

WHY SHOULD YOU BE CONCERNED?

After changes by Parliament the Bill is again **UNCONSTITUTIONAL**.

It will take us back to the 2008/2012 versions that the people and majority of Provinces rejected.

NOW THE BILL:

Has no provisions allowing for individuals to opt-out or participate voluntarily in traditional courts.

Rejects the consensual nature of customary law and procedures.

Makes traditional courts into “courts of law” to impose enforcement mechanisms.

Makes traditional leaders the presiding officers of traditional courts with top-down power over people.

Lessens transparency around potential abuses by traditional courts.

Keeps the links between traditional court jurisdictions and the boundaries of the Bantustans.

IT'S NOT TOO LATE TO EFFECT CHANGE!

Go to public hearings on the Bill. Write to government, Parliament, and provincial legislatures. Tell the media and people in your community about the Bill.

Share your story!

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THE TRADITIONAL COURTS BILL 2017

AIM?

Government says the Bill will regulate traditional forums for resolving disputes and ensure that they function in line with the Constitution. The Bill will replace parts of the Black Administration Act of 1927.

WHO IS AFFECTED?

If passed, the Bill will directly affect the lives of the approximately **17 million** South Africans living in rural areas of the former homelands. It could also affect people living in cities.

The Bill threatens to force rural South Africans into a separate justice system!





A HISTORY OF THE BILL

April 2008

Introduced in the National Assembly.

June 2011

Bill withdrawn due to public concerns about the Bill's content and lack of public consultation.

January 2012

Introduced in National Council of Provinces. Triggers nationwide campaign to stop the Bill.

2014

Bill fails to win majority vote by provinces and lapses at time of national elections.

2015-2016

Government forms reference group to work on drafting a new Bill version.

January 2017

Revised Bill introduced in Parliament, addressing some past concerns.

March 2018

Oral submissions presented by selected stakeholders at Parliament. Hostility shown to some presenters.

August 2018

Parliament's Portfolio Committee changes Bill to undo many of the improvements.

March 2019

National Assembly passes the Bill without any clause that allows people to opt-out of traditional courts.



PROBLEMS WITH 2008 & 2012 VERSIONS OF BILL

Jurisdiction of traditional courts **based on apartheid-era** Bantustan boundaries.

Imposed a separate legal system

on people living in the former homelands.

Ignored the voluntary and consensual nature of customary law.

Centralised power in senior traditional leaders.


Did not address discrimination against women, children and other vulnerable groups.

Prohibited legal representation, even for criminal matters.

Allowed for harsh sanctions

such as forced labour, banishment and deprivation of customary rights, including land rights.

The Bill drafting **did not include adequate public consultation**.



HOW DID PROVINCES VOTE ON THE BILL IN 2014?

 **AGAINST:** Eastern Cape, Gauteng, Limpopo, Western Cape

 **ABSTAIN:** KwaZulu-Natal

 **SUPPORT IF SPECIFIC CHANGES ARE MADE:** Free State, Mpumalanga, Northern Cape, North West.

The provinces all proposed changes that contradicted each other.

WHAT POSITIVE CHANGES WERE IN THE 2017 BILL WHEN IT WAS INTRODUCED TO PARLIAMENT?

Initially the 2017 Bill recognised the consensual, voluntary and living nature of customary law. It allowed people to opt out of traditional court processes. Important protections for women and vulnerable groups were included, and the different levels of traditional justice systems were acknowledged.

BUT many of these improvements have now been undone by Parliament.