



DEMOCRATIC LEFT FRONT

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National Steering Committee

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15 February 2012

TO : Honourable Mninwa Mahlangu
The Chairperson of the National Council of Provinces
cc NCOP Select Committee on the Traditional Courts Bill (TCB)
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Dear Sir

PRELIMINARY SUBMISSION ON THE TRADITIONAL COURTS BILL

The Democratic Left Front hereby submits its preliminary response to the Traditional Courts Bill (TCB, Bill 15 of 2008) to the National Council of Provinces (NCOP). We intend to send you a full submission in due course.

We are extremely concerned that today's deadline is passing without much notice and without much mobilisation of rural communities by government to ensure that large numbers and diverse voices of engaging in genuine consultation with those who will be most affected by it, in particular rural women.

The DLF calls on the NCOP, the National Assembly and government to create adequate opportunity for all rural people to be consulted on, and make their views heard on this Bill. We therefore call on the NCOP to convene provincial hearings on the TCB. Specifically, we call on the NCOP to ensure that such consultations are not held at the homesteads of chiefs or headman under the guise that those are tribunals of custom. That would be a sham. We also ask for a platform for the DLF to make a verbal submission in any public hearings on the TCB.

We are extremely concerned that this Bill is anti-democratic in both content and process. South Africa is one country with a constitutional framework that commits to human rights, equality and consultation. It is therefore unacceptable that through the TCB close to 17 million South Africans living in the former homelands are about to be stripped of their constitutional rights. This Bill will create a separate legal regime under the jurisdiction of unaccountable traditional leaders: rural dwellers in former homeland rural areas will effectively become subjects yet again.

In our analysis, the Bill embodies an autocratic and patriarchal approach which turns rural

dwellers into powerless and voiceless people who require mediation through the agency of unelected and unaccountable traditional leaders. This virtually makes it impossible for rural people to be heard in their own right and diversity. Further, the TCB will reinforce the power and practices of those traditional leaders who are corrupt, unaccountable and who violate the rights and interests of broader rural communities. Already, many traditional leaders are mired in corrupt mining and land deals in the poorest parts of South Africa.

The DLF calls for a new law to govern community-based access to justice mechanisms that would be deeply democratic in content and process. Such a law must establish a broad national legal framework to standardise common systems, principles and procedures for community-based access to justice that are fundamentally founded on the promotion, advancement and deepening of justice, gender equality, democracy, accountability and human rights. Key principles in such a law must include the following:

1. Such a law must ensure access to justice through mechanisms that are democratic, accountable and challengeable. This therefore means that such mechanisms must not be reduced and integrated with the powers of chiefs.
2. Rural people must also be able to opt whether to use such mechanisms. They must not be forced into one regime as the TCB does by not allowing them to opt out of the TCB regime.
3. Women must be adequately represented (50-50) in such structures.
4. Gender equality must be effectively integrated and actively promoted in content and practice.
5. People's customs and practices must be respected whilst also harnessed to be consistent with the freedoms of association and expression as well as the rights to equality, non-discrimination, legal representation and other democratic rights.
6. The approach to judgments to be followed must not deprive people of their rights including land. The judgments must actively promote the social justice principles of equality, solidarity, dignity and human rights.
7. Community-based mechanisms or customary law must not be used to limit and hollow out democracy, human rights, gender equality, non-discrimination, and the freedoms of association and expression.

We hope and trust that you will do no less than the principles outlined above in finalising your recommendations on the TCB. We will elaborate on the above in our full submission as promised above.

Yours sincerely



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