

NKANYANI TRADITIONAL COMMUNITY

P.O. Box 1

VONGANI

0930

14 February 2012

The Speaker: Provincial Legislature

Private Bag X9309

POLOKWANE

0700

EMAIL: [Boshomanet@limpopoleg.gov.za](mailto:Boshomanet@limpopoleg.gov.za)

Dear Sir

**Re: SUBMISSION ON TRADITIONAL COURTS BILL**

We, the Royal family council and Nkanyani community at large wish to register our concerns about the traditional courts bill. The bill is relevant to our situation as a community that was undermined by both the Colonial and Apartheid regime in terms of traditional leadership under laws such as the Black Administration Act of 1927 and Bantu Authority Act of 1951 when Tribal Authorities and Community Authorities were established. In terms of the Bantu Authority Act, our chief was demoted to a lower status and the community was forced to reside and share office with other communities which had no customary relations with us

- 1.1. If the bill is passed into law as it is, our ancestral status of senior traditional leadership which was suppressed by the Apartheid government shall be permanently undermined.
- 1.2. Our status of "independent headmen" differs completely with that of the chief's "induna", because the former is independent and has control over a distinct clan (tribe) with its identity and origin. The plight of the "independent headman" is being deliberately ignored by our government for the sake of it being convenience to the state.
- 1.3. The bill seeks to entrench inequality and discrimination as it perpetuates the practices of the Apartheid past of degrading and undermining other rightful traditional leaders.

- 1.4. The bill is inconsistent with our living customary law and traditions particularly that it seeks to give extraordinary Customary powers to a selected traditional leaders at the expense of others. For example, it gives the presiding officer's position to only traditional leaders who are recognized by the Traditional Leadership Governance and Framework Act of 2003, whose jurisdiction has been carried over from the Apartheid Bantu Authority Act of 1951 during which traditional leaders such as ours were discriminately treated against. This amount to sidelining and distortion of historical customary facts and evidence.
- 1.5. The bill is reminiscent of division and discrimination as the provisions are absolute and repugnant to the values and human rights enshrined in the constitution.
- 1.6. For the recognition and restoration of the above mentioned sphere of traditional leadership status, which has been pending for decades, the 1927 Black Administration Act and 1951 Bantu Authority Act should be unconditionally abolished and their demarcated boundaries by the then Apartheid government that are presently recognized by the Traditional Leadership Governance and Framework Act of 2003 should be unconditionally abolished and their demarcated boundaries revoked.
- 1.7. The status of the sidelined traditional leaders be restored with immediate effect before any law regulating traditional court are determined because failure thereof will amount to unnecessary tensions, conflicts and civil wars that our new democracy do not want to experience. The so-called Presiding officers that TCB intends to give powers to the Minister and the Premier to determine are unknown in our customary law and tradition. Such senior traditional leaders that presently recognized by the Traditional Leadership Governance and Framework Act of 2003 will want to impose their powers over people and communities are that are not related to them in terms of the living customary law and tradition. This imposition is unconstitutional as centralizing powers to an individual violates the principle of separation of powers as per the Bill of Rights.
- 1.8. In our traditional courts, cases are dealt with bottom up, from the family level to upper structures and the chief is the last dispute resolution mechanism under customary law.
2. We are therefore demanding that efforts should be undertaken to first recognize and elevate all independent headman and headwomen, who were degraded and continue to be sidelined by the colonial and Apartheid Acts. These leaders should be recognized as senior traditional leaders without reservations. The process should include those independent headman and headwomen who were forcefully incorporated under certain individuals to form the so called Tribal Authorities.

3. We are looking forward to a direct response to our letter, urgently addressing all our concerns that we have raised.

M.E.. Nkanyane

Secretary (082 416 9485)