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**REPORT: STAKEHOLDERS INPUTS AND PUBLIC HEARINGS: TRADITIONAL AND KHOI – SAN LEADERSHIP BILL, 2015**

1. **INTRODUCTION**

The Traditional and Khoi – San Leadership Bill 2015 as introduced in the National Assembly as a section 76 Bill was referred to the Portfolio Committee on Cooperative Governance and Traditional Affairs for finalization. The Committee decided to divide the public participation process into two main categories. First the Committee decided to invite various stakeholders who have conducted work on traditional and Khoi San matters. Secondly the Committee decided to conduct interviews in all the Provinces.

This report covers the assessment of stakeholder’s inputs as well as issues raised during the public hearings conducted in Northern Cape, Western Cape and the Eastern Cape Provinces. The public hearings were conducted in the three above mentioned provinces between the periods 24 November until 9 December 2016. Part A of the report focuses on stakeholder’s inputs while Part B focus on inputs received during the public hearings. Part C of the report will be added at a later stage and will focus on all the written submissions received by the Committee.

1. **PART A: STAKEHOLDERS INVITED**

The Committee invited various academics, organisations and individuals working on matters relating to traditional and Khoi San leadership, culture, customs and tradition were invited to present their views on the contents of the Traditional and Khoi – San Leadership Bill. The following stakeholders were invited to give their inputs on the Bill:

1. Natural Justice
2. PLAAS (University of the Western Cape)
3. Land and Accountability Research Centre
4. Legal Resource Centre
5. Financial and Fiscal Commission
6. CRL Rights Commission
7. South African Local Government Association (SALGA)
8. Ntinga Ntaba KaNdoda Organization
9. **STAKEHOLDERS INPUTS ON THE BILL**

The following are the issues that stakeholders raised regarding the Bill:

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| **Organisation/ Individual/ academic or member of the public** | **Comments/ inputs** | **Section of the Bill referring to and proposed amendments.** |
|  | *Criteria for the recognition of the Khoi San Communities.* Criteria as drafted in the Bill makes it difficult for the Khoi San communities to be recognised. It fails to take into account the unique and violent manner apartheid had on the disruptions of the cultural institutions, way of life and values of the Khoi San | *Clause 5 of Chapter 2 of the Bill.* Criteria for recognition should reflect the historical trajectory of the Khoi San communities. The criteria should be amended to take a restorative approach. Status quo report should be used as a guiding standard as to who the historical Khoi San communities are. Modern day Khoi – San descendants to self-identify and take membership of those historical communities |
|  | The Bill entrenches former homeland and apartheid boundaries. Traditional Communities recognised in terms of the Bill are those created in terms of TLGFA which recognises tribes created under Natives Administration Act of 1927 and tribal authorities created under Bantu Authorities Act of 1951. Khoi San leaders given jurisdiction over people who choose to affiliate to them and not over territorial land. Traditional leaders have jurisdiction over land. Bill treats the two differently. | Clauses 3, 4, and 5 of chapter 2 of the Bill. No specific amendments suggested. |
|  | Two different systems are envisaged for traditional communities on the one hand and Khoi San communities on the other. The two communities are treated differently in the Bill. No requirement for self-identification for traditional communities.  The Bill needs to treat the two in the same manner otherwise it opens itself for constitutional challenges (undermines freedom of association as contained in the constitution. No opt –in and out mechanisms are provided for people living in traditional areas. | Clause 3, 4, and 5 of Chapter 2 if the Bill. The above sections it was suggested needs to be reworked in order to ensure that the two communities are treated in the same manner in the Bill. The issue of self-identification as well as opt in and out mechanisms needs to be amended. |
|  | Allocation of roles to kingship or queen ship council, principal traditional council, traditional council, and Khoi San leaders. The section dealing with the above matter does not provide sufficient guidance on what roles can be given and what procedures should be used to do so. Traditional and Khoi San leaders and councils should not be treated as another sphere of government as that will be unconstitutional. | Clause 25 of Chapter 2. The Bill must provide sufficient guidance and specify which roles and responsibilities. |
|  | The Bill does not clarify the relationship between elected local government leaders and traditional and Khoi San leaders as well as the role of traditional and Khoi San leaders in municipal Councils |  |
|  | The Bill is silent on the role of Traditional and Khoi San leaders as custodians of religion and language | The Bill only makes reference to culture. It was suggested that it must be amended to ensure that were reference is made to culture, religion and language must be inserted. |
|  | Lack of inclusiveness in the title of the Bill. The title “Traditional and Khoi San” creates the perception of setting the two groups apart from each other and this may have unintended consequences | The title of the Bill must be changed. No specific recommendation was made by the Stakeholders. |
|  | Level of recognition of the Traditional and Khoi San leaders not the same. The President recognises Traditional Leaders whereas the Premier represents Khoi San leaders |  |
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1. **PART B: PUBLIC HEARINGS IN PROVINCES**

**NORTHERN CAPE PROVINCE: 24 TO 28 NOVEMBER 2016**

During the above mentioned dates the Committee conducted public hearings in the following venues Kimberley (R S Elliot Hall Galeshewe), Kuruman (Wrenchville community Hall), Upington and in Springbok (Concordia Hall).

* 1. **Public hearing in Kimberley: 24 November 2016**

Due to Logistical challenges the Committee could not secure space in the flight to Kimberley and as a result the Committee had to take a flight to OR Tambo and connect to Kimberley. The change in flight route made it impossible for the Committee to arrive in time for the hearing. In the absence of the Committee, the Chairwomen of the Portfolio Committee on Cooperative Governance in the Provincial Legislature facilitated the hearing. The Chairperson of the Committee has however decided that the Committee will go back to Kimberley during the next round of the public hearings to once more give the Community an opportunity to give their inputs on the Bill.

* 1. **Inputs received at the Public Hearing in Kuruman (Wrenchville Community Hall): 25 November 2016**

Number of public members present:

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| **Comments /Inputs** | **Section of the Bill referring to and proposed amendments** |
| The Bill makes no reference to an area of jurisdiction or land for the Khoi – San Communities. It only makes reference to an area of jurisdiction for Traditional Leaders. | Reference is made to Clause 3 (1) (a) of the Bill which refers to a defined area of jurisdiction for the traditional communities. In the case of the Khoi San community the bill refers to such a community as occupying a specific geographic are or various geographical areas together with non-community members. It was proposed that the Bill should be amended to also refer to an area of jurisdiction for the Khoi San communities. |
| No proper detailed research was conducted on the Khoi San communities. | General comment which does not refer to a specific section of the Bill. |
| The Bill does not treat Khoi San communities and its leaders in the same manner as Traditional Leaders. Example on the issue of land and recognition. | It was proposed that clause 5 of the Bill must be amended to ensure that the recognition of the Khoi San community and its branches is done by the President or the Minister of Cooperative and traditional Affairs. |
| Allocation of responsibilities to Traditional and Khoi San communities and leaders clauses are problematic and unclear. | It was proposed that the Bill must clearly defined what the responsibilities that must be allocated to traditional are and Khoi San leaders. |
| History of the Khoi San community must be provided for in the Bill | It was proposed that the Bill must have a preamble which must contain the history of the Khoi San. |
| The Bill gives powers to political leaders and the leaders will misuse the powers. Example provided the power of the Premier to recognise Khoi San communities and Leaders. | The power to recognise Khoi San community and braches it was proposed must be given to the President. |
| Another sphere of government must not be created through the Bill by giving responsibilities to Traditional Leaders. | General comment on the allocations of roles and responsibilities to Traditional and Khoi San Councils. |
| The Bill does not address the issue of Khoi San rights such as Land (Land Rights Group). | General comment. |
| The title of the Bill is not appropriate. | The Committee must consider changing the title of the Bill. No specific proposal was given. |
| The Khoi San Communities and Leaders must be included in the current Bill | The Traditional Leadership and Governance Framework Act, 2003 ( Act No 41 of 2003) must be amended to include the Khoi San Communities and its leaders |
| The Bill does not deal with the role of the Khoi San as traditional healers. | It was proposed that the role of the Khoi San as traditional leaders must be inserted in the Bill. |
| The Language of the Khoi San communities is not included in the Bill. | It was proposed that the Bill must have a section which recognises the Khoi San Languages. |
| Have a separate Bill for the Khoi San communities and Leaders | General comment. It was indicated that the current Bill treats Khoi San communities and its leaders differently and as such it is recommended that the Bill should be separated into two Bills. |

