittings of the Court at venues elsewhere than at the seat of the Court. If the Court sits at a venue elsewhere than at the seat of the Court, it is not a separate court. It remains the same Court (Legal Academics, Socio-Economic Rights Institute, Western Cape Government).	Clause 6(2) permits the Land Court to hold its sittings in separate courts all at the same time (see section 33 of the Superior Courts Act), and is different from clause 6(1) which permits a matter to be held elsewhere than at the seat of the Court.
National House of Traditional Leaders It is recommended that the word "may" be replaced by "must", to compel the court to hold its sitting for the hearing of any matter at a place elsewhere than at the seat of the court.	The submission is not supported as that would compel the Court to hold its sitting elsewhere even if it would be expedient to hold the sitting at the seat of the Court.
Legal Resources Centre Supports the clause and suggests that the Court sits as closely as possible where land disputes arise, the majority of which in rural and farm areas (Natural Justice Lawyers).	Noted.
Socio-Economic Rights Institute It is recommended that the Court be established as a Court of Appeal in respect of matters that are adjudicated in the High Courts and Magistrates Courts.	The aim with the Bill is to get the Court established and to systematically increase the Court's jurisdiction. Creating the proposed system would require the amendment of other principal Acts which may be a time consuming process.
Clause 7: Jurisdiction	
Land Claims Court (a) It is proposed that, for section 7(1), the exclusivity of the jurisdiction of the Court should be in the Acts dealing with land themselves and not the Land Court Bill (Agri SA).	(a) The intention of the Bill is to specify Acts which should fall under the exclusive jurisdiction of the Land Court immediately upon its establishment. Due to the incremental approach adopted for the Bill, other pieces of legislation may in due course grant the Land Court exclusive jurisdiction (in those Acts) if so proposed.
(b) It is submitted that the list of laws in respect of which the Land Court will have jurisdiction is incomplete (Legal Academics, LAMOSA).	(b) The Bill adopts an incremental approach in terms of which other Acts may in due course be placed under the jurisdiction of the Land Court. The Bill avoids the inclusion of all land related legislation under the exclusive jurisdiction of the Court especially when it is so newly established with

	extensive jurisdiction, as the Court may be inundated unnecessarily.
(c) It is suggested a simpler formulation that section 7(2) should merely state that "the Land Court shall have jurisdiction throughout the Republic of South Africa".	(c) The intention is the provision is to say that the Land Court exercises jurisdiction over the area where each of the current Divisions of the High Court has jurisdiction. That is, if a certain Division of the High Court has jurisdiction over a certain area, the Land Court will have jurisdiction over that area, but only on land related matters.
(d) It is submitted that section 7(3)*(a)* and *(b)* are not necessary, and it is moreover unclear when the circumstances contemplated in these paragraphs would arise.	(d) These provisions are necessary to enable the Minister to establish, increase or decrease areas of jurisdiction of the Court.
(e) It is submitted that section 7(3)*(c)* and *(d)* are unclear. A provision allowing the establishment of satellite seats of the Court with staff and judges allocated to a satellite seat might be advisable. If this was the intention behind the two subsections, they should be reworded.	(e) These provisions are clear.
Agri SA (a) All cases previously adjudicated by the Land Claims Court and the Magistrates' Court under ESTA, and all cases adjudicated by the High Court and the Magistrates' Court under PIE, will now fall within the exclusive jurisdiction of the Land Court. It is submitted that this will result in a substantial increase of its case load. Restitution cases, it is estimated, will not be more than about 20% of the total number of cases, but most of them are complex and their hearings tend to be protracted.	(a) The exclusivity of the Land Court jurisdiction will increase the workload of the Court; hence the Court will be capacitated sufficiently. Also the Minister may in terms of clause 8(5) appoint acting judges to manage the workload of the Court.
(b) It would be good practice to consolidate the general powers and administration of the Court into a single statute.	(b) Noted. This is a matter that require an extensive research and engagements that may be conducted by the SA Law Reform Commission.
(c) It is not clear what is meant by "each Court" in clause 7(3). If it is the intention to establish separate divisions or satellite seats of the Land Court, each with its own area of jurisdiction, judges and administrative staff, it should be clearly stated. Particulars should be given on how each division or satellite seat will operate.	(c) The intention is to establish a Land Court which may hold its sitting elsewhere other than at the main seat, and the Court establish elsewhere should have the area of jurisdiction that it serves. No satellite courts are intended.
Legal Academics (a) Express the concern that the Court does not have the power to refer matters to NPA.	(a) The Department is not opposed to the proposal but such a provision should be carefully drafted so as to not encroach on the NPA discretion to

	institute prosecutions.
(b) Clause 7(3)(a) – it is not clear what is meant with "each court" (Western Cape Government).	(b) This clause is aimed at promoting access to justice defining the area of jurisdiction of those places where the Court may sit.
(c) Clause 7(3)(c) appears very similar to clause 6(1) – it is not clear what the difference is.	(c) Clause 6(1) empowers the JP to decide where the Court may hold sittings. However, such place must be formally proclaimed by the Minister in terms of clause 7(3)(c).
Clause 8: Appointment of Judges of Court	
LARC (a) The Bill needs to provide for, at the very least, clear guidelines of what is meant by 'expertise in the field of land rights matters' in terms of knowledge and training. (b) The Bill needs to also contemplate mechanisms of providing appropriate training for inexperienced lawyers to continuously build the capacity of the Court and increase the pool of appropriate candidates for lawyers and judges.	(a) The provision is clear and no guidelines are necessary. To provide for guidelines may make the process of interviewing candidates too restrictive. (b) This is not a matter for the Bill.
AfriForum The aspects of race and gender should never be the overemphasised when it comes to the selection and appointment of any judicial officers. The most important criterion should be the competence of the candidate, irrespective of race or gender.	The intention is to require that race and gender be considered, but not to be a determining factor.
CASAC It is submitted that in the interest of preserving the separation of powers, the Minister should only be able to do so "in consultation" with the Judge President or Deputy Judge President and not only "after consultation".	This proposition would be in conflict with section 175(2) of the Constitution which obliges the Minister to appoint acting judges to other courts "after" consulting the senior judge of the court on which the acting judge will serve.
Land Claims Court (a) The expression "half of whom must be judges at the time of appointment" in section 8(4)*(a)* limits access to the bench of those judges who are experienced and also advocates who have been acting in the Land Claims Court (Agbiz).	(a) The intention of the Bill is to ensure that half of persons appointed in the bench are experienced judges, so that not all of the appointees are taken only from a pool of Magistrates, Advocates or Attorneys.

(b) To limit appointments to only those with experience is once again limiting the pool of potential appointees, and it is suggested this provision be deleted (Agri SA, Agbiz).	(b) The intention is to appoint persons on the bench who are experienced in land matters, similar to the LRA which requires the appointment of judges from those with knowledge, experience and expertise in labour law.
Agri SA (a) It is submitted that the only real challenge faced by the Land Claims Court is the high turn-over of acting judges, some of them with scant experience of the issues which come before the court. As presently worded, the Restitution Act under which the Land Claims Court was established, does not provide for the appointment of new permanent judges. It is therefore positive that a court with permanent judges be established and that a proper consolidation of all the powers of the court be done.	(a) Noted.
Agbiz (a) Section 8 requires the President to appoint judges on the advice of the Judicial Service Commission but permits the Minister to appoint acting judges. Whilst this provision is broadly in line with similar legislation such as the LRA, it is unclear why the duty is split between the President and the Minister. (b) It is submitted that when the President appoints a judge, he does so as part of his prerogative powers as the head of state, not as the head of the executive. The Minister is in all respects part of the Executive. It is enquired whether it will not threaten the separation of powers if the Minister is permitted to appoint acting judges? (e) It can be understood that the appointment of an acting judge is an interim measure and requires expediency. However, if this is the rationale, then should this duty not rest solely with the Judge President of the Court? The Judge President will be in the best position to determine the need for acting judges, based on the case load of the court as well as to identify potential candidates who are well suited to fulfil the role of an acting judge.	(a) The provision is in line with section 175(2) of the Constitution which obliges the Minister to appoint acting judges to other courts. (b) See paragraph (a) above. (c) See paragraph (a) above.
SA Institute of Race Relations (a) The Bill should be amended to provide that all the judges appointed to the Court must already be judges with significant judicial experience at the	(a) The submission is not supported as the intention is that half of the judges appointed to the Court must already have been judges when they

time of their appointment. (b) The provision requires all the judges appointed to 'have experience in the field of land rights matters', and this criterion will apply to every appointment without the need for prior judicial experience and expertise. The wording will encourage the appointment as judges of land activists with narrow and partisan views on land issues, rather than with the objectivity needed for balanced and independent adjudication.	are appointed. (b) The aim is to enable the expertise on land be placed in the Court, but legal qualification is not a requirement for a person to be appointed a judge.
Legal Academics (a) Clause 8(4)(a): Judges of the Court should not be required to be judges of the High Court. Specialist persons should be appointed permanently to the Court (Legal Resources Centre).	(a) Paragraph (a) should be carefully read to the extent that there is a "proviso" that at least half of persons who are appointed to the Court must be appointed from persons who are not judges at the time of appointment to the Court.
Natural Justice Lawyers (a) It is not clear whether the judges of the Court will also adjudicate cases in the High Court at the same time. The judges of the Court should like the judges of the Labour Court, who are only dealing with labour cases, be required to focus only on cases that have to be adjudicated in the Court.	(a) Subclause (3) stipulates that persons are appointed as judges of the Court which implies that they will only adjudicate cases in the Court.
Socio-Economic Rights Institute (a) Judges who are trained and socially representative can be captured by conservative legal culture and formalistic reasoning. It is important that judges should have extensive experience in acting for unlawful occupiers in PIE Act proceedings. (b) It should be clarified that a person who is appointed to the Court automatically becomes a judge of the High Court.	(a) This is an issue that will receive the necessary attention during the appointment process of judges, among others, where the JSC plays an important role in the process. (b) Clause 8(4)(a) determines that persons appointed to the Court becomes judges of the High Court if they were not judges by the time of their appointed to the Court.
Clause 9: Tenure, remuneration and terms and conditions of appointment of judges	
Agri SA (a) It is important that all Land Court Judges, being also Judges of a Division of the High Court, should also sit in the High Court. Periods during which Land Court Judges will sit in the High Court should be by arrangement between the Judge President of the Land Court and the Judge	(a) The submission is not supported. The intention is to capacitate the Land Court with permanent judges so as to get rid of the backlogs and create the necessary jurisprudence.

