

**THE TRADITIONAL COURTS BILL**  
**SUMMARY OF THE PROCESS TO DATE 5 FEBRUARY 2014**

---

**1. BACKGROUND**

- 1.1 The Minister for Justice and Constitutional Development, in November 2011, requested the introduction of the Traditional courts Bill in the National Council of Provinces (NCOP), in terms of NCOP Rule 186. The Select Committee on Security and Constitutional Development then formally introduced the Bill in the NCOP on 25 January 2012 in terms of the said Rule.
- 1.2 The JTM, in terms of Joint Rule 160(6), classified the **Traditional courts Bill [B 1 – 2012]**, as a section 76 Bill and as a Bill falling within the ambit of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No 41 of 2003).
- 1.3 An explanatory summary of the Bill and prior notice of its introduction was published in Government Gazette No 34850 of 13 December 2011. The Select Committee received 57 submissions on the Bill from NGO's, civil society and communities. The initial 2008 Bill was also referred to the National House of Traditional Leaders (NHTL) for comment, which was received on 14 March 2012.
- 1.4 The Select Committee received a briefing on the Bill from the Department of Justice and Constitutional Development on 7 March 2012, and with agreement of the special delegates and permanent delegates, referred the matter to the legislatures for public hearings.

**2. COMMITTEE PROPOSAL TO HOST FURTHER PUBLIC HEARINGS ON THE TRADITIONAL COURTS BILL**

- 2.1 The Select Committee received eight negotiating mandates from provinces and one request from the Mpumalanga legislature, addressed to the Chairperson of the Council, to postpone the Negotiating Mandate meeting for three months to assist it to conclude its public hearing process.
- 2.2 The Select Committee considered the Mpumalanga request for extension, a request for a meeting by the Minister for Women, Children and People with Disabilities, national stakeholders and interested parties that had not had an opportunity to present their concerns on the Bill, and agreed to request the Chairperson of the Council's consideration to extend the deadline of the Traditional courts Bill, in terms of NCOP Rule 240(3). The extension was aligned with the statutory deadline of 30

December 2012 by which the legislation envisaged by the Bill should be enacted to repeal the Black Administration Act.

- 2.3 The Committee advertised for further submissions on the Bill and, after short-listing 21 submissions and granting an additional 5 submissions, held hearings in Parliament from 18-21 September 2012 and produced a report of the hearing process and comments from the presenters.
- 2.4 The Committee considered the Repeal of the Black Administration Act and Amendment of Certain Laws Amendment Bill on 28 November 2012 and, with the National Assembly, removed the sunset clause that determined the date by which the Traditional Courts Bill had to replace the Black Administration Act.
- 2.5 The Select Committee met on 15 October 2013 to discuss the negotiating mandates of the provinces. The Committee accepted a proposal to return the mandates to the legislatures to consider further amendments to the Bill, or further public hearings to amend the Bill and requested legislatures to confirm their position on the Bill.
- 2.6 The Eastern Cape, Gauteng and Western Cape legislatures replied that they would not conduct further public hearings on the Bill as they had initially followed an extensive public hearing process. The North West legislature held additional public hearings and submitted a revised negotiating mandate. The Free State legislature indicated they would need until February 2014 to conduct additional public hearings.
- 2.7 The Committee has nine negotiating mandates before it for consideration.

### 3. Negotiating Mandate process

<b>For (but with amendments)</b>	<b>Against</b>	<b>Unclear</b>
Free State	Eastern Cape	KwaZulu Natal
Northern Cape	Gauteng	
North West	Western Cape	
Mpumulanga	Limpopo	

- 3.1 The Committee must consider the negotiating mandates
  - i The delegates may negotiate as per the parameters of their negotiating mandates and amend the Bill to address the Constitutional challenges and concerns raised by the public to produce an amended Bill for provinces to consider final mandates.

TRADITIONAL COURTS BILL SUMMARY OF NEGOTIATING MANDATES		VOTE of PROVINCE		
PROVINCE	NEGOTIATING MANDATE	YES	NO	ABSTAIN
EASTERN CAPE	The Eastern Cape legislature does not support the Bill and mandates the Eastern Cape delegate to the NCOP to negotiate against the adoption of the Bill. The Eastern Cape raised matters for consideration but stated that, "[T]he Bill is fundamentally flawed and no amount of amendments will be able to remedy the Bill."		NO	
FREE STATE	"The Free State delegation votes in favour of the Bill." The Free State proposed amendments to the Bill	YES, with amendments		
GAUTENG	"The Gauteng legislature does not support the Bill in its current form and therefore votes against the Traditional Courts Bill." The Gauteng legislature proposed matters for consideration.		NO	
KWAZULU-NATAL	The KZN legislature proposed amendments to the Bill. <b>No formal stance on the Bill was communicated.</b>			
LIMPOPO	The Limpopo legislature stated that, "NCOP Permanent Delegates not to support the Bill, considering the inputs mentioned in the attached report."		NO	
MPUMALANGA	The legislature requested postponement of the Negotiating Mandate meeting for three months to finalise the provincial hearings. The request was granted in terms of NCOP Rule 240(3). The Mpumalanga legislature confers on its delegate the mandate "to negotiate on the Bill in accordance with the views of members of the Committee and also taking into account the proposed amendments...".	YES, with amendments		
NORTHERN CAPE	The Northern Cape is in favour of the principle of the Bill but supports enhancing the Bill by considering the views as expressed during the public participation process and deliberations of the Committee.	YES, with amendments		
NORTH WEST	The north West legislature submitted a revised negotiating mandate on 22 January 2014 and stated they, "Vote in	YES, with amend		

	favour of the Bill noting the concerns that have been highlighted and the attached submissions of communities.	ments		
WESTERN CAPE	The Western Cape legislature conferred on the Western Cape delegation the authority not to support the Bill for the reasons outlined in its mandate.		NO	