

New Land Court Bill seeks to address slow processing of land claims

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A new Land Court Bill aims to speed up land reform by addressing the slow processing of land claims by the Land Claims Court. The new bill seeks to give effect to recommendations of the 2019 Report by the Presidential Advisory Panel on Land Reform and Agriculture.



Source: www.pexels.com

Presently, the Land Claims Court has exclusive jurisdiction to decide various issues regarding claims for the restitution of dispossessed land in terms of the Restitution of Land Rights Act. When the Land Claims Court was created in the 1990s, the idea was that most land claims would be finalised relatively quickly. It was therefore meant to be a temporary court with temporary judges.

The reality is that restitution processes are taking far longer than was anticipated.

The Land Claims Court is also struggling to properly settle the growing backlog of land claims. These delays have caused significant frustration and dissatisfaction for land claimants.

Insufficient capacity

According to a memorandum on the Bill and the Advisory Panel Report, a major cause of the backlog is because the Land Claims Court does not have permanent judges or sufficient capacity and staff to process land claims efficiently and timeously.

Another problem (not mentioned in the memorandum or the Advisory Panel Report) is that an appeal against a judgment of the Land Claims Court can only be decided by the Supreme Court of Appeal (SCA). In practice, an appeal to the SCA can take a long time to finalise.

To address these problems, the Bill proposes that the Land Claims Court be abolished and replaced with a specialised Land Court and Land Court of Appeal. If the Bill is enacted, these two courts will deal almost exclusively with all issues relating to land rights and land claims.

According to the Advisory Panel Report and the Memorandum on the Bill, the establishment of a specialised and permanent Land Court and Land Court of Appeal will also help contribute to the development of case law on land restitution and land rights.

The Bill also allows for future legislation to give the Land Court jurisdiction to deal with other issues relating to land rights and land claims if the need to do so arises in the future.



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Land Court status

According to the Bill, the Land Court will have similar status and powers to the High Court. The Land Court of Appeal will have similar status and powers to the Supreme Court of Appeal. Both courts will be headed by a judge president and deputy judge president who must both be judges of the High Court at the time of their appointment.

Significantly, every judge on the Land Court and Land Court of Appeal will be permanent. Judges will be appointed by the president on the recommendation of the Judicial Service Commission and must have experience or expertise in land rights matters. The judges of the court must also be representative of the race and gender demographics of the country.

An important innovation is the Bill's emphasis on alternative dispute resolution. For instance, one clause will empower the judge president to decide that a case should rather be resolved through mediation or arbitration and not in open court. Judges will also be empowered to suspend a hearing at any time and refer a case to mediation or arbitration if they think this will be appropriate. This is supposed to provide a cheaper and quicker alternative for cases to be decided outside of the usual court process which tends to be more costly and adversarial.

The judge president can, however, decide that a case should be decided through the usual court process, if the outcome of the case could contribute to the development of the law.



Public accessibility

The Bill places a significant emphasis on making the Land Court accessible to the public. The Bill will allow the minister of justice (in consultation with the chief justice) to designate places for hearings to be held, like community centres or schools, to make the court more accessible for people located in rural areas.

Judges will also be empowered to refer cases to Legal Aid so that an unrepresented party can be provided with a lawyer. The Bill states that Legal Aid must provide a lawyer if substantial injustice would result otherwise. Parliament must also provide Legal Aid with sufficient funding to ensure that unrepresented people can receive legal representation in appropriate cases.

The Bill also proposes that the Land Court be given the power to order the Commission for the Restitution of Land Rights to conduct an investigation and provide a report on any case referred to the court.

When a case is taken on appeal to the Land Court of Appeal, the Land Court can also make any appropriate order that will operate until the appeal has been finalised.

The Bill retains several provisions that already regulate proceedings in the Land Claims Court. For instance, that the Land Court (like the Land Claims Court) can accept evidence that would not normally be admissible in court, such as hearsay evidence or expert evidence by anthropologists or historians on land dispossession. Also, the Land Court retains the power to order the state to pay a land claimant compensation or to set conditions that must be fulfilled before dispossessed land can be restored.

The Bill has been sent by the minister of justice to the National Assembly for consideration.

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