



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

NATIONAL ASSEMBLY
THE SPEAKER

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27 August 2012

Adv S P Holomisa MP
Co-Chairperson: Constitutional Review Committee
P O Box 15
CAPE TOWN 8000

Dear Adv Holomisa

SUBMISSION FROM REPRESENTATIVES OF LGBTI COMMUNITY

Two submissions have been received from representatives of the Lesbian Gay Bisexual Transgender and Intersex (LGBTI) community, requesting that their opposition to the request by the Mpumalanga House of Traditional Leaders for the removal of the equal rights clause in the Constitution be taken into consideration. Their submissions are supported by approximately 20 000 on-line signatures of which 7 000 are attached.

Though these submissions are unsolicited and are therefore not being formally tabled and referred to the Constitutional Review Committee, they are being sent to the committee for consideration as a practical means of giving effect to Parliament's vision of being responsive to the needs of the people.

Furthermore, you will note that the submissions specifically refer to your participation in the consideration of the request from the Mpumalanga House of Traditional Leaders. You will appreciate that your membership of the National House of Traditional Leaders could be perceived as a conflict of interest. Consideration could therefore be given to your recusal when the matter serves before the committee.

Once the committee has considered the matter, please inform me of the outcome so as to enable me to provide feedback to the complainants:

Yours sincerely


M V Siemola MP
Speaker of the National Assembly

COMMENTS BY THE HOUSES OF TRADITIONAL LEADERS ON THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA 1996

BACKGROUND

In terms of section 45(1) of the Constitution of the Republic of South Africa, 1996, the Constitutional Review Committee must review the Constitution annually. Members of the public are therefore invited to make written submissions to the committee on specific sections of the Constitution that they feel need to be reviewed.

Therefore the National House of Traditional Leaders is also invited to make written submissions to the Constitutional review Committee on specific sections of the constitution.

INTRODUCTION

The National House of Traditional Leaders has studied the Constitution and deliberated on it, and make the following submissions:

Chapter 2

Our submission is that section 9 should exclude "sexual orientation" under the equality clause.

Chapter 3

Section 41(2) should be amended to include traditional leadership institutions, that is, the Houses of Traditional Leaders and Traditional Councils as Intergovernmental structures, to facilitate intergovernmental relations.

Chapter 7

It is our submission that Local Municipalities be disestablished and be replaced by Traditional Councils as service providers within traditional communities. Sections 151 and 155 should be amended and municipalities be replaced by Traditional Councils. By doing this, service delivery will take place rapidly in traditional communities.

Chapter 8

Section 166 should be amended to include traditional courts as one of the courts.

Chapter 9

It is our submission that section 190(1) (a) should be amended to provide that the Electoral Commission must in consultation with traditional councils, manage elections in traditional communities.

Chapter 12

We are of the view that the roles, functions, powers of traditional leaders and the status of traditional councils must be included in the Constitution.

We propose that section 211 be amended to provide that the Institution of Traditional Leadership is guaranteed and not only recognized as is the case now.

It is further submitted that the recognition of traditional leadership should include all layers of traditional leadership, to prevent the introduction of other layers outside the Constitution.

The Houses should be removed from departments and be under Parliament and Provincial Legislatures to enable them to function as proper parliament of traditional leaders.

Enq. Mr B J Modipane
Tel: 013 766 2947
Date: 18/08/2009
Ref: 3/3/1

Constitutional Review Committee

Att: Ms Pat Jayiya

Sir/madam

SUBMISSION ON THE CONSTITUTION ANNUAL REVIEW

Introduction

Mpumalanga House of Traditional Leaders is an institution established in terms of Mpumalanga Provincial House and Local Houses of Traditional Leaders Act no 3 of 2005. Its main aim is to advise the Premier on matters affecting traditional leadership within the Province and serve as a coordinating office for the affairs of the Traditional Leaders.

