



LEGAL RESOURCES CENTRE

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15 February 2012

The Honourable Chair  
Mr T Mofokeng MP  
Select Committee on Security and Constitutional Development  
National Council of Provinces  
Parliament  
Parliament Street  
Cape Town

Att: Mr G Dixon  
Committee Secretary:  
Select Committee on Security and Constitutional Development

And to:  
The Secretary to Parliament  
Parliament  
PO Box 15  
Cape Town  
8000

By hand  
By email: [gdixon@parliament.gov.za](mailto:gdixon@parliament.gov.za).

Dear Sirs

**Traditional Courts Bill B1 - 2012**

- 1 The Legal Resources Centre is a non-profit public interest law firm. Much of the work of our organisation is devoted to representing poor rural communities, and our comments on the Traditional Courts Bill are on behalf of such communities. This letter addresses the invitation to submit comments, and the attached submission of the LRC deals with the following matters:
  - a) the Legal Resources Centre and its submissions

- b) The public participation process
- c) The institutional arrangement of traditional courts in the Bill
- d) Women and the traditional courts
- e) Clause-by-clause commentary on the constitutionality, practicability and efficacy of the Bill
- f) The information required before the Bill can be adequately considered
- g) The constitutional imperative to develop customary law
- h) The Bill fails to promote true customary law and the values of the Constitution.

2 We refer to the government gazette notice of 13 December 2011<sup>1</sup> which

- a) announced that your committee intended to introduce the bill in Parliament at the request of the Minister of Justice;
- b) invited the public to comment on the bill to the Secretary to Parliament by 15 February 2012; and
- c) purported to have been issued in terms of rule 168 of the rules of the NCOP.

The Bill was subsequently introduced and published as Bill 1 of 2012.

3 On 14 February 2012 we wrote to the Chair of the National Council of Provinces<sup>2</sup> pointing out that the notice of 13 December 2012 flouts the Constitution. It pre-empts any consideration of appropriate public involvement by the NCOP as envisaged under section 72. The Department of Justice and Constitutional Development attempts to supplant the authority of the National Council of Provinces.

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<sup>1</sup> General Notice 901 Of 2011; government gazette 34850 dated 13 December in the name of the Department of Justice and Constitutional Development

<sup>2</sup> We sent a copy of our letter to your secretary on the same day.

- 4 Our letter of 14 February motivates for the setting aside of the notice of 13 December 2011 and the withdrawal of the Bill. We also stated that we would in any event submit an update of our comments made in 2008 on Bill 15 of 2008. Our updated comment on Bill 1 of 2012 is attached.

Thank you for the opportunity to make this submission.

Yours faithfully

**[signed]**

**LEGAL RESOURCES CENTRE**

**Per: HENK SMITH AND WILMIEN WICOMB**