



## **NORTH WEST PROVINCIAL LEGISLATURE**

### **PUBLIC HEARIN & STAKEHOLDER CONSULTATION REPORT: TRADITIONAL COURTS BILL [B 1B-2017]**

**HON A MOTSWANA**

**08 NOVEMBER 2019**

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## **1. ACRONYMS**

<b>NCOP</b>	<b>NATIONAL COUNCIL OF PROVINCES</b>
<b>MEC</b>	<b>MEMBER OF EXECUTIVE COMMITTEE</b>
<b>NHTL</b>	<b>NATIONAL HOUSE OF TRADITIONAL LEADERS</b>
<b>NWHTL</b>	<b>NORTH WEST HOUSE OF TRADITIONAL LEADERS</b>
<b>CPA</b>	<b>COMMUNAL PROPERTY ASSOCIATION</b>



## 1. INTRODUCTION AND PURPOSE

This report presents the outcome of the Public hearings on Traditional Courts Bill, [B 1B-2017], held on the 8<sup>th</sup> November 2019, across the four districts of the province. Additionally, the report further covers the stakeholder consultation processes embarked by the portfolio committee on Premier, Finance, Cooperative Governance, Human Settlements and Traditional Affairs in relation to the Bill. The primary purpose of the public hearings was to afford the north west citizenry and identified key stakeholders an opportunity to make inputs and comments on the Bill prior to final decision making by Parliament. This report outlines amongst others, process followed, summarised inputs and comments from communities and stakeholders categorised per district and conclusion thereof.

## 2. BACKGROUND

The Traditional Courts Bill [B 1B-2017] was formally referred by the Speaker, Honourable S.R. Dantjie to the Portfolio Committee on Premier, Finance, Cooperative Governance, Human Settlements and Traditional Affairs for consideration, processing and reporting.

The Portfolio Committee received a presentation from the National Department of Justice and Constitutional Development on Traditional Courts Bill [B 1B-2017] at the meeting held on the 30<sup>th</sup> October 2019. Given the significance of the Bill and observation from the historical background of this Bill, the Committee deemed it of utmost importance to employ various public participation mechanisms to ensure adequate coverage of stakeholders and interested parties, including the public hearing as the common method used by the Legislature. The following additional mechanisms were utilised to inform the public and stakeholders about the Bill and arouse their interest to participate in the process;

- pre-public hearing workshops: where key identified stakeholders (i.e. Tribal councils, Tribal communities). The workshops main objective was to empower stakeholders with knowledge and understanding of the content of the Bill prior to the public hearings. The workshops were held in all identified areas of public hearings in the four districts. (see annexure A: pre-hearing workshop report ).



- Key stakeholder consultation: Traditional leadership as identified as the custodian and implementors of the Bill were given an opportunity to make inputs and comments through the following approach;
  1. The North West house of traditional leaders was formally requested to make inputs and comments on the Bill.
  2. The north west Human rights commission was invited to scrutinise the Bill and make comments in relation to the human rights aspects.
  3. Individual tribal councils were gathered in a focus groups approach to discuss the Bill and make comments (**Annexure List of councils consulted**)

### 3. PROCESS FOLLOWED.

Prior to the hosting of the public hearing, the portfolio committee advertised the invitation to public to participate on the public hearings. The advertisement was made through 10 print publications (i.e. Stella lander; Klerksdorp Record; The Mail; Rustenburg Herald; Ratlou Dispurche; Tlhabane Dispurche; Business Inc; News Fact, Lekwa Teemane Record & Quick Act), and Radio adverts ran on 12 stations, (i.e. Motsweding FM; RSG FM; SA FM; Vaaltra FM; Modliri FM; Ratlou FM; Bojanala FM; Moretele FM; Mafisa FM; Star FM; Aganang FM; Mahikeng FM & Kopano FM).

