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NATIONAL HOUSE OF TRADITIONAL LEADERS

Private Bag 2824 Pretoria 001 Telephone 012 343 6055 Fax 012 343 8679 2nd Floor Maseru Building Corner Rusesa and Leyds street Sunnyside

Enquiries: Mr ZM Matebese
Phone: (012) 343 6055
Fax: (012) 343 86 79

NATIONAL HOUSE OF TRADITIONAL LEADERS SUBMISSION - LAND USE MANAGEMENT BILL, 2001, DEPARTMENT OF LAND AFFAIRS, PRETORIA

The National House of Traditional Leaders is a statutory body established in terms of Act 10, 1997, with amongst other responsibilities, to see to it that the interests of its members are well addressed by the relevant institutions or departments.

Therefore, the National House in responding to your Bill, has observed that:

CHAPTER 1

DEFINITIONS

In defining the role players concerning this Bill, the drafters failed to include the definition of a Traditional Leader and the Rural Communities under their jurisdiction.

APPLICATION

Herein again no direct reference is given to Rural Communities and this omission will have an effect of automatically defining Rural Communities under the Municipal banner, which is not a correct approach.

CHAPTER 2

PURPOSE

In this Chapter, Section 3(1)(c) provides for the adoption and implementation of all provincial and municipal development plans. Members observed that rural communities should have been put in the same level as provincial and municipal development plans. Direct reference will once more avoid the obvious conclusion that all land belongs to municipal council.

THE PRINCIPLE OF EQUALITY

Section 6(a) provides that '.....and communities with an interest in the matter being decided'. Members submitted that this section should also have direct reference to rural communities and not be included as having an interest. Members also registered their strong concern regarding the non-mentioning of traditional authority's plans under their control in this Bill as it would be difficult for them to be given their value thereof.

CHAPTER 4

LAND USE SCHEMES

Regarding Section 19, members submitted that nothing is said about compensation in adopting the schemes when it became evident that a traditional leader will be affected by the said process.

In addition, Section 20 takes a step further by providing that the schemes will have superseding powers and by implication, the already existing rural plans will automatically be declared null and void. Members viewed this provision as a direct attack to their governance and are totally opposed to it.

Furthermore, Section 22(3) provides that traditional authorities '.....may.....participate in the drafting and adoption of the municipality's land use scheme.....'. Members unequivocally rejected the word '*participate*' as too vague and not directive and that it should be replaced by the words: '*must be involved*'.

CHAPTER 6

Herein Section 39(1) provides that applications will be decided on 'behalf of the municipality'. Members contended that in whatever involvement they might have with the municipalities, they would under no circumstances be acting 'on behalf of the municipality' as they will be executing their functions in their 'capacity as traditional leaders'. This concern must be attended to.

PART 3

Section 46 made reference to Section 81 of the Municipal Structures Act as amended. In this Act, Section 81(2)(b) provides for 20% of traditional representation in municipal councils while Section 81(3) gave traditional leader 'an opportunity to express a view'. Herein, this 20% representation is still a matter of debate with the government as traditional leaders have rejected this notion out of hand as was Section 81(3) provision and the reference to them by this Bill is so unfortunate.

Members further registered their concern to the fact that there are no mechanisms in place in the eventuality that a traditional leader differs with the municipal council without resorting to tribunal.

Consequently, Section 47 provides that '.....may designate a person chosen by them'. Members criticized this provision in that it will create an opportunity for any person to represent a traditional leader and proposed that it must be categorically stated that only a traditional leader must be involved in committee proceedings. Also, what if there will be two or more traditional authorities that will be affected by the land use application, will they designate one person as the Section provides or more? This concern should be addressed.

Again, Section 47(2) does not state clearly what criteria will be employed when considering land use applications. The procedure herein is needed for all those involved.

PART 4

With regard to Section 67(1), reference is made to land use applications in the provinces. Members once more contended that nothing is said about the involvement of the Provincial Houses in this regard which played vital role in traditional authorities.

Furthermore, the issue of adjoining land has not been addressed as traditional leaders held the view that no provision has been provided thereof.

