

REPUBLIC OF SOUTH AFRICA

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**SELECT COMMITTEE AMENDMENTS  
TO**

**LAND COURT BILL**

**[B 11B—2021]**

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*(As agreed to by the Select Committee on Security and Justice  
(National Council of Provinces))*

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**[B 11C—2021]**

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## AMENDMENTS AGREED TO

### LAND COURT BILL [B 11B—2021]

#### CLAUSE 7

1. On page 6, in line 39, to delete “concurrent”.
2. On page 6, in line 41, after “Court” to insert “or the Magistrate’s Court”.
3. On page 6, in line 46, to delete “each” and to replace with “the”.
4. On page 6, in line 47, to delete “each” and to replace with “the”.

#### CLAUSE 8

1. On page 7, in line 9, after “(3)” to insert “(a)”.
2. On page 7, in line 10, to delete “judges” and to replace with “persons”.
3. On page 7, in line 11, after “Court,” to insert “including persons”.
4. On page 7, after line 12, to insert the following:

“(b) Any person who was not a judge of the High Court of South Africa or any court of a status similar to the High Court of South Africa at the time of the appointment to the Court does not automatically hold concurrent appointment to the Court and the High Court of South Africa, unless the Judicial Service Commission advises the President that such person must hold concurrent appointment.”.
5. On page 7, in line 16, after “be” to insert “broadly”.

#### CLAUSE 12

1. On page 8, in lines 32 and 33, to delete all the words from “The” up to and including “manner.”, and to replace with the following:

“The assessors contemplated in subsection (1) must be—  
(a) appointed by the presiding judge in the prescribed manner;  
and  
(b) a person who has skills, experience and knowledge relevant to the work of the Court, irrespective of whether that person has any legal qualifications or not.”.
2. On page 8, in lines 52 and 53, to delete all the words from “If” up to and including “prescribed.”, and to replace with the following:

“An assessor who is not in the full-time employment of the State must receive such remuneration and is entitled to such benefits as may be determined by the Minister, in consultation with the Cabinet member responsible for finance.”.

## Part 2

1. On page 9, in line 35, after “*representation*,” to insert “*powers of Court on hearing*”.

## CLAUSE 14

1. On page 9, in lines 37 to 41, to delete all the words from “Except” up to and including “to—”, and to replace with the following:

“The Rules Board must make rules to regulate the conduct of proceedings of the Court, including—”.

2. On page 9, in line 48, to delete “and”.
3. On page 9, after line 48, to insert the following:
  - “(d) the practice and procedure of the Court in applications in terms of Chapter IIIA of the Restitution of Land Rights Act;
  - (e) any of the matters listed in section 6(1)(a) to (s) of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), insofar as they are appropriate to the functioning of the Court; and”.
4. On page 9, in line 49, to delete “(d)” and to replace with “(f)”.
5. On page 9, in lines 51 to 53, to delete all the words from “Notwithstanding” up to and including “basis.”, and to replace with the following:

“Notwithstanding anything to the contrary in this Act or in the rules contemplated in subsection (1), the Court may—

- (a) at any stage after a claim has been referred to it, refer the claim back to the Commission with directives as to matters which are to be investigated and reported on by the Commission; and
- (b) conduct any part of any proceedings on an informal or inquisitorial basis.”.

6. On page 10, in line 1, to delete “for Courts of Law”.
7. On page 10, after line 7, to insert the following:

“(5) Except as is otherwise provided for in this Act, the provisions of the Superior Courts Act, and of the rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court of South Africa made under the Rules Board for Courts of Law Act, 1985, apply with the necessary changes required by the context to the Court—

- (a) in so far as these provisions are not provided for in this Act or the rules; and
- (b) to the extent that they are not inconsistent with this Act.”.

## CLAUSE 17

1. On page 10, in line 37, after “appeal” to insert “in terms of”.

## Part 3

1. On page 11, in line 2, after “*Witnesses*” to insert “, *witness fees*”.

## CLAUSE 24

1. On page 12, in line 34, to delete “incidental to an issue”, and to replace with “sufficiently connected to a matter”.

## CLAUSE 25

1. On page 13, in lines 14 and 15, to delete all the words from “The” up to and including “fit.”, and to replace with the following:
  - “The Court may, after the holding of such a conference—
  - (a) issue such orders and directions as to the procedure to be followed before and during the trial as it deems appropriate; and
  - (b) make such order as to the costs of any proceedings under this section as it deems fit.”.

