**SUMMARY OF SUBMISSIONS ACCEPTED BY DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

**Table 1:**

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| **NAME OF INSTITUTION/INDIVIDUAL****COMMENTS/RECOMMENDATIONS** | **DoJ&CD RESPONSE** |
| **Agri SA**(e) The preamble should also refer to section 34 of the Constitution.  | (e) The submission is supported as the Bill provides for access to courts and alternative disputes resolution mechanisms in the form of mediation and arbitration. Therefore, a provision will be incorporated in the Preamble.  |
| **Legal Academics** (d) The Court should be enabled to refer matters of suspected corruption to the NPA for prosecution. | (d) 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. |

**Table 2:**

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| **NAME OF INSTITUTION/INDIVIDUAL****COMMENTS/RECOMMENDATIONS** | **DoJ&CD RESPONSE** |
| **Clause 1: Definitions** |
| **Council for the Advancement of South African Constitution (CASAC)**(c) While paragraph *(a)* of the definition of “claim” makes reference to the Restitution of Land Rights Act, paragraph *(b)* does not refer to that Act.  | (c) Agreed to insert in paragraph *(b)* the expression “in terms of the Restitution of Land Rights Act, 1994” after “Court”.  |
| **Land Claims Court**(a) It is submitted that the definitions of “claim”, “claimant” and “Commission”, which are defined in the Restitution of Land Rights Act, are not strictly necessary for the purposes of the Land Court Act (Agri SA, Agbiz, Legal Resources Centre). | (a) The definition of claim and claimant relate to clause 28(3) – (9) of the Bill which is a reproduction of section 35 of the Restitution Act. Paragraph 4 of item 4 of the Schedule to the Bill deletes the entire Chapter 3 of the Restitution Act, which chapter includes sections 22 to 38. Section 35 provides for order that the court can make in relation specifically to restitution, and reference is made in that section to a “claim” and “claimant” necessitating the definition of these terms. Also it is necessary to define “Commission” as it is referred to in several clauses of the Bill. The terms “claim” and “claimant” are confined to restitution claims, but to avoid confusion the definitions to these terms will be qualified to read:**“claim”**, in relation to a claim contemplated in the Restitution of Land Rights Act,means …”; and**“claimant”**, in relation to a claimant contemplated in the Restitution of Land Rights Act,means …;”. This amendment will also avoid a conflict with the terms “claim” and “claimant” as contemplated in other legislation that are or may later be included under the jurisdiction of the Court. |
| **Rand Water** Recommends insertion of definition of—(a) “day” in order to bring clarity for the computation of day; | (a) This proposal is accepted. |
| **Clause 3: Establishment** |
| **CASAC**(b) A suggested redrafting of the clause 3(2)*(a)* would read: “The Court is a superior court, as defined in the Superior Courts Act, that has the authority, inherent powers and standing, in relation to matters under its jurisdiction, equal to that which a Division of the High Court of South Africa has in terms of the Superior Courts Act in relation to matters under its jurisdiction” (Land Claims Court, Agri SA, Legal Academics). | (b) The suggestion amounts to what the clause already provides, except it unnecessarily repeats a reference to the Superior Courts Act. However, the words “High Court” will be replaced by the words “Superior Court” as suggested to fully replicate section 151(2) of the Labour Relations Act. |
| **Clause 8: Appointment of Judges of Court** |
| **SA Institute of Race Relations**(c) The requirement that judges ‘must…be representative in terms of race and gender’ is inconsistent with Section 174 of the Constitution and invalid, as that section requires that judges must first and foremost be ‘appropriately qualified’ people who are ‘fit and proper’ to serve on the bench. | (c) The submission is supported and amendments will be made to reflect the requirement of “appropriately qualified” and “fit and proper” person as other requirements for appointment to the Court. |
| **Legal Academics**(b) Clause 8(4)(c): the word “broadly” should be inserted in front of “representative”. | (b) The Department accepts the proposal and an amendment will be prepared in this regard. |
| **Clause 9: Tenure, remuneration and terms and conditions of appointment of judges** |
| **Land Claims Court**It is submitted that the expression “who is also a judge of the High Court” in section 9(3) is confusing. All judges of the Land Court should also be appointed as judges of the High Court, if not already so appointed. If a judge resigns as a judge of the Land Court, he or she will remain a judge of the High Court. If and when a judge is no longer a judge of the High Court (whether due to resignation, release from active service or for any other reason), he or she automatically ceases to be a judge of the Land Court, and this should be clearly stated (Agri SA). | The submission is supported and the expression “who is also a judge of the High Court” will be removed. |