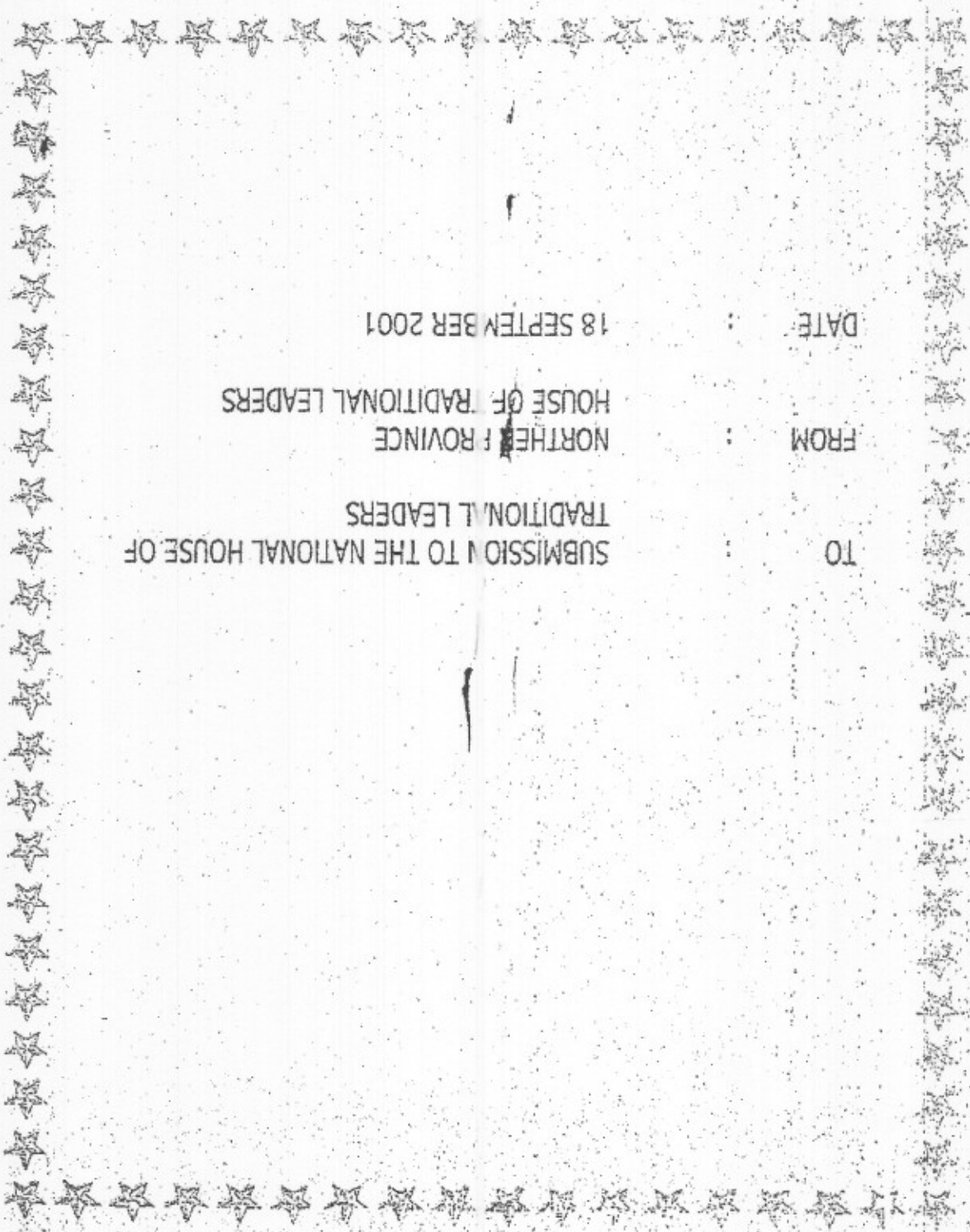
RESOLUTIONS BY MEMBERS

With reference to the above, the resolutions are as follows:

- There is no differentiation made between residential and dwelling land as the Bill keeps on referring to land,
- That communal land has been referred to and there is no similar reference to white farms,
- Members strongly felt that the promulgation of this Bill should have been put into abeyance until the White Paper process has been finalised,
- That traditional leaders are the custodians of the land of African people which is owned communally and indivisible as the land is regarded as a sacred heritage from God.