President of the applicable Division of the High Court. Experience has shown that exposure to High Court litigation and interaction with other High Court judges is of great benefit to judges of the Land Claims Court.	
Clause 11: Appointment of officers and staff	
CASAC (a) The Minister is given the power of appointment which appear to be a function that is currently performed by the Office of the Chief Justice (OCJ), headed by the Secretary-General. The Land Court would fall under the auspices of the OCJ, and so the Bill would in effect transfer these functions from the OCJ to the Minister. It is submitted that the OCJ should be responsible for staffing the Land Court, as with all other superior courts, in line with current public service legislation and the Superior Courts Act (Legal Academics). (b) Clause 11(4) also empowers the Minister to designate some of the functions to be performed in terms of its provisions to the Secretary-General of the OCJ. There is no reason advanced as to why the Secretary-General, as head of the OCJ, should not be directly empowered by the Bill to make administrative appointments to the court, with an appropriate supervisory relationship established between the Secretary-General and the Minister.	(a) Section 11(1) of the Superior Courts Act empowers the Minister to appoint a court manager, one or more assistant court managers, a registrar, assistant registrars and other officers and staff whenever they may be required for the administration of justice or the execution of the powers and authorities of the court. (b) The Secretary-General makes these appointments if so delegated by the Minister in terms of section 11(4) of the Superior Courts Act.
Land Claims Court It is proposed that the Secretary-General should, under section 11(4), be able to also delegate the powers delegated to him/her by the Minister to any staff member.	Section 11(4) of the Superior Courts Act does not provide for the Minister's sub-delegation of the powers as suggested.
Clause 12: Appointments of Assessors	
Land Claims Court It is suggested the following be substituted for section 12(2): "The assessors… must be appointed by the presiding judge". Judges appoint assessors as they need them. It is not clear what is meant by "the prescribed manner" (Agri SA, Legal Academics).	It is envisaged that the regulations will set out general provisions for the appointment of assessors – section 53(1)*(d)*.
National House of Traditional Leaders There are people in rural communities with experience and knowledge in matters regarding the dispossession of land rights and the rules governing	The regulations will provide for the criteria for appointment of assessors.

the allocation and occupation of land within the community, and therefore recommend that these people with historical facts should be considered for appointment.	
SA Institute of Race Relations (a) The Bill is silent as to the qualifications the assessors must have and on what steps will be taken to ensure that only 'fit and proper' persons are brought in as assessors. In many instances the disputes before the Court will turn primarily on questions of fact which inadequately qualified and potentially partisan assessors will be empowered to decide. (b) The appointment is inconsistent with Section 34 of the Constitution, which gives everyone the right to have legal disputes decided by independent and impartial courts or similar tribunal.	(a) Clause 12(2) requires the regulations to provide for the criteria and qualifications for appointment of assessors. (b) The appointment of assessors is not inconsistent with the section 34 right, as the Court sitting with assessors is still a Court of law which must still give effect to that section 34 right.
Legal Resources Centre Welcomes the clause. However, the clause does not elaborate on the required expertise of assessors who must have knowledge, expertise or experience related to the claims to be adjudicated by the Court. Recommended that assessors must have some expertise in a field related to the facts in front of the Court.	It is in the discretion of the judge of the Court whether an assessor should be appointed or not. It is submitted that the judge concerned will be in the best position to decide precisely how knowledgeable the person should be and what type of experience and expertise are required in a particular case.
Clause 13: Institution of proceedings	
AfriForum (a) The procedure in subsection (3), that a matter can be referred to mediation or arbitration even before it is formally instituted in court, will diminish the constitutional right enshrined in section 34 of the Constitution. It is also not indicated if such a referral will stay prescription if it is invoked.	(a) Once the notice to institute proceedings has been submitted, the proceedings will be instituted, after which the referral could be made. The rules will set out a procedure that will be followed in this regard. The actual institution of proceedings will suspend the running of prescription.
BASA Reference is made to 'person' throughout the section, however, it is not clear whether this will include juristic persons such as trusts, companies etc. It is suggested that 'person' be defined, or the section be updated to include all parties eligible to launch applications.	Person is not defined in many pieces of legislation, as it is defined in the Interpretation Act 33 of 1957 to include any body of persons corporate or unincorporate.
Land Claims Court	

(b) It is proposed that section 13(3)*(a)* should be amended to read as follows: "The Presiding Judge may refer a matter for mediation in terms of section 31 of the Act, or should the parties so agree, to arbitration in terms of section 32 of the Act."(Legal Academics).	(b) The proposal is one of two options that are available. The other option is discussed with regard to the input that has been made by Prof Butler. This option would clarify that arbitration is by agreement or consent of the parties.
(c) It is only once the judge commences case managing a matter that the need for mediation or arbitration arises. It could even arise after a matter commences in which case proceedings are stalled pending an arbitration. It would thus not be appropriate for the Judge President at the outset to refer a matter to mediation or arbitration.	(c) The procedure will be provided for in the rules of court. There would have been the exchange of documents in between, before the matter is referred for mediation or arbitration.
(f) It is submitted that the provisions of this section 13(4) are unnecessary and should be deleted. The circumstances they raise generally have no bearing on the referral of a matter for adjudication. Also, a Judge President would not non-suit a party if he/she thinks the relief is not necessary or does not pass muster in relation to section 13(4).	(f) The submission is not supported as the provision is intended to be a necessary guide when consideration is made regarding the referral of the matter for mediation or arbitration.
Agri SA (a) Clause 13(3) refers to the "prescribed manner and prescribed period". It is not clear in terms of what rules this will transpire.	(a) The regulations will prescribe the manner and the period for the referral of the matter to the Judge President.
(b) Clause 13(3)*(a)*(ii), dealing with compulsory arbitration should be scrapped as such a provision may be unconstitutional. All references to compulsory arbitration should be deleted, since arbitration should always be voluntary.	(b) There is one of two options that are available. This matter will be discussed further under the proposals made by Prof Butler.
(c) It will be impossible for the Judge President to decide whether a matter should be referred to arbitration or mediation merely upon receipt of a notification from a claimant that proceedings will be instituted. The Judge President will not be aware of what defenses will be raised by the defendants or respondents, or whether the matter will be defended at all. Referring a matter for arbitration or mediation without hearing the other side might well constitute a breach of the *audi alteram partem* rule.	(c) The procedure will be provided for in the rules of court in this regard. There would have been the exchange of documents in between, before the matter could be referred for mediation or arbitration.
(d) Mediation, in contrast to arbitration, can be and should be ordered in suitable circumstances. However, mediation will not work if one or more of the parties are intractable in the positions that they have adopted and unwilling to deviate therefrom. In such cases, mediation will be futile and	(d) Any party is entitled to request the mediator to refer the matter to court for adjudication in certain instances.

the matter should be adjudicated by the Court. (f) Clause 13(3)*(a)* should be amended to provide that the Court may at any time before judgment is delivered, refer a matter or a specific issue in the matter for mediation under section 31 of the Act or, if the parties so agree, to arbitration under section 32 of the Act.	(f) This proposal is contained in clause 31(1) and 32(1).
Agbiz (a) Apart from preventing unnecessary litigation, mediation is well suited to land reform disputes as it seeks to reach agreement between parties who may have been on opposite sides of race based, historical conflicts. (b) The only benefit that arbitration has over formal litigation is that it is inquisitorial in nature, requires a less formal procedure and may reduce costs associated with legal representation. The first aspect is rendered redundant as clause 14(2) allows the Land Court to conduct proceedings on an informal or inquisitorial basis in any event.	(a) Support of mediation is noted. (b) The first aspect relates to arbitration and clause 14(2) enables the Court to follow an inquisitive approach.
National House of Traditional Leaders It is submitted that 99% of land claims in the country are instituted by traditional leaders on behalf of community members. It is recommended that the Bill should make it clear that traditional leaders can institute proceedings in this Act on behalf of their traditional communities.	The proposal is not supported as it is covered by clause 13(1)*(d)* which provides that any person acting as a member of, or in the interests of, a group or class of persons may institute proceedings in Court.
Legal Resources Centre (a) To ensure a more expeditious settlement of matters it is recommended that certain disputes must be subjected to automatic mediation or arbitration, for example, eviction of labour tenants and resolution of claims made by labour tenants in terms of section 18(3) of the Land Reform (Labour Tenants) Act and evictions in terms of the Extension of Security of Tenure Act. (b) Clause 13(1)(b) provides that a person may institute proceedings in the Court in the prescribed manner. It is recommended that if a person is unrepresented that the institution of proceedings must be as simple as possible and available in the language of that person.	(a) The Department does not agree, if the decision is taken by Parliament to retain the principle that arbitration should be left for the parties to agree on then an automatic mediation or arbitration clause will not take the matter further. (b) This is a matter that will be addressed in the rules/regulations.

