

4 September 2012

To: Mr. Tjheta Makwa Harry Mofokeng, MP
Chairperson
Select Committee on Security and Constitutional Development

Attention: Mr. Gurshwyn Dixon

Secretary

Select Committee on Security and Constitutional Development

Fax: 086 658 9371 / 021 403 3942

Email: gdixon@parliament.gov.za

PER FAX

Dear Sir

Submission on the Traditional Courts Bill B1-2012

Please see my written submission on the Traditional Courts Bill included in the following pages. I hope that it will be seriously considered by the Committee and that it will encourage Parliament to stop the Bill and consider the bills impact on rural people.

I request that you kindly provide me with the opportunity to present my submission verbally at the public hearings to be held in Cape Town in September 2012. Any assistance with transport to the hearings and accommodation will also be greatly appreciated. I look forward to your response.

Many thanks

Tsholofelo Zebulon Molwantwa

Baralokgadi Communal Property Association

8927 Botes Street

P.O. Box 2389, KAGISO, MOGALE CITY

Tel: (011) 410-8080

Cell: 083 478 8655

Email: basebo@yahoo.com

Chairperson, and Honourable members of the Select Committee on Security and Constitutional Development as Barokologadi Communal Property Association (CPA) we would like to bring the following scenarios to the attention of this committee, as we feel that the Traditional Courts Bill will impact negatively on these scenarios.

Barokologadi of Melorane

At the time of the forced removal of the community in 1950, the community was split into 4 groups and settled in 4 villages. Different villages with no real connection with the Barokologadi were incorporated into two tribal authorities under the Bantu Authorities Act of 1951. According to government records this was done for “administrative feasibility purposes”.

The Barokologadi of Melorane fought and won the restitution of their ancestral land around the Madikwe Game Reserve and now holds that land under the Barokologadi Communal Property Association. The incorporated communities tried to use the new laws to address this issue, which has been problematic to date and without success.

We used the TLGFA and the Northwest Leadership and Governance Act to complain to the premier about the apartheid and homeland incorporation of the 4 groups under different tribal authorities. The community got this answer:

“The Traditional Authority cannot be dismantled, lest floodgates of problems are opened”, and “this would create new administrative problems”.

Our community expected better from the new laws under our constitution. The wrongs done under the Bantu Authorities Act must be undone. We could get our land back but we cannot get our community back.

I, TZ Molwantwa, was born in 1944 at Melorane near Zeerust. I grew up, I was “given” [in Setswana tradition], in my grandmother’s household. My grandmother, Baitse Ngwatoe [1880 – 1967] was the first child of the Kgosi

Thari [1800s – 1930s]. She would have been the kgosi if we had a democratic constitution at the time. I do not want to be a kgosi but I am telling you this to show that I am rooted in the community.

When I was 6 years old our community was moved by force from Melurane. I remember some of the events and my family still talks about it. The forced removal process included:

- Impounding of cattle... I saw this;
- Fencing across the village and arrests for trespassing for crossing the fence to fetch water;
- Government trucks came to load our people and their possessions;
- We started with nothing in the new villages.

The first Scenario: Barokologadi Tribal Authority

Under the Black Authorities Act (BAA), four communities were clustered under the Barokologadi Tribal Authority, though they themselves did not relate to the Barokologadi. Two of these communities, Ramotlhabe and Silkaatskop, were landowners who bought their own private farm and had their own community authority, which was incorporated under the Barokologadi Tribal Authority. Two other communities, living on state land in the proximity of the Barokologadi tribe, also had their Community Authority with affinity to the original main tribe e.g. Nkaipaa (Bafurutshe) and Sesobe (Bakwena) commonly known as Nooitgedacht

Second Scenario; Barokologadi Ba-Obakeng Community

This Community is part of the Barokologadi Tribe, which, during forced removals of the Barokologadi Tribe, were moved from their ancestral land Melorane. They went to stay in a private farm called Spitskop (Motlollo). Later during the former Bophutatswana era, they were allocated land at Obakeng (Volgestruisdraai) and because of their proximity to the Batlokwa Tribal

Authority, they agreed to be served by the Batlokwa Tribal Office for administration purposes as their tribal Authority was far from them with no proper roads to reach the office. Since our democratic Government they have been trying in vain to regain their place in the Barokologadi Traditional Administration.

The changing of boundaries and clustering of these communities under the abovementioned tribal authorities brought about tensions, which have escalated to date:

1. One of the reasons is that they do not share any traditional values with these tribal authorities and are forced to observe and practice the traditions and value systems of this tribe. They feel they have been made second-class subjects under this authority.
2. Whilst they were made to pay levies to the Tribal Authority there was no service rendered to them, preference with service delivery was always been given to the main tribe.
3. There is nothing to show how the revenue benefited them, no financial reports are provided.

Given the above, these communities are agitating to be released from these Traditional Authorities and have made submissions before the Portfolio Committee in 2003, stating their intention, and this has been blocked at every corner. A response letter was received from the Premier of the Northwest in 2004 (Ref: 11/2/10//3/14 (183) Subject: Problems at Nkaipaa).

In this letter to the Chief Director of Legal Services the then Chief Director of Traditional Leadership and institutions concluded: "The claim of the Nkaipaa community to secede cannot be entertained; the Traditional Authority cannot be dismantled, "LEST FLOOD GATES OF PROBLEMS ARE OPENED".

Faced with this attitude that denies them their Constitutional rights, these communities are now revolting, the following are few examples:

- Nkaipaa Community has now resorted to legal action and has established their own administration system with their own stamps.

Those who still abide by the Barokologadi Tribal Authority have no mandate.

- Sesobe and Obakeng Community are also not cooperating and have since established their own office own stamps and letterheads.
- There is also a rumour that Ramothabe and Ramokgolela (Silkatskop) Community also wants to unilaterally withdraw. Submissions have been made to Nhlapo Commission without any help.
- Retaliation by the traditional council influences those who have to offer services not to do so unless he is consulted first. For example, Obakeng MTN Tower project was abandoned as a result. The Municipality Ward Councilors are also in cahoots, instead of focusing on developments and service delivery, they are now indulging in these politics, and therefore the community stands to suffer.

CONCLUSION:

We believe that the issues caused by the clustering of these communities will only be made worse by the Traditional Courts Bill. This is because the bill does not allow for the ability to 'opt into' the Traditional court. The way in which the TCB allocates jurisdiction to the Traditional Court will cause much friction in these already unsettled communities. We call for the ability to 'opt in' to the jurisdiction of the court. This will avoid the problem of forcing communities who do not identify with the Traditional court or its presiding officer to be under that courts jurisdiction.

The TFLGA and TCB should be reviewed so as to ensure that they are not a repetition of the Black Authorities Act in disguise. We cannot go backwards!