INKOSI/MB MZIMELA
CHAIRPERSON
DATE : 20 SEPTEMBER 2001

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TO : SUBMISSION TO THE NATIONAL HOUSE OF
TRADITIONAL LEADERS

FROM : NORTHERN PROVINCE
HOUSE OF TRADITIONAL LEADERS

DATE : 18 SEPTEMBER 2001

INTRODUCTION

- 1.1. The National House of Traditional Leaders has referred the Land Use Management Bill, 2001 to Chairpersons of Provincial Houses for comment. The Department of Provincial and Local Government in conjunction with the National House, has since conducted a workshop in Pretoria in this regard.
- 1.2. The Land Use Management Bill, 2001, seeks to plan and regulate Land Use management and Land Development, to provide for the enactment of national land use framework, to adopt the municipal spatial development frameworks and land use schemes, to provide for the establishment of land use tribunals as well as appeal tribunals and to provide for an intervention by the Minister of Land Affairs when the national interest may be prejudiced by the decision of a particular municipality.

The Northern Province House has notice with dismay that the Government has stalled the negotiations with the coalition. If this negotiations has continued may be something positive could have been achieved in regard to the amendment of Chapter 7 and 12 of the constitution of the country as well as Municipal Structures Act. The two legislation have a big bearing on the Land Use Bill. We feel the National House should first seek audience with the presidency regarding resumption of negotiations. Having said that we feel strongly that the process on this bill should be suspended.

However, hereunder follows our contributions regarding the bill in question:

2. Wherever the word "May" appears in the bill as far as it concerns traditional authorities, we propose that "shall" should be used instead. We further feel that the term traditional authority should be covered under definition.
3. This bill is going to give Municipality Land Use by law in the area of Traditional Authorities jurisdiction an overriding powers of Traditional Leaders in the allocation of land to their Communities, see section 25.

Our input here is that status quo should remain and further that title deed should be issued to traditional authorities on behalf of their communities.

4. Traditional Authorities must consider and decide all Land Use in terms of Section 40 of the Bill the obligation must lie with the Traditional Authorities within their areas of jurisdiction.
5. Land Use application affecting traditional authorities section 46 and 47 of the bill - the two sections should await the outcome of national negotiations.
6. Land Use application affecting traditional authorities section 46 and 47 of the bill - the two sections should await the outcome of national negotiations.
7. The National House must see to it that Traditional Leaders are well represented in Land Use Tribunal and other structures in terms of Chapter 7 on Land Use Tribunals. The person to be identified must know and understand the culture and custom of

that particular tribe for the fact that there are areas which are sacred in nature and there are those areas which are accessible by the Traditional Leaders only because of their ancestral nature.

CHAIRPERSON
HOUSE OF TRADITIONAL LEADERS

DATE 18/9/2001

TRADITIONAL LEADERSHIP AND THE LAND USE MANAGEMENT BILL

RESOLUTIONS MADE BY THE DELEGATES AT THE BRIEFING SESSION HELD AT SOUTHERN SUN Elangeni DURBAN, 09 MAY 2008 REGARDING THE LAND USE MANAGEMENT BILL

WHEREAS the Traditional Leadership and Governance Framework Act (No. 41 of 2003) stipulates the role of the traditional leadership in democratic and co-operative governance;

AND Whereas the TLGFAct envisages an active involvement of the traditional leadership in the formulation and the implementation of the government measures;

AND Noting that Section 4 of the TLGFAct which provides for the establishment of traditional councils states that traditional councils should, amongst others;

- support municipalities in the identification of community needs,
- facilitate the involvement of the traditional community in the development or amendment of the integrated development plan of a municipality in whose area that community resides,
- participate in the development of policy and legislation at local level,
- promote the ideals of co-operative governance, integrated development planning, sustainable development and service delivery to promote indigenous knowledge systems for sustainable development and disaster management;

AND FURTHER Noting that Section 5 (2) of the TLGFAct affirms that any partnership between a municipality and a traditional council must-

- (a) be based on the principles of mutual respect and recognition of the status and roles of the respective parties, and
- (b) be guided by and based on the principles of co-operative governance;

AND Whereas the Land Use Management Bill has an unacceptable urban bias;

AND Whereas Section 81 of the Local Government: Municipal Structures Act provides for the participation of traditional leaders in the proceedings of councils in matters affecting traditional communities, and those traditional leaders must be allowed to attend and participate in any meeting of the councils;

AND Whereas the LAND USE MANAGEMENT BILL tangibly affects the constitutionally-mandated roles and responsibilities of Traditional Leaders;

IT IS RESOLVED as follows:

1. Re: LONG TITLE

That the role of traditional leaders in land use management be specifically acknowledged and written into the Long Title.