| **Clause 13: Institution of proceedings** |
| **AfriForum**(b) Subsection (3)*(b)* is not sensible since the Judge President cannot already assign a date of hearing in the matter at the stage of issuing of the papers. Court proceedings do not unfold in this manner, and the date will more likely fall away. | (b) The submission is supported, and necessary amendments will be made that this procedure will be provided for in the rules of court. There would have been the exchange of documents in between, before the date could be assigned. |
| **Land Claims Court**(a) It is proposed that section 13(2) be deleted as the proceedings are instituted when issued by the Registrar in any Court as provided for in the rules.(d) Reference to the time period within which the Judge President must refer a matter should be deleted as it is inappropriate for an Act to prescribe to a Judge President how to perform functions. (e) It is submitted that section 13(3)*(b)* is unnecessary, as it pertains to a procedural matter which the rules should cater for. In any event, a hearing date can only be assigned after the pleadings have closed or, in motion proceedings, after all requisite affidavits have been delivered. | (a) The proposal is accepted. There seems to be no purpose served by notifying of intention to institute proceedings. The proceedings should just be instituted as provided in the rules.(d) Agreed. The rules will regulate the procedure in this regard.(e) Agreed. The rules will regulate the procedure in this regard. |
| **Agri SA**(g) The provision in clause 13(3)*(b)* that "if the Judge President decides that the matter is to be heard in the Court, he or she must refer the matter to the registrar who must within the prescribed period of such referral assign a date of hearing of the matter" makes no sense. A hearing date can only be allocated after the papers have been served on the defendants or the respondents, and after the pleadings have been closed in an action, or all affidavits have been filed in motion proceedings. The allocation of hearing dates should be subject to the rules of the Court and not be prescribed in legislation or regulations (Agbiz). | (g) Agreed. There would have been the exchange of documents in between, before the matter could be allocated a hearing date. The procedure will be provided for in the rules of court in this regard. |
| **Clause 14: Rules governing procedure of Court** |
| **Agri SA**(b) It is submitted that procedural issues fall within the scope of the judicial branch of government, and should not be prescribed by the regulations made by the Minister, whose functions are part of the executive branch.  | (b) Agreed. Amendments to the Bill will be considered to ensure that certain procedural aspects be regulated in terms of the rules and not in the regulations. |
| **Clause 16: Intervention to proceedings before Court** |
| **Land Claims Court**It is proposed that section 16(1) should be amended to state: “Any person or body with legal standing may apply to the Court…”. | The proposal is supported as it clarifies that the applicant must have legal standing. |
| **Clause 17: Powers of Court on hearing appeals** |
| **Land Claims Court**It is submitted that remitting the case to an arbitrator should only be permitted if the parties agree to arbitration (Agbiz). | The submission is supported, a provision for the remitting of the matter if the parties have agreed to arbitration will be considered. |
| **Clause 19: Witnesses** |
| **Land Claims Court**It is not advisable or proper for the executive to prescribe how judicial functions should be exercised. The Bill should provide for the subpoena in terms of the rules and not the regulations. | The proposal is supported and section 19(1) may be amended to provide as follows:“The registrar must, in the manner and on the form provided for in the rules subpoena a person to appear as a witness in a matter before the Court to give evidence or to produce a book, document, written instrument or any object on request by—”. |
| **Clause 21: Examination by interrogatories** |
| **Legal Academics**In clause 21(1)(a) – “affidavits” probably refers to “evidence”. | The Department agrees and will consider proposing an amendment. |
| **Western Cape Government**21(1): it is unclear whether this provision should be included in this Bill as it deals with commissioners of the High Court in general, and seems to have a wider application than just in relation to the Land Court. 21(1): reconsider this provision.There is no cross-reference to section 39 of the Superior Courts Act. Add a cross-reference to the Superior Courts Act, and delete all duplicated provisions.Inconsistent references: “Commissioner of Court” vs “Commissioner of the Court”. Superfluous wording. Delete references to “aforesaid”. | The Department agrees and will consider deleting this clause as it is similar to section 39 of the Superior Courts Act. |