Following the briefing and workshops, the Portfolio Committee embarked on Public Hearings throughout the province on the 8<sup>th</sup> November 2019 held as follows; Ngaka Modiri Molema District (Gopane Community Hall -Zeerust), Bojanala District (Mogwase), Dr Kenneth Kaunda District (-Ventersdorp) and Dr Ruth Segomotsi Mompati District. A total of **1109** people were reached in various districts of the Province. The table below presents total participants per region.

District	Public hearing Venue	Public hearing
Bojanala Platinum	<b>Mogwase Community Hall</b>	Number of participants: <b>193</b> Key stakeholder:
Ngaka Modiri Molema	<b>Gopane Community Hall - Zeerust</b>	Number of participants: <b>336</b> Key stakeholder:



Dr Kenneth Kaunda	<b>Ga-Mokgopa Community Hall</b>	Number of participants: <b>222</b> Key stakeholder:
Dr Ruth Segomotsi Mompati	<b>Tlou le Tau Tribal Hall; Ganyesa</b>	<b>Tlou le Tau Tribal Hall; Ganyesa</b> Number of participants: <b>358</b> Stakeholder participants: <ul style="list-style-type: none"> <li>• Batlhaping ba phuduhucwana</li> </ul>

#### 4. STAKEHOLDER & PUBLIC ORAL INPUTS/ SUBMISSIONS

The public hearing was conducted in presentation format. Dedicated committee support staff and electronic recording system was available to record comments from the public and proceedings of the public hearings. The table below therefore presents inputs submitted by stakeholders and participants during both the pre-hearing workshops and public hearings.

##### 4.1. BOJANALA PLATINUM DISTRICT

CLAUSE	INPUTS/COMMENT
Clause 6	Clarity on the qualification that the presiding officers / Traditional Leaders should possess when presiding over cases.
Clause 6	Bill did not cover a detailed clarity on the composition of the Traditional Courts.
Clause 7	The communities wanted to know whether a person would be allowed a legal representation if they prefer one
Clause 3	How the Bill will protect the communities against patriarchy - instances where Dikgosi are dictators.
Clause 17	The method that the Minister will utilise to

	determine the extent or value of damages.
<b>Clause 6</b>	A clarity was sought as to how the Bill will be applied by the time the Kingship has been established in North West Province.
<b>General</b>	Whether the Land issue will have an impact in the Traditional Courts.
<b>Clause 9</b>	The action that will be taken against a person who refuses to appear when summoned before the Traditional Court.
<b>Clause 16</b>	A clarity was also sought on who will preside over Traditional Leaders who are implicated or have offenses.

#### 4.3. DR KENNETH KAUNDA DISTRICT INPUTS

CLAUSE	INPUT/COMMENT
<b>Clause 3</b>	. There should be a clear distinction between operations of the CPA's and those of the Traditional Court bill, as CPA's have been operating under its own bi-laws.
<b>Clause 3</b>	4.3.2. Citizenship was also raised as a general concern towards this Bill.
<b>Clause 3</b>	4.3.3. A concern was raised as to whether the traditional leadership is well represented at National Government. A proposal was also made that the government should employ youth for this generation as the current structure is run by older people.



<b>Clause 3</b>	4.3.4. Due to the fact that CPAs do not have ownership to any land, it was then proposed that the bill should separate the roles of CPA's members and those of traditional leadership.
<b>Clause 4</b>	4.3.5. The Court bill laws tends to be giving too much power to the traditional leadership.
<b>General</b>	4.3.6. A concern with regard to how the law will be implemented in a case whereby a village does not have a Chief was raised.
<b>General</b>	4.3.7. CPA members should also be empowered before implementation of the Traditional Courts Bill.
<b>Clause 5</b>	4.3.8. What would be the role of Trusts members if the law is going to introduce its new clerks.
<b>General</b>	4.3.9. The community also confirmed that CPA's have been functioning well without the laws of the Courts Bill.
<b>General</b>	4.3.10. Members of the community welcomed the bill, but also raised concern on the way the bill was introduced, e.g. no workshops were conducted, no public participation and feedback on the processes of the Bill.



