

Limpopo Legislature

Office Of The Secretary

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Polokwane
0700

NEGOTIATING MANDATE

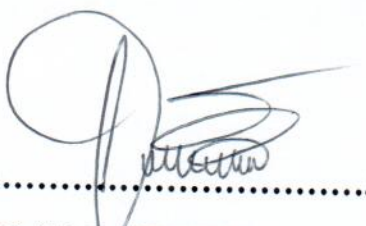
To : The Chairperson: Select Committee on
Security and Justice

Name of the Bill : Traditional Courts Bill

Number of the Bill : [B 1B-2017]

Date of deliberations : 29 January 2020

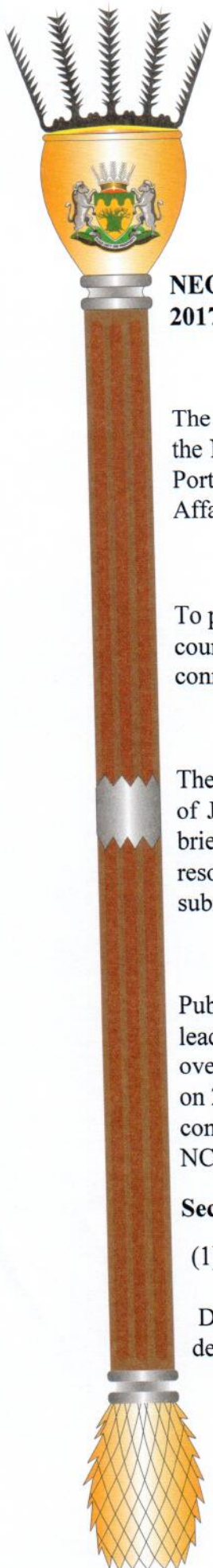
Vote of the Legislature : Provincial NCOP Delegates to negotiate in
favour of the Bill


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HON. M.J. APHIRI

DATE 29/01/2020

COMMITTEE CHAIRPERSON



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NEGOTIATING MANDATE ON TRADITIONAL COURTS BILL, 2017 [B 1B-2017]

1. INTRODUCTION

The Traditional Courts Bill, 2017 [B1B - 2017] was introduced in the august House from the National Council of Provinces (NCOP) and the Bill was subsequently referred to the Portfolio Committee on Cooperative Governance, Human Settlements and Traditional Affairs for consideration and inputs.

2. OBJECTS OF THE BILL

To provide a uniform legislative framework for the structure and functioning of traditional courts, in line with constitutional imperatives and values; and to provide for matters connected therewith.

3. CONSIDERATION OF THE BILL

The committee met the NCOP delegates together with the officials from the Department of Justice and Constitutional Development on 05 November 2019 to receive a detailed briefing on the principles and objects of the Bill. It was in this meeting that the committee resolved to conduct a public consultation process so that critical stakeholders on the bill submit their inputs so that the bill reflects the will of the stakeholders.

4. PUBLIC HEARINGS

Public hearing was held on 22 November 2019. Various stakeholders, including traditional leaders, attended to give inputs and comments on the Bill. The public hearing was an overwhelming success and constructive inputs on the Bill were made. The committee met on 29 January 2020 to consider inputs made by the stakeholders to the hearing and having considered these inputs, the committee hereby makes the following submission to the NCOP for consideration:

Section 1 Definitions

(1) The clause must provide a definition for “**customary law**.”

Definition of “**restorative justice**” is too long and therefore sub-paragraph (b) must be deleted and sub-paragraphs (a) and (c) retained.

Section 3 Guiding principles

Sub-section 2 (e): the clause must be rejected because it allows aspect of voluntarism to approach magistrate court. It is equal to opting-out through back door. If the aggrieved party approaches traditional court, the offender should not have an option for magistrate court as this will render traditional courts powerless.

Section 4 Institution of proceedings in traditional courts

(1)(a) All cases must be heard and dealt with within the traditional jurisdiction where the offences have occurred.

(b) A traditional court must not hold its sessions outside where its sessions ordinarily take place as this might be an inconvenience to some community members who will have to travel a distance to where the cases are to be heard. The clause must therefore read as follows: **“Traditional courts must take place exactly at Moshates and nowhere else.**

(4) (a) – The clause undermines powers of traditional leaders. There must be consequences for failure to fulfil traditional court ruling. Instead of having to refer the matter to Justice of the Peace, traditional courts must be empowered to deal with a party who fails to appear before a traditional court after being served with summons by clerk of the traditional court. The bill must provide for imposition of fines by traditional courts against offending parties.

Section 5. Composition of and participation in traditional courts

(4)(a) The clause does not state the role of officer who sends summons. It must say there must be a messenger to send summons and record submissions of summons delivered and further explains the procedure to the person served with summons instead of this done by a traditional leader.

(5) Traditional leaders must not be subjected to make a pledge before adjudicating a case as this is not happening in magistrate courts. The clause must therefore be removed.

Section 6 Nature of traditional courts

(2) It must read “Traditional courts should create enabling environment to community members for successful resolution of conflicts”.

Section 7. Procedure in traditional courts

(4)(b) The bill does not require legal representative. What if we all know that the person is a lawyer even if the person comes in the capacity as a friend of witness? There is therefore a need for legal representatives in traditional courts for fair decision of cases so that traditional court rulings are appealed. Or else, the bill must provide traditional leaders with lawyers to guide them on professional ruling of cases so that their rulings are not overruled in magistrate courts.

Section 9. Enforcement of orders of traditional courts

(1) There must not be an appeal in traditional court rulings resulting in cases being referred to magistrate courts as this will show contempt of traditional courts. For example, the

offending party has paid the compensation and later approaches magistrate court for appeal and subsequently wins that case, will the traditional court pay him/her back what he already paid.

(1) Traditional courts must be provided with protection services in the form of police officers especially for messengers who serve summons against aggressive parties.

Section 11: Review by High Court

The whole clause should be removed and replaced with "Considering that there are no cost implications on the adjudication of cases in traditional courts, and traditional leaders would have been provided with training, there is no need for High Court involvement".

Section 12. Referral of matters from traditional courts to Magistrates' courts

Instead of referring traditional court decisions or orders to magistrate courts, the bill must provide for the establishment of appeal structure in senior traditional leaders jurisdictions. There must be a structure that looks into appeals so that by all means magistrate courts are avoided.

Section 13. Record of proceedings

(1)(h) The paragraph must be removed in compliance with input made under Section 5(5)

Section 15. Limitation of liability of members of traditional courts

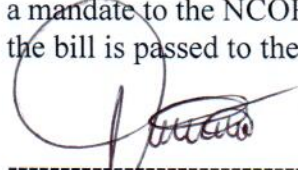
The section means liability is there but reduced. The section should read "indemnity" instead of "liability".

Section 17. Regulations

(k) The bill must provide for a minimum of five persons per traditional council identified for training.

5. CONCLUSION

The committee, having considered comments and inputs during the hearing, hereby confers a mandate to the NCOP delegates to vote in favour of the Bill with the above inputs before the bill is passed to the next stage of legislation.



HON. M.J. APHIRI
COMMITTEE CHAIRPERSON