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To: The Select Committee Secretary: Select Committee on Security and Constitutional Development

SUBMISSION ON THE TRADITIONAL COURTS BILL B15 of 2008 BY THE KZN RURAL WOMEN'S MOVEMENT (RWM) PROVINCIAL COMMITTEE

1. RWM Mission

The Rural Women's Movement (RWM), based in KwaZulu Natal, is an independent non-profit rural women's land and property rights organization. We seek to eliminate poverty and to enhance women's participation in local governance. RWM advocates for women's independent land, inheritance and property rights, and lobbies the government for public policy changes.

RWM works with more than 2,000 orphaned children in KwaZulu Natal, trying to ensure that children do not drop out of school. While nurturing children's capacity to deal with the loss of their parents, RWM also strives to deepen children's commitment to personal responsibility, helpfulness, respect for

others, and kindness–qualities we believe are essential to leading humane and productive lives.

RWM consists of 500 indigenous women's organizations (consisting of 50,000 members) involved in projects such as small-scale farming, catering, block making, hand crafts, and arts and culture. RWM members include widows, single mothers, young women, married women, deserted women, women who are living positively with HIV/AIDS and the youth. RWM consists of marginalized groups who are suffering poverty and oppression. The majority are living on privately-owned farms, on the land administered by the traditional authorities, and freehold land.

2. Traditional Courts Bill of 2008

The RWM acknowledges the significant role played by customary dispute resolution processes and the central role of customary law in our society. We welcome the attempt to place existing traditional court structures on a recognized footing, especially in the light of the imminent repeal of the Black Administration Act of 1927, in terms of which traditional courts have previously been regulated. Many South Africans rely on customary dispute resolution processes and institutions as their primary means of access to justice - both because they value these systems and also because in many instances other courts are inaccessible to them. We are deeply concerned, however, about discrimination against women in many customary and traditional courts. We are of the view that legislation concerning customary courts must take particular care to avoid entrenching patriarchal power relations and to provide practical mechanisms towards the realization of substantive equality for women in the context of traditional courts.

In our analysis, the Bill fails not only in relation to equality for women, but also because it superimposes state-backed structures in place of the many institutions currently engaged in customary dispute resolution processes. In ignoring (and overriding) the courts that operate at community council and family level, the Bill undermines the dynamics that mediate power and contribute to accountability in rural areas. It also subsumes and undermines courts used and supported by people who dispute the legitimacy of controversial apartheid boundaries.

It is the RWM's view that the institutional arrangements in the Bill have been shaped largely by a desire to protect the interests of traditional leaders. The traditional leaders complained to the Law Commission investigation on traditional courts that it would undermine their authority if people were allowed to "opt-out" of their jurisdiction. The ultimate success of the traditional leader lobby in ensuring that rural people are unable to "opt-out" of their jurisdiction is reflected in the package of controversial laws enacted prior to the 2004 elections:

The Traditional Leadership and Governance Framework Act of 2003 ("the TLGFA"); the Communal Land Rights Act of 2004 ("the CLRA"); and the provincial laws enacted pursuant to the TLGFA.

The Traditional Courts Bill cannot be understood outside the context of its place within this package of new laws. The TLGFA deems the boundaries established in terms of the Bantu Authorities Act of 1951 to be the default boundaries for Traditional Council jurisdictional areas, and converts existing tribal authorities into "new" traditional councils provided they include a minority of women and "elected" members. The CLRA gives traditional councils ownership powers over communal land. The Traditional Courts Bill entrenches the same controversial tribal authority boundaries, and recognizes only senior traditional leaders and those of royal blood as presiding officers.

The Bill complements these other laws by providing formally appointed traditional leaders with state-sanctioned coercive powers to force people who live within a court's jurisdictional boundary but who reject its legitimacy to appear before it, and authorizes the court to strip them of their customary entitlements to land, water or community membership and to perform forced labour (see section 10(2)(g) of the Bill).

This, together with the ownership powers provided by the CLRA, means that controversial apartheid boundaries are entrenched, and formally appointed traditional leaders provided with significantly more power than they had under apartheid, at a time when the Constitution is designed to bring about a steady broadening of democracy.