* 1. **Inputs received at Upington (Toll Speelman Hall): 26 November 2016**

Number of public members present:

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| **Comments / inputs** | **Section of the Bill referring to and proposed amendments** |
| The Khoi san communities are not recognised in the Constitution of the Republic of South Africa | Recommended to the Committee that the Khoi San must be included as one of the ethnic groups in the Constitution of South Africa. |
| Khoi San Communities lost their land before 1913 and as a result they are not in the position to lodge a claim with the Lands Claims process as reopened by government. | General comment. |
| Application for recognition of Khoi San communities to the Premiers was raised as a concern. It was further indicated that the Minister as well as the President must meet with the National Khoi San Council. | The recognition should be made by the President. A request was made that the President as well as the Minister of Cooperative governance and Traditional Affairs must meet with the National Khoi San Council |
| The lack of clarity on the relationship between municipal councillors and traditional leaders was raised as a concern and the fact that the Bill does not clarify the relationship. | It was proposed that a clause must be included in the Bill that clarifies the relationship between traditional leaders and elected municipal councillors. |
| Indigenous Desk must be established to deal with indigenous languages at municipal level. | General comment. |
| The Committee must first rectify ILO Convention on the recognition, promotion and protection of the rights of indigenous communities. This must be followed by the recognition of the Khoi San communities in the Constitution. | General comment as well as the proposal for the inclusion of the Khoi San communities in the constitution. |
| Naming of the Bill. | It was proposed that the Bill must be called African Traditional Leadership Bill.  It was further recommended to the Committee that the name Khoi San must be removed from the Bill. |
| The Language of the Khoi San communities is not recognised in the Constitution unlike other languages spoken by other African communities which are recognised in the constitution. | The indigenous language of the Khoi San (Nama) must be recognised as one of the official languages in the constitution. |
| The transitional arrangements as contained in the Bill are unacceptable as it was indicated that they will cause many problems | No specific proposals were made on how to deal with the transitional arrangements in the Bill. |

**4.3 Inputs received at Springbok (Concordia Hall): 28 November 2016**

Number of public members present:

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| Schools were Nama language was taught have been closed without any explanation provided to the community. Children are no longer learning their language | General comment regarding the closure of schools were the Nama language was used. |
| Nama Language must be given official recognition in the Constitution like all the other languages. | Proposal: The Nama language must be recognised in the Constitution as one of the official Languages. |
| National Khoi San council supports the Bill and they want the Bill to be finalised within three months. | General comment. |
| Clauses on the recognition of the Khoi San was indicated as being problematic. It was indicated to the Committee that their land, culture and customs have been destroyed and this will make it difficult for them to prove who they are. | It was proposed that the criteria for the recognition of the Khoi San communities as contained in clause 5 of the Bill must be removed from the Bill as it will make it difficult for them to be recognised given their history. |
| Khoi San leaders does not have land. You cannot recognise leaders without any land. It was indicated that government must first recognise their language, then give them their land back and then recognise them. | General comment regarding the lack of land for the Khoi San communities. It was further indicated that their language must be recognized. |
| The National Khoi San Council was established to assist with the recognition of the Khoi San communities. It was indicated that the Council supports the Bill to be finalised as soon as possible | General comment. National Khoi San Council indicated its support for the Bill. |

In general the members of the public present at the public hearing indicated their support for the Bill with amendments as indicated above. The main issues that members of the public raised related to the non-recognition of the Khoi San in the constitution, the recognition of their language Nama, as well as their lack of land and the destruction of their culture during colonialism and apartheid.

**PUBLIC HEARINGS IN THE WESTERN CAPE**

* 1. **Inputs received in Cape Town (Old Assembly Chamber): 30 November 2016**

Number of public members present:

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| Government does not want to recognise the first Nation Status of the Khoi San communities. The Bill is rejected on the basis that it does not recognise the constitutional rights of the Khoi San. Bill does not treat the Khoi San and traditional leaders equally. It does not give the Khoi San the right to self-determination. | Reference is made to the International Convention on the rights of indigenous Communities. It was proposed that the Bill must first recognise the Khoi San. |
| Second input indicated that the Bill is rejected on the basis that the Khoi San is excluded from the Constitution. Bill is an attempt to recognise the Khoi San in an unfair manner. UN Declaration not rectified by government, role of Councils not legislated, the bill contains different sections for Khoi San and traditional leaders. | It was proposed that the Khoi San must be included in the constitution, the UN Declaration on the recognition, promotion and protection of the rights of indigenous Communities must be rectified.  The Bill must be extensively amended to ensure that there is no different sections for the Khoi and Traditional leaders on the other side. |
| Criteria for recognition of the Khoi San. A historical perspective on the history of the Khoi San must be taken into account as it will be difficult for the Khoi San to prove a history of coherent existence. | The criteria for recognition must take a restorative approach. |
| The power given to the Premier to recognise the Khoi San communities was seen as problematic as the Bill provides no appeal mechanism. | The power to recognise the Khoi San communities and its leaders should be given to the National Minister or there should be an appeal mechanism to appeal the Premier decision in the Bill. |
| The title of the Bill was indicated as one area that needs to change. | The title of the Bill should say “Indigenous” |
| The last census did not recognise us as a community. There were no provision for the Khoi San in the official documentation of Stats SA and as a result there is lack of statistical information about the Khoi- San | General comment |
| Khoi San leaders must be included in the House of traditional leaders. | General comment. |
| The Bill makes no reference to self-determination and as a result we reject the Bill | General comment. |
| The Bill must not separate the Khoi San and Traditional Leaders | It was proposed that the Bill must not separate Traditional and Khoi San Leaders. |
| The Advisory Committee as proposed in the Bill should include all people in various Districts. | General comment. |
| The Bill gives Premiers too much powers to the Premiers in the recognition of the Khoi San communities. | The powers of the Premiers in the recognition of the Khoi San communities and its leaders must be given to the Minister of Cooperative Governance and Traditional Affairs. |
| Parliament must understand the urgency of passing this Bill. No need to visit other provinces. The Bill must be passed by March 2017. | General comment. |
| The Bill is silent on the relationship between elected councils and Traditional Leaders. | A clause must be included in the Bill which clarifies the relationship between the two. |
| The Bill does not include the role of women in traditional communities. | It was proposed that the role of women should be included in the Bill especially in traditional communities. |
| The Bill treats Traditional leaders and Khoi San leaders differently. Traditional leaders will be responsible for areas of jurisdiction while Khoi San leaders will be responsible for people only. Other Khoi San communities resides in other sovereign states such as Namibia. What will happen to such communities? | It was proposed that the Bill must be amended to ensure that Traditional Leaders and Khoi San leaders are treated equally. It was indicated that if this is not addressed the bill might be challenged on its constitutionality. |
| The Bill does not have a preamble or history of the Khoi San. The Bill must explain why it includes the Khoi San. The Bill separates traditional leaders and the Khoi San leaders | A preamble must be included on the history of the Khoi San. |
| The Bill does not talk about mission stations Act of 1929. In the Act Missionaries were holding the land on behalf of indigenous people. The role of Community properties Association is also problematic as they creates sea of poverty in communities. | General comments |
| All reference to coloureds in all legislations or government documents must be repealed immediately. | The usage of the word coloureds must not be used any longer in any government document as it has been repealed. |
| The criteria for recognition: The Bill allows the Khoi San voices to be included in National and Provincial levels. It will further assist in the historical land claims. Bill will further help with the decolonialization of the Khoi San. | General comment |
| Criteria for recognition: After 300 years of non-recognition the bill must take into account the effects of colonialization and apartheid on the history of the Khoi San. It will be difficult for the Khoi San communities to prove their history of existence as a distinctive community | Section 5 Criteria for recognition must take into account the effects of colonialization as well as apartheid on the Khoi San communities. The criteria for recognition must be removed from the Bill. |
| Section 5 (1) and (2) must be removed from the Bill. | The criteria for recognition for the Khoi San must be removed from the Bill as it will make it difficult for the Khoi San communities to be recognised. |
| We cannot recognise the Khoi San leaders without acknowledging their culture and language. | The Bill must first recognise the language and culture of the Khoi San. |
| Natioal Khoi San Council must be disestablished. There was no criteria for NKC but there is criteria now for us to be recognised. | General comment on the disestablishment of the National Khoi San council. |
| We reject the bill in its current form as it will not pass constitutional scrutiny as it is not of common application (equal) between the Khoi San and traditional leaders. We are asking for equal treatment as a community. | The Bill should treat the Khoi San in the same manner otherwise it will be unconstitutional. |
| Before the Bill can be finalised the Khoi San must be given their First Nation status. | General comment on the first nation status of the Khoi San. |
| National Khoi San Council does not have a mandate to speak on behalf of the Khoi San Communities. | General comment. |
| The Criquas rejects the Bill based on the following grounds: Name of the Bill. The Bill implies that the Khoi San communities does not have kings or Queens | The Bill must be called Traditional Leadership Bill |
| Reference was made to a 1973 case in Canada. Case about ownership of land by indigenous people. Indication was made that according to the ruling in that case when the British occupy Canada the right to ownership of land was not distinguished. The indigenous people did not lose their right to land. |  |
| Most legislation passed since 1994 still makes reference to coloureds. The Population Registration Act was repealed in 1991. The usage of the term coloured was done away with. Official documents of government still makes reference of the word coloureds. The broad based black economic empowerment Act of 1998 still makes reference to coloureds. Coloured is a term given to us by apartheid legislation. We are Khoi San. | General comment on the usage of the word coloureds in the official correspondence of government. |