| **Clause 22: Admissibility of evidence** |
| **AfriForum**(a) The inclusion of a section that purports to allow a discretion to allow any inadmissible evidence is nonsensical. A court of law only acts on admissible evidence. Justice cannot be served in any other way (BASA, Legal Academics). | (a) This clause is imported from the Restitution Act. Land claims emanate from a long time ago and strict admissibility of evidence could lead to injustice in some cases. Most witnesses with firsthand knowledge of the matter could have passed on, and others could be so aged that they cannot testify in court, or have memory of certain facts. The clause will be made applicable to restitution matters only, and in respect of other legislation, evidence will be admissible as per the Evidence Act.  |
| **Land Claims Court**It is submitted that this clause is only applicable to land restitution matters and should remain in the Restitution Act. Suggestion is made to refer to section 30 of the Restitution Act (AgriSA, Agbiz). | Agreed. The clause will be restricted to restitution matters only. However, they will be retained in the Bill so that all Court related provisions are contained in one statute, and to avoid cross referencing to the Restitution Act. |
| **Clause 26: Referral of particular matters for investigation by Referee** |
| **AfriForum**The section is objected to in that it in effect delegates the work of a Presiding Judge to a referee. Often when there are difficult calculations to be made, expert evidence has to be led. The Court has to make a final determination after hearing this evidence. | Not all matters are intended to be sent to a referee, but those that require extensive examination of documents or scientific, technical or local investigation which cannot be conveniently conducted by the Court. Since section 38 of the Superior Courts Act, 2013, contains a similar provision, the deletion of this clause will be considered by the Department. |
| **Agri SA**The words "a referee appointed by the parties" in section 25(1) gives the impression that any referral of a matter to a referee may only be done with consent of all the parties. If so, it should be clearly stated. | Consideration will be given to inserting the expression “with the consent of the parties” in clause 26(1) to be in line with section 38(1) of the Superior Courts Act. |
| **Clause 27: Pre-trial conference** |
| **Land Claims Court**(a) It is proposed that provisions for pre-trial conference be made as wide as possible, as this is helpful in practice to resolve matters.(b) The expressions “prior to hearing” and “pre-trial” must be deleted from section 27 as conferences are usually called at any stage of the proceedings. Hearings are sometimes converted into less formal conferences (AgriSA). | (a) The proposal is accepted and consideration will be given to widen the provision along the lines of section 54 of the Magistrates Courts Act, 1944.(b) The deletion of “prior to hearing” will be covered by consideration contemplated in paragraph (a) above. To refer to “Conference” as opposed to “Pre-trial conference” is supported. The current rules of the Land Claims Court provide for this, and it may be accepted that judges and legal practitioners as well as court officials are now acquainted to this process in practice as conference rather than pre-trial conference. |
| **Clause 28: Court orders** |
| **Land Claims Court**(c) The other subclauses are too narrow, as a Court may make more types of orders than the seven (7) that have been listed.(d) The expression "that the dispute ought to have been referred to mediation or arbitration" in section 28(2) should be replaced by words along the following lines: "... that it would advance the finalisation of the case if some or all of the disputes between the parties are referred to mediation or arbitration ...". The words "ought to have been" implies that there was a duty to refer the matter to mediation or arbitration at an earlier stage, which duty was not performed. | (c) To cover more orders that the court can make, it is suggested that proposed provision be incorporated in the section as a catch all provision in paragraph *(i)* as follows:“*(i)* 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.”.(d) The proposal is supported and will be considered for incorporation. |
| **Agri SA**(b) Clause 28(1)*(a)* - *(g)* could be replaced by a clause stating that 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. The list of permissible orders listed in sub-clause *(a)* to *(g)* is incomplete. It does not, for example, include interlocutory orders and orders relating to contempt of court (Legal Academics, Agbiz).  | (b) The submission is supported, but instead of replacing paragraphs *(a)* – *(g)*, a catch all provision could be inserted as paragraph *(i)* to read “any appropriate order which a High Court is competent to make and which relates to a matter under the jurisdiction of the Court.”. |
