23 July 2021

The Chairperson: Portfolio Committee Justice and Correctional Services

Parliament of the Republic of South Africa

Cape Town

8000

Attention: Hon. Magwanishe and Mr Ramaano

Per email: **Landcourt@parliament.gov.za**; **vramaano@parliament.gov.za**

WRITTEN SUBMISSION ON THE LAND COURT BILL, 2021

Dear Honourable Magwanishe, Mr Ramaano,

Thank you for the opportunity to submit commentary to the Land Court Bill B11 – 2021.

We are a group of academics and practitioners working on land and social justice issues. We submit these comments in our personal capacity as experts in the field. The opinions expressed in this document are our own and should not be attributed to our respective institutions.

We are willing to make an oral submission, if required.

Regards,

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1 Land Court Bill B11 - 2021 commentary

1.1 Abbreviations used in this report

"commission"	Land Claims Commission
CRLR	Commission on Restitution of Land Rights
ERD	Environment, Resources and Development
ESTA	Extension of Security of Tenure Act 62 of 1996
LC	Land Court
LCC	Land Claims Court
LTA	Land Reform (Labour Tenants) Act 3 of 1996
NEMA	National Environmental Management Act 107 of 1998
OVG	Office of the Valuer-General
PIE	Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998
RLRA	Restitution of Land Rights Act 22 of 1994
SCA	Supreme Court of Appeal
SEIAS	Socio-economic Impact Assessment System

1.2 History of the Bill

1.2.1 *High-Level Panel Report*

The High-Level Panel conducted extensive research into problems associated with land reform. Their report, *inter alia*, suggested that the "Land Claims Court needs to be stabilised by the appointment of permanent Land Claims Court judges".[1]

They also suggested that an independent panel should be appointed to assist the Commission to research land claims. This panel will also assist the Land Claims Court

[1] High Level Panel, *Report of the High Level Panel on the assessment of key legislaiotn and the acceleration of fundamental change* (2017) 246.

("LCC") to review improperly consolidated claims that have been referred to the LCC. The report further sets out details on what should be done and what processes should be followed that will not be repeated here.[2]

The reason for mentioning the report here is because this might be a more cost-effective and meaningful way to resolve many of the disputes and might alleviate the pressure on the court, leaving it to deal only with the complex legal questions that need to be solved. In this regard, also refer to the discussion on "adjudication through land administration" in paragraph 2.3.

The report further suggested that provisions requiring the LCC to scrutinise settlement agreements be re-enacted and include clear criteria for the court to consider when doing so.[3]

1.2.2 *Presidential Advisory Panel on Land Reform and Agriculture*

The Presidential Advisory Panel on Land Reform and Agriculture's recommendations regarding the policy direction to give effect to "expropriation without compensation" (or

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[2] 247.

[3] The criteria are:

"6.6.1 approving just and equitable compensation paid to current owners; and
6.6.2 joint ventures, lease-backs and similar arrangements forming part of settlement agreements;
6.6.3 ensuring consistency of treatment of claimants and claims;
6.6.4 substantive provisions to allow decisive and effective intervention where CPAs and trusts have become dysfunctional, particularly as a result of consolidation of claims, creation of artificial communities or failure to apply the *Kranspoort* judgment;
6.6.5 terminating the role of the Commission following a restoration award or order in line with the Meer Judgement in the Shongwe case (46/2009) which holds that 'Once a restitution award is made the Act provides no further function for the Commission'. A different body with the capacity to deal with post settlement support needs to take over following a restoration award or order;
6.6.6 clarification of the meaning and application of the concept of 'feasibility' of restoration as referred to in Section 33 of the Restitution Act, including the introduction of clear criteria for the adjudication of feasibility of restoration;
6.6.7 provisions imposing strong and enforceable duties on the DRDLR and on other departments and spheres of government to provide a full range of technical, financial, resource, administrative, accounting and other support to claimants who receive restoration of land and relieving the Commission of any duties in this regard;
6.6.8 provisions ensuring the co-ordination of the provision of such support."

just expropriation) suggested that the Land Court ("LC") should "adjudicate on all land-related matters, and not only restitution".[4] The idea is that the LC will be an "expropriation body", meaning an institution that sits separately from the Office of the Valuer-General ("OVG") as an expropriation body. This body must then develop guidelines on calculating the value in terms of the Property Valuation Act 17 of 2014 ("Property Valuation Act") and devise a Compensation Policy in line with the constitutional requirement of "just and equitable" compensation.[5]

In the context of expropriation, it suggests that the

> Land Court be given additional responsibilities, both judicial and extra functions. Consistent that the Land Court Bill which already advocates conflict resolution and mediation, the proposed EWC functional approach should also be modelled towards negotiation before litigation.

In this context, it is suggested that the new LC must be strengthened to include the appointment to the LC of a permanent judge president and four permanent judges to capacitate it to deal expeditiously with restitution claims and other land matters.[6] Stronger judicial oversight,[7] it is averred, will lead to improved settlements, reduce the scope of potential corruption and prevent bundling of claims that leads to conflict. The LC must also ensure that "settlement agreements give just and equitable compensation to landowners, in line with section 25 and the new Expropriation Act, when enacted".

1.2.3 *Reference to it in Parliament*

In May 2019,[8] the Minister of Justice and Correctional Services spoke of the judiciary's "quest for the democratisation of land ownership and the significance of well-grounded

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[4] 81. Erroneously it refers only to restitution while it also has jurisdiction under LTA & ESTA.
[5] 81.
[6] 81.
[7] Presumably over s 42D of the RLRA settlements.
[8] Parliamentary Monitoring Group "Proceedings of the Mini-Plenary Session – Committee Room E249" (16-07-2019) *PMG* <https://pmg.org.za/hansard/28908/> (accessed 20-07-2021).

jurisprudence towards [the] attainment of land justice in this country." He continued that for this reason a "broader dispensation to that [of] the current Land Claims Court for the full implementation of section 25 of the Constitution" is envisaged for the long term. The Bill would aim to address the current challenges facing the LCC, including the appointment of permanent judges.

During a meeting of the National Council of Provinces,[9] reference was made to the Land Courts Bill. It alluded that this Bill would deal with "access to for especially the poorest in our country and the most vulnerable […] through our legal aid system".