The members of the public as well as various organisations that made inputs criticized the Bill in its current form. The main issues raised relates to inter alia the non-recognition of the first nation status of the Khoi San, the exclusion of the Khoi San in the Constitution, the criteria for recognition which in the view of the public was seen as very problematic in that it punishes the Khoi San for the manner in which they were treated historically, the unconstitutional nature of the Bill in that it treats the Khoi San differently from Traditional leaders. The role of the Premiers was also raised sharply. The National Khoi San Council was also critised.

* 1. **Inputs received in Swellendam (Tsusong Centre): 2 December 2016**

Number of public members present:

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| Title of the Bill is not appropriate. It separate us as South Africans.  African Communities still have land while the Khoi San does not have land or an area of jurisdiction. | It was proposed that the Bill should treat both the Khoi San and traditional leaders in the same way. |
| The Bill divides African traditional leaders and Khoi San Leaders. It does not treat the two communities in the same way. | Same comment as above. |
| The Bill does not mention the Khoi San as indigenous people of South Africa. It does not take into account the history of the Khoi San community. | General comment. |
| Criteria for recognition as contained in the Bill is not acceptable. It does not take into account the historical realities of the Khoi San. | The criteria for recognition as contained in the bill should be changed as it will make it difficult for the Khoi San Communities to be recognised. |
| The word coloureds must be removed from all the statues and all government documents. | General comment. |
| The powers of the Premiers to recognise the Khoi San is not supported. | The power to recognise the Khoi San must be given to the National Minister. |
| The status quo report must be used as the basis for the recognition of the Khoi San Communities. | The Status quo report should be the basis for recognition of the Khoi San and not the criteria as contained in the Bill. |
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In general the public in Swellendam indicated that they support the Bill with the proposed amendments as indicated above.

* 1. **Inputs received in Oudtshoorn (Navada Hall): 3 December 2016**

**Number of members of the public present:**

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| In 1994 there were no red tape for the recognition of other tribes, why the long process to recognise the Khoi San communities as introduced in the Bill | Process to recognise the Bill as contained in clause 5 of the Bill. |
| The role of the Premiers is recognising the Khoi San communities | The role given to the Premiers as contained in clause 5 of the Bill it was proposed should be given to the Minister of Cooperative Governance and Traditional Affairs |
| Advisory Committee on Khoi San matters must be an independent body. | Establishment of the Advisory Committee as contained in Clause 59 of the Bill must be an independent body. |
| The Bill does not have a firm constitutional basis. It must recognise the Khoi San as the indigenous people of the land. It was further indicated that how can we apply for recognition in our land. | The criteria for recognition as contained in clause 5 of the Bill must recognise the Khoi San as indigenous people of South Africa. |
| There is currently a number of Khoi San graves located on various farms and the farmers are busy destroying them and this graves represents our heritage. | Input not specifically referring to a particular clause in the Bill. |
| Before any Bill there must be constitutional recognition of the Khoi San | The Khoi San must first be recognized in the constitution. |
| The shortlisted candidates to serve on the Advisory Committee on Khoi San matters should be published for public comments. | Clause 59 of the Bill must make provision for the publishing of the names of the short listed candidates. |
| A separate Act recognizing the Khoi San as indigenous people similar to Act 59 of Norway must be passed. | A separate Bill to recognise the Khoi San as indigenous people must be passed by parliament. |

In general the members of the public present indicated that they support the Bill, with the proposed amendments as indicated above.

**EASTERN CAPE PUBLIC HEARINGS**

* 1. **Inputs received in Umtata (Umtata City Hall): 5 December 2016**

Number of members of the public present:

The Committee conducted two public hearings in Umtata. This was due to the fact that when the Committee was about to start with the public hearing, municipal workers invaded the hall regarding their own municipal labour related matters. The Committee immediately decided that another venue must be found so that the public hearing can proceed. OR Tambo Hall was identified as such a venue and members of the public who were present were then moved to the venue.

Traditional Leaders who were present at Umtata Hall however refused to move to the new venue without first being addressed by the Chairperson of the Committee. The Chair returned to the venue to address them. Another members of the public were also present in around Umtata Hall. The Chairperson agreed with the Traditional Leaders that given the fact that municipal workers have vacated the Hall, the public hearing should proceed with members of the public present.

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| The Bill does not define the “Royal family” as to where does it begins and ends. | A definition of royal family must be provided in the definition section of the Bill (Chapter 1) |
| The position of Indunas in villages is still a challenge. | The position of an Induna must be recognised in clause 7 of the Bill. |
| The Demarcation of municipal boundaries have an impact on the areas of jurisdiction of Traditional leaders. | General comment. |
| Nhlapo Commission only focused on the Kings and Queens and not focused on other recognised positions of Principal Traditional Leaders, Senior Traditional leader as there is serious disputes amongst these positions within traditional communities. | Recommended that the Nhlapo Commission should proceed beyond Kings and Queens and focus on challenges or disputes relating to other positions such as Principal Traditional Leaders, Senior Traditional Leaders. |
| Challenges with the recognition of Khoi San. All of them will emerge as Leaders | General comment. |
| Traditional Courts must be given the same powers as normal courts so that they can take binding decisions. | The Bill must give Traditional courts the same powers as the normal courts. |
| Role of anthropologists in the Advisory Committee on Khoi San matters should be carefully considered as they perpetuate apartheid definition of traditional leaders. | Appointment of Anthropologists on the Advisory Committee on Khoi San matters must be reconsidered. |
| Headman or Headwomen. This not a person with royal blood. The Headman or Headwomen must be elected by the community. This is not a hereditary position. | The definition of a Headman or Headwomen must be defined in the Bill |

The Traditional Leaders as well as members of the public present supported the Bill with proposed amendments and comments as indicated above. It was indicated that Parliament should proceed with the Bill to recognise the Khoi San communities as their own history and tradition.