| **Western Cape Government**(a) 28(1)(g) and (h): these paragraphs do not make sense when read with the introductory part. Ensure all paragraphs make sense when read with the introductory part.(b) 28(2): incorrect wording. Replace “31 and 32” with “31 or 32”.(c) 28(6): the reference to the procedures set out in the Distribution and Transfer of Certain State Land Act is confusing, as said Act only applies to certain state land, whilst clause 28(6) refers to “land” (instead of “state land”). Indicate whether the procedures only apply to the state land to which the Distribution and Transfer of Certain State Land Act applies, or whether the Bill widens the scope of that Act. | (a) Noted, an amendment will be considered.(b) Noted, an amendment will be considered.(c) Noted, an amendment will be considered. |
| **Clause 29: Variation and rescission of orders of Court** |
| **CASAC**(b) The Court’s power to *mero motu* rescind or vary final orders and judgments should be limited only to remedying patent errors or omissions. Where variation or rescission would implicate substantive legal questions, such a power must only be exercisable on application by the parties.  | (b) The submission is supported and an amendment will be effected to restrict the Court’s power to *mero motu* rescind or vary final orders and judgments to clause 29*(b)* only to remedying ambiguity, patent errors or omissions.  |
| **Clause 31: Mediation** |
| **Land Claims Court**(a) It is proposed that clause 31(2)*(a)* should read: “If the Judge President or the presiding Judge decides”.(b) It is submitted that mediation is part of the judicial process and should be regulated by the rules, and not by regulations made by the Minister as contemplated in clause 31(2)*(a)*(i), (3) and (5). | (a) Supported and “Court” will be replaced by “presiding judge”.(b) Supported. The relevant provisions will be amended to refer to the rules and not the regulations. |
| **Agri SA**(c) To what "other processes provided for in this Act" does clause 31(10) refer? If there is no provision for "other processes" in the Bill, the sub-clause should be deleted.  | (c) The proposal is supported. |
| **Clause 32: Arbitration** |
| **CASAC**(a) Section 32(6)*(a)*(ii) provides that if there is an arbitration agreement between the parties and a dispute arises in respect of an arbitrable matter, the parties may agree that the court act as an arbitrator and the court in such a case would only be able to make an order which an arbitrator could make. It is not clear whether such an arbitration award would be subject to review in terms of the Arbitration Act, 1965 or if it would be subject to an appeal to the Land Court of Appeal.(b) It is also not clear which court would have jurisdiction over a review of an arbitration award made in terms of section 32(6)*(a)*(ii); whether it would be the High Court in terms of the Arbitration Act or the Land Court itself sitting as a court of review. Another question is whether, in any event, the Land Court could itself ever have jurisdiction over disputes arising from the Arbitration Act. | (a) and (b) Clause 32(9) provides for the review of the arbitration award made by an arbitrator. Consideration will be given to dealing with arbitration award made by the Court. |
| **Land Claims Court**(a) It is submitted that section 32(1) must be deleted in light of the comments made relating to section 13(3)*(a)*.(b) It is proposed that in section 32(2)*(a)*(i) the expression “in the prescribed manner" be replaced by "in the manner set forth in the Rules".(c) It is submitted that the expression “with the Court acting as arbitrator” in section 32(6)*(a)*(ii) be deleted as the court cannot act as arbitrator.(d) It is submitted that an arbitration award cannot be enforced as if it were an order of the Court. No writ can be lawfully issued only on the strength of an arbitration award. It is proposed that the last part of the clause be replaced by the following: "and it may on application by any of the parties be made an Order of the Court". A writ can then be issued on the strength of the Court Order.(e) It is proposed that arbitration be limited to cases where parties agree thereto.  | (a) The provision is necessary as it empowers the Court to refer to the matter for arbitration. Instead, an amendment will be made to clause 32(10) to require referral to arbitration where the parties agree or consent to arbitration. (b) The proposal is supported but the provision should be amended to read: “(i) directing the registrar to transfer the matter, in the **[prescribed]** manner provided in the rules, to the arbitrator contemplated in subparagraph (iii);”.(c) The submission is supported and paragraph (ii) may be amended to read:“(ii) with the consent of the parties and where it is expedient to do so, to continue with the proceedings **[with the Court acting as arbitrator]**, in which case the Court may only make an order corresponding with the award that an arbitrator could have made.”.(d) The proposal is supported and section 32(7) may be amended to read:“An arbitration award issued by an arbitrator is final and binding, and it may be enforced **[as if it were]**, if made an order of the Court, as judgment in respect of which a writ **[has been]** may be issued.”.(e) Clause 32(10) could possibly be amended to require referral to arbitration where the parties agree or consent to arbitration.  |