1.2.4 *Press conference announcing the Bill*

On 1 March 2021,[10] Minister Lamola held a press conference introducing the LC. In this press conference, he emphasised the permanent appointment of judges with a permanent judge president, a court that can overlook settlement agreements, and a court that can determine just and equitable compensation for landowners in line with the Expropriation Bill. He added during the conference that it seeks to introduce a Land Appeal Court with jurisdiction on the same level as the Supreme Court of Appeal ("SCA"). It should ultimately be a court of record that must develop jurisprudence.

The press release further mentions that the Land Rights Management Facility will move over to Legal Aid South Africa, where they are building capacity.

The introduction of hearsay evidence for those relying on hearsay history and expert evidence of people who can attest to historical and anthropological facts was also emphasised.

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[9] Parliamentary Monitoring Group "Proceedings of the National Council of Provinces" (16-03-2019) *PMG* <https://pmg.org.za/hansard/32591/> (accessed 20-07-2021).

[10] Government ZA "Minister Lamola and Minister Didiza brief the media on the Cabinet approved Land Court Bill" (01-03-2021) *GovernmentZA* <https://www.youtube.com/watch?v=gHBZcTCbYFM> (accessed 20-07-2021).

Ultimately, the aim is to ensure that land reform is based on sound legal and economic objectives.

2 Broader background

2.1 Current jurisdiction of the Court

The LCC was established in 1996, with its powers and functions set out in Chapter III of the Restitution of Land Rights Act 22 of 1994 ("RLRA"), with its foundational jurisdiction in section 22 of the Act. Section 13 of the Land Reform (Labour Tenants) Act 3 of 1996 ("LTA") and section 20 of Extension of Security of Tenure Act 62 of 1996 ("ESTA") set out the court's jurisdiction for the specific issues these Acts deal with. It has exclusive jurisdiction for matters falling under the RLRA and the LTA and shares jurisdiction on ESTA matters with the magistrates and High Court. It has national jurisdiction and has all the powers (and ancillary powers) that the High Court has.[11]

Regarding the RLRA: claims can either be referred to the RLRA by the Land Claims Commissioner(s) or come directly from the claimants or affected landowners.[12] The court adjudicates on the legal issues, primarily by ensuring that the land is awarded to those who satisfy the statutory requirements and on matters such as compensation.[13]

It is important here to make mention of the so-called section 42D settlements. This refers to section 42D of the RLRA. The 1999 Amendment Act allowed for a parallel administrative process and introduced section 42D that empowered the Minister or their delegate to sign off on a final settlement agreement. This led to a spate of administratively settled claims. However, these claims were not as well-researched, and many of the claims were settled with communities that might not comply with the section 2

[11] Section 22(2) of the Act. See also JM Pienaar *Land reform* (2014) 576 for a more detailed discussion on the Land Claims Court.
[12] This was not the case initially. Ibid 579.
[13] MalaMala.

requirements. Claims were also often bundled together. These settlements, while proving faster, have also in some instances created immense problems.

The court, however, also deals with cases falling under ESTA and the LTA. For instance, evictions under ESTA is usually dealt with in Magistrates' Courts, subject to automatic reviews by the LCC court.

Section 22(2)(c) of the RLRA also provides that the court can decide issues regarding other legislation if it is incidental to a matter within its jurisdiction. In addition, appeals from the LCC lies with the SCA.

The appointment of judges was (and still is) through secondment from the Gauteng division of the High Court to the LCC. This seems to indicate that government did not have a good long-term vision as to what will happen to the Court. This resulted in a situation where judges have been acting in the LCC for 17 years, which is not ideal. This is one of the problems that the Bill seeks to address.

The amendment to the RLRA[14] sought to address some of these issues. Still, the *LAMOSA* judgement[15] declared the entire amendment Bill unconstitutional. Some great ideas contained in the Bill that were not central to the problematic aspects of the Bill, therefore, fell in the wayside.

2.1.1 *Socio-economic Impact Assessment System*

The Socio-economic Impact Assessment System ("SEIAS") was introduced to "[assess] the impact of new policy initiatives, laws and regulations on core government priorities". It is meant to assess the full costs of regulations and the impact on the economy. Not

[14] Restitution of Land Rights Amendment Act 22 of 1994.
[15] *Land Access Movement of South Africa v Chairperson of the National Council of Provinces* [2016] ZACC 22 (Constitutional Court).

such SEIAS was published with the Bill, so it is not possible to comment on that aspect. The SEAIS also did not take the environmental consequences into account.

It might also be helpful to do an “equality and social justice” impact to ascertain if the Bill (and the LC it seeks to establish) will address inequality and social justice issues.

2.1.2 Tagging of the Bill

Since the LC will deal with customary law rights in land, it is imperative that the Bill be tagged correctly as a “section 76” Bill.

2.2 Proposed jurisdiction of the LC

The Bill seems to envision (judging from the schedule) having jurisdiction under the following pieces of legislation:

1. Upgrading of Tenure Rights Act 112 of 1991
2. Land Reform: Provision of Land and Assistance Act 128 of 1993
3. KwaZulu-Natal Ingonyama Trust Act 3KZ of 1994
4. Restitution of Land Rights Act 22 of 1994
5. Land Reform (Labour Tenants) Act 3 of 1996
6. Communal Property Associations Act 28 of 1996
7. Interim Protection of Informal Land Rights Act 13 of 1996
8. Extension of Security of Tenure Act 62 of 1996
9. Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

It is not clear what the jurisdiction of the court is otherwise. It is essential not to restrict the (undefined) concept of “land reform” too much. Land rights are threatened by a vast array of legislation (also pre-1994 legislation) that is not listed above. Tenure security and

land redistribution as envisaged in the White Paper on Land Reform of 1997 should be included under the auspices of the court.

We are also concern about the lack of the powers of the courts to refer corruption matters to the National Prosecuting Authority, with interdicts to follow up. Corruption is a big problem in land reform[16] and any serious effort to ensure that land reform happens in terms of a legal process will be undermined if the court does not have such powers. In this regard, the High-Level Panel suggested a Restitution of Land Rights (General) Amendment Bill[17] with accountability mechanisms (especially with regards to settlement agreements) that the court can also adjudicate on.

