

Submission by **Monoko Thomas Moshitsoa** of the Bakone Development Forum in Rakgwadi Limpopo

Experience of traditional court: forced labour issue

I am the headmaster of a rural school in Tafelkop. I live in Mmotwaneng village in Rakgwadi which is part of the greater Sekhukhuneland district. I have been active in development issues and within the ANC for many years. I was previously chairperson of my branch and I am currently on the Branch Executive Committee.

During the 1980s I was active in anti-Bantustan politics in my area. In particular I opposed the issue of people being forced to provide free labour for our chief. The practice of forced labour in the chief's fields was something that impacted very seriously on our mothers and sisters. I was also very active in supporting women in their struggles to be allocated land – a burning issue for single mothers whose applications for residential sites were repeatedly rejected on the basis that only men are entitled to land. Slowly and over many years the efforts of women, with the support of progressive men in the community has shifted that practice.

I became known to the chief as someone who supported women and opposed his demands for free labour, obedience and excessive tribal levies – we challenged whether these practices were really customary, and whether he needed such things given that he received a salary and cars as their finance minister of Lebowa.

In about 1995 our chief announced that we need no longer pay rent to the South African Development Trust because the title to our land had been transferred to the tribe and the title deeds were now held by him as our chief. We were shocked and dismayed to hear this. Each family had been forced to pay rent to the SADT since 1959 and we were expecting that like urban people, each family would soon be getting title to the land for which we had paid rent for so many years. We tried to investigate what was behind his statements and discovered that various Lebowa cabinet ministers had made a deal with the National Party government to transfer title of large numbers of farms to them just before the change of government in 1994. However, the chief refused to reply to our many requests for information about the change in the status of the land.

At the same time the chief began to interfere in the affairs of our village. (There are 23 villages in Rakgwadi). We have our own village headman and kgoro which operates in a democratic way – with all villagers able to participate in discussions and decisions about issues that affect our area and our land. We as residents respect the induna, and he too respects us. For many years the village kgoro has operated as a valuable and respected customary dispute resolution forum. However after the chief got the title deeds to the farms he began to undermine the authority of our kgoro. He reversed decisions made in the kgoro – especially decisions about land disputes and land allocation. He upheld the claims of outsiders to valuable fields and rejected the claims of long-term residents of the area.

We became more and more worried about him stretching his finger to our land, especially because the chief did not reply to our requests for information and for a meeting to sort out the problems that were becoming a crisis in our village.

Finally in 1999 we drew up a memorandum asking for explanations and for the kgosi to return our title deed to us. In the memorandum we reaffirmed our respect for the kgosi in all matters of custom and tradition, but also said that he should not undermine the authority of our induna and our kgotla and interfere with our land. A group of over 300 people took the memorandum to the mosate of the kgosi.

In response he summoned us to the court where we were made to wait in the sun the whole day. There he rebuked and intimidated us – saying that the old people would lose their pensions because they had been stupid enough to listen to teachers. He also said that he would confiscate our land

and that while the teachers had salaries and so were “alright” everyone else would starve because they would no longer have houses or fields. We were not allowed to say anything in our defence. In fact we were not allowed to say anything at all.

The old people were so intimidated that they each agreed to pay a fine of R300 to the mosate because they had dared to challenge the chief. Most of the younger people – including myself, refused to pay. This means that we have been refused all services and resources by the tribal authority ever since. For example we cannot get letters from the tribal authority providing proof of residence. These letters are necessary for many things in the rural areas, because people do not have the same formal addresses as people living in urban areas. Any application for an ID document, a social grant, to open a bank account or for any other official purpose requires a proof of residence letter from the tribal authority. I know of two men whose sons were refused such letters because they participated in the march. As a result the one son could not submit an application to university and the other an application to become a policeman.

I myself remain very active in development work and have recently (together with others in Mmotwaneng) started a home-based-care organisation. However we were unable to open a separate bank account for the organisation because the mosate refused us proof of residence letters.

Now we are shocked to hear of this new Traditional Courts bill. It is completely unknown in rural areas. I heard of it for the first time on Thursday last week because people from the LRC told me about it.

I am absolutely shocked and depressed that the democratic government we fought for can introduce a Bill like this – a Bill that will have a devastating effect on power relations in rural areas – and then not even communicate it to rural people so that we have the chance to debate it and explain its impact on our daily lives.

Section 10(1)(g) takes us straight back to the system of forced labour in the chiefs fields that we fought so hard to end during the rural rebellions in the 1980s. This bill will cause the same conflict. It enables autocratic chiefs to summon those who resist abuse of power to their courts and fine them and strip them of their customary entitlements (s10 (1)(i))

This provision is worse than anything we had under apartheid. The big stick of Bantustan chiefs was always the threat of eviction. But under proper customary law no-one can be evicted or deprived of land unless a pitso of the whole community agrees. That central protection which is at the heart of the democratic nature of customary law is changed by this bill, now a chief, as presiding officer of a traditional court can strip people of their customary entitlements to land and other resources.

This Bill has nothing to do with tradition and custom. If it wanted to support customary courts it would be supporting the courts that do 90% of the cases – the village level dispute resolution processes convened by indunas. It seems to know nothing of the actual reality in rural areas. Instead it props up the autocratic powers of senior traditional leaders. Why did the House of Traditional Leaders draft these kinds of provisions? Chiefs who accountable and respected by their people do not need a Bill like this, their power comes from the people.

It is only chiefs who do not enjoy the support of their people who need the government to prop them up with laws like this. This law will add nothing to the proper functioning of good customary courts (of which there are many). Instead it props up unpopular and autocratic chiefs and will take us back to the abuses of the apartheid era.

We cannot understand how our government can do this to us, when rural people have fought so hard for equal citizenship in a democratic South Africa. We beg you to withdraw this bill and to send people to consult with the ordinary rural people whose future would be blighted if this Bill is made law.