| **Agri SA**(c) Any compulsory arbitration that interferes with the parties’ rights to access to the court is opposed to, as it is probably unconstitutional. The possibility of arbitration in terms of an arbitration agreement voluntarily entered into between the parties can be retained, and provision therefor included in the Bill (Agbiz). (d) A Court cannot act as arbitrator, as stated in clause 32(6)*(a)*(ii). Similarly, an arbitrator's award cannot be enforced "as if it were an order of the Court in respect of which a writ has been issued", as stated in clause 32(7). A provision elevating an arbitrator's award to a deemed court order is unconstitutional. The award has to be made an order of court before a writ can be issued of other execution steps taken in respect thereof. | (c) Amendments could be considered for arbitration where there is agreement or consent between the parties. Section 34 of the Constitution recognizes arbitration as it is an independent and impartial tribunal.(d) Consideration will be given to removing the expression “with the Court acting as arbitrator”. Consideration will be given to amending clause 32(7) to require the arbitration award be made order an order of Court before it is enforced. |
| **Legal Academics**The contradiction between clause 32(6) and 32(1) needs to be addressed. Clause 32(6) appears to refer to a voluntary process of arbitration.The aspect of mandatory arbitration is concerning to the extent that there are no appeals of arbitration orders unless provided for by agreement. It is recommended that the default position should be that the parties retain their right to appeal. It is recommended that if the Court is able to order arbitration then an award is appealable to the Court. | Clause 32(6) envisages a different scenario which would be the case where the parties’ right at the outset agreed to arbitration, but where a party has before the conclusion of the arbitration instituted proceedings in the Court.The concerns regarding the mandatory aspect of the arbitration will be addressed by means of a proposed amendment to the provision. |
| **Legal Resources Centre**(c) Subclause (7) is confusing to the extent that an award is binding if a writ is issued. It is recommended that the wording “in respect of which a writ has been issued” be deleted to avoid confusion. | (c) Clause 32(7) could be amended as proposed. |
| **Prof Butler**Expressed his concern with regard to the constitutionality of Court ordered arbitration because parties agree to arbitration and there are very limited grounds of review in respect of arbitration precisely because of the fact that the parties have agreed to “private” arbitration. Sections 33 and 34 of the Constitution do not apply in respect of “privately” agreed arbitration.Two options are available, namely, to omit the provisions for Court ordered arbitration from the Bill or if it is to be retained the following is recommended:(a) Although the Court would retain the discretion to order arbitration, such arbitration should take place under the auspices of the Commission on Restitution of Land Rights so that commissioners would serve under the auspices of the Commission. The Commission would appear to qualify as an organ of state. Both sections 33 and 34 of the Constitution would apply.(b) A “defect” in arbitration proceedings, justifying the setting aside of the award, should be defined as in section 145(2) of the LRA and the grounds for reviewing an award must meet the standard of a reasonable decision maker as envisaged by section 33 of the Constitution – PAJA should expressly be excluded.(c) The Court should have the same powers as the Labour Court under section 154(4) of the LRA in the event of the award being set aside, to enable the Court to resolve the dispute itself.(d) An award should only be capable of being enforced directly once certified by a designated official.(e) The provision of clause 32(6) of the Bill regarding the staying of proceedings for arbitration is only required if the parties may validly agree to arbitrate a land claims dispute. Alternatively, the introductory wording of clause 32(6) could be based on the wording of section 158(2) of the LRA.(f) The application of the Arbitration Act, 1965, which is designed for consensual arbitration, should be excluded from the Bill.(g) It is recommended that the Bill contain similar provisions to section 138 of the LRA on the general conduct of the arbitration proceedings, but to the extent necessary, the rules to be used can be provided for by regulation. | Noted, it is recommended that amendments to the Bill be prepared to give effect to the second option. |