## CLAUSE 26

1. On page 13, in line 18, to delete “of”.
2. On page 14, after line 31, to insert the following:
  - “(10) Any direction or ruling made by the Court has the force and effect of an order of the Court.”.

## CLAUSE 27

1. On page 14, in lines 33 to 39, to delete all the words from “The” up to and including “proceedings.”, and to replace with the following:
  - “The Court may, on application of any person affected thereby, or acting of its own accord in cases falling under paragraph (b), and subject to the rules, vary or rescind any judgment or order—
  - (a) erroneously sought or erroneously granted in the absence of the person against whom that judgment or order was granted;
  - (b) in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission;
  - (c) which was void from its inception or was obtained by fraud or mistake common to the parties; or
  - (d) in respect of which no appeal lies.”.

## CLAUSE 32

1. On page 16, in line 32, to delete “**Appeals against judgment or order of other courts**”.
2. On page 16, in line 33, to delete “**32.** (1)” and to replace with “(3)”.
3. On page 16, in line 36, to delete “(2)” and to replace with “(4)”.
4. On page 16, in line 38, to delete “(3)” and to replace with “(5)”.
5. On page 16, in line 40, to delete “(4)” and to replace with “(6)”.
6. On page 16, in line 40, to delete “(1)” and to replace with “(3)”.
7. On page 16, in line 46, to delete “(5)” and to replace with “(7)”.

8. On page 16, in line 49, to delete “(6)” and to replace with “(8)”.
9. On page 16, in line 52, to delete “(7)” and to replace with “(9)”.
10. On page 16, in line 52, to delete “(6)” and to replace with “(8)”.
11. On page 17, in line 16, to delete “(8)” and to replace with “(10)”.
12. On page 17, in line 24, to delete “(9)” and to replace with “(11)”.
13. On page 17, after line 26, to insert the following:

**“Appeals against judgment or order of other courts**

**32.** The rules must provide for the manner in which appeals must be lodged with the Court, and the processes that the Court must follow in hearing appeals against judgments and orders of other courts.”.

CLAUSE 33

1. On page 17, after line 32, to insert the following:

**“Removal of action or proceedings**

**34.** (1) If any action or proceedings have been instituted in the Court sitting in any area of jurisdiction, and it appears to the Court sitting in that area that such action or proceedings—

- (a) should have been instituted in the Court sitting in another area of jurisdiction within the same province; or
- (b) would be more conveniently or more appropriately heard or determined—
  - (i) by the Court sitting in another area of jurisdiction within the same province;
  - (ii) at the seat of the Court if the proceedings have been instituted in the Court sitting at another area of jurisdiction within the same province; or
  - (iii) at another area of jurisdiction if the proceedings have been instituted at the seat of the Court within the same province,

the Court sitting in that area may, upon application by any party thereto and after hearing all other parties thereto, order such action or proceedings to be removed to the Court sitting at another area of jurisdiction or to the seat of the Court, as the case may be.

(2) The provisions of this section apply, with necessary changes required by the context, to the removal of an action or proceedings from—

- (a) the Court to a Division of the High Court; and
- (b) a Division of the High Court to the Court,

within the same province.

(3) An order for removal—

- (a) under subsection (1) must be transmitted to the registrar of the Court to which the removal is ordered; and
- (b) under subsection (2) must be transmitted to the registrar of the Court or the High Court, as the case may be, to which the removal is ordered,

and upon the receipt of such order the Court or the High Court, as the case may be, may hear and determine the action or proceedings in question.”.

## CLAUSE 34

1. On page 17, in line 34, to delete “34” and to replace with “35”.
2. On page 18, after line 9, to insert the following:
 

“(c) Officers and staff of the Land Claims Court who were appointed in terms of section 28I of the Restitution of Land Rights Act before the date of commencement of this Act, become officers and staff of the Court on the same terms and conditions of their appointment in terms of that section: Provided that the terms and conditions applicable to officers and staff who have been appointed on contract basis remain the same at the commencement of this Act.”.
3. On page 18, after line 13, to insert the following:
 

“(4) Until the rules contemplated in section 29(3) and the regulations contemplated in section 37(1)(d) have been made, mediators and assessors must be appointed in the manner provided for in the Restitution of Land Rights Act.

