



**Mr G Mgidlana
Secretary to Parliament
Parliament of the RSA
PO Box 15
Cape Town
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Dear Mr Mgidlana

Attention: Mr V Ramaano

**INPUTS BY THE NATIONAL HOUSE OF TRADITIONAL LEADERS ON
TRADITIONAL COURTS BILL**

The National House of Traditional Leaders has studied the Bill and deliberated upon it, and therefore submit the following comments:

PREAMBLE

The Bill recognizes that customary law is premised on the principle and spirit of voluntary affiliation, and that its application is accessible to those who choose to live in accordance with the values of evolving customary law and abide by the practices and customs.

The House is against voluntary participation in court proceedings by any person. Customary courts are accessible to all and people should not be given a choice as they are subjected to customary law and traditions, and they must abide by practices and customs of communities.

Chapter 1: Definitions

The House recommend that a traditional community be defined in the Bill as community members are also involved as parties in the resolution of disputes. Therefore a “**traditional community**” should be defined as a traditional community recognized as such in terms of section 2 of Traditional Leadership and Governance Framework Act, 2003, Act No. 41 of 2003.

Clause 4: Institution of proceedings in traditional courts

Clause 4(3)(a) provides for a person who elects not to have a matter dealt with in a traditional court, to give reasons for that decision to the clerk of the traditional court.

The House is of the view this will undermine the legitimacy of the court. It should not be optional for the person to elect not to have his or her dispute heard by the traditional court, but it should be compulsory. Therefore the words “should he or she so wish” must be deleted in Clause 4(3)(a).

Clause 5: Composition of and participation in traditional courts

Clause 5(1)(a) and (2) provides that a traditional court must be constituted of women and men, and that the traditional court must promote and protect the representation and participation of women as parties and members thereof.

It should not be a requirement that traditional courts should compose of women and men because their attendance in a traditional court is optional and not compulsory. Furthermore, woman may feel not comfortable to attend the court because of certain conditions, for instance the place where the court is held. Woman should also be capacitated and be encouraged to understand their roles in a traditional court.

Clause 8: Orders that may be made by traditional courts

This clause emphasizes restorative justice measures, for instance, compensation and redress, which are aimed at restoring the relations between parties and promoting social cohesion.

Traditional leaders recommend that the Bill should provide for the imposition of fines which must be paid to traditional courts. If the courts cannot impose fines, how will the courts be run. It complicates the limited resources that the courts have. Court members are for instance, paid out of the fines.

There should be a clause on disputes centered around a traditional leader who has violated the law, and on who should try a traditional leader.

Clause 9: Enforcement of orders of traditional courts

The mechanism proposed in the Bill is that if a party fails to comply with an order the aggrieved party can approach the clerk of the traditional court who will try to mediate. If unsuccessful, the clerk must refer the matter to a justice of the peace.

How do the court then deal with someone who disrupts the traditional court, or undermines the sheriff and refuse to accept summons. It is recommended that there should be a clause in the bill that deal with these issues.

Clause 11: Review by High Court

This clause allows review of procedural shortcomings in the High Court, for instance if the traditional court was not properly constituted or the parties were not allowed to be represented by persons of their choice. The High Court can confirm, set aside or correct the order made by the traditional court.

It is the view of the House that as traditional courts are open to all members of the community, the requirement that the traditional court should consist of women and men is beyond the control of the traditional court and therefore the traditional court cannot be penalized for that.

Clause 12: Escalation of matters from traditional courts

This clause provides for a party aggrieved by a decision or order of a traditional court to escalate the matter to a customary institution or structure in accordance with customary law and custom

The House recommend that there should be a structure to be called customary appeal court, established at provincial level, consisting of traditional leaders from various provinces to deal with appeals.

Clause 17: Regulations

This clause requires the Minister to make regulations on the training of traditional leaders, members of traditional courts, paralegals and interns in the functioning of traditional courts.

It is recommended that magistrates and judges should also receive training, and that there should be budget for ongoing training as well.

Hope our inputs will be considered.

Regards

A handwritten signature in black ink, appearing to be 'Kgosi PP Maubane', written in a cursive style.

Kgosi PP Maubane

Chairperson: NHTL

Date: 5/04/2017