It is of great concern that the Bill is inconsistent with the recommendations of the South African Law Reform Commission's Report on Traditional Courts and the Judicial Function of Traditional Leaders. The RWM worked around the

clock preparing written submissions, sensitizing communities and rural women about the SLRC's Discussion Paper and the rural women effectively engaged and started preparing submissions to the South African Law Commission in our efforts to influence the build-up to this Bill.

3. Rural communities' effective participation in the drafting of the TCB

The RWM only found out about the Traditional Courts Bill in 2009. This was after it has lapsed due to elections and change in parliament. And thereafter it was re-introduced in July 2009; discussed by Justice Portfolio Committee in September 2009. As RWM we made our oral submissions. We have just learned at the national workshop on the Bill on 15-17 January, 2012 in Johannesburg, that the government has announced its wish to proceed with the provincial consultations.

We are concerned about the fact that there have been no communications with the rural communities, particularly women, about the content of the Bill by government or parliament. Consultations have been inadequate because only traditional leaders are currently involved.

Part of the reasons why we are so concerned is that it is estimated that 80% of the food we eat in the continent is produced by women and women only own less than 2% of the African Continent's land. Yet the drafters of the Bill sidelined the real people (rural women) who will be affected by the Bill if enacted and the government consulted the traditional leaders, who to this day most of them, do not allocate land to women in their own right as women and in most situations do not recognize rural women's land, property and inheritance independent rights.

4. The Research Findings presented by the South African Law Reform Commission

RWM is deeply concerned about the research, consultations and recommendations presented by the South African Law Reform Commission after conducting a research in 1998 to 2003 which has disappeared from the process of drafting this Bill. In 1998 RWM was effectively involved in the Law Reform Commission's discussion paper activities about the roles and judicial functions of the traditional leaders where the Law Reform Commission

emphasized that women must be included in the council but instead the Bill centralizes power to the presiding officer who is a senior traditional leader or his delegate and the councils do not feature in the 2008 Bill.

The Law Commission recommended that rural people must be able to opt out of customary courts in favour of other courts (e.g. Magistrate's Court) – traditional leaders objected claiming that this would undermine their authority. The Bill therefore, emphasizes that refusal to appear before the senior traditional leader as presiding officer of traditional court is an offence (clause 20).

5. The Traditional Courts Bill [B15] of 2008 is actually inconsistent with the South African Constitution of 1996

The Bill reinforces often-contested colonial and apartheid boundaries, which forced people of different cultures to live under traditional authorities they did not recognize. Furthermore, it does not permit people to opt out of traditional courts jurisdiction and criminalizes refusal to appear before a court once summoned to do so by a traditional leader who is a presiding officer.

In effect, this Bill makes into law the dictates of an individual (presiding officer), and imposes it on potential large numbers of people – by not providing for the diverse forms of community participation and accountability mechanisms that might ordinarily check the traditional leader's power, it erodes the need for them to be accountable.

The Bill also bans the legal representation in criminal disputes, making it inconsistent with the Bill of Rights.

Yet the Constitution provides that every accused person is entitled to be represented by a lawyer in criminal matters – section 35 (3) (f). The counter argument by the traditional leaders is that lawyers would change nature of customary courts and make more costly. RWM thus argue that the Bill conflicts with the Constitution of our country and yet the:

- Presiding officer is a senior traditional leader or his delegate who will be the only person who could translate our customary laws, conduct trials in court and penalize the offenders

- The presiding officer will only be trained after appointment – exemptions possible in no-fault context

- Power centralized to presiding officer

- Presiding Officer (clause 4) (senior traditional leaders) can impose fines and damages

- Presiding officer can order **any person** to perform unpaid labour – 10 (2) (g)

- Presiding officer can deprive rural people of customary entitlements – (10)(2) (i)

- Implication – the presiding officer could deprive of land rights, strip of community membership or evict rural people from their respective communities.