(5) The rules published under Government Notice No. R. 300 of 21 February 1997 continue to apply to the Court, with necessary changes required by the context, until the rules contemplated in section 14(1) have been made.”.

## CLAUSE 35

1. On page 18, in line 15, to delete “35” and to replace with “36”.

## CLAUSE 36

1. On page 18, in line 18, to delete “36” and to replace with “37”.

## CLAUSE 37

1. On page 18, in line 36, to delete “37” and to replace with “38”.
2. On page 18, in line 36, to delete “2022” and to replace with “2023”.

## LONG TITLE

1. On page 2, in the fourth line, to delete “concurrent”.

## ARRANGEMENT OF SECTIONS

1. On page 4, in line 3, after “*representation*,” to insert “*powers of Court on hearing*”.
2. On page 4, in line 11, after “*Witnesses*” to insert “, *witness fees*”.
3. On page 4, after line 37, to insert the following:
 

“34. Removal of action or proceedings”.
4. On page 4, in line 38, to delete “34” and to replace with “35”.
5. On page 4, in line 39, to delete “35” and to replace with “36”.

6. On page 4, in line 40, to delete “36” and to replace with “37”.
7. On page 4, in line 41, to delete “37” and to replace with “38”.

#### SCHEDULE

1. On page 19, in the third line, to delete “35” and to replace with “36”.

#### ITEM NO. 1

1. On page 19, in the fourth column, in the eighth line, to delete “2022” and to replace with “2023”.
2. On page 19, in the fourth column, after the tenth line, to insert the following:
  - “2. The substitution in section 20(4) for paragraph *(f)* of the following paragraph:  
 “*(f)* on the authority of a warrant issued by a magistrate or a judge of the Land Court having jurisdiction at any reasonable time enter upon such land or any contiguous land.”.
3. On page 19, in the fourth column, in the eleventh line, to delete “2” and to replace with “3”.
4. On page 19, in the fourth column, after the fourteenth line, to insert the following:
  - “4. The substitution in section 24D(6) for paragraph *(d)* of the following paragraph:  
 “*(d)* if it is necessary for the purposes of paragraph *(a)*, *(b)* or *(c)*, at any reasonable time, on the authority of a warrant issued by a magistrate or judge of the Land Court having jurisdiction, enter upon any erf or other land in the area concerned.”.
5. On page 19, in the fourth column, in the fifteenth line, to delete “3” and to replace with “5”.
6. On page 19, in the fourth column, in the thirtieth line, to delete “4” and to replace with “6”.

#### ITEM NO. 2

1. On page 19, in the fourth column, in the thirty-eighth line, to delete “2022” and to replace with “2023”.

#### ITEM NO. 3

1. On page 19, in the fourth column, in the forty-fourth line, to delete “2022” and to replace with “2023”.

#### ITEM NO. 4

1. On page 19, in the fourth column, in the fifty-first line, to delete “2022” and to replace with “2023”.

2. On page 19, in the fourth column, after the fifty-seventh line, to insert the following:
  - “**4.** The substitution in section 11(5) for paragraph (a) of the following paragraph:  
“(a) If after an order has been made by the Court as contemplated in section [35] 26(3) of the Land Court Act, 2023, or an agreement has been entered into as contemplated in section 14(3) or 42D, it is shown that another claim was lodged in terms of this Act in respect of the land to which the order or agreement relates, any interested party may apply to the Court for the rescission or variation of such order or the setting aside or variation of such agreement.”.
  - 5.** The substitution in section 11 for subsection (5A) of the following subsection:  
“(5A) Where an appeal is pending in respect of an order of the Court contemplated in section [35] 26(3) of the Land Court Act, 2023, an application for the rescission or variation of such order under subsection (5) shall be made to the Constitutional Court or the Supreme Court of Appeal, as the case may be.”.
3. On page 19, in the fourth column, in the fifty-eighth line, to delete “**4**” and to replace with “**6**”.
4. On page 19, in the fourth column, in the fifty-eighth line, to delete “3” and to replace with “**III**”.
5. On page 19, in the fourth column, in the fifty-ninth line, to delete “**5**” and to replace with “**7**”.
6. On page 19, in the fourth column, in the sixty-third line, to delete “2022” and to replace with “2023”.