2.2.1 PIE and ESTA

The schedule gives the LC exclusive jurisdiction over Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE") cases. While the Bill makes provision for the court to sit in a different location, we have concerns over the practicality of such suggestions. With the LC in Randburg and the number of PIE disputes, will the litigants be expected to travel to Randburg or, on the flip side, will the court be sufficiently capacitated to travel frequently to hear these cases? The same concern can also be raised with regards to ESTA. The persons involved in PIE and ESTA cases do not have the means to address or oppose cases, also if the costs will be on a High Court scale.

2.2.2 Expropriation Act and the Property Valuation Act

The Presidential Advisory Panel recommended that the LC also deals with expropriation matters. Yet, the Bill is entirely silent on this matter. It does not refer to either the Expropriation Act 63 of 1975 ("Expropriation Act") or the Property Valuation Act in the

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[16] See for instance Karyn Maughn, 'Officials looted millions in land reform scam' *Business Day* (24 January 2019) <https://www.businesslive.co.za/bd/national/2019-01-24-officials-looted-millions-in-land-reform-scam/> (accessed 20-07-2021).

[17] Available at Parliament of South Africa, 'HLP report' <https://www.parliament.gov.za/high-level-panel> accessed 19 July .

schedule. It is thus unclear if the jurisdiction of the LC on expropriation is restricted to the extent that it is mentioned in the legislation above or whether it includes all cases of expropriation.

The Property Valuation Act aims to give effect to the provisions of the Constitution of the Republic of South Africa, 1996 ("Constitution") as far as land reform is concerned, specifically to facilitate land reform through the regulation of property valuation,[18] and applies to the valuation of property contemplated in section 12.[19]

If the LC will indeed be a court that determines compensation for expropriation – presumably in land reform contexts – it would be prudent to indicate the interaction between the Land Court Bill, the Property Valuation Act and the Expropriation Act.

The Supreme Court of Australia, for example, has a Land and Valuation Division that deals explicitly with *inter alia* land tax, land valuation, water matters.[20] Clarity on what courts adjudicate on these matters is crucial.

2.2.3 State Lease Disposal Act 48 of 1961

Many communities live on land belonging to the state and have done so for decades. There are communities that neither fall under the RLRA or the LTA, and since there is no "Redistribution Act", they fall in the wayside of the jurisdiction in terms of the schedule attached but do fall squarely within the bounds of section 25(5) (even though they have precarious tenure because the state has not given their rights substantive recognition).

2.2.4 Land Titles Adjustment Act 11 of 1993

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[18] Section 2(a).
[19] Section 3.
[20] Courts Administration Authority "Land and Valuation Division" (2012) *Courts SA* <http://www.courts.sa.gov.au/OurCourts/SupremeCourt/Pages/Land-and-Valuation-Division.aspx> (accessed 20-07-2021).

This Act refers to the instances where people claim ownership of land, but do not have registered title deeds. Many of the upgrading will fall under a broader concept of “land reform” and should thus be included.

2.2.5 Other land legislation impacting on land administration

It is not clear why the following legislation is not included:

1. Land Administration Act 2 of 1995
2. Communal Property Association Act 28 of 1996
3. Transformation of Certain Rural Areas Act 94 of 1998
4. Distribution and Transfer of Certain State Land Act 119 of 1993
5. Land Reform: Provision of Land and Assistance Act 126 of 1993
6. Upgrading of Land Tenure Rights Act 108 of 1991
7. Abolition of Racially Based Land Measures Act 108 of 1991

as well as other former apartheid legislation that is still in place.

2.2.6 Spatial Planning and Land Use Management Act 16 of 2013

Planning decisions can impact land transferred or to be transferred for land reform reasons and should therefore be included under the jurisdiction of the court as far as it is applicable.

2.2.7 Mineral and Petroleum Resources Development Act 28 of 2002

The *Maledu v Itereleng Bakgatla Mineral Resources (Pty) Limited*[21] and *Baleni v Minister of Mineral Resources*[22] cases are clear examples of how mining can affect the rights of communities living on land in terms of customary law, thereby threatening their fragile

[21] *Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Limited* [2018] ZACC 41.
[22] *Baleni v Minister of Mineral Resources* [2018] ZAGPPHC 829.

tenure rights. While those cases might come to the court because of Interim Protection of Informal Land Rights Act 31 of 1996, there should be reference made to the potential conflict between mines and other holders of rights protected by section 25(5) to (7) of the Constitution.

2.2.8 National Water Act 36 of 1998

Water rights and access to water rights are crucial for farming purposes and, therefore, can directly impact beneficiaries of land transferred in terms of land reform legislation. Similarly, the Conservation of Agricultural Resources Act 43 of 1983 came to the fore in restitution cases.[23]

2.2.9 Traditional Courts Bill B1C-2017

The Traditional Courts Bill is also not clear how land disputes on traditional land are to be dealt with and its relationship with the proposed LC. New Zealand, for instance, introduced a court that deals with land matters on Māori land, namely the Māori LC that deals with all disputes and use of Māori land.[24] Traditional leader disputes may also have an impact on land administration and development in traditional areas and may impact on decisions of a LC.[25]

2.2.10 Environmental matters

It is proposed that the Land Court Bill not only focuses on restitution and eviction matters only. It might be opportune for South Africa to develop a Land and Environment Court where all land matters can be addressed.

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[23] For example, *Minister of Rural Development and Land Reform v Normandien Farms (Pty) Ltd, Mathibane v Normandien Farms (Pty) Ltd* 2019 1 SA 154 (SCA). In this case the Provision of Land and Assistance Act 126 of 1993 was also referred to.

[24] Māori Land Court <https://maorilandcourt.govt.nz/> (accessed 20-07-2021).

[25] Traditional and Khoi-San Leadership Act 3 of 2019.

Land matters involve interdisciplinary thinking. South Africa committed to the Paris Agreement which means that in all matters climate change issues will have to be addressed.[26] Section 2 of the National Environmental Management Act 107 of 1998 ("NEMA") obliges government departments whose decisions may affect the environment to take the sustainable development principles into account. South Africa also has to achieve the UN's 2015-2030 Agenda for Sustainable Development.

Environmental matters not only relate to climate change issues (which would in the case of land matters also have to take adaptation into account) but also involve planning, culture, access to natural resources, to mention a few.

Even in restitution matters, environmental matters come to the fore.[27] Several land disputes revolve around mining, traditional communal land, conservation of agricultural resources, to mention a few. It usually also deals with tenure related issues. South Africa still has a dearth of pre-1994 land legislation. The issue of tenure has never been properly resolved, although one of the aims of the White Paper on Land Reform of 1997.