* 1. **Inputs received in East London (Duncan Village Centre): 7 December 2016**

**Number of members of the public present:**

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| Khoi San community wants to be recognised as the indigenous people of South Africa. We suffered under colonialism and such our culture and language was destroyed. Under apartheid we continue to suffer and we are called coloureds. | Recognition as the Indigenous people of South Africa. |
| Why is the Khoi San communities and leaders not given the same status as traditional leaders in the Bill? | The Bill must treat the two in the same manner. |
| The power of the Premiers in the Bill to recognise Khoi San Communities should be removed. | The power to recognise the Khoi San Communities and its leaders in the Bill must be given to the President. |
| The Title of the Bill is not appropriate | The Bill should be called Traditional Nations Leadership Bill. |
| Criteria for recognition. Government does not recognise the princes amongst the Khoi San | The Bill must recognise the position of Khoi San |
| The Khoi San communities and its leaders unlike other traditional leaders have no areas of jurisdiction | The proposal is that the Bill must also refers to areas of jurisdiction for Khoi San leaders |
| National Land Movement: we don’t want this Bill as people from rural areas. Government must write the Bill with the people as traditional leaders don’t account to the people. The Bill takes us back to Tribal Authorities Act of 1951. | General comment. |
| We disagree with the Bill as it is based on apartheid policies. | General comment. |

In general the public agreed with the Bill with the exemption of a number of Community representatives from the organisation Ntaba ka Ndoda based in Kieskamma Hoek. The organisation indicated that it represents a number of villages in that area. Their objection to the Bill is based on the fact that it does not assist rural communities and that the Bill takes us back to Tribal Authorities Act of 1951.

* 1. **Public hearing in Graff Reinet (Alex Gaig Hall): 8 December 2016**

**Number of members of the public present:**

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| The Bill does not talk about the rights of communities who don’t want to be members of a traditional community. | The Bill must provide opt out mechanisms for members of traditional communities who do not want to be members of a traditional community. |
| The election of headman must be clarified as we have problems in our areas with their elections | The Bill must clarify how headman must be elected within communities. |
| Ntaba Ntoda Organisation: We support the full reparation of the Khoi San as first nation of South Africa. | A separate Bill must be drafted to recognise the Khoi San as first nation of South Africa. |
| The framework Act made it possible for a community to withdraw from a Traditional community under the leadership of a Traditional Leader. | The Bill must retain the provisions that are contained in the framework Act regarding the withdrawal of a community member from a traditional leader area. |
| The provisions in the Bill regarding the election of a Headman or Headwoman are very weak. No provisions for deepening rural democracy | The Bill must provide for clear mechanisms for the election of Headman or Headwomen. Such mechanisms must deepen rural democracy. |
| The 60/40 composition of Traditional Councils is problematic. | The 60/40 percent composition of traditional Councils as contained in clause 16 of the Bill must be dropped from the Bill. |
| The following sections that deals with the allocations of resources and functions to traditional leaders are not supported. Clause 15, 19, 20 and 25 of the Bill. | No specific proposals made. |
| We don’t support this Bill as it is based on apartheid laws. Khoi San leaders are given powers to govern people only as compared to Traditional Leaders who have areas of jurisdiction | Bill based on apartheid laws and it does not give the Khoi San any land. It gives them powers only over people. It was proposed that this must change in order to ensure that they are given areas of jurisdiction like traditional leaders. |
| Sections of the Bill that deals with partnerships is not supported as members of the community is left out in the finalization of partnerships and agreements. | Provision must be made in the Bill for the role of communities in the finalization of partnerships and agreements by Traditional and Khoi San Councils. |
| The Constitution should be amended to include Khoi San Communities. | Proposed that the constitution should be amended to make specific reference to the Khoi San. |
| National Khoi San Council. We have taken a decision to support the Bill. It must be finalised as soon as possible as it has taken too long to recognise the Khoi San as a nation. | General comment. |
| We cannot separate recognition and identification. The Bill must first identify the Khoi San properly. | General comment. |
| Government have not as yet rectified the definition of the Khoi San as Coloureds as used in various government documents. Other groups in official documents are referred to as Africans while Khoi San is still referred to as “Coloureds” | The usage of the word “Coloureds” must be dropped in all official documents. The word Africans must be used instead. |

The majority of members of the public present indicated their support of the Bill. The Committee was further urged to finalise the Bill as a matter of urgency as the recognition of the Khoi San communities and their leaders in their view is long overdue. It was however indicated to the Committee that regular interactions with the Committees must take place very often and not take place only during public hearings on Bills. Other issues not related to the Bill such as lack of grazing land for the livestock of some of the members of the Khoi San communities as well as African communities was indicated.

* 1. **Inputs received in Port Elizabeth (Gelvandale Community Hall): 9 December 2016**

**Number of community members present:**

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| **Comments/ Inputs** | **Section of the Bill referring to and proposed amendments.** |
| The Bill is supported on conditions that appointments should be done by the Kings and not the Premiers. The ruling partly should acknowledge and recognise that the Khoi San have been oppressed for 350 years and acknowledge us as the first nation and give us back our land. | The role of the Premiers as contained in the Bill is not supported. The Bill should recognise the Khoi San as first nation. |
| The name of the Bill must be changed | The title of the Bill should be changed to Traditional, Khoi and San Leadership Bill. |
| Scrap clause 18 of the Bill as we know our own history and can write it ourselves. | Scrap clause 18 dealing with the establishment of Khoi San Councils. |
| We need enough time to consider the Bill and give our inputs. The Bill should also be considered through ANC structures as part of political education. | General comment. |
| In one opening of the House of Traditional Leaders, the then Acting Minister Nathi Mthethwa promised that there would be separation between Traditional and Khoi San leaders in legislation. | General comment. |
| The Premiers should not have powers over us | The role of the Premiers in the recognition of Khoi San should be abolished. |
| The public hearings are being held in cities, which is unfair and excludes the rural communities. The recognition seems to suggest that the Khoi san should apply as if they are looking for jobs. We must be recognised as first nation. | General comment. |
| Land issue. The Khoi San cannot be part of governance without their stolen land. The Bill should address this matter. The categorization of “coloureds” should be scrapped | General comments |
| The Bill should address the language issue and provide that it becomes one of the official languages. | The language of the Khoi San should become one of the official languages. |

1. **CONCLUSION**

Khoi San Leaders, Traditional leaders, organisations as well as community members who made their inputs in the public hearings held in the three provinces supports the Bill with amendments. The amendments are indicated in the tables indicated in the report for each venue. It should be noted that the inputs in most cases relates to the same clauses but presented in different ways. The following is a summary of the key issues that have been raised so far in almost all the public hearings.

* 1. The non-recognition of the Khoi San as indigenous people or first nation of South Africa.
  2. The non-recognition of the Khoi San and their language in the Constitution of the Republic of South Africa.
  3. The criteria for the recognition of the Khoi San which is seen as a way of punishing them for their bad past.
  4. The unconstitutional nature of the Bill in that it treats the Khoi San community and its leaders different from other traditional leaders. This was indicated as a possible constitutional challenge if left unattended.
  5. Role of the Premiers in the recognition of the Khoi San communities and their leaders.
  6. The lack of land for the Khoi San.

**DRAFT REPORT: PUBLIC HEARINGS: TRADITIONAL AND KHOI – SAN LEADERSHIP BILL, 2015 22 JANUARY – 4 FEBRUARY 2017**

1. **INTRODUCTION**

The Traditional and Khoi – San Leadership Bill 2015 as introduced in the National Assembly as a section 76 Bill was referred to the Portfolio Committee on Cooperative Governance and Traditional Affairs for finalization. The Committee decided to divide the public participation process into two main categories. First the Committee decided to invite various stakeholders / organisations who have conducted work on traditional and Khoi San matters to give their views on the content of the Bill. Secondly the Committee decided to conduct public hearings in all the nine Provinces.

This report focuses on inputs received by the Committee during the public hearings conducted in North West, Free State as well as in Kwazulu Natal Provinces. A public hearing was also conducted in the Northern Cape Province in Kimberley. This was as a result of the challenges that the Committee experienced in 2016 with a scheduled public hearing in Kimberley. The public hearings were conducted in the four above mentioned provinces between the periods 21 January and 3 February 2017.