Apart from concerns and fears that rural communities were not consulted in the drafting of the Bill, there are numerous substantive grounds upon which the Traditional Courts Bill is arguably constitutionally flawed. These substantive issues themselves reflect the problem of who was not consulted in the Bill's drafting.

The rural communities are preparing to elect the 40% of the Traditional Councils on the 19th of February 2012 and yet:

No functions, powers or recognition given to role played by the Traditional Council or Councilors in customary dispute resolution process.

By contrast, the South African Law Reform Commission (SALRC) recognized role of councils as intrinsic to customary dispute resolution.

The SALRC Discussion Paper put forward various options for selection of council, including option for elected councilors. SALRC also specified that women must be included. But the 2008 Bill – councils do not feature, the Bill provides that ***the presiding officer selects 60% of the Traditional Council*** and the ***community is left with election of the 40% of which 30% will have to be women.***

The Bill does not guarantee women participation in traditional courts – neither as members of the body of people who make decisions in the courts, nor as litigants. Rural women are most often marginalized from traditional courts. They are commonly refused self-representation and even attendance of some traditional courts. This leads to their further exploitation and economic vulnerability. For example, widows are not permitted to enter the "sacred spaces" that are traditional courts whilst in mourning and are often required to be represented by the male family members who seek to dispossess them of their inheritance/property. They are therefore unable to defend themselves in the traditional courts and are consequently evicted from their homes. The Traditional Courts Bill does not require that this customary law practice change but instead permits that women may continue being represented by husbands, "in accordance with customary law".

Clause 9 (2) (a) (i) pays lip service to formal equality but the Bill as a whole entrenches unequal power relations between women, particularly rural women and men.

6. The Traditional Courts Bill is the brainchild of the apartheid laws:

The Traditional Courts Bill cannot be understood outside the context of its place within the package of new laws. The TLGFA (Traditional Leadership and Governance Framework Act of 2003) deems the boundaries established in terms of the Bantu Authorities Act of 1951 to be the default boundaries for Traditional Council jurisdictional areas, and converts existing tribal authorities into "new" traditional councils provided they include a minority of women and "elected" members. The CLRA (Communal Land Rights Act 11, of 2004) gives traditional councils ownership powers over communal land.

The Courts' jurisdictions and boundaries are the same as the Traditional Leadership and Governance Framework Act of 2003 boundaries, i.e. the old tribal authorities (established in terms of the Bantu Authorities Act of 1951)

No recognition of community level or headmen's courts – courts recognized only at traditional council/chief's court level.

The Traditional Courts Bill entrenches the same controversial tribal authority boundaries, and recognizes only senior traditional leaders and those of royal blood as presiding officers.

The Bill complements these other laws by providing formally appointed traditional leaders with state-sanctioned coercive powers to force people who live within a court's jurisdictional boundary but who reject its legitimacy to appear before it, and authorizes the court to strip them of their customary entitlements to land, water or community membership and to perform forced labour (see section 10(2)(g) of the Bill).

7. Impact on disputed authority

Presiding officer has powers over everyone within traditional council jurisdiction area it exists virtually wall-to-wall in former homelands. Regardless of whether boundaries or authority disputed by – for example:

- Private owners, Trusts and CPAs (Community Property Associations)

- Other groupings who dispute apartheid tribal boundaries or legitimacy of particular traditional leaders

- Community structures or local dispute resolution forum

Refusal to appear before the senior traditional leaders as presiding officer of traditional court is an offence.

8. Separation of powers

- Constitutional doctrine that those who administer or enforce the laws cannot be the same people as those who make the laws. And that separate people must adjudicate the disputes arising from the administration of law.

- This is the purpose to mediate abuse of power

- E.g. Parliament is separate from government, and both are separate from the courts.

- Traditional Courts Bill, by contrast, empowers the senior traditional leader as presiding officer to:

  - Determine the content of customary law

  - Administer the law (in his capacity as traditional leader)

  - Adjudicate disputes arising from his administration actions. E.g. disputes arising from land allocation

The RWM concern is that as the rural communities we were excluded from the consultations that formed the basis for the drafting of the Traditional Courts Bill of 2008.

