



The FW de Klerk Foundation  
**CENTRE FOR CONSTITUTIONAL RIGHTS**

*Upholding South Africa's Constitutional Accord*

**Hon SL Tsenoli, MP**  
Chairperson  
Portfolio Committee on Provincial and Local Government  
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16 July 2008

Dear Sirs

**Re: Traditional Leadership and Governance Framework Bill [B57 - 2008]**

1. The Centre for Constitutional Rights wishes to record its acknowledgment of the vital role that Traditional Leaders play in keeping alive and developing our rich customary heritage as a living law. In particular, the Centre appreciates the delicate task faced by the leaders in developing customary law in a manner that supports the principles contained in the Constitution. The Centre accordingly supports any measures aimed at facilitating efficient functioning.

2. The Centre is particularly pleased with the inclusion of clause 2(4) of the Bill which will ensure that customary law will be developed in a manner that will guarantee all citizens the rights protected in the Bill of Rights. Section 211(1) of the Constitution requires that Traditional Governance is bound by the Constitution, whilst section 39(3) requires that all customary law be consistent with the Constitution. Sadly has not always been consistent with the Constitution and far too many people, and particularly Black rural women, have to date been denied many of their rights.

3. However the Centre is concerned with certain aspects of the Bill In particular the Centre is concerned with the provisions of clause 3(2)(c) which requires that only 40% of the traditional council be democratically elected. The Constitution has created for

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**A UNIT OF THE FW DE KLERK FOUNDATION**

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RP Hoffman (Director) N de Havilland (Deputy Director)

Panel of Advisors:

Anthea Jeffery, Johan Kruger, Penuell Maduna, Johann Marais, Matthews Phosa, Brian Spilg, Hennie Strydom, Francois Venter, David Welsh, Marinus Wiechers

South Africa an open democratic society, based on human dignity, equality and freedom. Accordingly, principles of democracy should permeate all institutions. The Centre thus believes that this clause should be amended to allow at minimum for the progressive realization of a fully elected council.

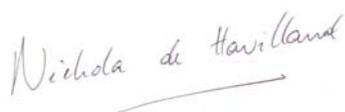
4. The Centre is also concerned with the fact that the Bill requires that only a third of the members of a kingship council should consist of women, and more particularly that that threshold may be reduced by the Minister. The Centre is mindful of the fact that traditionally, and because of the principle of patrilineal succession, women do not hold positions of leadership. However the over arching constitutional principles of equality and non- discrimination require that the Bill should promote equal rights of participation. At minimum clause 3A (2)(c) should be amended to provide for the progressive realization of equal representation.

5. The Centre is equally concerned with the small percentage of democratically elected members of the kingship council, and would argue that clause 3A(2)(d) should be amended in a similar manner to clause 3(2)(c).

6. Lastly the Centre is concerned with the quorum provision contained in clause 3(A)(6) as it believes that decisions by fifty one percent of the total number of the kingship council flies in the face of the principle of consensus which underpins all customary law. The quorum for decisions should thus be increased to at least two-thirds.

7. For the sake of certainty, the Centre proposes that clause 3A (10)(c) be amended to require that the resignation be in writing.

Yours faithfully,

A handwritten signature in cursive script that reads "Nichola de Havilland". A horizontal line is drawn underneath the signature.

**Adv N de Havilland**  
Deputy Director  
Centre for Constitutional Rights