(c) In terms of clause 13(3) the Judge President must decide whether a matter can be referred for arbitration or mediation. A person should therefore set out a prima facie evidence for the matter to proceed or warrant consideration by the Judge President. It is important for ordinary persons to understand what it is they need to prove for their matter to be considered. In this regard the process must be as simple as possible, with the Registrar providing assistance to potential parties.	(c) This concern will fall away when amendments are prepared.
Western Cape Government The Bill should specifically indicate that the processes in the Acts in terms of which the Court will have jurisdiction should be followed before proceedings can be instituted in the Court.	There is no need for a provision of this nature. The Acts only confer jurisdiction on the Court to adjudicate disputes. A disruption or non-compliance with process contained in other Acts is something that simply cannot occur. Those processes must still be followed because that is what the law stipulates.
Clause 14: Rules governing procedure of Court	
AfriForum The Court should not operate on an informal basis, and it is important to maintain decorum in all judicial proceedings. It is contended that the proposed Bill will in fact increase disputes and legal expenditure and will cause further delay in finalising land-related disputes.	It is not an obligation for the court to conduct any part of the proceedings on an informal or inquisitorial basis. This will happen in some occasions and will be decided by the judge in light of the prevailing circumstances. Similar provision currently exists in section 32(3)*(b)* of the Restitution Act.
BASA The same rules that apply to the High Court of South Africa should apply to this Court (Legal Academics, Legal Resources Centre).	The Bill provides for the application of the Uniform Rules in the Land Court.
Land Claims Court (a) It is submitted that in section 14(1), as is the case with the Land Claims Court, the Judge President be empowered to make rules. The Rules Board for Courts of Law has no experience in this field. Also High Court rules should apply where no provision is made in the rules or regulations (AgriSA, Legal Resources Centre, Western Cape Government).	(a) The proposal is not supported as the Rules Board is a statutorily established Board to make rules of courts for the country. The Uniform Rules do apply to the Land Court where no provision is made in the rules or regulations.
Agri SA (a) It might cause confusion if the Court's procedures are subject to both the Uniform Rules and its own rules. There could, however, be a provision in the Bill that the Uniform Rules will apply where the Land Court Rules	(a) The Court will have its own rules and Uniform Rules will apply to the Land Court where no provision is made in the rules or regulations.

are silent on a particular issue. (c) The Superior Courts Act, the Uniform Rules and the regulations which the Minister might make, do not cater for all procedures of the Land Court. The Labour Court, which is also a specialist court, has its own rules, tailored to its particular needs. The Land Claims Court also has its own rules, which can serve as a model in preparing rules for the Land Court. The Land Claims Court rules should, however, apply until such time as the Land Court rules have been promulgated. (d) It is proposed that the Land Court Bill should also authorise the Judge President of the Court to issue Practice Directions from time to time, as circumstances may require (Agbiz).	(c) The Court will have its own rules and Uniform Rules will apply to the Land Court where no provision is made in the rules or regulations. The intention is that the rules should be in place when the Bill comes into operation, and therefore there is no need for the existing Land Claims Court rules to apply in the interim. (d) The directions are issued by the Chief Justice under section 8(3) of the Superior Courts, who can under section 8(4) delegate this power to any other judicial officer of the court concerned.
SA Institute of Race Relations (a) The Bill undermines the established procedural rules by suggesting that the Court need follow only those rules that 'facilitate the expeditious handling of disputes and the minimization of costs. (b) It is submitted that the established rules of procedure in the high courts have been developed over many centuries to help ensure that issues are properly aired and justice is done to both parties.	(a) Do not agree. Clause 14(3) provides that: "The rules contemplated in subsection (1) must facilitate the expeditious handling of disputes and the minimisation of costs involved.". (b) The rules will be drafted for the Land Court and the High Court rules will be applicable where some rules are not provided for in the Land Court rules. Therefore, the High Court rules are not discarded.
Western Cape Government (a) 14(1): the sandwich provision should rather be included in the introductory part. Move the sandwich provision into the introductory part after "in this Act".	(a) The words "Except as is otherwise provided for in this Act" is not wrong and is a general phrase that is used in many different pieces of legislation.
Clause 15: Powers and functions of Court under other legislation	
Legal Academics Clause suggests that the power and functions of the Court might stem from other legislation. It might be prudent to do an audit of "other legislation" to confer power on the Court and to consolidate it in the Bill.	It has been indicated that the intention is to gradually extend the Court's jurisdiction in terms of other existing legislation. It will serve no useful purpose to list "other legislation".
Clause 16: Intervention to proceedings before Court	
AfriForum (a) It is submitted that since all parties should be equal before the law, the State should not have an automatic right of intervention.	(a) The State does not have automatic right to intervene. The rules of court will regulate the procedure for a party to intervene, and the requirement for

(b) It is proposed that clarity be provided on whether a referral to the Legal Aid Board will lead to automatic postponement of a matter, and how many such postponements will be entertained. A limited timeframe should be provided within which the Legal Aid Board must indicate whether they will assist or not.	such intervention. Similar provision exists in section 29(2) of the Restitution Act. (b) If there is a necessity for legal representation, that will necessitate a postponement of a matter. Legislation cannot dictate how many postponements the court may allow in a matter, as this lies within the discretion of the court. The court can make an order requiring Legal Aid to indicate if it will assist or not, and this is not a matter to be regulated in the legislation.
BASA Section 16(1) of the Bill provides some comfort to the banking sector that any interested person, including an organisation, may apply to the Court for leave to intervene as a party to any proceeding before the Court.	Noted.
Corruption Watch It is submitted that the Bill must provide clarity regarding the role of the LRMF, and explicitly state whether the LRMF will continue to provide legal aid functions and be the accountable institution to Parliament regarding the legal aid expenditure (Legal resources Centre).	Legal Aid SA replaces LRMF in the provision of legal aid. The funding on this is covered by clause 51(3) of the Bill which provides that: "Any money available from the budget allocation for purposes of section 29(4) of the Restitution of Land Rights Act, before its amendment by this Act, forms part of the budget allocation of Legal Aid South Africa for purposes of giving effect to section 16(4) of this Act.".
FW de Klerk Foundation The right to and provision for legal representation must be applied equally to both applicants and respondents in matters before the Court as an unbalanced, and unfair, situation may indeed be created if some receive assisted legal representation at no cost, but others before the Court must pay for their own legal representation if engaged in proceedings before the Court.	The provision of legal aid applies equally to applicants and respondents as clause 16(4) applies where a party involved in a matter before the Court is not represented by a legal representative because such party cannot afford to pay for legal representation.
Agri SA The question arises as to whether Legal Aid South Africa has enough protocols that will allow a party to seek assistance for the matters within the expanded jurisdiction of the Land Court.	Legal Aid SA will provide sufficient personnel to deal with extra work load.
National House of Traditional Leaders	

It is recommended that where a party cannot afford to pay for legal representation, the Court must arrange legal representation at the expense of the Commission.	The submission is not supported as the funds allocated to LRMF will be transferred to Legal Aid SA.
Legal Academics Clause 16(4)(b) seems like a stringent test of "substantial injustice" for legal aid to be provided (Legal Resources Centre).	That is general norm to be applied when a decision is taken with regard to the provisioning of legal aid.
Legal Resources Centre A difficulty regarding the clause should be addressed, namely, staff shortages, lack in funding and a lack of expertise result in delays;	Legal Aid SA has taken over the functions of the LRMF effective from 1 April 2022 and they will assess the expected case load.
Socio-Economic Rights Institute Clause 16 should be amended to require that Legal Aid SA reports on a quarterly basis to the Minister to account for expenditure in connection with rights holders.	Clause 16(4)(c) provides that Parliament must appropriate money to Legal Aid SA. Parliament as oversight body will be reported to regularly.
Western Cape Government No specific mention is made of amici curiae. Provide for the involvement of amici curiae.	Clause 16(1) is wide enough to include amici curiae, especially the reference to "any interested person, including an organisation".
Clause 17: Powers of Court on hearing appeals	
Agri SA The Magistrates' Courts presently have non-exclusive jurisdiction to make orders under ESTA and PIE. In terms of the Bill, the jurisdiction of the Magistrate's Court is removed, and the Land Court will have exclusive jurisdiction under these two Acts. There exists no other legislation that provides for an appeal to the Land Court. Clause17 therefore appears to be redundant and should be deleted.	There are many Acts that deal with land matters, and that may be required to be dealt with in the Land Court. There may be matters that may require to be appealed against to the Land Court. This section will be applicable in those instances.
Clause 18: Judgment by default	
Land Claims Court It is submitted that this provision should be deleted since default judgment is a matter that belongs in the rules and not the Act.	The submission is not supported as this is a substantive provision that empowers the rules to make full provisions for default judgment.
Agbiz The provision is supported in principle as a litigant who has followed the correct procedure should not be denied relief if the other party fails to	The procedures contemplated in the legislation giving the course of action must be followed as set out in that legislation in order for default judgment

respond. The provision should perhaps just be qualified in the context of an eviction order under the PIE or ESTA Acts. According to section 26(3) of the Constitution, a person can only be evicted from their home by an order of court made after considering all the relevant circumstances. In the case of an eviction order, it may not be sufficient for the court to merely be satisfied that the proper service process was followed as the court will need to consider "all relevant circumstances".	to be granted.
Legal Resources Centre In cases where parties comprise a community of persons the ordinary rules should not apply, special measures such as placing notices at communal areas, loud speaker announcements and community meetings should be considered.	A requirement of this nature appears not to be feasible because it might prove to be time consuming and may place an unnecessary burden in connection with the service of process.
Clause 19: Witnesses	
Western Cape Government The Bill should define what is meant by a "written instrument".	The ordinary dictionary meaning will apply to the extent that the term "written instrument" refers to a formal written legal document which reflects enforceable rights, obligations or duties.
Clause 20: Witness fees	
Western Cape Government 20(2): incorrect cross-reference: The Supreme Court Act has been repealed. Replace with correct cross-reference.	Section 20(2) of the Supreme Court Act is still in force and has not been repealed by the Superior Courts Act.
Clause 22: Admissibility of evidence	
AfriForum (b) Undue hardship and prejudice will come to litigants if hearsay evidence is simply accepted, and the same goes for expert evidence which is not tested in the normal fashion. This section will lead to grave injustices.	(b) The court is required to give weight to any evidence given before it that it deems appropriate.
BASA <u>Clause 22(3)</u> It is suggested that clause 22(3) include specific factors for the Court to consider when determining the weight/admissibility of any evidence presented to the Court in terms of subsections (1) and (2), regarding	To set factors to be considered as suggested could fetter judicial discretion when dealing with such evidence.