**PUBLIC HEARINGS IN PROVINCES**

1. **NORTH WEST PROVINCE: 22 TO 25 JANUARY 2017**

During the above mentioned dates the Committee conducted public hearings in the following venues Rustenburg (Rustenburg Civic Centre), Mafikeng (Mmabatho Civic Centre), and in Vryburg (Banquette Hall).

* 1. **Inputs received at the Public Hearing in Rustenburg (Rustenburg Civic Centre).**

Number of public members present:

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| --- | --- |
| **Comments /Inputs** | **Section of the Bill referring to and proposed amendments** |
| Land issue: How can we be expected to support this Bill when it does not address the land issue? Parliament is falling us | General comment on challenges regarding land. |
| The houses of the chiefs are dilapidated, let’s fix them before we even talk laws, this is as result of evictions and interdictions, | General comment on the state of Chiefs houses. |
| We need development of rural areas, training for chiefs is important and CoGTA should establish this programme. Stipend given to the Chief is far less | General comment. |
| Community resources are lacking, they only benefit the elite and Not the ordinary citizens, our Chiefs cannot bear fruitful benefit or make use of their rich land. We appreciate the recognition of the Khoi-Sans but when talking about the Kingships, do they have that? We need to look at the role of Traditional Leaders in the councils. The R350 stipend needs to be revisited and compared to the R1000 ward committees are getting, | General comments. |
| The Bill gives too much power to the Premiers, this is not fair as they are the ones undermining the chieftaincies and the communities in general. Who is auditing the traditional councils? | The proposal was that the powers of the Premiers must be reduced. Premiers should not be the ones to recognise Khoi San communities and Leaders. |
| What part of the Bill is speaking to the 60/40 ratio, this is not fair and needs to be revisited. In terms of Khoi-Sans movements, they cannot have dedicated chiefs or even the land | It was proposed that Clause 18 on the establishment of Khoi San Councils must be amended. The 60/40 split must be amended to give more percentage to communities. |
| Our current traditional leaders are there but they are not reporting to their communities. | General comment. |

* 1. **Inputs received at the Public Hearing in Mafikeng (Mmabatho Civic Centre).**

Number of public members present:

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| --- | --- |
| **Comments /Inputs** | **Section of the Bill referring to and proposed amendments** |
| The Bill deals with the Khoi San and yet they are not present in this meeting. | General comment. |
| We want to know what the salary scales of all kings and chiefs are as it seems some king’s salaries are more in some provinces. | General comment on salary scales of Chiefs and Kings |
| The time given to give inputs on the Bill is too short. The issue raised was that how can we make inputs on the Khoi San when our own Chiefs are not paid. The provincial government does not take our Traditional Leaders serious. | Concern about certain Traditional Leadership positions that are currently excluded from remuneration. Amendments to the Independent Remuneration of Public Office Bearers Act as proposed in Chapter 5 of the Bill covers the concern. |
| Send the Bill back as it is not going to give us our land back. Government has not build any houses for the Chiefs and the Khoi San communities have no land of their own. | General comment |
| Send the Bill back for effective public participation. We don’t have Kings in our area while other areas have Kings. Did Parliament checked whether there is no kings amongst the Tshwana people? | General Comment |
| There is unequal treatment of former Bophuthatswana soldiers as we have not received our pensions. | General comment of pensions. Not related to the Bill. |
| Remove the word “AND” in the title of the Bill as it separate Traditional Leaders and Khoi San Leaders. | The Bill must only be called Traditional Leaders Bill. |
| Drugs is a big problem within our communities. We will not have future leaders due to the impact of drugs in our communities | General comment. |
| .Why did the CODESA negotiations not included the Khoi San in the negotiations | General comment. |
| The Bill perpetuate divide and rule. It separate Khoi San and African traditional leadership from each other. | General comment that the Bill does not treat Khoi San Leaders and Communities in the same manner as African Traditional Leaders and this is not in line with the spirit of the Constitution. |
| There is a challenge for support to Traditional Leaders. The Houses of Traditional Leaders must be consulted on the Bill | Suggestion that Parliament must consult the Houses of Traditional leaders separately on the Bill |

* 1. **Inputs received at the Public Hearing in Vryburg (Banquette Hall).**

Number of members of the public present:

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| --- | --- |
| **Comments /Inputs** | **Section of the Bill referring to and proposed amendments** |
| Were where the Khoi San communities since 1994? Did they arrive in South Africa recently Why were they excluded? | General comment on the exclusion of the Khoi San. |
| The Section of the Bill that refers to Agreements and partnerships does not include the role of communities. | The role of communities must be inserted in the Bill on the conclusion of agreements and partnerships by Traditional and Khoi San Councils.. |
| Recognition and removal of Kings and Chiefs must not be given to the President and Premiers. | General comment |
| Challenges around Bedfontein Land was highlighted to the Committee | General comment |
| The Title of the Bill must be changed | Proposed title should be Indigenous Peoples Bill. |
| Report by the United Nations on South Africa indigenous people must be submitted. | General comment |
| The Bill proposes two different Commissions for African Traditional Leaders and another one for Khoi San communities and leaders | A single Commission must be established for African Traditional Leaders and the Khoi San leaders and communities. |
| The Bill in its current form promotes unfair discrimination. The criteria for recognition is inhuman and promotes inequality. There is various levels of recognition in the Bill. | The issues of unfair discrimination as contained in the Bill must be addressed. |
| The Bill approach on the criteria for recognition is wrong. The history of the Khoi San communities was erased from them. | The criteria for recognition must be changed to take into account the historical circumstances of the Khoi San communities. |
| The Bill imposes dictatorship with the 60/40 formula for the election of Councils. | The formula must be changed. |
| Commissions of equal standing must be established for the Khoi San and African Traditional Leaders | Comment on the different Commissions for Traditional and Khoi San Leadership. |
| The power given to Premiers to withdraw some leaders. How can politicians be given the power to withdraw. | The role of politicians must only be limited to financial management of the finances allocated to Traditional and Khoi San leaders.  An independent commission must be established to deal with recognition of Traditional and Khoi San leaders. |
| The recommendations of the UN Special Rapoteer must be implemented by the South African government. | UN Special Rapoteer recommendations must be implemented by government. |
| There is a lack of a national register for the Khoi San communities | Government must put in place a national register for the Khoi San communities. |

IN general members of the public who attended the public hearing welcome the main principles of the Bill. A number of comments and suggestions on how the Bill needs to be amended were highlighted to the Committee. The members of the public articulated their thoughts on the Bill and also raised other issues which does not relate to the contents of the Bill.

**NORTHERN CAPE PROVINCE**

1. **Inputs received at the public hearing in Kimberley (J S Elliot Hall)**

Number of members of the public present:

Due to Logistical challenges the Committee could not secure space in the flight to Kimberley and as a result the Committee had to take a flight to OR Tambo and connect to Kimberley. The change in flight route made it impossible for the Committee to arrive in time for the hearing. In the absence of the Committee, the Chairwomen of the Portfolio Committee on Cooperative Governance in the Provincial Legislature facilitated the hearing. The Chairperson of the Committee has however decided that the Committee will go back to Kimberley during the next round of the public hearings to once more give the Community an opportunity to give their inputs on the Bill.