In many traditional areas, there are overlapping claims and boundary disputes that have not been settled. Sekhukhune is an example where many overlapping restitution land claims were instituted. Land valuation and expropriation matters could also be addressed in a court such as this. The court then not only focuses on the matter at hand but holistically evaluates the application before the court by considering the climate, environmental, cultural, social, and related aspects of the court's final order.

In this South Africa can take learning points from land and environment courts that have been established elsewhere.[28]

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[26] The Department of Forestry, Fisheries and Environment published draft Guidelines for Climate Change Impact Assessments for comment, for example.

[27] See for instance .

[28] On environment courts see UNEP "Environmental Courts & Tribunals: A Guide for Policy Makers" (2016) *Wedocs* <https://wedocs.unep.org/bitstream/handle/20.500.11822/10001/environmental-courts-tribunals.pdf> (accessed 20-07-2021).

Section 13(2) and (3) of the Kenyan Environment and Land Court Act 19 of 2011 refers to the jurisdiction of the Court:

(2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—
  (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  (b) relating to compulsory acquisition of land;
  (c) relating to land administration and management;
  (d) relating to public, private and community land and contracts, chooses in action or other instruments granting any enforceable interests in land; and
  (e) any other dispute relating to environment and land.

(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.

The Kenyan Environment and Land Court Act, for example, states as follows in section 18:

In exercise of its jurisdiction under this Act, the Court shall be guided by the following principles—

(a) the principles of sustainable development, including—
  (i) the principle of public participation in the development of policies, plans and processes for the management of the environment and land;
  (ii) the cultural and social principles traditionally applied by any community in Kenya for the management of the environment or natural resources in so far as the same are relevant and not inconsistent with any written law;
  (iii) the principle of international cooperation in the management of environmental resources shared by two or more states;
  (iv) the principles of intergenerational and intragenerational equity;

(v) the polluter-pays principle; and

(vi) the pre-cautionary principle;

(b) the principles of land policy under Article 60(1) of the Constitution;

(c) the principles of judicial authority under Article 159 of the Constitution;

(d) the national values and principles of governance under Article 10(2) of the Constitution; and

(e) (e) the values and principles of public service under Article 232(1) of the Constitution.

Likewise, in Australia, the "Environment, Resources and Development (ERD) Court is a specialist court dealing with disputes, and enforcement of laws relating to the development and management of land, the natural and built environment and natural resources."[29]

The court allows applicants to represent themselves. It has jurisdiction over a wide range of legislation relating to environmental, land and indigenous land matters.[30] Since it is a specialist court, it therefore also requires special skills for appointment as a commissioner to the court.[31] The court is also allowed to "make any other form of order that it considers more appropriate to the circumstances of the case."[32]

The Act also makes a distinction between judges, magistrates and commissioners[33] with different jurisdictions.[34] The court provides for both mediation and conciliation.[35]

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[29] Established in terms of the Environment, Resources and Development Court Act 1993.

[30] See Environment, Resources and Development (ERD) Court <http://www.courts.sa.gov.au/OurCourts/ERDCourt/Pages/default.aspx> (accessed 20-07-2021).

[31] Section 10. For example, practical knowledge and experience in "(a) local government, (b) urban or regional planning; or (c) architecture, civil engineering, building, building safety or building regulation; or (d) administration, commerce or industry; or (e) environmental protection or conservation; or (f) agricultural development; or (g) land care or management, housing or welfare services; or (h) heritage; or (i) resource exploration, recovery or production; or (j) any other field which is relevant to a jurisdiction conferred on the Court by a relevant Act."

[32] Section 28C.

[33] "A commissioner appointed as a native title commissioner must be a person with expertise in Aboriginal law, traditions and customs."

[34] Section 15.

[35] Section 28B.

The South African NEMA also has provisions that may benefit the Land Courts Bill regarding conciliation, arbitration, investigation, and so forth.[36] NEMA section 32(2)(b), for example, also allows that a cost order not be granted against someone who acted bona fide or in the public interest as well as makes provision for reverse cost orders.[37]

2.2.11 General legislation clean-up

Based on the above, it is clear that it is important to do a general "clean-up" of legislation – to ensure that there are appropriate references to other legislation and that other legislation that might be applicable in this case appropriately reference the LC.

2.3 Interaction with other institutions

The slow processing of land claims lies in the Commission on Restitution of Land Rights ("CRLR"), and to address that problem, one would expect that the Bill contains provisions to guide the coordination and cooperation between the CRLR and the LC. In this context, the failure to find ways to address the mass processing of claims should also be added. See the suggestion of "land administration" in paragraph 2.3.

2.4 Adjudication through land administration as a way to solve many of the disputes

The Minister, in his press release,[38] voiced his wish that this court will develop jurisprudence. In this regard, courts have played a significant, if not disproportionate, role in redefining property relations in South Africa.[39] Ideally, the development of law in courts

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[36] Sections 17 – 22.
[37] Section 32(3).
[38] See paragraph 1.2.4.
[39] AFRA, *Land Rights Adjudication: Developing principles and processes for ESTA and Labour Tenants Rights' Holders*, 2017) 18.

will be followed up by the legislature (by amending or promulgating legislation) and the executive (by adjusting practices), but this rarely happens.[40]

The judiciary stands in this regard alongside the other arms of government – the legislature and the executive – with the relationship between the three arms interacting. However, there seems to be a gap when it comes to defining and shaping substantive land rights. This is a gap that the legislature and the executive should fill by developing "legal and administrative competence to recognise, adjudicate, record and hold evidence of rights that are not secured through title, and in this way develop the capacity of government to recognise a layer of rights that do not comply with the requirements of the Deeds Office".[41] Therefore, what is proposed is a land administration system that explicitly recognises off-register rights for recordal and custody. Such a recordal system will speak to dismantling the hierarchy of rights that was established by South African common law, where ownership was at the pinnacle,[42] to a system where rights can be balanced.

In other words – there is a dire need to fill the legal and administrative vacuum with regards to off-register rights because no institutions were developed to give effect to *all* the rights in section 25. This leads to an overburden on the judiciary.

