

NKOMAZI COMMUNITY ADVICE OFFICE

P.O. BOX 1057
SHONGWE MISSION
1331



STAND NO. 788B
OPPOSITE WAY INN
SCHOEMANSDAL

Reg. No. 024 – 752-NPO
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NATIONAL COUNCIL OF PROVINCE (NCOP)
P O BOX 15
CAPE TOWN
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Introduction:

TCB

I am **Mrs Daphne Nkosi** the Executive Director of the above mentioned organisation. The organisation was established in 1994-07-04 registered as an NPO. Its core business is to educate, advocate and create human rights. Our area of operation is a deep rural it's governed by Traditional Authority. Our clients are women, children, men and elderly who are mostly semi and illiterate. There is high rate of poverty, HIV/AIDS and unemployment. We also assist Child headed families, women raising children because men are not at home coming once per month as time goes once per quarter, then once per year , they then end up not coming at all. We are monitoring

PROBLEM WITH TRADITIONAL COURTS AND L.R

DISPUTES: Swaziland people taking everything from the widow

People who do not have legal documents to be in South-Africa are able to access land because they have money to buy no matter how much they are requested even if they want more than one stand. There's a high rate of crime due to that and it is difficult for our police to arrest them because they cannot find their finger prints since they do not have S.A. Identity.

- The traditional leaders are selling the stands at an abnormal price. Even if people have R.T.O. they resell it to the who has money like dust because of money without consulting with the people who already own the place.
- Development is hinder because of the above-mentioned.

TRADITIONAL COURTS

- It has no privacy, cases are held under the trees, everyone has a right to go and listen to the people's sensitive problems and things that are suppose to be heard by adults only.
- Women are not represented in the council, only men are represented by other men and they always defend men. If the woman is their relative then they will protect the woman, otherwise in all their cases men are winners is no
- Fines are not regulated. People with similar cases are getting different judgement depending on who is who.
- The community doesn't benefit from them.
- There is no criteria that is used as to who attends the hearing. Their cases take too long to be finalized.
- You can not be represented by lawyers. This affects us as an advice office.
- They are biased because if you are not from the worthy family you'll lose the case before you even open your Mouth.
- The courts are not user friendly at all.
- There is no proper record keeping.
- Sometimes they argue in front of you among themselves.
- Our Chiefs are imported from Swaziland they know nothing about our communities and it a challenge.
- **(The Chieftaincy) "akubuzwa lutho ngemvelaphi yabo"** when ever they need to appoint the Chief there must be

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War, some appoint this one others that one. That is why one of our chief was killed by his relatives because they give people positions that are not rightful theirs and once given they abuse them by not respecting anyone.

- We are happy that they do not entertain cases of witchcraft- since there's no way that one can prove it.
- Right now we do not know who the Chief we were never introduced to him is. We were informed at the graveyard by our headman that the Chief has been appointed. Some villages were requested to pay R30.00 for the inauguration of the Chief some were not informed. Our new chief resides in Swaziland he knows nothing about us whether good or bad things about us and it doesn't work like that.

RECOMMENDATIONS

- Chief being a presiding officer is not traditionally correct , the court should use the old system where by there were headmen and advisers elected by community.
- Women must be represented 50/50 as said in the constitution.
- There must be a proper structure for hearing; they need to do away with under the tree hearings.
- Procedures and process of the court must regulate and be recorded.
- Fines should regulate not depending on whose whom.
- Courts should be user friendly.
- Who is going to be trained? Is it the Chief & the council or the chief alone?
- All our Tribal Authorities must have a data that is going to assist them to know who has a stand where and all the details to make sure that people do not own lots of stands unnecessary e.g.to own a stand in Nkomazi, Mbombela, Matsulu etc.
- We want to cancel the Tax (Inagane) that we are paying in our tribal authority because we do not have a Chief that is at school, it was paid by our parents to educate our chief in 1949 until 1962 and he thanked our parents after he completed his education it was 25 cents then and to day it is R50.00 we want to know where does it go.
- They should also stop using the Policing forum to assault our community members.
- We would also like them to inform us about the community's development and their challenges too.
- To make sure that People will know how much they are suppose to pay for fine in their cases
- Their staff member's practice the Bathu Pele Principles at all times and are also well trained in client service.