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| **Comments /Inputs** | **Section of the Bill referring to and proposed amendments** |
| Criquas welcome the Bill as it attempts to restore the rights of the indigenous nation of South Africa. The Bill further attempts to restore our dignity as a nation. It was further indicated to the Committee that government must first restore them into their territory, their ancestral land. | General comment. |
| Give the Khoi San leaders the same status as other African Traditional Leaders. It was specifically indicated that they must be given equal rights. | The Bill must be amended to give Khoi San Leaders the same status as other traditional leaders. |
| Membership of Advisory Councils should include provincial people with knowledge of Khoi San history and culture. | The section on Advisory Committee on the Khoi San must be amended to include Provincial people with knowledge of Khoi San history and culture. |
| The House of the Criquas of Criqualand West and the South African first Indigenous and Human rights Organisations welcomes and support the Bill with some reservations. | General comment on the support for the Bill |
| The Bill discriminate against the Khoi San people as though they never had paramount Chiefs. Our paramount Chiefs were regarded as Kings and Queens | The Bill needs to provide the same leadership positions for both Traditional and Khoi San communities and not discriminate against the Khoi San. |
| The Bill does not compliment the UN standards and mechanisms on the recognition of indigenous people. | General comment. |
| The Bill does not address the issue of ancestral land. | General comment |
| The Bill does not give Khoi San leaders the same status as other African Traditional leaders. We have Kings or Queens in our culture and they have always been referred to as Kaptains. | The Bill needs to treat Khoi San Leaders as well as African Traditional leaders in the same fashion. |
| Khoi San leaders needs to be appointed by the President and not the Premiers of the Provinces. | Clause 10 on the recognition of Khoi San leaders must be amended to ensure that the recognition of Khoi San Leaders is done by the President and not the Premier. |
| Submission on behalf of the Criqua nation under Adam Kok V. We oppose the Bill reason being that it is premises on a discriminatory framework and historical narrative which does not take into account the historical circumstances of the Criqua nation. | General comment. The Bill needs to be amended as it is based on a discriminatory framework. |
| There is no definition in the definition section of the Bill of the term “Indigenous nation” or “Indigenous People” | The definition of the two words must be inserted in the definition section of the Bill |
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In general the main principles of the Bill of recognising the Khoi San Communities, leaders and Councils was supported with proposed amendments as indicated above.

1. **FREE STATE PUBLIC HEARINGS: 27 JANUARY TO 30 JANUARY 2017**

During the above mentioned dates the Committee conducted public hearings in the following venues Philippolis (Civic Centre), Bloemfountein (Thaba Ntsu), and in QwaQwa.

* 1. **Inputs received at the public hearing in Philippolis: 27 January 2017**

Number of members of the public present:

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| **Comments /Inputs** | **Section of the Bill referring to and proposed amendments** |
| Our RDP houses have been damaged due to poor workmanship during their construction. My sister has been struggling to get pension fund due to duplicate ID with someone in KZN since 2013. | Complain about the quality of RDP and the challenge of a sister who cannot receive pension. |
| Convention 169 of UN. South Africa have not rectified the convention which deals with the rights of indigenous people. | General comment |
| The language of the Khoi San must be recognised as one of the official languages in the constitution. | The language of the Khoi San must be recognised in the Constitution. |
| The rights of ordinary people must be looked into as children in Phillippolis does not attend school. | General comment. |
| There is no college in our area and matriculates have turned into drinkers’. | General comment. |
| The Bill must became law as soon as possible. | General comment. |
| There is no recreation facilities for our children in our area. When tenders are awarded they must be awarded to local people. | General comment. |

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| The powers given to Premiers in the recognition of the Khoi San communities must be reduced. | Powers given to the Premiers as contained in the Bill must be reduced. |
| The Khoi San community does not have any land as all their land were taken away from them. | Complain about land. |
| The land for traditional Leaders in the Mautse area have been taken away from them. | Land complain. Not related to the Bill |
| The teaching of the Khoi San Language in schools must be introduced. Our heritage must also be respected and promoted. | Complain about the Khoi San language. |
| There is still bucket system in our area and it is four weeks now without any collection being made. | Complain about the bucket system. |
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In general the Community supported the main principles of the Bill of providing for the recognition of the Khoi San Communities, leaders and Councils. A number of suggestions were made on how the Bill should be amended as indicated above. A number of issues which were raised by the community members related to social problems in the areas such as unemployment especially amongst the youth, lack of recreation facilities, challenges with the quality of RDP houses in the area as well as land related problems.

**4.2 Inputs received at the public hearing in Bloemfontein (Thaba Ntsu): 28 January 2017**

Number of members of the public present:

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| **Comments /Inputs** | **Section of the Bill referring to and proposed amendments** |
| The 60/40 split in the formation of Councils was raised as a concern. | The Bill must be amended to give more percentage to communities in the makeup of the traditional and Khoi San Councils. |
| In principle we support the Bill. Why is there no reference to Khoi San Kings or Queens | The Bill must be amended to include positions of Kings and Queens amongst the Khoi San communities. |
| After 23 years we are still called coloureds in all official government documents | The usage of the word coloureds must not be utilised any more in any official government document. The word or classification Khoi San must instead be utilised. |
| The issue of legal background should not be a criteria for membership of the Advisory Committee is problematic as most people who knows the Khoi San history and culture does not have legal background. | Clause 60 of the Bill must be amended to remove a requirement of a person to have a qualification in law as a requirement for being a member of the Advisory Committee on Khoi San matters. |
| The Khoi San community should be recognised in the Bill as the first nation of South Africa. | General comment |
| The Criqua Council of the Free State in consultation with other Khoi San groups support the Bill | General statement supporting the Bill |
| The Provincial houses of Traditional and Khoi San Leaders must also submit annual reports |  |

In general the members of the community present in the hearing welcome the purpose of the Bill in providing for the recognition of Khoi San communities, Leaders and councils. A number of proposals on how the Bill must be amended was indicated to the Committee as highlighted above.

**4.3 Inputs received at the public hearing in QwaQwa (Multipurpose Centre): 30 January 2017**

Number of members of the public present:

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| **Comments /Inputs** | **Section of the Bill referring to and proposed amendments** |
| There is no sound constitutional basis for the Bill. Chapter 12 of the Constitution does not make any distinction between Khoi San and African traditional leadership. Chapter 2 of the Constitution, The Bill of rights gives all South Africans the same rights. Equality before the law. | The Bill must be amended to ensure that it treats the Khoi San and African traditional leaders in the same way |
| Leadership positions amongst the Khoi San. The Khoi San have Queens and Kings amongst them and the current Bill does not recognise that | Proposal: Leadership positions for Kings and Queens must be included for the Khoi and San. |
| Powers of the Premiers in terms of recognition must be limited. | The Provision for the powers of the Premiers in the recognition of Khoi San communities and Leaders must be amended. The recognition of Khoi San leaders and communities must be the responsibility of the President. |
| Implementation of the Bill can take up to 7 years while the mandate of Advisory Committee or its term is only 3 years. | The term of office of the Advisory Committee must be changed from 3 years to seven years. |
| We accept the Bill with amendments | General comment. |
| The term branch as used in the Bill must be reconsidered | The term branch in the Bill must be replaced with Clans. |
| Traditional Councils must be called Traditional Authority to be in line with the constitution. | Traditional Councils must be changed to Traditional Authority. |
| Title of the Bill: The Constitution recognises Traditional leaders and not Khoi San and traditional leaders. The current title discriminate | The title of the Bill must be Traditional Leaders Bill |
| The different titles of leadership positions as contained in the Bill are not there in our communities. | The Leadership positions as contained in the Bill needs to be changed to reflect titles amongst traditional communities. |
| Definition of the term “Royal Family” must be included in the definition section of the Bill. | Definition of “Royal Family” must be included in the definition section of the Bill. |
| The Khoi San language must be included in the Bill. | General comment. |

1. **PUBLIC HEARINGS IN KWAZULU NATAL: 31 JANUARY TO 3 FEBRUARY 2017**

**5.1 Inputs received at the public hearing in Vryheid: 31 January 2017**

Number of members of the public present:

