

BLACK AUTHORITIES REPEAL BILL

Submission to the Portfolio Committee of Rural Development and Land Reform

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We represent a Land Forum in Sekhukhune District Municipality. We live in a district where the devastating effects of the Black Authorities Act are still vivid, where the people remain second class citizens who do not know clean water, sanitation or land ownership.

Prior to the 1950's, there were a number of tribal leaders congesting our district. Following the promulgation of the Black Authorities Act, the apartheid government spotted one particular 'kgoshi' in the area as a young and learned leader who was both able and willing to work with the apartheid government in their efforts to establish Bantustans. The government wanted him to become visible as the leader of a greater area. As compensation, he was offered land to buy. He was unable to pay for all the land, so a large portion of the land was declared trust land while he was appointed as the supervisor of the land.

At the time we were moved to the trust land. Before being moved, we never paid anything for our right to work and live on our land. Starting from 1958, this suddenly changed as we were expected to pay trust money (rent).

Governance in the area also changed as a result of these new arrangements. Before 1957, the villages were not scattered; we constituted a single community. As from 1957 the Chief appointed headmen for the villages. People were participating freely within the villages. We worked according to the resolutions taken at 'kopanong' – and these were reached democratically.

Since about 1997, the Chief has started to abuse his power, however. The headmen appointed now are invariably people loyal to the Chief – and always men. This remains the case today and has in some regards become even worse: the Chief now appoints elderly people as headmen who know nothing about the Constitution. They have become nothing more than watchdogs or spies for the Chief on the one hand, and his messenger on the other. It is unclear to us whether the repeal of the BAA will mean the end of this abuse of power.

We continued to pay the trust monies until one day in 1995 when the Chief – who was once a cabinet minister of Lebowa - came to address our community and announced that we did not need to pay trust monies any longer as the land had been transferred to the tribe and the title deed was now in his name as the Chief.

In 1999, after submitting a memorandum to the Chief demanding an explanation as to the status of the land and the title deeds, we were summoned to the tribal court where we were made to stand in the sun for an entire day before being rebuked for demanding our title deeds.

One of the worst legacies of the Black Authorities Act impacting upon our communities remain the Chief's right to impose levies upon his subjects. The significance of this power must be understood in the context of the socio-economic conditions of our community: the overwhelming majority of people are unemployed, surviving on government grants only. Most of those employed work as farm labourers or small scale farmers who earn hardly enough to care for their families.

Against this background, we can hardly do better than merely mention some of the levies recently

imposed by the Chief:

1. The residents were informed without explanation that every person who has finished school needed to pay R50 towards a new car for the Chief. This, despite the fact that the Chief has received a car from the government.
2. Tribal levies are charged yearly, but we don't know what the basis for that is.
3. There is what is called the 'ancestors levy': if the Chief performs a cultural ritual at the community level, then every member of the community must pay an amount that is arbitrarily fixed. These levies are imposed regardless of one's religion.
4. There is also a levy for the traditional healer that was recently instituted. In one of our villages, children started mysteriously falling down and the people suspected witchcraft. As the Chief must know everything that happens in his district, the people went to update him. Soon after, they were told that the Chief had consulted with a traditional healer on the matter, and as a result everyone in the village had to pay R 17 as levy. In one of our villages, a murder recently occurred. Members of the community were forced to contribute R 20 each towards the traditional healer who was consulted in solving the murder. After the police found a suspect, the healer demanded more money as he claimed to have helped in getting the suspect. The community is still debating this issue.

The headmen take the lists of people who have paid their levies to the Chief every Wednesday when they meet with him. They return to their communities with news of any new levies that may have been imposed.

If a person does not comply with paying levies, it is regarded as an offence and he or she will be brought before the Chief. There people are threatened and refused any services until the levy is paid. If a person dies before paying, his family would not be able to bury him unless they pay.

This power of the Chief is not only limited to the imposition of levies. The traditional leader can impose fines on people in his court and does so even if they are found not guilty. It is in fact impossible to appear before the Chief's court and not pay a fine. This practice is abused by the people on the ground to take revenge on those they differ with.