9. RWM personal experiences on the ground

Matiwaneskop: This community is based at uThukela District of KwaZulu Natal. The community land was bought in 1925 by a group of 120 men, who organized themselves into a syndicate, called the Matiwaneskop Management and Syndicate Committee. The Syndicate then elected a Mr Mbekwa to be the leader (***not the traditional leader***) of the whole committee (***and not the community***). The Title Deed for this land was only received by the Committee in 2007 after an intensive struggle.

After the death of Mr Mbekwa, his ***son Nhlanganiso started imposing himself as a chief over the community,*** even though this was ***private land.*** The current traditional leader belongs to the fourth generation of the leadership flowing from this ***original imposition***. The chief is also a member of ***the KwaZulu Natal Provincial Legislature***, and before that he was a local school principal.

9.1 Real life situation under the current chief: Mr Shabalala

The chief unilaterally controls community resources and access to land. In most instances, where there are projects that the rural women have initiated without him, for example the sewing machines project, the chief tries to frustrate the projects and threatens to take away the resources that are needed for the project e.g. sewing machines. This is because he feels like he has no control over the project and the "money" involved. Some of the project resources that the chief

wanted to confiscate, initiated by the rural women of the community, were donated by the self-help programmes of the American Consulate who also supported the group of local women to build a house to work from.

9.2 Matiwaneskop traditional Courts – Traditional Council

In 2001, the chief appointed 19 people as the traditional authority to run the Traditional Court, on the basis that he had "**dreamt**" about that particular composition. On the 19 people appointed, only 6 of them are women. The chief has continued with the procedure of appointing such a traditional authority, and has **not appointed a Traditional Council** in terms of the new law (Traditional Leadership and Governance Framework Act of 200)

The conduct at the Court is that if one is a woman, one may not represent herself in the Court or witness box - a man must represent her. As a community, we feel that this is against our human rights and the Constitution that we have fought so hard for and for which our ancestors died. In the case of a widow, she is not even allowed to enter the premises of the Court, because it is believed she will bring bad spirits to the Court. Justice in the Traditional Court is dependent on who you are, your resources and your status in the community. If you have a lot of resources and are known, you can buy the people in charge a bottle of expensive alcohol or pay them money and your case can be thrown out of court.

- Where there is a dispute between a woman and a man about who the father of a child is, the Court will order a blood test to be done and the father's family must pay a fine of ***one (1) cow or R1000***. The fine is not paid to the Syndicate who owns the land or the young woman's family - ***it is paid to the Chief.***

- Where there is a case of trespassing livestock, there will be ***a fine of one (1) cow or bull, to be paid to the chief*** and not the person whose fields have been destroyed by the livestock. In other instances, the trespassing livestock may be pounded by the owner of the field where the livestock trespassed. Then the owner will charge a fee for the release of the animals. Sometimes the chief will come to court and say the fee is too high and decide that a ***total fine must be paid, of about R1000.*** The problem is that the chief does not know what damage is done by the livestock to the field – he is not an expert of this.

10. E-Makhuzeni Community – imposition of levies on the communities

At eMakhuzeni Community at Sisonke District-Ingwe Municipality the chief has just passed away. But his legacy still exists: He imposed heavy levies on the unemployed poor rural communities who are mainly made up of women:

- Payment for the university education for his "son" (R50) per household
- Payment toward the purchase of his wife's isidwaba (R50) per household
- Payment towards purchase of his car (R50 – R100) per household

These levies exclude the penalties imposed on "offenders" by him at his traditional court. These levies and penalties make it quite expensive for poor rural women to live in a rural area compared to an urban area where one knows that s/he has to pay her/his rates and 14% VAT.

Their court deals with cases of fraud which as RWM we think its not in their jurisdiction. We think we have higher courts to tackle cases like fraud, assault and rape.

In one of the meetings on women's human rights issues, I asked a group of 75 women a question about where the money for the levies is coming from since the community has a high rate of unemployment and they informed me that ***they use the grandmothers' social grant and child grant***. And I asked what would happen if as the Rural Women's Movement we stop paying these levies? I was told a family who does not pay their levies or penalties get sidelined: they cannot have, for example, a wedding or a party in their own homes without settling these outstanding levies.

