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**Subject: Submission by Ilizwi Lamafama Farmers Union
On the Repeal of the Black Authorities Act of 1951**

TO : Portfolio Committee on Rural Development and Land Reform, Parliament, Cape Town

Background

As Ilizwi Lamafama Farmers Union, we have more than 3,000 members in 44 villages in the Buffalo City, Ngqushwa, Amahlathi and Nkonkobe municipalities. As Ilizwi Lamafama, we work with a variety of communities who share their experiences with us about their dreams and visions for development. They also tell us about their sufferings from the rule of chiefs.

We therefore appreciate this move of repealing of the Black Authorities Act. As we welcome it, we also inform this committee there are many problems that continue even though the BAA is being removed. In particular, ever since the promulgation of the Traditional Leadership and Governance Framework Act and the Communal Land Rights Act, we have seen the rural communities in Tshabho, Berlin, Nxarhuni, Nkqonqweni, AmaNtinde, AmaHleke villages being divided. Chiefs in these areas claim that these laws gave them strong powers. They also say that they are now the new government in rural areas. As Ilizwi Lamafama, we are not happy with this situation. This continuation of the divide and rule system of colonialism and apartheid as it was in the classical and in the contemporary is not acceptable and cannot be countenanced. The society has engaged in bitter struggles to redress this situation. Therefore participatory democracy need to be implemented.

Traditional council elections

The March Traditional Council election was fraudulent in the sense that communities were not consulted and we tried to pursue the MEC concerned about our dissatisfaction but were disappointed to hear from him that he will be judged as a "stupid MEC" by the President if he can put the election on hold.

Before the March 6 elections we held a series of meetings with MEC Gqobana in trying to pursue him to put the elections on hold because there were lots of grey areas and poor participation by communities in the build-up to the elections. But all those attempts were in vain as his response was a very bad one.

The AmaNdlambe Tribe in Berlin was of the view that before implementation of the Framework Act they are going to apply to the premier as the act stipulates. They did not look in that notorious section 28 of the Framework Act which takes us back to apartheid era. They were thinking that they will reject anybody who applies on their behalf.

For instance, there at AmaNdlambe Tribal Authority the 40% was elected from the same 60% that was appointed by Chief Makinana. The so-called traditional council took SANCO stamps because they said there is no authentic structure other than them as tribal council. To show that AmaNdlambe tribe don't want this to happen during nomination only 88 people and some of that 88 didn't belong to Ndlambe they were from as Ndevana formerly known Khambashe and Msintsini. Chief Makinana and his cronies hired taxis to collect people from Ndevana and Msintsini villages whilst these areas were not falling under his jurisdiction to cast the vote.

Therefore traditional councils in our villages in the mentioned areas are seen as illegitimate. People still see them as the old tribal authorities where they used to be beaten up by Sebe's chiefs. How is the repeal of the BAA going to give us structures that are genuine and democratic? Not these tribal authorities dressed up as traditional councils. We want parliament to answer this question

Service delivery, land allocation and meetings

In terms of service delivery we are encountering a lot of problems: development is driven by traditional leaders. For example, the CASP budget is utilised by the Department to buy tractors for the chiefs whilst they are not farmers. We also do not know about the money generated by the tractors. And if we request financial reports from them they fight with us as small farmers. If you want to open a bank account the bank requires tribal authority stamps and not community stamps. At Tshabho villages there are sand deposits that are controlled and managed by the tribal authority where they sell sand and the money generated from it is not known by the community. If a person wants land, you have to go to the chief and request the chief. If he wishes he will give you land and if he does not wish so, he will not give you land.

This means that rural people are subjects and not full citizens. This is the exact same thing that the BAA did by giving power to these unelected individuals. So, we ask parliament not just to repeal the BAA on paper but to also ensure that rural people become citizens. For this to happen, parliament must look at the other laws that continue with what the BAA intended.

The human rights for men, women and children were, and are deprived and violated by the chieftaincy. In the AmaNtinde villages in King William's Town, if you are summoned by the chief and you fail to appear before him, then the chief can take away your residential rights or force you to work in his mealie fields for a certain period. Also women have no rights to present their issues in the gatherings of the traditional councils. They have to be represented by a male relative. The traditional council took away the SANCO stamp from the Nxamnkwana village. The community then took the matter to court where the court instructed the council to return the stamp to SANCO.

During the era of Sebe and Gqozo, the communities waged a battle against the notorious headman system and won that battle. We then developed our community structures which dealt with our issues properly, openly and by listening to the people. Chief Makinana had stopped being our chief. But he now feels strong and bold to come back. We expected the new democracy to support people's structures. But the new laws take us back to the era of Sebe. They bring back what we fought against. Why? In our ANC branches we never had a chance to discuss this and say yes he must come back. But he is supported by the law, and not the people. He stops even meetings of this ANC that we vote for.

In Tshabho, meetings of other structures are not allowed unless we request permission from the chief. We were holding a meeting to educate the community about the Traditional Courts Bill. But we could not proceed because the representatives of the chief told us that since the meeting mentioned the word "traditional" it must then be held by the chief. What about our rights to meet freely as we choose? This is just not democracy!

The new laws

The chiefs are implementing the Traditional Leadership and Governance Framework Act. Section 28 of this Act is problematic to us. It states if one has been under the traditional authority before 2003 you are liable to be a traditional community today. To demonstrate that there is legal loophole with respect to the traditional leadership legislation CLARA is now currently declare null and void. Community participation is key in all law —making processes if the government wants to enjoy the support of people in a democratic dispensation. But our community does not know where this Framework Act and CLARA come from. As we are happy about the repeal of the BAA, we are also not happy about this CLARA and Framework Act.

We are also concerned about the Tribal Courts Bill that is currently before the Parliament. We are for one government for all the people of South Africa. As rural people, why are we left with the government structures of the BAA? We therefore say repeal the BAA and its structures. The tribal authorities must go. We therefore say all laws related to Traditional Authorities must be scrapped.