hearsay evidence and evidence not admissible in other Courts.	
Agri SA It is submitted that although the admissibility of hearsay evidence is not new, it remains challenging to adjudicate on the credibility of such evidence. The rules should provide some guidance on the kind of hearsay evidence that is admissible and how it should be evaluated.	To set guidelines in the rules as suggested could fetter judicial discretion when dealing with such evidence.
Agbiz (a) The section allows the established law of evidence to apply subject to deviations permitted by the Court. In this instance, the threshold for permitting evidence that would otherwise not be admissible to be heard is whether it considers the evidence relevant and cogent to the matter being heard. This creates uncertainty as litigants will not be able to know which evidence is admissible and which is not before the litigation takes place. Such a situation will make it very difficult for litigants to prepare their heads of argument.	(a) The starting point is that hearsay evidence is admissible, and the court will weigh such evidence as it deems appropriate.
National House of Traditional Leaders The view that hearsay evidence can be admitted by the Court regarding the circumstances surrounding the dispossession of land right is supported. Most families in traditional communities have to rely on oral history and the existence of elders with knowledge of description, location and extent of land which their descendants occupied.	Noted.
Legal Resources Centre Supports hearsay evidence. Clause 22(2) deals with restitution cases only. The clause should be amended to apply to the range of legislation under the jurisdiction of the Court.	Restitution cases are unique to the extent that land claims exist where most witnesses with firsthand knowledge of the matter may not live anymore or other persons are old and may not remember certain facts anymore. In respect of the other range of legislation it should be remembered that the admissibility of evidence will be determined in terms of the Evidence Act.
National Employer's Association of South Africa Clause 22 is a duplication of the RLRA. The wording *"whether or not such evidence would be allowed in any other court"*. This causes concern because any evidence, which would normally be inadmissible, would be allowed.	The Department does not agree with the statement that "with the current discourse around land expropriation it could be left in the hands of the Executive which will be a violation of the separation of powers.".

Accordingly, any hearsay or any other evidence can be presented to the Court regarding circumstances surrounding dispossession and the Court must then give such evidence the weight it deems appropriate. In view of the current discourse around land expropriation, is that such discretion could be left in the hands of the Executive which will be a violation of the separation of powers. This will cause property owners to be exploited. Recommends that the wording *"whether or not such evidence would be allowed in any other court"* be removed from subclause (1).	Expropriation is an Executive function and if not exercised in compliance with empowering legislation will be subject to scrutiny of the Court at the instance of an aggrieved party.
Rand Water Clause 22(1)(a) will bring inconsistency about in proceedings in the Court because there will be no consistency in the admissibility of hearsay evidence.	The Court is a court of record and will develop its own jurisprudence which will provide the necessary guidance when deciding on admissibility of evidence.
Sakeliga Bill circumvents section 3 of the Law of Evidence Amendment, 1988. This may result in unequal treatment before the law to the extent that an owner is required to proof lawful ownership beyond a balance of probability, but a claimant is allowed to bring a claim with a less rigorous burden of proof. Clause 22(2) and 22(3) should be amended with strengthened safeguards to allow for early dismissal of cases where claimants are unable to present *prima facie* evidence of past ownership.	The Department is not concerned that the clause will amount to unequal treatment before the law. The clause is clear and unambiguous in that it is left to the presiding judge to give all evidence before the Court such weight as it deems appropriate.
SA Institute of Race Relations It is submitted that the only test laid down by the Bill is that the inadmissible evidence must be 'relevant and cogent'. Whether there is adequate reason to regard it as 'reliable' need not be considered.	If the evidence is relevant and logical the Court can admit it, and if it is not reliable the Court will reject it. It is not necessary to stipulate that the Court must accept evidence that is reliable, as the Court will admit evidence that is reliable.
Clause 23: Scope and execution of process of Court	
Land Claims Court (a) The words "must be executed" in subsection 23(1) should be replaced with "shall apply". (b) In subsection 23(2) replace "execute" with "enforce".	(a) The proposal is not supported as it is correct to say "executed". (b) The proposal is not supported as it is correct to say "execute".

(c) It is submitted that subsection 23(5) is unnecessary and should be deleted, as a Court can in any event order a Sheriff to perform functions.	(c) The submission is not supported. The provision is necessary as it also sets out the procedure to be followed, so that there is uniformity in the application of the provision.
Clause 25: Powers of Court	
Land Claims Court (a) It is submitted that section 25(2)*(a) – (c)* should be deleted. The work of the Court is to decide matters and not to refer difficult legal issues to the Appeal Court. Once the Land Court has decided a matter it is for a party to appeal the decision to the Appeal Court. If the Land Court were to refer difficult legal issues to the Appeal Court instead of deciding them, the Appeal Court would be inundated. (b) It is submitted that subsection 25(3) should be deleted. It is a matter that does not belong in a statute but in the judicial norms and standards and is already catered for there.	(a) Only difficult legal questions may be reserved for the appeal court rather than the parties having to appeal as suggested. Section 158(4) of the LRA has a similar provision. (b) Section 158(5) of the LRA has a similar provision.
Agri SA The application of subsection 25(2) should be restricted to cases where all parties consent to the referral of a question of law to the Land Court of Appeal, or the clause should be removed in its entirety. The referral of an issue to the Land Court of Appeal could have serious cost implications for the parties, which they should not be compelled to incur without their consent. It is part of the work of the Land Court Judges to decide legal issues, even if the issues are difficult. If they were allowed to refer them to the Land Court of Appeal of their own accord, it could inundate the Land Court of Appeal with work which should be performed by the Judges of the Land Court.	Section 158(4) of the Labour Relations Act, 1995, has similar provision. The court can refer of its own accord or any party may request such referral. However, the court would likely hear submissions from the parties regarding the referral. Although, a referral may have costs implications, such referral may also save costs (and time) where the question is referred directly to the Land Court of Appeal, rather it be heard by the Land Court the Land Court of Appeal.
LAMOSA (a) It is proposed the insertion of the following provisions in clause 25(1): "(d) the power to decide any constitutional matter in relation to the laws mentioned in the First Schedule; (e) the power to determine any matter involving the validity, enforceability, interpretation or implementation of an agreement contemplated in the Restitution Act specifically section 14(3), section 42D or an agreement incorporated by reference into an order of court and the	(a) The proposals are not supported: (d) – the power to decide any constitutional matter emanates from the Constitution. (e) – this is covered by clause 25(1)*(a)* which provides that the Court has all such powers in relation to matters falling within its jurisdiction as are possessed by a Division of the High Court having jurisdiction in civil proceedings at the place where the land in question is situated.

LRLTA; (f) the power to conduct any part of any proceedings on an informal or inquisitorial basis; (g) the power to condone any delay by a party to institute proceedings reviewing an act, omission or decision of any functionary if it is in the interest of justice and the achievement of land, water and related reform; (h) to review an arbitration award in terms of the Arbitration Act, 1965 (Act 42 of 1965), in so far as it deals with any matter that may be heard by the Court.". (b) It is further proposed the insertion of the following provision in clause 25; "(4) The Court, of its own accord or at the request of any party to the proceedings before it, may request, direct or order any party, the Commission, the SAHRC or the Gender Commission to conduct an investigation and produce evidence of assistance to the Court to determine the content of relevant customary law.".	(f) Clause 14(2) provides that the Court may conduct any part of any proceedings on an informal or inquisitorial basis. (g) – the Court has an inherent power like a High Court to condone delay in instituting review proceedings. (h) This is covered by clause 32(9) which provides that: "Any party to a dispute who alleges a defect in any arbitration proceedings under the auspices of the arbitrator, may apply to the Court in the prescribed manner for an order setting aside the arbitration award.". (b) Customary law is presented to court by way of evidence and where necessary an expert evidence may be presented before the Court.
Legal Academics The powers set out in section 22(1) of the RLRA should be included in the provision.	The provision is a general wide sweeping empowering provision and it is not necessary to refer to particular legislation. Clause 25(1)(a) is clear in this regard where it is provided that the Court "has all such powers in relation to matters falling within its jurisdiction".
Clause 26: Referral of particular matters for investigation by Referee	
Land Claims Court It is proposed that section 26(1) should be amended to read "referee appointed by the Court", as the parties do not appoint a referee.	Section 38 of the Superior Courts Act provides for referral by the court to a referee appointed by the parties.
Legal Resources Centre It is recommended that the Court should be empowered to appoint a referee if the parties are unable to agree on a referee.	The provision is similar to section 38 of the Superior Courts Act where the principle has been accepted that referral should take place on agreement by the parties.

