

# Eastern Cape Lesbian Gay Bisexual Transgender Intersex Organisation

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National Council of Provinces  
PO Box 15  
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## Re: TRADITIONAL COURTS BILL

The ECLGBTI Organisation is a voluntary association operating in the eastern parts of the Eastern Cape. The organisation has over 400 members, and active branches in the following localities:

- Mquma and Mbhashe
- Mthatha
- Lusikisiki
- Mdantsane
- East London
- Dimbaza

The organisation advocates for the rights of LGBTI people. Approximately 75% of our membership is lesbian. Approximately 60% of these women live in the former Transkei and, as such, will be greatly affected should this bill be passed.

Our organisation has a number of problems with the bill, but primarily these relate to the position of women in customary law. In many areas, women may not approach the customary court, but have to be represented by a man. For a lesbian, this presents a particular problem. Not only is she denied direct access to justice, but is also subject to the provisions of customary law which are not favourable to same-sex relationships. Because, in terms of the bill, the judicial and administrative power is centralised in one person (the chief, or a person nominated by the chief), our members are at risk of facing prejudice if the presiding officer has a negative attitude to her. The bill does not make provision for a person to opt out of the customary law system and approach the magistrate's court.

These factors constitute an assault on the freedoms guaranteed by our constitution to people regardless of their sexual orientation.

Our organisation demands that there be **proper consultation with rural people**, particularly women, and most particularly lesbians, with respect to the proposed legislation.

We demand that, at the very least, people be afforded **the right to approach the magistrate's court** if they so wish. The **powers of the presiding officer** should be broadened to more than one person – a council, for example, would give the hope of some balance if the presiding officer is homophobic.

We demand that the bill expressly **protects the rights of lesbian, gay, bisexual, transgender and intersex people.**

Yours faithfully

**Gail Kirchmann**  
Deputy Chairperson