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| **Comments /Inputs** | **Section of the Bill referring to and proposed amendments** |
| Land has been taken away from us and it has not been returned as yet. | General comment. |
| Mandlovini Traditional Council: Traditional leadership is not getting proper attention regarding their land claim. Current government promised to relook at the issue of land distribution. | General comment on the land issue. |
| The Bill proposes that Kings and Queens must be appointed by politicians. | The Act must be amended to ensure that no politician appoints Kings and Queens. |
| The Khoi san people are the indigenous people of this country as their paintings are found on rocks all over the country. | General comment. |
| We appreciate the fact that Parliament has arrived to engage with us. We wish to live in peace without our rights being violated. This Bill must not be passed because of oppressive demarcation, It divides the nation in terms of where they come from and cultures are being mixed which will cause conflict. | General comments |
| The Bill is discriminatory in that it will only apply to rural areas. | General comment |
| We have different customs and traditions and this Bill will cause conflict. | General comment. |
| The land was previously owned by our Chiefs and it later taken by whites and at the moment the land has not been returned to our chiefs. | General comment on the land issue. |
| Do leaders have the right to distribute land without following the right procedures? Indunas in this Province were promised tools of trade but nothing has come forward. | General comment |
| Land must be given back to people so that people can sustain themselves. | General complain about land. |
| Our leaders need political education. They are using politics were they are not required. They are interfering everywhere. They even go to the extent of dismantling school governing bodies. Our leaders are politically influenced. | General comment. |
| We have a problem with Khoi San. Land is under traditional leadership. We don’t like laws that will cause conflict. The Khoi San must be treated equally and be given the same constitutional rights as other leaders. | General comment. |
| Traditional Leaders must not rule according to politics or political affiliation. A true leader must be neutral. | General comment |
| Has the kIng shared his views regarding this Bill? | General comment |
| It is not clear which king the Khoi San will fall under. Another issue is the language barrier for them. I am not sure which language they speak. | General comment |
| We accept the Khoi San communities but we must know their history. Our king has a historical background. We also need to know their history. We don’t have a problem with the Khoi San as long as they respect the law. | General comment |
| Traditional Leaders were oppressed under apartheid. When freedom was won government did not conduct any consultations with them that’s why there is trusts all over Kwazulu Natal. | General comment |
| There is too much crime due to the fact that people do as they please because traditional leaders have no control over matters in their constituencies. | General comment |
| We respect the Khoi San communities, we live with them. Our request is to meet with them and have thorough engagements at our traditional councils. They must come to our tribal authorities so that we can pave a way forward with them. | General comment |
| How will the king of the Khoi San be elected because every area has a leader or someone governing. Where will the Khoi San be placed? | General comment |
| The government of the 90’s took land from existing leaders and divided it to other leaders who were previously oppressed. When it comes to government benefits the Ntombela clan is not benefitting. | General comment. |
| Will the Khoi San community abide by the terms and conditions of our leader? Will they respect our king like we do? | General comment. |
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**5.2 Inputs received at the public hearing in Hluhluwe: 1 February 2017**

Number of members of the public present:

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| --- | --- |
| **Comments /Inputs** | **Section of the Bill referring to and proposed amendments** |
| We welcome our Khoi San brothers, we do not need to review how they live. The Khoi San must follow Act no 5 of 2005. | General comment. |
| The Nkonyama Trust is discriminating our people. They cannot pick wood for fire, fish or conduct any activity due to the terms and conditions made by the Ingonyama Trust. | Complain about the Ingonyama Trust |
| The ANC is using policies which were used by the apartheid government. They have failed to make policies which will reserve what the apartheid government intended to do. | General comment |
| If government allows every individual who was left out of the process, the country might end up being led by people we don’t know. If future when government makes laws they must start on the ground. | General comment |
| What role did the Khoi San play in South Africa? What role did they play in ensuring that government works with traditional leaders, who was their leader and where is he today? | General comment. |
| Certain chiefs in Mpumalanga and Eastern Cape are being paid. Why is chiefs from this province not being paid? This is causing divisions amongst us. Out of 3000 chiefs, less than 100 is getting paid. | Complain about benefits for Chiefs |
| Majority of the Khoi San are in the Northern Cape. Why don’t they all go there because they are a majority in that place? | General comment |
| We have traditional courts in our traditional areas that can assist. They were established for a reason. Why are we not utilizing them? | General comment about the role of traditional courts |
| Our population has increased. Where will the Khoi San live? | General comment. |
| Women in this province are not given the same amount of land that is given to meet. Even in traditional courts we are not allowed to represent ourselves, men must speak on our behalf. | General comment |
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**5.3 Inputs received at the public hearing in Pietermaritzburg: 2 February 2017**

Number of members of the public present:

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| --- | --- |
| **Comments /Inputs** | **Section of the Bill referring to and proposed amendments** |
| As the Khoi San community we fall under chapter 12 of the constitution. Our language as a community has been lost. We need our language to be taught in schools and it must also be recognised in the constitution as 12 official language. | General comment on the inclusion of the Khoi San language in the constitution as another official language. |
| The Bill does not recognise us as the first nation of South Africa. The usage of the name Coloureds must be abolished as it reminds us of our brutal past. | General comment. |
| The land of South Africa belongs to the Khoi San and it must be returned back to us. | General comment. |
| The title of the Bill must not talk about Traditional and Khoi San Leadership. | The title must be changed to Traditional Leadership Bill. |
| Government violated the constitution by not including the Khoi San in the constitution. | General comment. |
| The Khoi San community does not have branches but clans. | Branches of the Khoi San community in the Bill must be amended to refer to Clans. |
| The discretion given to Premiers in terms of the recognition of Khoi San communities and its leaders is open ended. It gives too much powers to the Premiers. | Powers of the Premiers in the Bill must be limited. |
| Chapter two allows for authoritarian abuse of power by the President in the appointment of Kings and Queens. | Power of the President in the appointment of Kings and Queens must be limited. |
| The Bill needs to make recognition of Kings and Queens amongst the Khoi San communities as we have such positions historically. | Clause 7 of the Bill on Traditional and Khoi San Leaders needs to be amended to include positions of Kings and Queens amongst the leadership positions provided for the Khoi San. |
| Our land as the Khoi San (Criquas) have been taken away from us. | General comment. |

In general the community accepted the main principles of the Bill of providing for the recognition of the Khoi San communities, leaders and councils with proposed amendments to some of the sections of the Bill as indicated above. Some of the issues raised in the public hearings does not relate to the Bill. The key issue that has been raised sharply is the issue of land. The Khoi San community main issue was that they don’t have land unlike other traditional leaders.

**5.4 Inputs received at the public hearing in Kokstad: 3 February 2017**

Number of members of the public present:

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| **Comments /Inputs** | **Section of the Bill referring to and proposed amendments** |
| The Khoi San as a community does not have any land of their own and you cannot separate us from the land. | General comment. |
| Does Khoi San communities have Kings and Queens? | General question on whether there is Kings and Queens amongst the Khoi San community. |
| We do not clearly understand the new positions or the titles of leadership positions as contained in the Bill. | The different leadership positions as contained in the Bill needs to be explained properly. |
| There must be a separate Bill for the Khoi San. | Proposed that a separate Bill be drafted to specifically deal with the Khoi San. |
| The definition of the word “Induna” must be included in the Bill | A definition of the word “Induna” must be inserted in chapter 1 of the Bill. |
| The title of the Bill must be changed to Indigenous People Bill. As the Khoi San we are the indigenous people of this land. | Title of the Bill must be called Indigenous People Bill. |
| Khoi San community is the first nation of South Africa and we must be given all the rights of indigenous people. | General comment |
| The name coloureds must be abolished in all official documents | General comment. |
| As the Khoi San community we have royal lines and the Bill does not makes provision for that. | The Bill must make provision for royal lines amongst the Khoi San |
| The Bill does not addresses the issue of land. | General comment about land |
| The Bill gives the President and Premiers too much powers to appoint and remove leaders. | Powers of the Presidents and Premiers in the recognition as well as withdrawal of the recognition of communities and its leaders must be limited in the Bill. |

1. **CONCLUSION**

In general members of the public who attended the public hearings in all the venues in the different provinces as indicated in the report welcomed the main principles or purpose of the Bill in providing for the recognition of Khoi San Communities, Leaders and Councils. The other main purpose of combining all other legislation on traditional leadership into a single law was welcomed. A number of proposed amendments were indicated as captured in the report.

A number of key issues not related to the Bill was raised. Key amongst such issues is the recognition of the Khoi San Language in the constitution as well as in the Bill. The other main complaint was the recognition of the Khoi San as the first nation of South Africa. The other issues raised included inter alia challenges of basic services provision such as water, sanitation etc.