Out of 300 chiefs I only know one chief: Nkosi Hadebe of AmaHlubi Community – who allocates land to women in their own right as women no matter how young they are as long as they have a dependant/s, I have heard great stories about chiefs who allocate land to young women in the Eastern Cape. The others do not allocate land to women in their own right, they expect us to be represented by our male relatives and the piece of land gets registered under a male relative's name.

And this is part of the reasons why RWM thinks that it is important for ordinary rural people, particularly women to be consulted about laws/policies that will affect their lives.

And while Clause 9(3)(b) seems to offer women equal participation in a proceeding before a traditional court by specifying that a party may be represented by "his or her wife or husband, family member, neighbors or member of the community", this must be done "in accordance with customary law and custom", which ultimately undermines any supposed given benefit, since the interpretation of "custom" almost invariably favors men.

For the reasons cited above and others, we believe that the limited attempts to align the traditional justice system with the Constitution in the current Bill are neither realistic nor sufficient given the documented dynamics of inequality, exclusion and silencing of women in tribal court settings.

We would argue that rather than ensuring that women are no longer discriminated against in tribal court settings, the real impact of the Bill will be to perpetuate the existing discriminatory patriarchal power relations with state-backed sanction.

The ones who will pay a price in this regard will primarily be the poorest and most vulnerable women in rural areas (i.e., single women, women without sons or women without land rights and widows) even thought our Constitutional values that guarantee access to justice, non-discrimination and equality for all

The kind of consultation RWM thinks would be acceptable is as follows:

- Rural communities must be given sufficient notice of when and where the consultations will take place;
- Consultation should take place in venues that are accessible to ordinary people even if this means that multiple consultations must take place;
- Appropriate means to enable ordinary people's attendance should be provided.

Based on the fact that we have not been actively informed on the Bill so far and yet the government has announced its wish to proceed with the consultations promptly, we are very concerned that the kind of consultations described above will be different.

12. Women and the traditional courts

12.1 Although those existing traditional justice structures which have developed organically outside of apartheid legislation are largely supported by the RWM, it is submitted that even they (along with those traditional courts which owe their existence to apartheid era legislation or appointments) suffer from an important defect, namely the manner in which they entrench patriarchal power relations and social and economic practices that are discriminatory towards women. This reality is reflected in the South African Law Commission's 1999 "Report on Traditional Courts and the Judicial Function of Traditional Leaders".

> *The problem of traditional courts discriminating against women ... is Well described in recent literature and research reports. This is not to say that traditional courts discriminate against women in all instances, but to highlight the impact of entrenching the powers of patriarchal structures without putting in place adequate checks and balances to address structural inequality.*
>
> *After the South African Law Reform Commission had convened a consultative process which included convening workshops with rural women, its 2003 Report on Traditional Courts and the Judicial Function of Traditional Leaders stated: "Women have strongly argued that customary courts should not have jurisdiction over matters relating to status, maintenance or land on the basis that these courts are biased against women." (11) "With regard to land disputes, the joint submission by CALS, CGE and NLC (where RWM convened a workshop for 250 rural women, half of them were wives and daughters of the chiefs and clerks of the traditional authorities) pointed out that rural women are unhappy about the administration of land by traditional leaders claiming that women are traditionally disadvantaged by the customary law of land holding and its administration by traditional leaders. They also pointed out that the traditional courts are not accessible to ordinary rural women.*
>
> *The Report indicates that the Commission did not recommend that the draft customary courts bill include jurisdiction over land. On page 18 of its report the Commission noted that the joint submission by the Commission on Gender Equality, the Centre for Applied Legal Studies and the National Land Committee (the 250 rural women who attended the RWM workshop on the Traditional Courts and Judicial Functions of Traditional Leaders held at the Coastlands Hotel in Durban on November 18-23 in 1998 contributed to this submission by these three*

(3) institutions and organizations) argued that the women's participation in traditional' courts is prevented or highly restricted, and cited examples where women were not permitted to bring cases before the traditional courts, attend court proceedings, or question litigants.