| **Western Cape Government**32(1): superfluous wording. Delete “the provisions of”. | Noted an amendment will be prepared. |
| **Clause 33: Settling matters out of Court** |
| **AfriForum**(a) Settlement agreements are matters *inter partes.* Parties do not even have to make settlement agreements orders of court. In principle, parties are free to contract as they wish, as long as the contract is not unlawful. | (a) An amendment will be proposed to reflect that the settlement agreement should be made an order of Court if the parties agree to this. |
| **Agri SA**An arbitration award is not a settlement and is not subject to "acceptance" by the parties. It is binding on all parties to the arbitration. A party can apply for it to be made an order of Court, which the Court will only refuse under limited circumstances. If the award was properly made, the Court cannot "reject" it or set it aside on the basis that it does not agree with its contents (Agbiz). | Consideration will be given to removing arbitration from 33(1). |
| **Clause 34: Establishment and status of Land Court of Appeal** |
| **AfriForum**(b) This Court should not exclude the Supreme Court of Appeal, which is a court of law. This only increases the burden on the State since additional judges have to be appointed for this new Court. This function could just as easily have been performed by the current Supreme Court of Appeal. | (b) The Supreme Court of Appeal should not be excluded, and matters for appeal can still be adjudicated there. Necessary amendments will be proposed in this regard. |
| **Legal Resources Centre**Supports the provision and recommends that, in order to expedite matters, the Land Court of Appeal, should be on the same level as the Supreme Court of Appeal in order to ensure that matters of appeal are referred to the Constitutional Court. | In terms of section 168(3)(a) of the Constitution the Supreme Court of Appeal cannot be excluded from appeals in any matter. A proposed amendment to the provisions concerned may have to be considered. |
| **Clause 36: Appointment of other judges of Land Court of Appeal** |
| **SA Institute of Race Relations**(a) Though the President of the LCA and the Deputy President may be judges of the Supreme Court of Appeal, there is no requirement that they should be. Nor is there any requirement that they even be judges at the time of their appointment.(b) There is no requirement that any of the LCA judges should already be judges at the time of their appointment. | (a) Amendments will be proposed to clarify that the President and Deputy President must already have been judges on appointment. (b) Clause 36(3) will also be amendment by adding an expression similar to section 169(1) of LRA to say: “… must appoint the judges of the Land Court of Appeal referred to in section 35(1)(c).’ and that they must already have been judges on appointment. |
| **Clause 37: Tenure, remuneration and terms and conditions of appointment of Land Court of Appeal judges** |
| **Western Cape Government**37(3): it is unclear why this provision is not also contained in clause 9. Ensure alignment between clauses 9 and 37. | It is accepted that the two clauses should be aligned. An amendment will be prepared for consideration. |
| **Clause 38: Officers of Land Court of Appeal** |
| **Western Cape Government**38(1)(a): incorrect wording. Replace “or” with “and”. | Noted, an amendment will be prepared. |
| **Clause 42: Jurisdiction of Land Court of Appeal and power to hear appeals** |
| **AfriForum**(a) Stated its objection to the proposed Land Court of Appeal having jurisdiction to the exclusion of the Supreme Court of Appeal.  | (a) Amendment of clause 34(2) of the Bill will be proposed to provide that the Supreme Court of Appeal is not excluded from hearing appeals from the Land Court of Appeal. |
| **Clause 43: Appeals** |
| **Western Cape Government**(a) 43(6): there is no definition for “days”, and, as such, the Interpretation Act applies. However, to assist the reader, indicate whether this refers to weekdays, court days or working days. Indicate what is meant by “days”.(b) 43(9): superfluous wording. 43(9): delete “contained”. | (a) A definition of “days” will be included in clause 1 of the Bill.(b) Noted, an amendment will be prepared. |
| **Clause 46: Land Court of Appeal** |