But the most blatant example of their abuse of power is probably the fact that the traditional council in our area regard themselves as the local government. They stamp receipts with a stamp declaring them the 'Matlala Local Government'. They have, in fact, become a fourth tier of government – but one not accountable to anyone. See attached copy.

This goes unchallenged: the real local government in our area has no power as they are in fact subjects of the Chief. For any developmental project proposed by the Local Government, the Chief's permission must be requested in the form of a tribal resolution. The same applies to individuals applying for business sites. Applicants of business sites are not treated equally. There was a case where an application was turned down and immediately after the refusal the daughter of kgosi introduced a second applicant who was granted permission to use the same site. The daughter works together with this second applicant in NAFCOG.

The Chief is not accountable by law – as state organs are – and therefore can frustrate the process to the point of denying access to sites.

There is further no proper planning for land use. Functions are just mixed. Residential sites are set out very close to oxidation ponds, under high voltage electricity lines and close to the main road. That is because these traditional leaders are only interested in money, and not in the health and safety of their people.

In addition, even though the Chief is not the owner of the land, he 'sells' these sites. This is a practice of various chiefs in our area. A neighbouring community of ours is currently challenging their acting Chief as he is now selling their land at R 1000 a site.

So why are these chiefs allowed to continue to operate in this way, abusing the powers which were awarded to them by the Black Authorities Act even though the terrible aims of the BAA are a thing of the past?

Firstly, the Chief successfully oppresses the educated people in our area by accusing them of disobeying him whenever they question him. For the same reason, he is opposed to the issuing of title deeds as he believes that it will lessen his control over his subjects if they have their own title deeds.

Secondly, even though the people on the ground are often unhappy, they are also scared. In the area where the Chief stays, no meeting may be held if it was not sanctioned by him. In the other areas, developmental meetings do take place, but he ensures that he has spies present. This scares people into keeping quiet.

Thirdly, it is the case that, according to our culture, the Chief must be respected above all. The combination of this culture with the huge powers afforded to traditional leaders in terms of the BAA – which is not based on custom - has created a terrible abuse of power.

Fourthly, we submit that our government is promoting the abuses of traditional leaders as we never see any sanctions imposed upon them.

We would like to state that we are not opposed to the notion of traditional leaders or to custom. In fact, we want to treasure these institutions. What we do want is for parliament to enact laws that would enable us to hold these traditional leaders accountable and protect ourselves.

What we ask is the following:

1. Parliament must revise the TLGFA to take out all the aspects that promote the legacy of the BAA.
2. We ask that the notion of levies should be scrapped completely from all national and provincial legislation. We acknowledge that it is our custom to give to the Chief, but that custom originated in a time when the Chief received no salary or government support. What we now suggest is that there should be a yearly meeting where the working class members of the community decide amongst themselves how much they can pay yearly into the community's account and for developmental purposes. Then the Chief needs to account to these people regularly as to how this money was spent. In the same way, the government should provide the resources for the traditional councils to perform their functions so that they cannot use this need as an excuse to impose more levies.
3. We ask that traditional leaders and councils be capacitated to be able to perform their functions properly.
4. We want traditional leaders to understand the legislation that govern their powers and to be held accountable to that.
5. The role of the traditional leaders should also be limited to customary issues and not extend to governance issues.
6. Despite this suggestion, we would still like to see traditional councils as more democratic than the suggestion of a 40% elected representation.

7. We are further inviting the portfolio committee to come to our area to make some of their own observations.

In conclusion, we support traditional councils, but only insofar as the law is strong enough to curb the power of these leaders. Just like a municipal councillor can be taken to court if he does not comply with applicable legislation, so traditional leaders must be open to scrutiny.

Our poor community members know nothing about the Acts that protect them. There are no newspapers in our villages. We urge parliament to go and see and engage with people on the ground if they want to understand the impact of their laws on the people.

The fact that we came here and spoke out in parliament will probably mean that we will be summoned in front of the Chief and possibly be evicted. We ask parliament here today to protect us from this potential suppression of our rights by enacting legislation that keep traditional leaders accountable and that destroy the legacy of abusive power created by the BAA.