The 2006 HSRC report on the effect of the legislated powers of traditional authorities on rural women also cited examples where women suffered exclusion from or discrimination by traditional court processes. One of the problems described in an RWM rural women's workshop of 1998 was that of widows being represented by their male relatives during audiences with chiefs and headman, and that this "continues to undermine inheritance, access and control of land by women" (page 38)

12.2 In a further affidavit filed in the *Tongoane* case on the Communal Land Rights Act 11 of 2004, Sizani Ngubane (of the KwaZulu-Natal Rural Women's Movement, a former National Co-ordinator of the National Movement of Rural Women) testifies that:

"In 1998, I convened a workshop of rural women that was attended by approximately 250 women. We also invited women who are the wives and daughters of chiefs, and women who are tribal secretaries and work with tribal courts. The workshop was held in Durban at Coastlands Hotel and focussed on the tribal court system.

Various women raised the problems faced by widows representing themselves in tribal court hearings convened by tribal authorities. They described how, in many areas, widows in mourning dress were not allowed to speak at the tribal court. In most areas widows were required to sit outside the fence of the tribal court.
They were not allowed to stand but had to convey their views sitting, to a man on the other side of the fence who then interprets what they say to the tribal court. The women complained that this put them at a serious disadvantage especially in family disputes that arise after the death of a husband. Often, these disputes result in the widow being evicted from her marital home – yet she is denied the opportunity to put her case to the court herself.

Another issue raised by women at the workshop was that the people who adjudicate tribal court disputes are male councilors. They are often older men who are biased against women who bring family disputes to the court. They consider it inappropriate for the women to discuss family problems in public. They also tend to identify with men and regard the complaints brought by women as trivial, troublesome and unruly. Yet family disputes often have serious consequences for women and may end up with them being forced out of their homes. I found it remarkable that even the wives and female relatives of the chiefs expressed concern about how councilors tend to identify with men

and denigrate women's perspectives in the disputes that they adjudicate."

12.3 The disadvantages and discrimination faced by women in traditional courts are also described in the joint submission made by the Commission on Gender Equality, the Centre for Applied Legal Studies and the National Land Commission's to the Law Commission's enquiry.

> *They are also referred to in Constitutional Development's Status Quo report on Traditional Leadership and Institutions as follows:*
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> *"The various provinces have different categories of non-formally recognized courts and dispute resolution mechanisms ranging from courts of clan leaders, sub-headmen, headmen and chiefs (inkosi), i.e. the traditional court. Among the main issues here were the restrictions imposed on the participation of women and the youth in the traditional courts (they could only participate as complainants, witnesses or as accused) and the lack of a statutory basis for most of these courts."*[1]

12.4 It is submitted that the formalization and recognition of traditional courts in the Bill presents an ideal opportunity to take proactive and concrete steps to address these inequalities, which the administration of justice in the existing traditional courts has perpetuated. The drafters have, however, failed to take the opportunity to ensure compliance by traditional courts with the requirements of the constitution in relation to the rights of women. The only references to women in the Bill simply serve to entrench the position of women who appear before traditional courts. Examples include:

> *The use of the phrases "prevent conflict" and "maintain harmony" in section 7 suggest that the purpose of traditional courts is the maintenance of existing (unequal) social arrangements by requiring women to accede to structurally unequal power relations.*
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> *While section 9(2)(a)(i) refers to "full and equal participation in the proceedings" by women, it fails to specify that women are entitled to participate in all aspects of the proceedings and not merely as applicants and witnesses and that they may also cross-examine witnesses and take part in debating the merits of the case. The lack of specificity is insufficient given the documented dynamics of inequality, exclusion and silencing of women in tribal court settings.*
>
> *Section 9(3)(b), which appears to extend a level of equality in relation to rights of representation by women (and even then, only wives), is in fact illusory and disingenuous in that this right is dependent on being "in accordance with customary law and custom". This is derisory in the face of the reality of discrimination against women under such customs*

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[1] Department of Justice and Constitutional Development Status Quo Report on Traditional Leaders at p. 19.

and it is submitted that the real impact of the circular wording of this section will enable the continuing representation of women by male family members.

