

Important changes made to the Land Court Bill

The Land Court Bill was introduced in Parliament on 19 May 2021. Agbiz submitted written comments on the Bill. Public hearings were held on 1 and 2 March 2022 and Agbiz presented its views at the public hearings. The portfolio committee then engaged on the Bill and heard the Department of Justice's responses to the submissions by the public. At subsequent meetings the committee deliberated on the Bill and proposed changes to its wording. The portfolio committee finalized the Bill on 13 September. The Bill is now before the Select Committee of Security and Justice which committee will hold further public hearings on 4 November.

Important changes were made during the portfolio committee process. The controversial clause dealing with compulsory arbitration that Agbiz had objected to, has been removed. Agbiz argued that compulsory arbitration is by implication a limitation on either party's right to have a dispute resolved by a court as provided for by section 34 of the Constitution. In terms of the provisions of the Bill, which have now been dropped, neither party's consent was required as the Judge President can summarily refer a matter to arbitration. Agbiz also pointed out that the application of arbitration in eviction disputes under PIE or ESTA is therefore constitutionally questionable.

Also, the clause that would have established a Land Appeal Court, the necessity of which Agbiz questioned, has been dropped from the Bill. In its written submission Agbiz pointed out that the number of cases currently appealed from the Land Claims Court does not justify the creation of a specialist Land Court of Appeal.

The clause dealing with the admissibility of evidence has also been reworded. Agbiz submitted that: "Exceptions to the accepted laws of evidence will likewise not be applicable in all disputes before the court. For instance, hearsay evidence is permitted under the Restitution Act but should not be permitted when the facts at hand relate to ESTA, the Ingonyama trust or any other statute that does not expressly permit such evidence to be heard. To provide certainty to litigants, we propose that section 22 (1) be reworded to limit exceptions to those contained in specific legislation such as the Restitution Act. "The admissibility of hearsay evidence has in fact been limited to restitution cases in the latest version of the Bill.

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