Rand Water The clause should make reference to which persons qualify as referees which will bring certainty as to who qualify as fit and proper persons for appointment.	It is not necessary to stipulate qualifications of referees. To insert qualifications may restrict the provision unnecessarily, especially in view thereof that referral is upon agreement between the parties.
Clause 27: Pre-trial conference	
CASAC This clause dealing with pre-trials is prescriptive and unnecessary to be included in the Bill as it goes to the core of court procedure. As a superior court, the Land Court should have the power to regulate its own process and the clause may in fact constitute a usurpation of that judicial power by Parliament.	Pre-trial conferences are helpful in practice and is already legislated for.
FW de Klerk Foundation It is suggested the inclusion of a subsection in section 27 that makes the concept of a Con/Arb (and thereafter mediation) process to resolve disputes to be mandatory before parties enter a litigation phase. Such a process (similar to that followed in the CCMA in the labour dispensation) could bear positive fruit and also serve to drastically reduce matters on the Court's roll.	Clauses 31 and 32 provide for mediation and arbitration. The Court is empowered to refer the matter for mediation or arbitration.
Clause 28: Court orders	
CASAC (a) Clause 28(3)*(h)* provides that in the case where the claimant/applicant is a community, the court may make an order to "determine the manner in which the rights are to be held or the compensation is to be paid or held". It is submitted that this clause, by creating the possibility of compensation being held by someone other than members of the community, may create opportunity for malfeasance and exploitation of vulnerable communities. (b) It is submitted that in cases where compensation is awarded to a claimant community, such compensation should always be directly to the members of the community, equitably calculated, divided, and administered. This would eliminate the creation of a trust relationship in relation to compensation for land rights and avert any future disputes in relation thereto.	(a) The intention is that a determination is made as to who is to hold the rights or compensation on behalf of the community. The legal representative of the parties will make suggestions to assist the court in this regard. (b) The submission is noted, but is not a matter for regulation in the Bill.
Land Claims Court	

(a) It is proposed that 28(1)*(a)* to *(g)* be deleted and replaced with the following: "The Court may make any appropriate order which a High Court is competent to make and which relates to a matter under the jurisdiction of the Court". (b) Paragraph *(h)* will be better placed in the Restitution of Land Rights Act instead of in the Land Court Act. (e) It is submitted that section 28(3) to (9) are repetitions of what is contained in the Restitution of Land Rights Act, and does not belong in the Land Court Act. Its repetition serves little purpose. Subsection (6) only applies to land awarded in terms of the Restitution of Land Rights Act, and should not be included in the Land Court Bill, but in the Restitution of Land Rights Act.	(a) and (b) The proposed deletion is not supported as these provisions are copied from the Restitution Act. They are incorporated in the Bill so that all court related provisions are contained in one statute, and to avoid cross referencing to the Restitution Act. (e) The intention is to have all court related provisions contained in one statute.
Agri SA (a) Clause 28 deals only with orders in terms of the Restitution Act, but what about the Labour Tenants Act and ESTA? (c) The court should not be able to order compulsory arbitration, and the reference to arbitration in subclause (2) should be scrapped. (d) Clauses 28(3), (4), (5) and (8) are applicable only to restitution claims under the Restitution Act and should be retained in that Act and not be put in the Land Court Bill.	(a) The provisions in clause 28(3) – (8) relate to restitution as taken from the Restitution Act. Other provisions relate to all other legislation. (c) The proposal is not supported, as the Court should be able to order referral to mediation or arbitration. (d) The intention is to have all court related provisions contained in one statute, and to avoid cross referencing to the Restitution Act.
Agbiz In line with the opposition to compulsory arbitration, it is proposed that section 28(1)*(g)* be deleted.	The proposal is not supported as the Court should be able to make any arbitration award or any settlement agreement an order of the Court.
Legal Resources Centre The Court's orders should go beyond those that pertain to restitution matters only. The Court is not empowered to determine compensation in the cases of expropriation. The Court should also be empowered to determine the constitutionality of legislation dealing with land rights.	Again it should be noted that the extension of the jurisdiction of the Court will be enabled in terms of different pieces of legislation.
Clause 29: Variation and rescission of orders of Court	
CASAC	

(a) It is submitted that the clause would affect the finality of matters.	(a) Variation and rescission of orders are permissible even if they affect finality of matters.
Clause 30: Costs	
AfriForum (a) Fairness should not be applicable when it comes to cost orders. (b) Landowners are regularly out of pocket when having to defend land claim related matters. To allow cost order against those representing parties will also have a chilling effect with legal practitioners refusing to act in matters before the newly created Court.	(a) Fairness is also an appropriate criterion for costs orders. (b) These costs orders are necessary but will not be made by the Court lightly. The courts do currently hand down punitive costs order, and normally consider the conduct of the person representing the parties, to determine if a punitive costs order is warranted. Clause 30 is similar to section 162 of the LRA.
Agri SA (a) The general rule in constitutional litigation between a private party and the state is that if the private party is successful, its costs should be paid by the state, but if unsuccessful, each party should pay its own costs. The litigation before the Land Court will mainly be constitutional litigation, giving effect to section 25(5), (6) or (7) of the Constitution. (b) Clause 30(2)*(b)* should be deleted because it is the Judge President or presiding Judge who decides on mediation (or arbitration) and not the parties; and because it will be very difficult, if not impossible to quantify the "extra costs". (c) It should be stated in clause 30(3) that the Court may make a cost order against a person who represented a party only in circumstances where the conduct of the representative justifies such an order. It should also be added that the Court may make an order that a representative may not be entitled to any remuneration for all or some of his or her services if the conduct of the representative justifies such an order	(a) The court must make a cost order in light of the facts of the case, considering the requirements of law and fairness. (b) The provision is necessary as clause 31(5) enables any party to request referral of the matter to court, and clause 32(5) enable a party to apply to stop the arbitration, in which case the matter will proceed in court. The extra costs need not be quantified, as the referral for mediation or arbitration could have been saved costs. (c) The Court is entitled to make a costs order in light of the facts of the case, considering the requirements of law and fairness.
Agbiz Clause 30(2)*(a)* requires the Court to consider whether the matter should have been referred to mediation or arbitration in awarding a cost order. The Judge President determines whether the matter must first go to mediation or arbitration. If the matter should have gone to mediation first,	Clause 31(5) enables any party to request referral of the matter to Court, and clause 32(5) enable a party to apply to stop the arbitration, in which case the matter will proceed in court. These are instances where the court may consider imposing a punitive costs order if necessary.

then the Judge President should have made that determination. It is unjust to punish a litigant with a cost order where the Judge President decided that the matter should proceed directly to court.	
SA Institute of Race Relations (a) It is submitted that since the law has long required fairness in the award of costs, the introduction of a separate 'fairness' requirement simply promotes uncertainty and creates an ambiguous basis on which established rules can be undermined or bypassed. (b) Costs orders against any person who represented any party may be made in vague and wide-ranging circumstances against the legal representatives of the parties and will make it difficult for people to find lawyers willing to act for them in land disputes before the Court. (c) The wording in the Bill makes no attempt to limit costs orders against lawyers to 'Stalingrad' instances – and is far too broad to pass constitutional muster.	(a) It is not clear the requirement of "fairness" could promote uncertainty and ambiguity. However, the court must make a costs order in light of the facts of the case, considering the requirements of law and fairness. (b) The courts do currently hand down punitive costs order, and normally consider the conduct of the person representing the parties, to determine if a punitive costs order is warranted. Clause 30 is the same as section 162 of the LRA. (c) It would be overly prescriptive to limit punitive costs orders to certain instances; as other instances may not be listed which would require to be penalized by a punitive costs order.
Clause 31: Mediation	
AfriForum Mediation and arbitration will further increase costs and time spent on matters. The dispute resolution process can also be severely disrupted if there is a referral midway through proceedings. There are also possibilities in the draft legislation for stopping arbitration proceedings and then proceeding in Court.	In some instances, mediation or arbitration could be lead to speedier and cheaper resolution of matters.
Corruption Watch It is accepted that each matter must be considered on its merits in order to make a determination on mediation and arbitration rather than litigation. The Bill must include guiding principles within the schedule, with a simple set of criteria that unpacks which matters would qualify for mediation and/or arbitration. This will assist to create uniformity across all sitting courts and ensure that claimants are provided with sufficient and informed options on how to resolve their matter and advocate for their rights.	A determination on mediation and arbitration will be judged against the facts of each case. To isolate which matters must go for mediation and arbitration in the Bill could lead to unintended consequences as the Court will deal with various pieces of legislation regulating land.
CASAC	

Clause 31(6) provides that if such a mediator is not in the employ of the state, they "may" be remunerated. It is submitted that such a mediator must always be remunerated. This will affect the quality of work produced by the mediators and candidates who would make themselves available for appointment as such (Legal Academics).	The regulations are intended to provide for the remuneration of mediators who are not in the full time employ of the state. All mediators will be paid.
Land Claims Court (c) It is submitted that mediation does not work if parties are intractable and are not prepared to yield anything. Therefore, provision should be made for the mediation to be terminated and the matter adjudicated by the Court.	(c) This proposal is covered by clause 31(5)*(b)* a party to request termination of mediation.
Agri SA (a) It is unclear what is meant by "transfer the matter" in clauses 31(2)*(a)*(i) and 31(3). The registrar should retain the Court file, and make copies of the relevant documents available to the mediator. (b) Clause 31(6) raises two questions. Firstly, who is responsible for the fees and disbursements of mediator who mediates an issue in terms of subclause (1) and secondly, who is responsible for the fees and disbursements of a mediator appointed by the parties in terms of the proviso to clause 31(2)(a)(iii)? This should be clarified. It is suggested that the State (acting through the Department of Agriculture, Rural Development and Land Reform) should be responsible for the mediator's fees and disbursements. (d) If the mediation is ordered by the Court, the conduct thereof should be governed by the rules of the Land Court, not by the regulations.	(a) Transfer in this regard means to remove the matter from the court roll to mediation. The registrar will retain the original court documents. (b) The settlement between the parties will settle also the question of fees. The Department could not be liable for fees between the parties. (d) The proposal is not supported as the intention is to make regulations in this regard.
Agbiz (a) The clause does not set out who appoints the mediator nor whether the mediator is required to have specialist knowledge, expertise or experience in land rights matters. Will a mediator be assigned from a panel or do the parties need to consent to the appointment of the mediator?	(a) Clause 31(2)*(a)*(iii) provides that the court must make an order appointing a fit and proper person as mediator to chair the first meeting between the parties: Provided that the parties may at any time during the course of mediation, by agreement, appoint another person to mediate the dispute. Clause 53(2)*(g)* requires the Minister to make regulations regarding the criteria for appointment, appointment process, powers and functions and remuneration for a mediator and arbitrator.