13. Request to Mr G. Dixon and the NCOP

RWM members request support from the Secretary – Select Commttee: honorable Mr G. Dixon and the NCOP because rural women and their communities need assistance and protection in the consultation process around this Bill. We therefore, ask the honorable KZN Legislature through Speaker: Ms Nkonyeni to work in collaboration with the National Council of Provinces in assisting rural people, women in particular, to address these concerns and fears before you start the consultation process in the provinces and please provide us as rural communities with the necessary information about the Traditional Courts Bill so that we can be properly informed about the Bill and its implications:

- In terms of provincial consultations rural communities must be given sufficient notice;
- Rural communities need the consultations to take place nearby
- Rural communities need to be provided with the resources to enable people of all types in our communities to attend the consultations.
- RWM would like to request that rural communities be provided with the opportunity of local workshops to explain the Traditional Courts Bill of 2008 properly to its members.

For all these reasons, RWM strongly submit to the KZN Provincial Legislature and the NCOP that any further decision on this Bill be postponed until a wider consultative process can be formed and wider consultative fora be available that include the input of marginalized rural women in different areas whose rights and well-being will be significantly impacted by the Traditional Courts Bill.

If passed this Bill is taking us back to the 1960s – Bantustans – it centralizes power, trumps all other forums and vests all power in senior traditional leader as presiding officer. It adopts the model of the 1927 Black Administration Act.

- The Bill enables continuation of discrimination by providing that husbands can represent their wives just as wives can represent their husbands "according to customary law" – clause 9 (3) (b)

- South African Law Reform Commission recommended that people must be able to opt out of customary courts in favor of other courts (eg. Magistrate's Court)

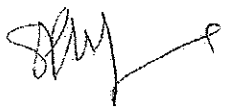
- Traditional leaders objected to this – claiming it would undermine their authority

- And now, the 2008 Bill makes it an offence not to appear before the traditional court once summoned – clause 20.

The RWM thus argue that the Bill conflicts with our Constitution of our land.

The Rural Women's Movement (RWM) is looking very much forward to the NCOP and KZN Provincial Legislature's direct response to our submission, urgently addressing all of the concerns that RWM has raised.

Thank You



Sizani Ngubane.

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TO: THE SC ON SECURITY AND CONSTITUTIONAL DEVELOPMENT, DEPT OF JUSTICE & CONSTITUTIONAL DEVELOPMENT

SUBMISSION ON THE TRADITIONAL COURTS BILL OF 2008

BY

SIZANI NGUBANE

My name is Sizani Ngubane and I am the Director of the KwaZulu-Natal Rural Women's Movement (RWM), an independent Non-Profit Making Organization based in KwaZulu-Natal. The RWM is made up of rural women who live in some of the poorest parts of KwaZulu Natal. The movement has attracted a membership of more than 40 000 (made up by 510 rural women's Community Based Organizations), with ages ranging from 16 to 84 years of age. The RWM is recognized as a significant institution by other actors working in the land reform movement, and we are one of five organizations, internationally, who won the Nelson Mandela Graca Machel Innovation Award in 2005.

1. I respectfully request an opportunity to make oral submissions when the Provincial Legislature conducts its public hearings in the province of KwaZulu Natal.

2. In my submission, I would like to raise concerns regarding the shortcomings in the Traditional Courts Bill that specifically impact negatively on rural women's rights.

3. I submit that the Bill does not adequately address the real, day-to-day discrimination currently, as well as historically, experienced by many rural women in the traditional justice system. Rather, I believe that the Bill is likely to further lend legitimacy to the unequal and patriarchal power relations to the further detriment of many women's ability to access justice in the rural areas.

4. We are concerned about the fact that there has been no communications with the rural communities, particularly rural women, about the content of the Bill by government or parliament. Consultations have been inadequate because only traditional leaders are currently involved.