| **AfriForum**The Land Court of Appeal should not have exclusive jurisdiction in hearing appeals to the exclusion of the Supreme Court of Appeal. It is also not clear what the role of the Constitutional Court would be and it is submitted that the section also cannot and should not limit access to that Court (CASAC). | Although section 183 of the LRA contains a similar provision, consideration will be given to proposing amendments that will clarify that the SCA has appellate jurisdiction also on reserved matters from the Land Court of Appeal.  |
| **Clause 47: Costs** |
| **AfriForum**Judges should not be reduced to taxing masters who can decide on an amount of cost that has to be paid to anyone. | Noted and to be reconsidered. Also the heading may be changed to Costs of appeal. |
| **Land Claims Court**It is submitted that this section is unnecessary as it is a trite principle of law that any court or judge hearing a matter can make a cost order. It is not a matter for national legislation to prescribe. The section is also not clearly drafted. An appeal is not a review, and the judge or judges will not fix the costs, as that is the function of the taxing master (Legal Academics). | Consideration will be given to have the section redrafted or deleted. |
| **Legal Academics**The clause should be redrafted for clarity. | Judges make cost order on a daily basis and the provision provides that judge of the Court with the discretion as to what cost order to make. |
| **Western Cape Government**It is unclear why there is a reference to “judge, judges or Land Court of Appeal”. Consider only referring to “Land Court of Appeal”. | Noted, an amendment will be considered. |
| **Clause 49: General provisions applicable to courts established by Act** |
| **Land Claims Court**It is suggested that this section be redrafted to read:“The Superior Courts Act 10 of 2013 shall apply in respect of any matter that this Act is silent on, read with the changes required by the context”. | The proposal is supported, but the provision may be revised to read: “The provisions of the Superior Courts Act, 2013, read with the changes required by the context, apply in **[relation to the Court and the Land Court of Appeal]** respect of any matter not provided for in this Act, to the extent that they are not inconsistent with this Act.”. |
| **Clause 51: Transitional arrangements** |
| **Land Claims Court**It is suggested that clause 51(1)*(c)*(i) be reworded as follows: "(i) a civil summons has been issued or an application has been lodged, but a final judgment has not yet been given." | Submission is supported, but the subparagraph may be redrafted to read: “a civil summons had been issued or an application has been lodged, but judgment or order has not been **[passed]** given; or”. |
| **Western Cape Government**(a) 51(1): there is no reference to the Land Court of Appeal. Consider including a reference to the Land Court of Appeal.(b) 51(1)(c): superfluous wording. Delete “of subsection (1)”. | (a) There is no need to refer to the Land Court of Appeal, because the Land Court of Appeal will start operating only when the Bill is enacted.(b) Noted an amendment will be proposed in this regard. |
| **Clause 53: Regulations** |
| **AfriForum**The bulk of the aspects listed should rather be dealt with in Rules of Court and not by promulgation by a Minister in the form of regulations. This will create an environment where the State can regulate the process of a court that regularly will adjudicate matters where it is a party. This can be detrimental to the separation of powers and independence of the judiciary (AgriSA, Agbiz, Legal Academics). | Noted. Amendments will be prepared to remove relevant matters from the clause, to be regulated in the rules. |
| **SA Institute of Race Relations**(a) There is nothing in the Bill or envisaged in the regulations to specify the criteria to be applied in appointing assessors. This lacuna is likely to erode the independence and capacity of the Court and undermines the rule of law. | (a) An amendment will be considered to insert the criteria for appointment of assessors. |
| **Schedule:** |
| **LAMOSA**(a) It is submitted that the four statutes [CSLA, LTA, TRANCRAA and PVA] are exemplary candidates for inclusion in the schedule. They are umbilically linked to land reform and the nine statutes already included in the schedule. There is no reason why their inclusion for amendment should have to await formal amendment of the Land Court Act and a lengthy parliamentary procedure to have them included in the schedule. There is no reason why disputes arising from their application should remain in the jurisdiction of the High Courts. (b) It is therefore proposed the insertion in the schedule as follows:“10. Distribution and Transfer of Certain State Land 1993, Act 119 of 1993 - ‘‘**Jurisdiction of Land Court** **18A.** The Land Court established by section 3 of the Land Court Act, 2021, has jurisdiction to resolve any dispute arising from the application of this Act.’’.  | (a) The proposal is noted and supported.(b) Agreed and amendments could be proposed for consideration by the Portfolio Committee. |