(b) The Bill fails to take cognizance of the mediation procedures set out in the ESTA Amendment Bill. ESTA Amendment Bill creates new institutions known as the Land Rights Management Board and local Land Rights Management Committees. The legislation also sets out a procedure whereby these institutions must attempt to mediate tenure conflicts before an eviction order is considered. There is a potential conflict relating to the procedure set out for mediation as well as the entity that must arrange for mediation.	(b) Each Act of Parliament will follow the ADR mechanisms that are contained therein, after which the matter will go to Court if the matter was not settled. If the legislation concerned does not have ADR mechanisms, then it goes straight to Court, where the Judge President will decide whether it should go for mediation, arbitration or Court.
LAMOSA It is submitted that what is missing from clause 31(2)*(a)*, which cannot be cured by regulations or rules, are specific provisions to enhance the legitimacy and status of mediation, including: (a) the state parties being liable for the costs of the mediator. (b) mediation proceedings to be confidential and without prejudice, subject to the obligation of the mediator to report to the Court. (c) the terms of reference for the mediation to be finalised by no later than a fixed date after the commencement of the mediation, (d) the mediator for the duration of the mediation process to file a report with the Registrar on or before the first day of every month, detailing the progress made in the mediation process. (e) the mediator's report not to reflect the details of any discussions, concessions or proposals by the parties as part of the mediation without the prior consent of all the parties.	The submission is not supported: (a) the settlement agreement between the parties will cover this. (b) this is covered by clause 31(7) which provides that: "All discussions taking place and all disclosures and submissions made during the mediation process are privileged, unless the parties agree to the contrary.". The regulations will set out the procedure for reporting the outcome of the mediation to the Court. (c) this is covered by clause 31(2)*(b)* which provides that the Judge President, when the matter is referred for mediation, the Judge President or the Court may attach to the order any comments he or she or the Court deems necessary for the attention of the mediator. Clause 31(2)*(a)*(ii) requires the Judge President or the Court to specify the time, date and the place where such process is to start, but the date for completion of mediation as this may unfairly inhibit the mediation process. (d) and (e) there may be covered by the regulations made by the Minister under clause 53(2)*(g)* regarding the powers and functions of the mediator.

Legal Resources Centre Supports the clause. It is submitted that mediation should be voluntary and the parties should agree to it. However, the Court should strongly encourage the parties to mediate disputes. This could be achieved to allow court annexed mediation and if such mediation does not work the parties may go to arbitration or present their case in Court.	The approach intended in the provision is to enable mediation to take place at any stage before the conclusion of a case if the judge is of the view that an issue may be resolved through mediation.
Clause 32: Arbitration	
Agri SA (a) The court ordered mediation is supported, but not arbitration. Court ordered arbitration is very problematic, and is neither cheap nor speedy. It will add an additional cost burden on the state, and it also goes against the individual's right of access to court.	(a) Matters are able to be resolved speedier and cheaper through arbitration, and in some instances arbitration saves costs of going to court.
Agbiz (a) It is submitted that the entire premise of the Bill is based on the argument that land reform is a specialized matter that requires specialist judges to hear a matter. It is unclear why a matter that is set down for hearing in a specialist court would be referred to an arbitrator who need not be an expert in land rights matters. There is no indication in section 32 that an arbitrator needs to be a specialist in the field, and therefore the concept contradicts the purpose of the legislation. (b) The Bill does not specify which cases can or cannot be sent for arbitration. This implies that arbitration could be ordered for any matter over which the court has jurisdiction, and this is not appropriate. (c) It is submitted that the ULTRA Amendment Bill makes provision for the Minister to adjudicate on applications for the conversion of an informal land rights to full ownership. A party dissatisfied with the Minister's decision can appeal to the Land Court. Therefore, it seems inappropriate for an arbitrator to adjudicate on a matter which has already gone through administrative adjudication by the Minister. (d) It is doubtful that an arbitrator would be able to decide on an eviction application under the ESTA or PIE Act, both of which will fall under the exclusive jurisdiction of the Land Court, since section 26(3) of the	(a) Arbitration is recognised as an alternative dispute resolution, and some matters may be resolved through this process. The regulations will provide for the qualification of arbitrators – clause 53(2)*(g)*. (b) The Bill cannot determine which matters must go for arbitration. This may ideally be considered for incorporation the respective pieces of legislation and not the Bill. (c) If a matter underwent an alternative dispute resolution process, it may not be referred for arbitration. The Minister's decision would go to the Court for review and not appeal. (d) Legislation that require direct adjudication by the Court would be referred to Court by the Judge President. However, the Court still has the power to refer the matter for mediation or arbitration if there is a matter

Constitution states that: (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances.	that can be resolved through this process.
Legal Resources Centre (a) The clause should provide that the parties may voluntarily choose arbitration. (b) A panel of arbitrators should be appointed as envisioned in section 31 of the Land Reform (Labour Tenants) Act.	(a) Noted. (b) The Department does not agree. If arbitration is to be voluntary, then the parties should not be restricted to a panel of arbitrators.
SA Institute of Race Relations (a) The Bill has conflicting provisions on the status of an arbitration award. In terms of section 32(7), 'an arbitration award issued by an arbitrator is final and binding and may be enforced as if it were an order of the Court'. Yet the Bill also provides that a party who alleges a defect in any arbitration proceedings may apply to the Court for an order setting aside the arbitration award. (b) If a matter is settled out of Court by means of arbitration, the Court may simply reject the settlement agreement and require that the matter proceed in the Court instead. (c) Arbitration is supposed to offer parties the opportunity to obtain a binding decision from an expert whose independence and knowledge they trust. Under the Bill, however, the Court effectively chooses the arbitrator and can also reject the award made (for some alleged defect) or any settlement reached (on any ground whatsoever). (d) If the state, as a party to the proceedings, alleges some defect in the arbitration award subsequently made, the award will no longer have binding effect and may instead be set aside by the Court.	(a) There is no conflict between these provisions. An arbitration award is binding, however a party may apply for a review where there is any defect in the proceedings, to have the proceedings set aside. (b) Arbitration proceedings may be a subject of a settlement agreement, but if the matter is settled, an arbitration award must be issued. (c) The settlement agreement will be made an order of Court, and the Court cannot make its order if the settlement is for any reason unlawful, even if the parties have so agreed. In any event, the Court will be sent certain aspects to the parties for reconsideration, before the settlement is made an order of Court. (d) If a defect is alleged, an application must be brought to the Court to set the award aside.
Clause 33: Settling matters out of Court	
AfriForum (b) The Court should accordingly not have a discretion to simply reject a settlement agreement (whereafter the matter will immediately proceed in Court). This section is unduly restrictive and curtails the contractual	(b) The Court will reject with good reason, as it is required to may refer the agreement back to the parties for reconsideration of specified issues.

freedom of parties.	
Legal Academics Clause 33(2)(c) and 33(3) seems to deviate from normal arbitration procedures. Parties often agree to arbitration instead of going to court – it is an alternative, not another step in the litigation process. It is not for the court to reject an award and then adjudicate on the matter.	It is submitted that it is prudent for a settlement agreement to be referred to the Court, especially in view thereof that there may be many and diverse parties involved in a settlement agreement. It is argued that it is not part of the litigation process to the extent that the parties have settled the matter out-of-court.
Clause 34: Establishment and status of Land Court of Appel	
AfriForum (a) The Land Court of Appeal should also not be a court of equity, and for legal certainty it should only be a court of law (Land Claims Court, AgriSA).	(a) Land issue is a matter that require equity considerations in some instances, as is the case with section 33*(c)* of the Restitution of Land Rights Act, 1994, which requires equity to be a factor to be taken into account by a court when making a decision. Therefore, the court should not be confined to being a court of law, but must follow equitable considerations where necessary. Section 167(1) of the LRA establishes the Labour Court as a court of law and equity.
Land Claims Court It is enquired if section 34(3) is correct in providing that the Land Court of Appeal, being a creature of statute, has inherent powers.	Section 167(3) of the Labour Relations Act provides that the Labour Appeal Court has inherent powers, and this court is a creature of statute.
Agri SA (a) It is submitted that there is no need for a Land Appeals Court. Such a court will be costly and there are very few expert land law practitioners in the country who will be able to serve as judges. Appeals from the Land Court should be to the Supreme Court of Appeal. The establishment of a Land Court of Appeal will be expensive and without any real benefit. (b) Judges to be appointed to the Land Court of Appeal in terms of clause 35 must be judges of the High Court or the Supreme Court of Appeal, but not of the Land Court. If this is accepted, cllauses 35(3), 36(1), 36(3), 37(3)*(b)* and 37(4) should either be adjusted or deleted. (c) In the light of clause 34(2), section 46 is a duplication and should be deleted.	(a) The Land Court is presided by one or two judges and the Land Court of Appeal is presided over by three judges. This is similar to the position in the High Court where an appeal goes from one judge to three judges. From the Land Court of Appeal, the matter would go to the bench of five judges in the SCA. (b) The exclusion of judges of the Court from being judges of the Land Court of Appeal is not supported. (c) The proposal is not supported. Clause 46 gives a final appellate jurisdiction to the Land Court of Appeal only in matters reserved for