#### ITEM NO. 5

1. On page 20, in the fourth column, in the seventh line, to delete “2022” and to replace with “2023”.
2. On page 20, in the fourth column, in the twelfth line, to delete “2022” and to replace with “2023”.
3. On page 20, in the fourth column, in the twenty-second line, after “13” to insert “(1)”.
4. On page 21, in the fourth column, in the second to seventh lines, to delete all the words from “**8**” up to and including “may—.”.
5. On page 21, in the fourth column, in the eighth line, to delete “**10**” and to replace with “**8**”.
6. On page 21, in the fourth column, in the thirteenth line, to delete “**11**” and to replace with “**9**”.
7. On page 21, in the fourth column, in the twentieth line, to delete “**12**” and to replace with “**10**”.
8. On page 21, in the fourth column, in the twenty-eighth line, to delete “**13**” and to replace with “**11**”.

9. On page 21, in the fourth column, in the forty-first line, to delete “14” and to replace with “12”.
10. On page 21, in the fourth column, in the forty-first line, to delete “29, 30 and 31” and to replace with “29 and 30”.
11. On page 21, in the fourth column, in the forty-second line, to delete “15” and to replace with “13”.
12. On page 21, in the fourth column, in the fifty-fifth line, to delete “16” and to replace with “14”.
13. On page 22, in the fourth column, in the second line, to delete “17” and to replace with “15”.

## ITEM NO. 6

1. On page 22, in the fourth column, in the twelfth line, to delete “2022” and to replace with “2023”.

## ITEM NO. 7

1. On page 22, in the fourth column, in the forty-sixth line, to delete “2022” and to replace with “2023”.

## ITEM NO. 8

1. On page 22, in the fourth column, in the fifty-fourth line, to delete “2022” and to replace with “2023”.
2. On page 24, in the fourth column, in the twenty-seventh line, to delete all the words from “The” up to and including “section 19”, and to replace with the following:
 

“The substitution in section 19 for—

  - (a) subsections (2) and (3) of the following subsections, respectively:
 

“(2) Civil appeals from magistrates’ courts in terms of this Act shall lie to the Land [Claims] Court.

(3) Any order for eviction by a magistrate’s court in terms of this Act, in respect of proceedings instituted on or before a date to be determined by the Minister and published in the *Gazette*, shall be subject to automatic review by the Land [Claims] Court, which may—

    - (a) confirm such order in whole or in part;
    - (b) set aside such order in whole or in part;
    - (c) substitute such order in whole or in part; or
    - (d) remit the case to the magistrate’s court with directions to deal with any matter in such manner as the Land [Claims] Court may think fit.”; and
  - (b) subsection (5) of the following subsection:
 

“(5) Any order for eviction contemplated in subsection (3) shall be suspended pending the review thereof by the Land [Claims] Court.”.
3. On page 24, in the fourth column, in thirty-third line, before “Court” to insert “Land”.
4. On page 24, in the fourth column, in the forty-ninth line, before “Court” to insert “Land”.

5. On page 24, in the fourth column, in the fifty-first line, before “Court” to insert “Land”.
6. On page 24, in the fourth column, in the fifty-sixth line, before “Court” to insert “Land”.
7. On page 24, in the fourth column, in the sixtieth and sixty-first lines, to delete all the words from “The” up to and including “(4)” and to replace with the following:
  - “**22.** The amendment of section 20 by—
  - (a) the deletion of subsection (3); and
  - (b) the substitution for subsection (4) of the following subsection:
    - “(4) The [**President of the Land Claims Court may**] Rules Board for Courts of Law must make rules[—
    - (a) **to govern the procedure in the Land Claims Court in terms of this Act; and**
    - (b)] to govern the procedure for the automatic review of orders for eviction in terms of section 19(3).”.

ITEM NO. 9

1. Item rejected.



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