#### 4.4. Ngaka Modiri Molema District Inputs

CLAUSE	INPUT/COMMENT
Clause 4	What type of cases will be dealt with at Traditional Courts.
Clause 3	Those who will be part of the proceedings at a Traditional Court, will they be taken to a University for five years or so to study law.
Clause 5	communities indicated the need for the a Chief to be excused from proceedings on a particular matter if it is deemed he/she could act in favour of the plaintiff or defendant.
General	Some Chiefs have criminal records so how are they going to be fair and just on a Traditional Court matter.
General	There has to be screening of those who are going to officiate over Traditional Court proceedings.
Clause 7	Some people act unruly in communities and when they are summoned to go and see the Chief they do not go. How is the Traditional Court procedure going to be regulated as a fair amount of people are oblivious to Chieftaincies.
General	The Bill has to be returned to Parliament as it is a replica of the governance model of former bantustans.
Clause 3	Will Traditional Courts be able to sustain stability, equality and integrity
General	Should a person be involved in matter that happened in a particular area that requires the Traditional Court yet the person resides out of the province , how will it be handled.
General	As members of communities there is a certain amount of money that is liable to be paid to a Traditional Council in a respective area, non-

	payment to the Traditional Council results in receiving no assistance on any matter.
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#### 4.5. Dr Ruth Segomotso Mompoti

CLAUSE	INPUT/COMMENT
Clause 3	It was emphasised that the composition of traditional courts must include all gender to promote equality.
Clause 13	The Traditional Courts clerks must also assist the traditional leaders in terms of record keeping in traditional houses.
Clause 6	The community wanted to know whether the bill include all provinces even the chief monarchy such as Bafokeng and KZN.
Schedule to the Bill	The community wanted to know whether the traditional courts will accept J88 form.
Clause 7	The community wanted to know whether the legal representative is allowed in the traditional courts or not
General	Municipalities do not work hand in hand with traditional leaders.
General	The community alluded that government does not recognise traditional leaders.



## 5.SUMMARISED ORAL INPUTS :CRITICAL CLAUSES

- 5.1. Women and young people must be empowered and be afforded opportunities in the proceedings of the Traditional courts.
- 5.2. The cases to be presided over at the Traditional Courts must be prescribed in detailed manner.
- 5.3. The Bill must prescribe the jurisdiction of the CPA`s on the tribal lands.
- 5.4. There has to be screening of those who are going to officiate over Traditional Court proceedings.

## 6. WRITTEN SUBMISSION

The committee received at least five written submissions from interest groups and public following the invitation for public comments through media platforms. The following table presents summarised content of the submissions;

	STAKEHOLDER/PUBLIC	SUBMISSION
1.	Alliance for Rural Democracy Trust	<p>Do not support the Bill on the following basis:</p> <p><i>“Terms such as ‘Presiding Officer’ that gives power to a “senior traditional leader”. This distorted a living customary law that is, in fact, based on distributed power and strives for participation and consensus among the members of a community;</i></p> <ul style="list-style-type: none"><li><i>• The refusal of right to legal representative, and the adopted definition of ‘Community’ that denied rural people choice and forcibly rendered them subjects in line with the former homelands’ jurisdictional boundaries;</i></li></ul> <p><i>Its failure to address gender inequalities that exist under the patriarchal arrangements that prevail in many traditional communities”</i></p>



2.	Citizen :Baby Makgeledisa [0780333078]	Do not support the Bill due to strong believe of unconstitutional nature of the Bill.
3.	Land Accountability & Research Centre	Not totally satisfied with refined clauses and removal of certain clauses which were covered such as "opting out".Further plead for further consultation and extension of time frames for public comments and inputs on the Bill.
4.	Bua Mining Communities	Do not support the Bill.

