



FREE STATE LEGISLATURE

PORTFOLIO COMMITTEE ON COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, OFFICE OF THE PREMIER AND LEGISLATURE

Negotiating Mandate

TO: Chairperson of the Select Committee on SECURITY AND JUSTICE

NAME OF BILL: Traditional Courts Bill

NUMBER OF BILL: [B1B- 2017]

DATE OF DELIBERATION: 04 February 2020

VOTE OF THE LEGISLATURE:

The Portfolio Committee on Cooperative Governance and Traditional Affairs, Office of the Premier and Legislature, as designated by the Free State Legislature votes in favour of the Bill with the following amendments:

Concerns by the Committee:

- That there is no specific codified legal protection for any person against being discriminated against on the grounds of race, gender, sexual orientation or religion, neither in the composition of the court, nor in the rulings of the court.
- The bill provides no legal protection against discrimination. (Clause 5) Although the bill in Clause 5, states 'Traditional Courts must be composed of women and men in accordance with the spirit of promoting the right to equality as envisioned in section 9 of the Constitution.' And 'The courts are required to promote and protect the representation and participation of women, both as parties and as members of the courts.' There is no specific codified legal protection for any person against being discriminated against on the grounds of race, gender, sexual orientation or religion, neither in the composition of the court, nor in the rulings of the court.

- Legal representation is not allowed in these courts. (Clause 7) This is a direct contravention of the right of a person to a fair trial, and to the administration of justice. It cannot be that any person can be subjected to a type of legal system, which may make any arbitrary ruling, and which is binding, without at least the assistance of a person trained in justice and legal matters.
- No person may opt out of this Traditional Court system. (Clause 12) The bill allows for the referral of matters from the traditional court to the magistrate's court by an aggrieved party, but only after the party in question has exhausted all traditional court appeal procedures available in terms of customary law. The magistrates court alternative is costly and could further frustrate the aggrieved party who never wanted to be part of this system in the first place. This is in contravention of Clause 3 which states: 'A founding value of customary law is that its application is accessible to those persons who voluntarily subject themselves to that set of laws and customs.'

RECOMMENDATION

The Portfolio Committee on Cooperative Governance and Traditional Affairs, Office of the Premier and Legislature hereby supports the Traditional Courts Bill [B1 B-2017], subject to the amendment of clause 3(a)(i) by deleting the word women and replacing it with the words any person and the word non-sexism with non-discrimination based on the grounds of race gender, sexual orientation or religion for the clause to read as follows:

- (ii) put measures in place in order to promote and protect the fair representation and participation of any person, either as parties or members in the traditional courts in order to create an environment that facilitates and promotes the meaningful and voluntary participation of any person in accordance with the constitutional value of non-discrimination based on the grounds of race gender, sexual orientation or religion;



HON H SMIT
CHAIRPERSON OF PORTFOLIO COMMITTEE ON
FREE STATE LEGISLATURE
11 February 2020