That the traditional, rural and communal characters of land affected by the land use management system be acknowledged and written into the Long Title.

2. Re: DEFINITIONS (Clause 1)

That the following concepts be defined in the Bill:

(a) "Traditional Communities" as recognised by section 2 of the TLGFAct.

(b) "Traditional Leadership" as contemplated by the TLGFAct.

(c) "Communal Land" as contemplated in section 2 of the CLaRA Act 11 of 2004.

(d) "Executive Authority" to include the partnership with and participation of traditional councils as envisaged in section 5 of the TLGFAct.

(e) "local community" and "community" to include "Traditional Communities" as recognised by section 2 of the TLGFAct.

(f) "Piece of land" to be re-defined to include "Communal Land" as contemplated in section 2 of the CLaRA Act 11 of 2004. (This will deal with issues such as in clauses 23 & 28).

(g) "Traditional Council"

(h) "Houses of Traditional Leaders"

3. Re: NORMS AND STANDARDS (Clause 4)

That Minister to prescribe "norms and standards" for land use management affecting rural or communal land under traditional councils in consultation with the NHTL.

4. Re: INTERGOVERNMENTAL SUPPORT (Clauses 5, 6 and 7)

That Clauses 5(a) and (b)(ii) & (iii), and 6(2) be amended to include support and assistance to traditional councils and local houses of traditional leaders in the performance of their land use management functions.

That Clause 6(1)(a) be amended to ensure that in the determination of matters of provincial interest or special provincial concern, the Provinces must have due regard to the opinions of traditional leaders in respect of matters affecting rural or communal land.

That Clause 7 be amended to include strengthening the capacity of traditional leaders (as in the case of municipalities), and to align the operations of traditional councils and municipalities.

5. Re: JURISDICTIONS OF LAND USE REGULATORS (Clause 11)

That a new sub-clause (c) be inserted to include the participation of local houses of traditional leaders in the deliberations of the municipalities when considering applications affecting rural or communal land. The manner of such participation to be further prescribed.

6. TRADITIONAL COUNCILS AS LAND USE REGULATOR

That Traditional Councils be recognised as competent Land Use Regulator with defined functions in rural or communal land.

7. Re: ROLE OF EXECUTIVE AUTHORITY (Clause 22)

That Clause 22 be amended by the insertion of a new sub-clause to recognise that the "Executive Authority", when performing its duties in Chapter 4 must be constituted, in such a manner as may be prescribed by the Minister, to include such number of members of the traditional councils as may be prescribed.

8. Re: COMPOSITION OF MUNICIPAL LAND USE COMMITTEES (Clause 34)

That a new sub-clause (6) be inserted to recognise that a "Committee" must, when performing its functions in terms of clause 32 as affecting rural or communal land, its membership must include a minimum representation of traditional leaders as may be prescribed by the Minister.

9. Re: COMPOSITION & MEMBERSHIP OF TRIBUNALS (Clause 42)

That a new sub-clause (10) be inserted to recognise that a "Tribunal" must, when performing its functions in terms of clause 40 as affecting rural or communal land, its

membership must include a minimum representation of traditional leaders from the Provincial HTL as may be prescribed by the Minister.

10. Re: COMPOSITION NATIONAL LAND USE COMMISSION (Clause 61)

That a new sub-clause (1)(c) be inserted to recognise that the "Commission" must, when performing its functions in terms of clause 60, be constituted to include such number of traditional leaders from the NHTL as may be prescribed.

11. CONSEQUENTIAL AMENDMENTS

That all other amendments that flow from the above resolutions be effected.

Specifically and clear role of NHTL.