



PRESS RELEASE

Rural citizens under attack by government: Traditional Courts Bill in the National Assembly this afternoon

On 12 March 2019 the Traditional Courts Bill (B1B-2017) (TCB) will be considered for a vote by the National Assembly. This comes less than a week after the Bill was adopted by the Portfolio Committee on Justice and Correctional Services on 6 March.

It is the third attempt to pass this Bill into law. The first two attempts failed because the Bill was grossly unconstitutional and contravened customary law. However, over the past 11 years, parliament and government have continued to try to push it into law, ignoring and dismissing the objections that rural citizens have raised against the Bill. The latest version remains as much a threat to rural democracy as the first one was. Parliament's ears seem to be open only to traditional leaders.

The TCB was first introduced in 2008, but was strongly opposed by rural citizens and eventually withdrawn from the National Assembly.

The Bill was opposed because it discriminated against women – who were not allowed to represent themselves in court – and because people were not allowed to opt-out and were forced to use the court of a traditional leader in whose area of jurisdiction they lived. These jurisdictions aligned with previous tribal authority and Bantustan boundaries. Furthermore, the Bill provided for forced labour, banishment from the community and deprivation of customary rights as punishment. Only the courts of senior traditional leaders were recognised in the Bill, while it also provided for traditional leaders to be presiding officers of the court with powers to summon people.

Despite the strong rural voices that spoke out against the 2008 version of the Bill, government made another attempt to pass the exact same version of the Bill in 2012. However, rural citizens remained strong in their opposition to the Bill, and as a result it was allowed to lapse after it could not obtain the support of a majority of provinces in the National Council of Provinces.

In 2017 an improved but flawed version of the Bill was introduced to Parliament. This version provided protective measures against discrimination in terms of gender and sexual orientation, and for other vulnerable groups. It also included an opt-out clause, which meant people would have a choice about where to take their matters – between recognised traditional courts, other customary dispute resolution forums or other recognised state courts. The 2017 version acknowledged the existence of other traditional forums for dispute resolution (not just chiefs' courts) and provided for traditional leaders to “convene” courts instead of making them presiding officers like judges.

During stakeholder engagement meetings in Parliament in March 2018, representatives from civil society welcomed the improvements to the Bill and proposed further ones. However, the Justice Committee dismissed these inputs.

On 6 March, when the Committee adopted the Bill, the Department of Justice and Correctional Services revealed that the Department of Cooperative Governance and Traditional Affairs had held further consultations with the National House of Traditional Leaders and Contralesa on 4 March. As an outcome of this consultation, a number of amendments were made to the Bill that the Department indicated were in line with amendments proposed by the Justice Committee in August 2018. These included the removal of the opt-out clause and the introduction of an appeals process within the traditional courts system that would have to be exhausted before a matter could be taken on appeal to the magistrate's court. Furthermore, in terms of the Bill, traditional courts had now become courts of law with traditional leaders as presiding officers.

The Committee has in many respects taken the Bill back to its 2008 version, which violated both the Constitution and customary law. This forms part of a broader pattern of parliament and government closing down the space for rural democracy. The National Assembly passed the Traditional and Khoi-San Leadership Bill only two weeks ago on 26 February. That Bill purports to provide for the overdue recognition of Khoi-San communities, but at the same time provides for traditional councils to enter into partnerships and agreements with commercial entities, including mining companies, without the consent of the people whose land rights will be affected. With elections on the horizon, it seems government is in a rush to hand over power over citizenship, property rights and justice to traditional leaders. This will effectively turn rural citizens into subjects, yet government is campaigning for their democratic votes.

Help stop this injustice against the already marginalised rural citizens of South Africa by joining the Stop the Bantustan Bills campaign. Sign up at <https://stopthebantustanbills.org>

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