	hearing by the Land Court of Appeal.
(d) In the light of clause 43(7)*(d)*, clause 42(3) is a duplication, and should be deleted.	(d) The submission is not supported.
(e) It is proposed to replace "review" with "appeal" in clause 47.	(e) Agreed.
Agbiz (a) The only concern to be considered is whether the current or expected caseload will justify the costs to create a specialist court of appeal? If one has regard to the number of cases that are currently taken on appeal from the Land Claims Court, then it seems difficult to justify the expense (Legal Academics). (b) As an alternative, the legislature could consider expanding the composition of the Land Court to enable a full bench of the same court to sit as a court of appeal. All that may be required is the appointment of sufficient judges so that an appeal can be made to a bench of 3 or 5 judges on any given matter.	(a) and (b) The intention is to create sustainable, consistent and concrete jurisprudence on land matters. Although the SCA can create such jurisprudence, to have a dedicated court in this regard will also assist in reducing the case load that will normally go to the SCA. The creation of a permanent Court and the capacitation of the Court with enough judges will see a number of land related matters being finalized in a short space of time, thereby creating a load of cases that may be taken on appeal. The Land Court of Appeal will deal with appeals from the Land Court, and the appeals from the Land Court of Appeal will be dealt with in the SCA.
SA Institute of Race Relations (a) In terms of the Bill, the Supreme Court of Appeal will be barred from hearing appeals from the Court, despite the great expertise and experience of SCA judges. (b) The Constitutional Court will be able to hear appeals made directly to it, but only 'if such an appeal is allowed by national legislation and by the rules of the Constitutional Court'. This wording in the Bill gives the executive and legislature a blank cheque to exclude any appeal to the Constitutional Court under any number of statutes still to be enacted into law.	(a) The Supreme Court of Appeal should not be excluded, and necessary amendments will be effected in this regard. (b) The provision that an appeal is allowed by "national legislation or the rules of the Constitutional Court' is contained in section 167(6) of the Constitution. National legislation giving effect to this section is the Superior Courts Act, 2013 in section 29. With these provisions currently already in existence, it would not be a correct submission that an appeal to the Constitutional Court is excluded.
Clause 35: Composition of Land Court of Appeal	
Legal Academics (a) Clause 35(1)(c) refers to "President" – it is not clear whether it is the President of South Africa or the Judge President. (b) Clause 35(3) is unclear. It appears as if judges from the Court will	The term "President" is defined in clause 1 of the Bill as the President of the Republic. (b) Clause 35(3) allows for judges of the Court to hear appeals unless they

also hear appeals unless it refers to clause 36(4) that allows for judges of the Court to act in the appeal court.	have heard the case in the Court.
Clause 36: Appointment of other judges of Land Court of Appeal	
CASAC Clause 36(3) deals with the appointment of judges to the Land Court of Appeal and creates a requirement for the President to consult with the Minister, Chief Justice and the President of the Land Court of Appeal before making such appointments. The wording of the clause creates an impression that the President enjoys a discretion as to the appointment of judges of the Land Court of Appeal, although it also provides that the President acts on the advice of the Judicial Service Commission.	The power of the President to appoint judges is Constitutionally mandated.
Land Claims Court It is submitted as unnecessary to specify that the President and the Deputy President of the Land Court of Appeal referred to in the clause may be Supreme Court of Appeal judges.	The intention is to clarify that SCA judges may be appointed to the Land Court of Appeal.
Clause 38: Officers of Land Court of Appeal	
CASAC Section 38 deals with appointment of court officers to the Land Court of Appeal and it submitted that the Minister is given the power of appointment which appear to be a function that is currently performed by the Office of the Chief Justice (OCJ), headed by the Secretary-General. It is submitted that the OCJ should be responsible for staffing the Land Court of Appeal, as with all other superior courts, in line with current public service legislation and the Superior Courts Act.	Section 11(1) of the Superior Courts Act empowers the Minister to appoint a court manager, one or more assistant court managers, a registrar, assistant registrars and other officers and staff whenever they may be required for the administration of justice or the execution of the powers and authorities of the court.
Clause 41: Rules for Land Court of Appeal	
BASA The Rules Board must make rules to govern the procedures of the Land Court of Appeal and until such time that the rules for the application to the Supreme Court of Appeal will apply.	Supported.
Land Claims Court (a) It is submitted that in subclause 41(1) the President of the Land Court of Appeal and not the Rules Board must make the rules of the Land Court	(a) The proposal is not supported as the Rules Board was established to make rules for courts.

of Appeal. (b) It is proposed that clause 41(2) should be deleted, as it is unnecessary and is not clear what it means. (c) It is submitted that any matter relevant to the rules can be addressed in the rules of the Court.	 (b) The clause is intended to require the rules to provide for direct access to the Land Court of Appeal, in matters relating to the Labour Tenant Act. (c) The rules will deal with all matters that must be dealt with in the rules.
Socio-Economic Rights Institute Clause 14(2) implies that the Land Court will function informally on the basis of the Uniform Rules of Court. This is unsatisfactory. It is recommended that there should be basic rules of procedure to guide court users. It is recommended that the Bill includes "a set of skeleton Rules".	It has been submitted that where the Uniform Rules are insufficient the Rules Board for Courts of Law will prepare the necessary rules. It is not feasible to include "a set of skeleton rules" in the Bill because that may restrict future expansion of the rules as and when necessary.
Clause 42: Jurisdiction of Land Court of Appeal and power to hear appeals	
AfriForum (b) Subclause (3) is also not sensible since a decision of two judges cannot be the decision of the Court if, for instance, five judges were to sit and a majority of three reach a different conclusion.	(b) In terms of clause 35(2) this court is constituted before any three judges. The decision of any two of these judges is the decision of the court.
Clause 43: Appeals	
SA institute of Race Relations In terms of clause 43(4)(b) the power to grant leave to appeal by either the Court or Land Court of Appeal is subject to the provisions of any other law which specifically limits it or specifically…excludes any right of appeal'. This provision gives a blank cheque to the executive and legislature to prevent any appeal from the Court to the LCA simply by enacting legislation excluding such an option.	This clause comes from section 17(4)(b) of the Superior Courts Act, and in practice this section does not seem to prevent an appeal to be made to any court of appeal in the manner submitted that it does.
Western Cape Government (c) 43(9): the content of this sub-clause is very important and should move to before subsection (1). Move the sub-clause.	(c) The Department does not agree and appeal starts with a party requesting leave to appeal as required in terms of subclause (1).
Clause 45: Judgments of Land Court of Appeal binding on Court	
Land Claims Court It is submitted that a judgment of the Land Court of Appeal could be set aside by the Constitutional Court in which case it cannot be binding on the	The judgment is so binding until set aside. The LRA has a similar provision in section 182.

Land Court. The section is not necessary and should be deleted. A further reason for its deletion is that any judgment is binding on the parties, not on the court which gave the judgment.	
Clause 47: Costs	
SA Institute of Race Relations The Bill does not address whether the LCA, like the Court itself, can also make a costs order against the legal representatives of one or more parties.	The Land Court of Appeal has inherent jurisdiction and it is thereby empowered to issue a punitive costs order when warranted.
Clause 51: Transitional arrangements	
Corruption Watch (a) It is submitted that an expansion of clause 51 should include socio-economic considerations to be put in place in the adjudication of unresolved cases. Further, it is submitted that timeframes be put for review and targeted objectives in order to ensure that vulnerable communities and individuals are not left behind during the transitional period. (b) By merely replacing the Land Claims Court with a new court will not be sufficient to foster a transparent and corrupt-free land restitution programme. It is submitted that clause 51 should include provisions that allow for anonymous reporting channels to facilitate public reporting on the progress of the new court and its impact, including instances of corruption. The parliamentary committee should also bolster this provision by including accountability mechanisms to address public officials that are found to participate in corrupt conduct.	(a) These considerations are not matters for the Bill but at least the case management of each case. (b) The main challenge faced by the Land Claims Court relates mainly to the lack of capacity and the judiciary of that court, resulting in backlogs of cases. The Land Court replaces that court so as to do away with the challenges. Issues relating to corruption and reporting of progress are matters not proper for inclusion in the Bill.
Agri SA The Magistrates' Court currently has jurisdiction in PIE and ESTA matters. In terms of the Bill, the Land Court will have exclusive jurisdiction in cases under PIE and ESTA. There should therefore be a provision in the Bill that proceedings pending in the Magistrates' Courts at the commencement of the Land Court Act, must be continued and concluded in every respect as if the Act has not been passed.	Clause 51(1)*(a)* covers this proposal as it provides that: "any proceedings arising out of the application of this Act or any other law conferring jurisdiction on the Court, pending in any court other than the Land Claims Court established by section 22 of the Restitution of Land Rights Act, at the commencement of this Act must be continued and concluded in every respect as if this Act had not been passed.".
National House of Traditional Leaders It is recommended that in respect of claimants who already lodged their claims in terms of the Restitution Act, must be given the opportunity to choose whether their claims should be finalized in terms of the Land Court	The intention of the provision is that the Court will decide that the matter has to be proceeded with in the Court, unless the Court is of the view that this would not be in the interests of justice. The Court will in all likelihood