## 7. COMMITTEE OBSERVATIONS

The committee made a number of observations across all four districts during the public hearings. Whilst some are regarded to have minor implications to the law making process of this Bill, the following are worth noting and corrected where necessary;

6.1. Anadequate time provided to stakeholders for making comments and inputs to the legislature.

6.2. Although, the House of Traditional Leaders was invited to the briefing by the department, concerns with regard to formal submission of the Bill to the House by the Legislature warrant investigation and correction prior to adoption of the mandate.

6.3. The Bill seems to have direct and indirect effects to the communities, including those who does not necessarily reside in tribal land. The indirect stakeholders were largely not consulted in favour of the directly affected stakeholders.

6.4. Traditional leadership of Bojanala raised concerns regarding coordination of invitation, constituencies not being represented. parliamentarians committed to re consultation

6.5. Traditional leadership also raised the concern that communities which have been afforded

6.6. Invitation of stakeholders did not cover all stakeholders, especially those leadership in disputes.



6.7. Confusion of the content and objects of the Bill with the traditional leadership framework general provisions

6.8. The manner in which concerns were raised indicated that there is conflict between CPA and traditional house.

## **8. COMMITTEE RECOMMENDATIONS**

Based on the inputs and submission from stakeholders and the general observations by the committee, the following are recommended.

8.1. Increase consultation and access to the Bill by all interested stakeholders irrespective of their direct or indirect relations to the Bill.

8.2. Allow for written submission until January 2020 on the basis of the extension provided by the NCOP.

## **9. ADOPTION OF THE BILL BY COMMUNITY MEMBERS**

9.1. Bojanala Platinum District :- recommended for Adoption with inputs.

9.2. Dr. Kenneth Kaunda District :- recommended for Adoption with inputs

9.3. Dr. Ruth Segomotsi Mompati :- recommended for Adoption with inputs.

9.4. Ngaka Modiri Molema District :- public hearing disrupted

## **10. ACKNOWLEDGEMENTS**

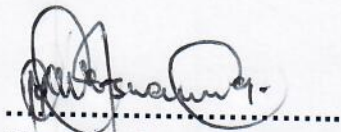
The Chairperson of Committee thanked all Members for their commitment to the oversight process of the Traditional Courts Bill [B 1B-2017].

The cooperation of the North West House of Traditional Affairs, Dikgosi, National Department of Justice and Constitutional Development, Head of the Department of Cooperative Governance and Traditional Affairs is highly appreciated.

## 11.ADOPTION OF THE REPORT

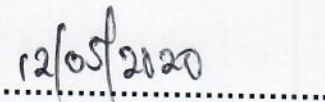
The Portfolio Committee recommends that the House approve the passing of the Traditional Courts Bill [B 1B-2017].

I present to this House, the report of the Portfolio Committee on Premier, Finance, Cooperative Governance, Human Settlements and Traditional Affairs for consideration and adoption.



Hon. A. Motswana

Chairperson: PC:- Premier, Finance, Cooperative Governance, Human Settlements and Traditional Affairs



Date





## NEGOTIATING MANDATE

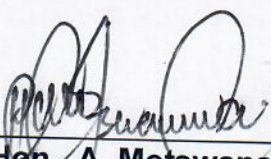
TO : HON. HON. S SHAIKH, MP  
THE CHAIRPERSON  
SC ON SECURITY AND JUSTICE

NAME OF BILL : TRADITIONAL COURTS BILL

NUMBER OF BILL : [B 1B - 2017]

DATE OF DELIBERATION : 12 MAY 2020

VOTE OF LEGISLATURE : The North West Provincial Legislature votes  
in favour of the Traditional Courts Bill [B1B-  
2017]

  
Hon. A. Motswana

12/05/2020  
Date

Chairperson: - Portfolio Committee on Premier, Finance, Cooperative  
Governance, Human Settlements and Traditional Affairs

North West Provincial Legislature