COMMUNITY CONSULTATION ON. TC.B.

- We are requesting consultation to be conducted per Village and per Traditional Authority.
- Every body must be invited even the ordinary citizens.
- This is the first time we had about this bill; luckily we are there once who have attended.
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- The importance of consulting ordinary rural people
 1. People will be empowered about the bill and be able to express themselves about this bill before it passes and it should be explained in the language that they can clearly understand.
 2. They will be able to refer their cases else where when they are not happy about the outcome of their case.
- Parliament must hear not just the voice of the chief, we should get our space as women so that we can speak for our selves.

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IMPACT

- It takes us back to the BANTU stands where the T.A. was impose on people because of that, it cause defiance's and resistance.
- Democracy talks about accountability, were do they account? there is no accountability their word is final.
- If this bill does not want a lawyer, it is undemocratic because our constitution states that we have a right to be represented in court where as with Traditional Authority lawyers are not allowed to represent a complainant or perpetrators.
- It depowers women because their cases are not represented by other women only man are.
- They do not recognise the chapter nine institutions.

BILL

- It does not recognise the boundaries two tribes can not be governed by one Tribal Authority.
- No 50/50 is mentioned in bill.
- .The hearing days are not consulted and are only once per week which drags the case for too long because sometimes they only hear 2-3 cases per day, sometimes they are not there, yet you were given the date, sometimes they end up arguing alone especially if they favour them all not knowing whom to please. Some cases needs to be handled amicably.
- All the powers are invested in chief not the people yet the **iNkosi iNkosi ngabantu** Meaning (The King is King by people)
- The bill does not state it clearly whether the Traditional Authority should or should not In political party.
- There has never been elections in the Traditional Authorities as stated in the bill that they Should be in office for 5 years. Not more.

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CASES THAT WE FEEL THAT THEY WERE NOT HANDLED PROPERLY BY THE TRADITIONAL COURT

Mr Sono paid lobola for his wife they were blessed with 3 children but one died later. They separated later. While they were separated the woman died. Mr Sono had to bury his wife since she was paid lobola for by Mr Sono. After the funeral Mr Sono pleaded with his in-laws to give him his children his in-laws refused to give him his children.

He then took the matter to the headman. Both families were called under the tree to try and solve their problem by the headman. The family of the deceased (hlathi's family) refused to give them the children claiming that he has paid lobola for his wife not children if he wants them he must pay their lobola, he agreed because the Headman seconded them.

He then paid the lobola for his children but they never gave him his children even after the lobola was paid, up to date Mr Sono has never been able to raise his children nor stay with them.

This case was not handled properly by the Headmen because Mr Sono paid lobola for his wife so automatically they belong to him. After lobola was paid Mr Sono informed the headman that he has paid the Lobola then the Headmen told him that they must go and discuss it as the family.

CASE 2

There was a boy by the name Musa who was taking care of Mr Mhlongo's cattle. Musa lost the cattle. Mr Mhlongo thought that Musa has sold them; they then request the Tribal Authority Police to beat Musa. They have beaten him beyond recognition. Then SAPS called Mr Vuma whom Musa has told them that he has sold the cattle to. When Mr Vuma arrived at SAPS, Musa told him in front of them that he has lied about him and told them that he has sold the cattle to him because they were going to kill him. Mr Vuma received a letter calling him under the tree to hear the case. On the said day they then went under the tree where they were informed by the owner that she has discovered the cattle Musa didn't steal them. They wanted to charge him but because they damaged him, he has to go to hospital for treatments they then drop the charges against him.

Now Musa is crippled for life, who is going to support him?

But because our people are illiterate they never took the case forward to try and claim for damages

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Case 3