Act or in terms of the Restitution Act.	allow submissions from the parties.
Clause 53: Regulations	
Agri SA The power of the Minister to make regulations should be considerably reduced. In particular, the power to make regulations as referred to in section 7(3)*(c)*, 12(2), 13(3)*(a)*, 13(3)*(b)*, 13(4), 14(1), 19(1) and 31(2) should be deleted.	Clause 7(3)*(c)* should not be deleted as it empowers the Minister by notice in the *Gazette* to appoint one or more places within the area of jurisdiction of the Court for the holding of sittings of the Court, other than the seat of each Division of the High Court; clause 12(2) empowers the Minister to appoint assessors in the prescribed manner, and this provision should not be deleted; clause 13(3)*(a)* and *(b)* requires the regulations to provide for the decision to be made by the Judge President as to whether the matter must go for mediation, arbitration or court, and if the matter is referred to court, the Judge President must direct the registrar to set the date of hearing. Amendments will be made that these matters be provided for in the rules and not the regulations; clause 14(1) empowers the Rules Board to make rules for the Court and this provision should not be deleted; clause 19(1) provides that the registrar must in the regulations, prescribe a form of subpoena of a witness and this form must be in the rules; and clause 31(2) requires the regulations to prescribe the manner of referral of a matter for mediation, and this provision should not be deleted.
National House of Traditional Leaders It is recommended that when making regulations, the Minister must do so in consultation with the National House of Traditional and Khoi-San Leaders.	Noted.
SA Institute of Race Relations (b) Parties to compulsory mediation or arbitration may find themselves barred from obtaining legal representation to help them through these alternative processes, if legal representation may be limited.	(b) There may be instances that may be necessary for legal representation to be disallowed. Legal representation is not allowed in certain instances in matters under the LRA.
Western Cape Government It is unclear why there are no references to the Land Court of Appeal. Consider also adding references to the Land Court of Appeal.	It is not necessary to include the Land Court of Appeal because the matter to be dealt with are functional in nature that do not concern that Court.
Clause 54: Short title and commencement	
LAMOSA (a) It is submitted that the Land Court will not assume jurisdiction over all	(a) The Interpretation Act provides for the staggered commencement of

nine statutes on the day the Land Court Act commences or comes into operation, as clause 54(2) of the Bill allows the President to proclaim the amendment of the nine statutes separately and on different dates. (b) It is proposed the insertion of subclause (3) in clause 54 to read: "(3) The President must determine the dates referred to in subsection (2) on the recommendation of the Minister.".	sections of an Act. However, it is not a given fact that different dates will ultimately be proclaimed by the President. (b) The President exercises the power to proclaim commencement dates for Acts of Parliament usually on advice of the Cabinet member who is responsible for the administration of the legislation concerned.
Schedule:	
COSATU (a) A concern is raised that the scope of the Bill to cover matters provided for in various land reform legislation is not explicitly stated in the Act itself but only mentioned in passing in the Schedule. This may lead to unnecessary confusion by not only plaintiffs, defendants but also amongst the magistrate's courts. (b) The wording in the Bill gives an impression that the Land Court will focus on land restitution cases. It is vague and ambiguous with regards to its role in cases involving the eviction of farm workers and labour tenants and their families from land they reside on and occupy. (c) It is proposed that clarity be provided for in the Bill itself citing those Acts and the nature of the types of cases that may be brought for it, in particular those falling under the Extension of Security of Tenure Act, e.g. the eviction of farm workers and labour tenants and families from land they occupy or reside on.	(a) Consequential amendments of the affected Acts must be in those affected Acts, and not in the Bill. (b) The Court will deal with all Acts mentioned in the schedule, and other Acts that are subsequently placed under the jurisdiction of the Court. (c) This is not a matter for inclusion in the Bill itself, but the affected Acts.
LARC (a) The Bill envisions that the Court will deal with matters arising from various legislation, that were dealt with by the Land Claims Court and mostly magistrates courts. The intended court will deal with an immense number of cases, and moving cases that were previously dealt with by lower courts to be exclusively dealt with by a High Court will also raise the costs associated with initiating or defending against litigation. (b) The Bill needs to be clear about ensuring that the result is not that people are unable to defend themselves and their rights because of excessive costs related to defending or instituting litigation – even people	(a) The submission is noted and agreed. (b) The Bill requires legal aid to be provided by the state to those who qualify.

that previously could have. (c) There are some laws, existing and intended laws, that are not referred to in the Bill which have implications for and are likely to give rights to land disputes, such as Traditional and Khoi-San Leadership Act, 1998 (Act No. 19 of 1998) and Traditional Courts Bill, 2017. The Bill does not explain or contemplate how these institutions will coexist or relate to one another. Traditional Courts will potentially be given jurisdiction over land-related matters, how will such proceedings and decisions emanating from there relate to the processes of the intended Land Court? (d) The Traditional Leadership and Khoi-San Act and Traditional Courts Bill are noted as pieces of legislation that will create multiple adjudicating processes on land matters, which may create legal uncertainty, and practical difficulties for litigants. Given that the Bill creates adjudication authority over all land matters, it is submitted that the Committee should consider the overlaps that will result from implementation of this Bill and traditional governance laws. Therefore, the Bill must include provisions that ensure jurisprudential certainty and/or explicitly state a hierarchy of processes.	(c) Clause 7(1) gives exclusive jurisdiction in respect of all matters that are to be determined by the Court in terms of the Bill or in terms of any other law. This enables any Department that requires any Act to be placed under the jurisdiction or the exclusive jurisdiction of the Land Court to do so, but the Minister of Justice and Correctional Services must in terms of section 3 of the Superior Courts Act be consulted before this is done. The Traditional and Khoi-San Leadership Act has no definition of court and therefore it can be argued that a dispute emanating from that Act should be adjudicated in any Magistrate or High Court. The Traditional Courts Bill defines a court as any court established by section 166 of the Constitution, and it can be argued that this includes the Land Court. Therefore, any disputes from the Traditional Courts Act may be adjudicated in the Land Court and must be land related. (d) The Traditional Courts Bill defines a court as any court established by section 166 of the Constitution, and it can be argued that this includes the Land Court. The Bill cannot list these two Acts in the schedule, as that would give the Land Court Bill exclusive jurisdiction and this is not the intention.
Agbiz (a) The schedule awards the Land Court exclusive jurisdiction over cases brought under both ESTA and PIE. This raises the practical question of where the court will be physically located. Will it operate from the premises currently occupied by the Land Claims Court in Randburg? (b) Litigants from tenure disputes arising from ESTA are likely to be based in rural areas whilst the majority of PIE cases are likely to be based in the metros. Will the Land Court be able to operate effectively as the	(a) Clause 6(1) determines the main seat of the Court to be Johannesburg. The Judge President may determine that the Court may hold any sitting elsewhere than at the seat of the Court for the hearing of any matter if it is expedient or in the interests of justice to hold its sitting. In terms of clause 7(3)*(a)* the Minister, after consultation with the Chief Justice for the purposes of adjudicating land disputes, by notice in the *Gazette* may define a specific area of jurisdiction of each Court. (b) The Judge President may determine that the Court may hold any sitting elsewhere than at the seat of the Court for the hearing of any matter if it is expedient or in the interests of justice to hold its sitting.

court of first instance (exclusive jurisdiction) for both PIE and ESTA without prejudicing litigants who would need to travel far to reach the court? (c) Magistrate's Courts have a national footprint which enables ESTA litigants' physical access. Will these litigants need to travel to Randburg from across the country if the Land Court is given exclusive jurisdiction? Deliberations should be had on which practical solution can offer rural litigants the best access to court.	(c) The Judge President may determine the Court to sit at any place for accessibility by the parties.
Socio-Economic Rights Institute It is envisaged that the Court will take over the jurisdiction of the High Courts and the Magistrates Courts, for example, in eviction cases. There is nothing in the Bill that facilitates the move from courts available in municipal and provincial boundaries to a Court with a single seat in Johannesburg (National Association of Employers of South Africa.	It has been pointed out that the Court will be able to sit across the whole country.
Schedule: Restitution of Land Rights Act: deletion of Ch 3	
Western Cape Government The entire Ch 3 of the Act is deleted in the Schedule, but not all the provisions in said Chapter have been taken over in the Bill (e.g. amongst others, relating to the powers of the Court). Ensure that all the relevant provisions in Ch 3 have been taken over in the Bill.	The content of the Bill is mainly based on the Superior Courts Act.
Schedule: Land Reform (Labour Tenants) Act: definition of "rules"	
Western Cape Government The Bill does not empower the Court to make its own rules. Either amend the Bill, or amend the definition of "rules".	The Rules Board of Courts of Law is the statutory body tasked with making rules.
Schedule: Land Reform (Labour Tenants) Act: other	
Western Cape Government Section 17(3) refers to the Magistrate's Court rules. It is unclear whether this is correct, or whether reference should be made to the rules of the Land Court (if the Court is empowered to make rules). Reconsider section 17(3) of the Land Reform (Labour Tenants) Act.	Noted, the matter will be reconsidered when proposed amendments to the Bill are prepared.
Schedule: Communal Property Associations Act: other	

Western Cape Government Section 11(4) and (5) refers to the Magistrate's Court rules. It is unclear whether this is correct, or whether reference should be made to the rules of the Land Court (if the Court is empowered to make rules). Reconsider section 11(4) and (5) of the Communal Property Associations Act.	Noted, the matter will be reconsidered when proposed amendments to the Bill are prepared.
Schedule: Extension of Security of Tenure Act: definition of "court"	
Western Cape Government The amendment does not make sense ("… the Land Court … including a Special Tribunal…"). Amend the definition.	Noted, the matter will be reconsidered when proposed amendments to the Bill are prepared.
Schedule: Extension of Security of Tenure Act: section 20(2)	
Western Cape Government It is unclear why there is no reference to the Land Court of Appeal. Consider adding a reference to the Land Court of Appeal.	Noted, the matter will be reconsidered when proposed amendments to the Bill are prepared.