**STATEMENT BY THE DEPUTY MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT, JOHN JEFFERY ON THE TRADITIONAL COURTS BILL**

The approval by Cabinet of the revised Traditional Courts Bill in December 2016 is a culmination of the tireless work of the Reference Group made up of representatives of the institutions of traditional leaders and members of civil society. Deputy Minister John Jeffery responsible for Justice and Constitutional Development and his counterpart responsible for Traditional Affairs, Deputy Minister Bapela backed by team of drafters and advises from the two departments and some academics steered the deliberations.

Therefore the Bill represents an end-product of a collation of ideas and wisdom without which we would not have succeeded in our endeavor to finalise the Bill. I wish therefore to convey my appreciation to the Reference Group and all who contributed to the outcome for their invaluable contribution.

During the colonial and the apartheid era the traditional way of dispensing justice in accordance with communal values and traditions existed side by side with the western courts which dispensed justice according to what became the law of the land.  This led to the pluralist legal system which consisted of the transplanted Roman Dutch law as the law of the land on the one hand and customary law and legal systems that applied to other communities on the other.

The Constitution, as the Supreme Law has incorporated customary law into the mainstream South African legal system making it part of the law of the land.  It is for this reason that all courts must apply customary law when such law is applicable in any matter before the court.

Chapter 12 of the Constitution recognises the institution, status and role of traditional leadership according to customary law, subject to the Constitution.  Schedule 6 of the Constitution recognises the existence of traditional courts. The Constitution recognises customary law and legislation must thus provide for it.

Traditional courts exist and therefore, there is a constitutional imperative that they be transformed to suit our constitutional dispensation. Although the democratic Parliament repealed the Black Administration Act of 1927, provisions that regulate the functioning of these courts were preserved in the time being, until a proper legislative framework is put in place.

The Traditional Courts Bill, in its revised form, provides the desired framework which is in line with our democratic Constitution. The enactment of the Traditional Courts Bill will put an end to the abuse of the system which was manipulated to serve the interests of the colonial and apartheid regimes. The envisaged legislation is aimed at transforming the traditional courts system in order to ensure that these courts function under and comply with the Constitution and the Bill of Rights.

Traditional courts are courts of law under customary law, with the specific purpose of promoting the equitable and fair resolution of disputes.  They are a centre of excellence in alternative dispute resolution mechanisms and restorative justice. Their focus is on preventing conflict, maintaining harmony and resolving disputes in a manner that promotes peace, social cohesion and reconciliation.

Customary law as a living law ensures that this body of law continues to develop to adapt to the democratic values underpinned by the Bill of Rights. For instance the right to dignity, achievement of equality, the promotion of non-racialism and non-sexism, freedom of sexual orientation and identity must be integral to the functioning of our traditional courts.

These courts must, when dealing with matters, bear in mind the existence of systemic unfair discrimination and inequalities or attitudes which are in conflict with the Constitution or which have the propensity of precluding voluntary participation in court proceedings by any person or group of persons, particularly in respect of gender, gender identity, sexual orientation, age, disability, religion, language, marital status and race brought about by colonialism, apartheid and patriarchy.  It is for this particular reason that the Bill enjoins traditional leaders and those who guide the proceedings to take and administer a pledge to uphold the Bill of Rights.

A further focus is on the voluntary nature of customary law and customary courts which are accessible to those who voluntarily subject themselves to customary law and traditional courts.

As I have alluded to in the beginning, this is Bill is fundamentally different from the previous versions.  We have taken every effort to address the concerns raised in respect of the two previous Bills which were introduced into Parliament in 2008 and 2012.  We have addressed concerns which were raised in relation to the role of women, the right to opt out and in and what was perceived as an entrenchment of tribal boundaries.

The revised Bill recognises the other levels of dispute resolution in the traditional justice system. The main object of the Bill is to create a uniform legislative framework, regulating the role and functions of traditional courts in the resolution of certain disputes, in accordance with constitutional imperatives and values.

The Bill is intended to improve access to justice as these courts are easily accessible to local communities, dispense justice speedily and cheaply.  Although legal representation is excluded, the system allows assistance of women and other vulnerable members of society.

Traditional courts must be constituted of women and men pursuant to promoting the right to equality as contemplated in section 9 of the Constitution. The courts are required to promote and protect the representation and participation of women, as parties and members of the courts.  It requires the Minister and the Commission for Gender Equality to put measures in place to promote gender equality in these courts and to report annually thereon to Parliament.  Before any proceedings of a court begin, the traditional leader or delegated person convening the court must say a pledge that he or she will protect and promote the values enshrined in the Constitution.

The orders that a court may make as set out in the Bill, differ from the previous Bills and address the concerns that were raised. While the previous Bills provided for the imposition of fines and the deprivation of customary law benefits, among others, the Bill does not provide for these, which could lead to abuses.  The emphasis is on restorative justice measures, for instance compensation and redress, which are aimed at restoring relations between parties and promoting social cohesion.

The payment of compensation may, however, not exceed the value of the damage giving rise to the dispute or the amount determined by the Minister by notice in the Gazette from time to time, whichever is the lesser.  Any community service ordered must be for the good of the community and not for the benefit of any member of the court or a traditional leader

Provision is made for the review of procedural short-comings in the High Court, for instance if the court was not properly constituted or the parties were not allowed to be represented by persons of their choice. The High Court can confirm, alter, set aside or correct the order made by a traditional court, set aside or correct the proceedings of the traditional court, make the order the traditional court ought to have made or remit the case to the traditional court to deal with in the matter ordered by the High Court.  These reviews will contribute to precedents and enhance jurisprudence in matters of this nature.

We believe that the enactment of this Bill will benefit millions of people who continue to lead the traditional African way of life and equally these courts enhance access to justice for all who choose to use these courts as an alternative vehicle to resolve disputes.

Deputy Minister and officials will be able to comment on the technical aspects of the Bill which may be raised in relation to the Bill.

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