2. We wish to make the following submissions to the Constitutional of Review Portfolio Committee.

- In terms of chapter 12 of the Constitution on Traditional Leaders, we submit that the roles , functions and status of Traditional councils must be enshrined in the constitution and
- The empowerment of the House definition of the House, the role and the type of entity.

- Recognition of traditional leadership must include all layers of traditional leadership.
- Intergovernmental relation must be amended to include the institution of Traditional Leadership, the IGR.
- In terms of chapter 7 subsection (6) governments must disestablish Local Municipalities replaced by Traditional Councils as service providers within traditional communities, as in time of immemorial.
- Chapter 8 section 166 Traditional Courts should be listed as one of the recognized courts.
- Chapter 9 s190 (1)(a) Electoral Commission and Traditional council must manage election in traditional communities.
- The status of the House must be defined whether public entity of be part of Parliament.
- The House of Traditional Leaders must be a chapter 9 institution.
- Chapter 2 should exclude sexual orientation..
- The House Financial management of the House of Traditional Leaders must be regulated by the Parliament Financial Management Act.

We hope the above is in order

Ikosi SE Mahlangu
 Chairperson Mpumalanga Provincial House
 of Traditional Leaders

Enq. Mr. B J Modipane
Tel: 013 766 2947
Date: 26/07/2010
Ref: 3/3/1

Constitutional Review Committee

Att: Ms Pat Jayiya

Sir/madam

**RE: SUBMISSION ON THE CONSTITUTION ANNUAL REVIEW
PRESENTATION BY MPHTL AND NHTL**

Introduction

The two Houses of Traditional Leaders presented before the committee on Friday, 23 July 2010 on Constitutional Annual Review

Discussion

The Mpumalanga Provincial House of Traditional Leaders has deliberated on its presentation before the committee on Friday, 23 July 2010. We, therefore, wish to clarify the aspects of our presentation as follows:

1. We support the contention by National House of Traditional Leaders that the Constitution should be amended to guarantee protection to the institution of traditional Leadership. Section 212(1) should be amended to read as follows:

"National legislation [**may**] shall provide for a role for traditional leadership as an institution [**at local level**] on matters affecting [**local**] traditional communities".

2. Section 212(2)(a) should be amended to read as follows:

"national or provincial legislation [**may**] shall provide for the establishment of houses of traditional leaders"

3. Section 212(2)(b) should be amended to read as follows:

"national or provincial legislation [may] shall establish a council of traditional leaders."

4. Section 212 should be amended with the insertion of paragraph (c) after paragraph (b) to read as follows:

"the institution of traditional leadership is hereby protected and guaranteed"

5. We request that the Committee should approve additions of the sections into the constitution which will cover the following aspects:

- 5.1. Powers of the Institutions of Traditional Leadership;
- 5.2. Protocol of Traditional Leaders;
- 5.3. Roles and Functions of the Institutions of Traditional Leadership
- 5.4. Status of the Institution of Traditional Leaders and Traditional Leaders;
- 5.5. Budget and Financial Regulation of the Houses of Traditional Leaders;
- 5.6. Role of the Institutions of Traditional Leadership in the legislative process; and
- 5.7. Relationship between Institutions of Government and Traditional Leadership.

Conclusion

Our submission is that section 39 of the Constitution allows the country to use precedents from outside the country. Our contention is that the constitution of Ghana should guide us on the issue of traditional leadership hence we request that the same clauses be inserted in our constitution as addition to inputs raised above. Other countries such as Uganda, Kenya, DRC, Namibia, Nigeria, Tanzania, etc. as a bench mark on how the institutions are recognized.

The Constitution should provide the mandate of the Institution of Traditional Leaders as it does with Parliament and Provincial Legislatures. The role of House of Traditional Leaders should not only be about customs and customary law but extended to deal with all matters affecting traditional communities. This includes the referral of bills to the Houses of Traditional Leaders for inputs. The issue of mandate further complicates the issue of funding and budgeting for the Houses. We are given minimal funding as a result.