Such a land administration system will give specific attention to off-register rights and thereby secure tenure, which will improve access to services as provided for in law and policy. During this process, there will be "adjudication". In this context, adjudication refers to

> mechanism whereby a person or institution is authorised to make a definitive decision where there are contesting parties or claims […] [It] thus refers to a legally authorised process of

[40] André Van der Walt, 'Property rights and hierarchies of power: a critical evaluation of land-reform policy in South Africa' (1999) 64 Koers-Bulletin for Christian Scholarship 259.
[41] AFRA *Land Rights Adjudication* 18.
[42] See AJ Van der Walt and Priviledge Dhliwayo, 'The notion of absolute and exclusive ownership: a doctrinal analysis' (2017) 134 South African Law Journal 34; Van der Walt (1999) *Koers-Bulletin for Christian Scholarship*.

final and authoritative determination or ratification of the *existing* rights and claims of people to land.

Adjudication as part of land reform administration will be a process that happens outside court, but that resolves certain doubts or disputes when the rights are recorded or adjusted.[43]

The Kenyan Community Land Act of 2016, is a good example of legislation that expressly states the co-existence of various forms of tenure and gives equal recognition to various tenure forms. It also provides for a participatory process of adjudication of rights, with an Adjudication Officer tasked to make final decisions in case of a dispute. It, finally, clearly sets out a state programme and institutions of adjudication.[44]

This process of adjudication is familiar with registered rights during the registration process. It is not entirely foreign to South Africa in other contexts. The Land Titles Adjustment Act 111 of 1993 adjudicates titles that are not registered (in mainly African freehold areas) for various reasons.[45]

These principles can be applied in the context of farm dwellers, labour tenants and land held in terms of customary law, not because it needs to be parcelled and registered, but build a system that can assess the strengths of the rights and record it, so that this can be institutionalised. This will provide more legal certainty and negate the need for courts to do so with individual cases on a case-to-case basis. While there is, for instance, in the case of farm occupiers, protection against eviction, such occupiers do not have *positive* recognition of their rights in a similar fashion that titled holders have. While there must be protection of rights, there will be no real change until there is *positive* recognition of such rights that will strengthen it.

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[43] AFRA *Land Rights Adjudication* 2. The report notes that this is already happening in the Deeds Registry system in South Africa, where "highly precise methods of adjudication or rights" are done before titles are ratified, conveyed and transferred. In other words, the checks are built into a regulatory structure (where people must be suitably qualified in terms of legislation).

[44] 3.

[45] AFRA *Land Rights Adjudication* 4.

The LC and the process of creating the LC should not just be another process where we have legislative change, instead of the much-needed administrative change to address service delivery problems at ground level.

3 Clause by clause commentary

3.1 Preamble

The preamble notes in particular subsection of section 25 but omit the others. It is not clear why. Land reform broadly defined is a process where governments distribute land mainly ownership, but not confined to ownership. It is also about strengthening other rights in land. Section 25(1) to (3) protects these rights in land (not just ownership), and as such protection of rights should also be "noted" in the preamble.

Since we are dealing with a court and making the court accessible to vulnerable people, reference should also be made to section 34 of the Constitution.

The preamble also references the slow pace of land reform and blames the LCC and "protracted litigation". This diverts the attention from the fact that the slow pace of land reform does not lie (mainly) with the courts. Courts adjudicate on individual matters as they come before the courts on a case-to-case basis. The legislature and executive had thus far been free to devise policies, structures and institutions to deal with land reform in a decisive matter – including speeding up the processing of claims. However, as was clear from the *Mwelase v Director-General for the Department of Rural Development and Land Reform*[46] judgement, the claims often get stuck in an administrative vortex at the Department. Placing the blame on the court might give the Department a free pass on being held accountable.

[46] *Mwelase v Director-General for the Department of Rural Development and Land Reform* 2019 6 SA 597 (CC).

On the African continent, Kenya established an Environmental and Land Court based on the Environment and Land Court Act. First, this court's overriding objective "is to enable the Court to facilitate the just, expeditious, proportionate and accessible resolution of disputes governed by this Act."[47] The current Bill does not state a similar aim, and one of the concerns is that as a High Court it may limit access to the court in that matters may take a long time to resolve.

3.2 Clause 1: Definitions

"this Act" – should not include regulations; Acts and regulations are "legislation"?

"claim" – only seem to refer to RLRA, what about labour tenants?

"rules": there are various problems with the rules of the Court alluded to in clause 14 that will also be dealt with there. For now, it should just be noted that when the concerns are addressed in clause 14, the definition of "rules" should change to either indicate whether it is the rules of the High Court or the LC.

There is no definition of "land reform". Having a clear definition of "land reform", will clarify what cases fall within the exclusive jurisdiction of the LC.[48] It is suggested that a broad concept of land reform is adopted and included.

3.3 Clause 2: Purpose and objects of Act

It is not clear how the court will help "enhance and promote" the ideal of access to land on an equitable basis.

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[47] Section 3.

[48] This might address many of the concerns in paragraph 2.2.

3.4 Clause 3: Establishment of court

Clause 3(1) seems to be a replica of the Labour Court.[49] However, this framing is problematic. It creates the impression that "law" stands opposed to "equity" or other considerations of justice. "Equity" is not part of South African law and was expressly rejected during colonial times because

> equity always remains more than a legal system with its own rules and doctrines, namely a recognition of the fact that strict adherence to positive law may lead to injustice and that over and above human law, a natural or divine law or reason – or whatever else it has been called and will be called – reigns and that courts should have a discretion to deviate from positive law if necessary to prevent injustice.[50]

We are well aware that there has, historically, been a separation between law and justice. This was firmly embedded in our legal culture and at times rears its head. Such an approach should be condemned. However, we are not convinced that it should be done by positing the two concepts like this. Instead, it might rather be feasible to clearly state that the LC is needed to enhance the courts' ability to heal past injustices.

More importantly, there is an imperative in section 39 to promote the values in the Constitution when interpreting legislation (that arguably includes what will be categorised under "equity"). Section 39(2) places a duty on the courts to develop the law in line with

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[4949] See section 151 of the Labour Relations Act 66 of 1995 that states that "[t]he Labour Court is hereby established as a court of law and equity". The equity part was inserted by section 11 of the Labour Relations Amendment Act 127 of 1998. Very little has been written about this. One article states that the Labour Appeal Court is a court of equity, which the SCA never was or intended to be. The article states that "[i]n creating a court of equity the new parliament was alive to that reality and to the fact that an inflexible regimented approach (to which ordinary courts are prone) would serve only to entrench employer rights without taking account of the socio-economic factors that inform the landscape of labour relations, especially in a South Africa that is still grappling with the effects of decades of labour exploitation". Vuyani Ngalwana, 'The Supreme Court of Appeal is not the apex court in all non-constitutional appeals' (2006) 27 Indus LJ 2001.

