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Dear Honourable Mofokeng

### NATIONAL HOUSE OF TRADITIONAL LEADERS' INPUTS TO THE TRADITIONAL COURTS BILL

Reference is hereby made to your earlier request for the National House of Traditional Leaders to attend the briefing by the Department of Justice and Constitutional Development on the Traditional Courts Bill.

The NHTL hereby submit attached inputs to the Traditional Courts Bill for your consideration.

For further engagement, please contact the Office of the Secretary of the NHTL at 012 – 334 5853 or 072 386 1771 for the attention of Dr Wilson Makgalancheche.

Sincerely

Kgosi P P Maubane  
Chairperson: National House of Traditional Leaders

Date: 13/3/2012

## INPUTS TO THE TRADITIONAL COURTS BILL

### DISCUSSION DOCUMENT

- Noting: The clause dealing with the Headman being presiding officers should be read in conjunction with section 4 and section 7. The institution of traditional leadership is the only institution that participates in the three spheres of Government. Within the sphere of judiciary, traditional leaders are to be designated with powers to serve as presiding officers in traditional courts.
- Members of the traditional courts should also be trained. Not only one person, in this case, the presiding officer should be trained as per the bill.
- No party to any proceedings before a traditional court may be represented by a legal representative. There could be instances where a person qualified as a lawyer may represent another, however, he or she will not be representing another from a legal perspective.
- The jurisdiction of the area takes precedence over the system to be applied in the traditional court.
- The issue of banishment from traditional community should be promoted as part of the sanctions for the protection of communities. In other words, the sanction will be seeking to protect the person through recommending that he or she relocate to a safer place, than to banish in a discriminately manner, without sufficient reasons. This situation may apply in cases where one is accused of theft, witchcraft and any other accusations which results in the community forcing the accused to leave the community. It should be viewed in the interest of the community not to commit crime or in the interest of the person or persons in order to save their lives. Perhaps, the problem is with the word banishment.
- Under enforcement, the law enforcement agencies should enforce the orders and judgments made by the tribal courts. The Department should come up with a clause that will close the gap. The traditional leaders feel that they must have their own way of enforcing their own decisions.
- The Bill must make provision for the messenger of the traditional courts.
- The Presiding Officers should take an oath through the Judge Presidents and not through Magistrates.
- Traditional Courts should have their own Appellate Division presided over by a Traditional Leaders instead of their cases being appealed at Magistrates Courts. This perhaps should be considered as a way forward beyond enactment of the TCB.

- The issue of revenue generation in terms of payment of funds into the Provincial Fund should be nullified. Instead, all monies should be paid into Trust Accounts of Traditional Councils, through District Coordinators (DCOs). In other words, the current status quo should be maintained.
- The Bill should consider sitting allowance for Traditional Courts Members.
- Regulations should be made in consultation with NHTL and Provincial Houses. Under section 21, it should be stressed that the Minister must make regulations in consultation with the NHTL and Provincial Houses regarding items listed under regulations.
- It should be clarified further as to under which court does the Traditional Courts falls under.