

## **Ad Hoc Committee mulls changes to the section 25 Amendment Bill**

At the end of March 2021, the Ad Hoc Committee tasked with amending section 25 of the Constitution hosted the national Public Hearings on the 18<sup>th</sup> Constitutional Amendment Bill. Various interested parties made oral submissions to accompany their written inputs which the Committee was tasked to consider. Following the public hearings, the Parliamentary Legal Services briefed the Committee on the impact of the proposed changes.

The first issue addressed by the legal unit related to the inclusion of improvements under the Amendment Bill. As it currently reads, the Bill states that *"...a court may, where land and any improvements thereon are expropriated for the purposes of land reform, determine that the amount of compensation is nil."*

Several organisations, including Agbiz, queried why improvements would be treated in the same manner as the actual land itself. Our overall opposition to the Bill notwithstanding, Agbiz argued that it would be illogical to include improvements in the social justice premise on which the Bill is based. This premise of the argument is that an owner who benefitted from past, racially discriminating regimes should not be compensated where they acquired the land via forced dispossessions. It is illogical to apply the same argument to improvements that were made via investments or sweat capital over the years. There is also a disjuncture with the Expropriation Bill as the 'nil compensation' provisions in the latter only refer to land and not improvements.

The Parliamentary legal unit noted these arguments and recommended that the words *"...and improvements"* be deleted. This would, however, constitute a policy decision and as such recommended that the Ad Hoc Committee checks with the National Assembly whether it is within their mandate to do so.

The legal unit also recommended that the words *"...a court may,"* be deleted from the Bill. On a pure, legal interpretation the current wording can be interpreted to imply that all instances of nil compensation must be determined by the court. According to the current wording of section 25 of the Constitution, compensation can either be agreed to by the parties or decided by a court of law. The current wording may invertedly exclude the possibility of parties agreeing to nil compensation. The legal unit went at length to explain that such an amendment does not restrict a party's access to court nor does it exclude the court's jurisdiction to decide on compensation. It merely clarifies that a court will only be involved where there is a dispute around compensation and that a court need not condone each instance of 'nil' compensation where an agreement to that effect has been reached.

Agbiz will study the implications of these amendments and follow the process closely.