[50] 262.

the Constitution. Where no law exists to give effect to a constitutional right, direct reliance on the Constitution is possible.[51]

This means that existing laws must be interpreted and developed to be equitable. The distinction between “law” and “equity” can create further problems – for example, if the LC decide an issue on “law” and the Land Appeals Court overturn it on “equity”?

It would be better for the development of jurisprudence in line with section 39 of the Constitution if, perhaps in the preamble, it is made clear that courts should take their duty in terms of section 39 seriously to develop jurisprudence that brings deep, lasting social transformation based on constitutional rights and values, grounded in law.

Clause 3(2)(a) refers to “the High Court”. It is unclear what court this refers to. Arguably the “Land Court” is not a High Court, but rather a court with similar status to a High Court.[52] Clause 3(2)(c) has drafting issues.

3.5 Clause 4: Composition of the Court

lause 4(1)(c) presumably refers to the judge president.

3.6 Clause 6: Seat of the Court

Clause 6(1) has an extra (1).

Clause 6(2) is drafted ambiguously. Presumably, this clause deals with locations or venues – in other words, when physically the court sits elsewhere than in Johannesburg. The wording of “many separate courts” creates confusion – it remains the LC, it is just sitting in a different location or venue.

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[51] See AJ Van der Walt, *Property and Constitution* (Pretoria University Law Press (PULP) 2012) for how this works.

[52] As envisioned in section 166(e) of the Constitution.

3.7 Clause 7: Jurisdiction of [the] Court

Clause 7(3): It seems that the Minister is involved here in matters that should be left to the judges of the LC.

Clause 7(3)(a): it is not clear what is meant with “each court”.

Clause 7(3)(c) looks very similar to clause 6(1), it is not clear what the difference is. It is also not something that the Minister should decide on.

e idea of going to communities is great for access to justice and ensuring that the court is accessible. However, great care must be taken that the court is not “taken to the communities” at great cost, only to be postponed.

3.8 Clause 8: Appointment of Judges of [the] Court

Clause 8(4)(a) requires that all judges of the Court must also be judges of the High Court and that half of the LC judges must have been High Court judges before their appointment on the LC. This is inappropriate. While the High Court judges should be able to be appointed to the LC, this should not be a requirement. The purpose of having specialist courts is to adjudicate disputes within the court's special expertise more expeditiously and often less formally. This purpose is best served by appointing specialists to work at the specialist court – preferably full time – regardless of whether they have sufficient general expertise to be appointed to the High Court. This does not mean that no High Court judges should serve on the LC. It just means that they should not be the only persons eligible for an appointment to the LC.

Clause 8(4)(b): “reason of their training and experience” should be deleted. However, this is something that can be taken into account. See also the Kenyan example referred to above in para 3.1.

Clause 8(4)(c): the word “broadly” should be placed in front of “representative”.

3.9 Clause 11: Appointment of officers and staff

Clause 11(1)(a): Again, the Minister seems to be overinvolved in the running of the LC. It is not clear why the Minister should be involved in the appointment of all staff, as this seems cumbersome and might cause delay, impacting the court's operation.

3.10 Clause 12: Appointment of assessors

It might be helpful to conduct an assessment to determine what the role and impact of assessors were to date.

Clause 12(2) states that assessors must be appointed in the prescribed manner without prescribing a manner.

3.11 Clause 13: Institution of proceedings

Clause 13(3)(a)(i) and (ii) seems incompatible with the principle that mediation is a consensual process. If the idea is to mimic the process as set out in the Labour Relations Act, then it should be clarified.

Equality Court jurisprudence also indicates that referring cases for mediation and arbitration should not be used as an attempt to temporarily pass the case to another

forum, with it inevitably ending up in court. See also the example of NEMA referred to above.

3.12 Clause 14: Rules governing [the] procedure of [the] Court

Clause 14(1) does not clarify what rules of the High Court will be applicable and what not. There does not seem to be power conferred to the LC to make its own rules. The LCC has rules specially crafted to make the LCC more accessible. Plain language drafting, for instance, is an especially important rule to make justice more accessible. These rules should become the rules of the LC with an instruction to the Rules Board, in consultation with the President of the LC, to review and amend them as necessary.

If by Clause 14(3) it is meant that the High Court rules must be amended to make room for rules that are specifically tailored for the LC, this will lead to a situation where rules will be introduced to the High Court that has no application in the High Court otherwise.

3.13 Clause 15: Powers and functions of [the] Court under other legislation

Clause 15 suggests that the power and function of the Court might stem from other legislation. It would be prudent to do an audit of possible "other legislation" that might confer power on the court and to consolidate it in this Act.

3.14 Clause 16: Intervention to proceedings before [the] Court, [the] right to appear and legal representation

Clause 16(4)(b) requires that there must be a "substantial injustice" before Legal Aid takes the case. This seems like a stringent requirement and might be difficult to ascertain.
The institutional problems at Legal Aid must be addressed and fixed to ensure that there is no delay in cases going to the LC, as this might add to the frustration.

3.15 Clause 17: Powers of [the] Court on hearing of appeals

In the schedule, it seems that all the legislation that conferred power on the Magistrate's courts to adjudicate on some issues (in terms of ESTA, for instance), have been removed and now rests on the LC. It is therefore unclear what appeals is envisioned in terms of this clause.

3.16 Clause 21: Examination by interrogatories of persons whose evidence is required in proceedings before the Court

In clause 21(1)(a) "affidavits" probably refers to "evidence".

3.17 Clause 22: Admissibility of evidence

Clause 22(2) is welcomed. Care must be taken to distinguish between "oral history" and "oral tradition". Oral history refers to the person recalling events in the past, of which the person was part. The issue with oral history is often that it is not only the memory that is recalled, but also coloured with the meaning that people attach to the events. On the other hand, oral tradition refers to people telling stories that were handed down by the previous generations. This can amount to hearsay in court. The problem with oral tradition, more than oral history, is that the original storyteller is not in court, under oath, and subject to cross-examination. The authenticity of the evidence is therefore problematic. Added to this is the fact that the historian, as an expert witness, is trying to help the court to determine the facts that are relevant to a legal dispute.[53]

[53] Du Plessis, E. (2017). Application of section 30 of the Restitution of Land Rights Act in the courts: some guidelines. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, *20*(1).