**REPORT: PUBLIC HEARINGS: TRADITIONAL AND KHOI – SAN LEADERSHIP BILL, 2015**

1. **INTRODUCTION**

The Traditional and Khoi – San Leadership Bill 2015 as introduced in the National Assembly as a section 76 Bill was referred to the Portfolio Committee on Cooperative Governance and Traditional Affairs for finalization. The Committee decided to divide the public participation process into two main categories. First the Committee decided to invite various stakeholders / organisations who have conducted work on traditional and Khoi San matters to give their views on the content of the Bill. Secondly the Committee decided to conduct public hearings in all the nine Provinces.

This report focuses on inputs received by the Committee during the public hearings conducted in Limpopo, Mpumalanga and Gauteng Provinces. The public hearings were conducted in the above mentioned provinces between the periods 27 March to 31 March 2017.

**PUBLIC HEARINGS IN PROVINCES**

1. **LIMPOPO PROVINCE: 27 TO 28 MARCH 2017**

During the above mentioned dates the Committee conducted public hearings in Thohoyandou (Civic Centre), and Polokwane (Peter Mokaba Stadium).

* 1. **Inputs received at the Public Hearing in Thohoyandou (Civic Centre)**

Number of public members present:

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| **Comments /Inputs** | **Section of the Bill referring to and proposed amendments** |
| The Bill is inconsistence in terms of the terms used such as King/ Queen. | General comment on the usage of different words or titles in the Bill. . |
| The word Headman is inconsistence with African institution of Traditional Leadership. | Instead of using the word Headman it must be replaced with the word or term Junior Traditional Leader. |
| Why is the Khoi San not joining the current National House of traditional Leaders? | General comment. |
| The Bill should not make reference to Traditional Leaders but to Royal Leaders | General comments. |
| The Bill keeps apartheid boundaries | .General comment on the Bill. |
| Bill will only apply in former homelands areas. | General comment on the Bill |
| The Bill treats the Khoi San differently from other African Traditional Leaders. | General comment. |

* 1. **Inputs received at the Public Hearing in Polokwane (Peter Mokaba Stadium).**

Number of public members present:

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| **Comments /Inputs** | **Section of the Bill referring to and proposed amendments** |
| Paramount Chiefs in different communities should be given the same status with regards to all benefits. | General comment. |
| The titles used in the Bill are inconsistence with the title. In Pedi we have Kgosi, Mokgoma / Bakgoma and Bakgomana and not the titles as used in the Bill. | The titles used in the Bill are inconsistence with the titles used in the Pedi system of Traditional leadership. |
| We support the introduction of Headman and Headwomen. | General comment. |
| We support the recognition of Khoi San leaders and communities. Their recognition is long overdue | General comment |
| The Bill must recognise the wife’s or husbands of kings and Queens in order to ensure that it is in line with our tradition as Africans | General Comment |
| The Bill must also include the remuneration of Bakgoma and Bakgomana as well as the Headman Assistance. | Proposal to add the positions of Headman Assistance, Bakgoma and Bakgomana in the Bill. |
| The Khoi San communities and its leaders were not recognised in the framework Act for a long time. We welcome their recognition. | General comment on the recognition of the Khoi San communities and leaders. |
| The relationship between Traditional Leaders and Councillors is not good. Traditional Leaders must also be trained. | General comment. |
| .The concept of Branch as applicable to the Khoi San communities must also apply to African Traditional Leaders. | General comment. |
| The Bill perpetuate divide and rule. It separate Khoi San and African traditional leadership from each other. | General comment that the Bill does not treat Khoi San Leaders and Communities in the same manner as African Traditional Leaders and this is not in line with the spirit of the Constitution. |
| The participation of Traditional Leaders in Municipal Councils is a big problem. Are they going to continue to be observers or not | General comment. |
| The title of the Bill must be changed from the current title of Traditional and Khoi San Leadership Bill. | The title of the Bill must be called African Traditional Leadership Bill. |

**MPUMALANGA PROVINCE**

1. **Inputs received at the Public Hearing in Mbombela (Mbombela Stadium) 29 March 2017.**

Number of members of the public present:

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| **Comments /Inputs** | **Section of the Bill referring to and proposed amendments** |
| The role of the Commission on Traditional Leadership Disputes and claims with regards to the cut of date of lodging claims and disputes must be changed as it leaves the Xhonga nation outside as it lost its traditional leadership before 1927. | The date for lodging of all claims and disputes must be changed from 1 September 1927 as it excludes other nations that lost their kingship before the date. |
| The recognition of the Khoi San nation is long overdue. The Constitution states that South Africa belongs to all who live in it. | General comment on the recognition of the Khoi San. |
| The Bill does not address the issue of traditional Leaders who lost their chieftainship in neighbouring countries. | General comment |
| The Bill promotes social inequality in that it establishes four different positions / levels | General comment |
| The Title of the Bill must be changed | Proposed title should be Indigenous Peoples Bill. |
| The issue of the exclusion of the Khoi San as the indigenous people of South Africa in the Constitution must be addressed. | General comment |
| The Bill proposes two different Commissions for African Traditional Leaders and another one for Khoi San communities and leaders | A single Commission must be established for African Traditional Leaders and the Khoi San leaders and communities. |
| The Bill in its current form promotes unfair discrimination. The criteria for recognition is inhuman and promotes inequality. There is various levels of recognition in the Bill. | The issues of unfair discrimination as contained in the Bill must be addressed. |
| The Bill approach on the criteria for recognition is wrong. The history of the Khoi San communities was erased from them. | The criteria for recognition must be changed to take into account the historical circumstances of the Khoi San communities. |
| The Bill imposes dictatorship with the 60/40 formula for the election of Councils. | The formula must be changed. |
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IN general members of the public who attended the public hearing welcome the main principles of the Bill. A number of comments and suggestions on how the Bill needs to be amended were highlighted to the Committee. The members of the public articulated their thoughts on the Bill and also raised other issues which does not relate to the contents of the Bill.

1. **Inputs received at the public hearing in Kwagafountein (Municipal Hall) 30 March 2017.**

Number of members of the public present:

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| **Comments /Inputs** | **Section of the Bill referring to and proposed amendments** |
| Commission of Traditional Leadership and Disputes must be made of people who understands and know the history of the communities concerned. The mistakes of the Nhlapo Commission must not be repeated. | The Bill must be amended to ensure that the criteria for membership of the Commission of Traditional Leadership must be made of people who understands the history of the affected communities. |
| The Bill must have been taken to Traditional Councils first in order for them to discuss the contents of the Bill. | General comment on the Bill. |
| The current government does not consult traditional leaders. Government must not take decisions about Traditional Leaders without first discussing with them. | General comment on the consultation processes with Traditional Leaders. |
| We accept that the Khoi San communities and their leaders must be recognised and also their language must be used. | General comment. |
| The Bill must be written in our own languages and not just only in English. | General comment. |
| The Khoi San communities and their leaders must be recognised as first nation or indigenous people of South Africa. | General comment. |
| The Bill does not address the issue of ancestral land. | General comment |
| The Bill will bring uniformity amongst Khoi San leaders and African traditional leaders | General comment |
| Houses of Traditional Leaders. Why is the Khoi San Leaders not joining other Traditional Leaders in the current house of traditional leaders? | General comment. |

In general the main principles of the Bill of recognising the Khoi San Communities, leaders and Councils was supported with proposed amendments as indicated above.

1. **CONCLUSION**

In general members of the public who attended the public hearings in all the venues in the different provinces as indicated in the report welcomed the main principles or purpose of the Bill in providing for the recognition of Khoi San Communities, Leaders and Councils. The other main purpose of combining all other legislation on traditional leadership into a single law was welcomed. A number of proposed amendments were indicated as captured in the report.

Key issue raised in Limpopo Province regarding the Bill was the different leadership positions mentioned in the Bill. It was indicated that the positions such as Senior Traditional Leader, Principal Traditional Leader are not available in the Leadership positions within their communities. The Committee will need to take this fact into account so that the Bill and its leadership positions can be consistent with customs within those communities.