This clause is a replica of section 30 of the Restitution Act that allows the court to deviate from the standard rules of evidence. This section is not without problems[54] and has been employed with great caution. Establishing a new LC allows us to reflect on the problems to see how this can be addressed, if possible, in legislation. In this instance, it might be helpful to give guidance to the court on how they should evaluate the evidence – either by inserting it in the Bill or dealing with it in the (LC) specific rules.

The Queensland Land Court Act 2000, for instance, provides:

> Land Court to be guided by equity and good conscience In the exercise of its jurisdiction, the Land Court—
>
> (a) is not bound by the rules of evidence and may inform itself in the way it considers appropriate; and
>
> (b) must act according to equity, good conscience and the substantial merits of the case without regard to legal technicalities and forms or the practice of other courts.

3.18 Clause 25: Powers of [the] Court

Express provision should be made for the exclusive power of judicial review of administrative actions under the legislation overseen by the LC, and of course, that the Promotion of Administrative Justice applies to the proceedings. The same goes with a question about the constitutionality of legislation overseen by the LC and conduct in terms of those statutes.

Powers set out in section 22(1) of RLRA should be considered with the useful ones included in this Bill (to the extent that they are not included elsewhere in the Bill).

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[54] See *Richtersveld Community v Alexkor Limited* [2001] ZALCC 10 (Land Claims Court), *Kranspoort Community Re: Farm Kranspoort 48 LS* [1999] ZALCC 67, *Salem Party Club v Salem Community* [2016] ZASCA 203 (Supreme Court of Appeal).

3.19 Clause 28: Court orders

Clause 28(1) lists various orders that the court can make. The word "including" indicates that it is not restricted to these.[55] However, the list is incomplete. It does not include orders such as interlocutory orders or orders relating to contempt of court. It can be remedies that (i) "[…] any other order that a High Court can make".

Clause 28(3) – (8) is section 25 of the RLRA. The section does not include competent orders that can be made in terms of other legislation on a similar footing, such as the LTA, and it is not clear if these sections can apply to any other legislation. Clarity on this is needed, for instance, starting 28(3) with "In the case of Restitution claims".

3.20 Clause 30: Costs

Clause 30(2)(a): it is the judge president who decides which matters go to mediation and arbitration (clause 13). It is, therefore, strange that this is one of the factors that can be taken into account – when parties might not have a choice in the matter. This can be remedied by making it clear that where mediation or arbitration was ordered and parties refuse, it might be something to consider.

In constitutional litigation involving a private party and the state, where the private party is successful, the state normally pays costs. If a private party is unsuccessful in these

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[55] The Kenyan Environmental and Land Court Act in section 13(7) also provides an interesting example of possible orders (taking however into account that Kenyans Law of Civil Procedure may differ from the South African Law of Civil Procedure):

(7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—
  (a) interim or permanent preservation orders including injunctions;
  (b) prerogative orders;
  (c) award of damages;
  (d) compensation;
  (e) specific performance;
  (g) restitution;
  (h) declaration; or
  (i) costs.

cases, each party pays their own costs. The likelihood of land matters being constitutional matters is substantial. Reference should be made to this rule in this section.

LCC also developed the principle that costs should not be awarded against an indigent litigant who litigated in good faith on a novel point of law.[56]

3.21 Clause 31: Mediation

A few general comments should be made about mediation before the specific clauses are looked at. Mediation can be an excellent tool to solve land disputes for various reasons. For one, mediation gives parties a chance to, with facilitation, come to some form of agreement. If we take into account the intimate relationship that often exists between landowner and occupier, mediation means that the problem can be solved in a way that does not injure that relationship beyond repair. Secondly, mediation can also be cheaper and faster than cumbersome court processes.

However, mediation is not always a panacea. It is not always disciplined unless the mediator has some form of authority. In this respect, it might be helpful to have a panel of experienced mediators to choose from or to put structures in place to ensure that the mediator had the appropriate experience.

In restitution cases, for instance, the passage of time may lead to factual complexities that undermine simplified adjudication. It is imperative to think about how such factual complexities will be addressed through mediation. There are more than two parties involved in some instances, which can lead to extreme difficulty with little chance of success. In this context, when one deals with “artificial communities” that resulted from joined claims, mediation might be impossible.

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[56] Theunis Roux, 'Pro-poor court, anti-poor outcomes: explaining the performance of the South African Land Claims Court' (2004) 20 South African Journal on Human Rights 511 518. See also how NEMA deals with this issue as discussed above.

Since mediation individualises outcomes, it can also lead to a situation where claimants have differing outcomes of their claims, leading to a situation where there is not equal treatment amongst the claimants.

Furthermore, if mediation is not confined timewise, it can lead to a significant delay in matters.

There are provisions for mediation in the RLRA (sections 13 and 35A) that was not successfully implemented. It would be helpful to understand why not. For instance, payment of these mediators was not provided for. There are also not structures in place to structure the process. At some stage, the Department tried to do mediation but had to stop because of perceptions of choosing sides.

It might be useful to consider using or creating, for instance, a “land CCMA” system to deal with land claims where the claimants are only seeking compensation and straightforward labour tenant claims under chapter III. Mass processing of claims will leave the court with only the complex cases.

Alternatively, it might be good to have a non-exhaustive list as guidance of more appropriate cases to solve through trying mediation first.

Clause 31(6): it is not clear who is responsible for paying the costs of a mediator.
Clause 31(8) is welcomed. Often time is spent on mediation, only to have the work undone by a party choosing to litigate later. In this regard, orders or agreements that can be made an order of court address this problem.

3.22 Clause 32: Arbitration

Some general comments are necessary again. As with mediation, arbitration might not be a miracle solution either. For one, arbitration is not necessarily faster. Arbitration might help the courts will alleviating their caseload.

Usually parties agree to arbitration and to be bound by the finding of the arbiter. Other than mediation, arbitration and its outcome is not in the party's hands – an arbiter, like a judge, makes an award based on the law. Clause 32(6) seems to refer to the voluntariness of such a process. This is in contrast with clause 32(1) where the court orders arbitration. This contradiction needs to be addressed. If the idea is that a court can order arbitration that parties did not agree to themselves, it should be explained how this deviation from normal arbitration proceedings will work.

A particularly concerning aspect of mandatory arbitration is that there are no appeals of arbitration orders unless explicitly provided for by agreement. The Arbitration Act provides that an award may only be set aside for three grounds:

- Misconduct by an arbitrator in their duties as arbitrator;
- Gross procedural irregularity or exceeding an arbitrator's powers; or
- Where the award was improperly obtained.[57]

As the disputes within the proposed LC's jurisdiction are complex, weighty, and involve novel issues and areas of law, it is important that the default should be that parties retain their ability to appeal orders and awards.

A potential solution would be to provide that where the LC orders the parties to arbitrate a dispute that the arbitrators' awards be appealable to the LC.

3.23 Clause 33: Settling matters out of court

Linking to the above, clauses 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. This means that an arbitration award is binding.

[57] Section 33(1) of the Arbitration Act 42 of 1965.

It is not for the court, certainly not in terms of its oversight functions, to “reject” the award and then adjudicate on the matter.

3.24 Clause 34: Establishment and status of Land Court of Appeal

The same concerns with “law and equity” is also applicable here.
An audit of appeals from the LCC might be needed to assess whether there are enough appeals to justify a separate court or if the SCA cannot fulfil this function.

3.25 Clause 35: Composition of Land Court of Appeal

Clause 35(1)(c) refers to “President”, and it is not clear if it is the President of South Africa or the Judge President.

Clause 35(3) is unclear. It seems to suggest that judges from the LC will also hear appeals. Unless it refers to clause 36(4) that allows for LC judges to act in the appeal court.

If looking at the court's composition, it can be helpful to learn from the Labour Appeal Court and the Competition Appeal that draws judges from the High Courts to hear appeals. Also see the structure of other LCs in Australia and Kenya where the courts have layers of judges and commissioners.

3.26 Clause 47: Costs

This clause needs to be redrafted for clarity.

3.27 Clause 50: Transitional arrangements

This is based on the transitional arrangements in the Superior Courts Act, which is not without problems. This is a good opportunity to address and improve the process.

3.28 Clause 53: Regulations

This clause must be proceeded with the utmost caution: the Minister as an executive should not afford too much power to interfere with the workings of a court that falls under the judicial arm of government. Of particular concern here is clauses 53(1)(g) to (n). These are matters that should be dealt with in the rules of the court.

4 Conclusion

The underlying principle of having a well-sourced court with permanent judges to deal with land reform matters to address the issues in land reform is welcomed. It is important to situate this court within the wider framework of policies and legislation, clarify its role and jurisdiction, and make sure that where the gaps remain, it is filled with clear policy and legislation.

Bibliography

Pienaar JM, *Land reform* (Juta and Company Ltd 2014)
Van der Walt A, *Property and Constitution* (Pretoria University Law Press (PULP) 2012)
Baleni v Minister of Mineral Resources [2018] ZAGPPHC 829
Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Limited [2018] ZACC 41
Kranspoort Community Re: Farm Kranspoort 48 LS [1999] ZALCC 67
Richtersveld Community v Alexkor Limited [2001] ZALCC 10 (Land Claims Court)
Land Access Movement of South Africa v Chairperson of the National Council of Provinces [2016] ZACC 22 (Constitutional Court)
Salem Party Club v Salem Community [2016] ZASCA 203 (Supreme Court of Appeal)
Mwelase and Others v Director-General for the Department of Rural Development and Land Reform and Another
Panel HL, *Report of the High Level Panel on the assessment of key legislaiotn and the acceleration of fundamental change* (2017)
Ngalwana V, 'The Supreme Court of Appeal is not the apex court in all non-constitutional appeals' (2006) 27 Indus LJ
Roux T, 'Pro-poor court, anti-poor outcomes: explaining the performance of the South African Land Claims Court' (2004) 20 South African Journal on Human Rights 511
Thomas PJ, 'Did the Supreme Court of the Colony of the Cape of Good Hope have equity jurisdiction?' (2006) 12 Fundamina: A Journal of Legal History 251
Van der Walt A, 'Property rights and hierarchies of power: a critical evaluation of land-reform policy in South Africa' (1999) 64 Koers-Bulletin for Christian Scholarship 259
Van der Walt A and Dhliwayo P, 'The notion of absolute and exclusive ownership: a doctrinal analysis' (2017) 134 South African Law Journal 34
Maughn K, 'Officials looted millions in land reform scam' *Business Day* (24 January 2019) <https://www.businesslive.co.za/bd/national/2019-01-24-officials-looted-millions-in-land-reform-scam/>
AFRA, *Land Rights Adjudication: Developing principles and processes for ESTA and Labour Tenants Rights' Holders*, 2017)
Restitution of Land Rights Amendment Act
Buckley-Farinha LPM, 'A legal framework for land reform and sustainable community conservation in South Africa' (2014)
Africa PoS, 'HLP report' (<https://www.parliament.gov.za/high-level-panel> accessed 19 July

Extension of Security of Tenure Act 62 of 1996.

Land Reform (Labour Tenants) Act 3 of 1996.

National Environmental Management Act 107 of 1998.

Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

Restitution of Land Rights Act 22 of 1994.

Courts Administration Authority "Land and Valuation Division" (2012) *Courts SA* <http://www.courts.sa.gov.au/OurCourts/SupremeCourt/Pages/Land-and-Valuation-Division.aspx>.

Maledu v Itereleng Bakgatla Mineral Resources (Pty) Limited 2019 2 SA 1 (CC).

Baleni v Minister of Mineral Resources 2019 2 SA 453 (GP).

Minister of Rural Development and Land Reform v Normandien Farms (Pty) Ltd, Mathibane v Normandien Farms (Pty) Ltd 2019 1 SA 154 (SCA).

Māori Land Court <https://maorilandcourt.govt.nz/>.

Traditional and Khoi-San Leadership Act 3 of 2019.

UNEP "Environmental Courts & Tribunals: A Guide for Policy Makers" (2016) *Wedocs* <https://wedocs.unep.org/bitstream/handle/20.500.11822/10001/environmental-courts-tribunals.pdf>.

Environment, Resources and Development (ERD) Court <http://www.courts.sa.gov.au/OurCourts/ERDCourt/Pages/default.aspx>.