

Border Rural Committee

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National Council of Provinces
PO Box 15
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Re: Submission on the Traditional Courts Bill

The Border Rural Committee is a well-established not-for-profit organisation working in the former homelands of Transkei and Ciskei. Established in 1982 as an anti-forced-removals organisation, BRC has a long tradition of advocating for the rights of the rural poor.

It is a membership-based organisation, with 47 active members, 81% of whom reside in areas that would be affected by this bill. The members will make submissions on behalf of the communities that they represent, from their perspective. The problems with the provisions of the bill, articulated to us, by our members, is of grave concern. These problems relate to the effect that the bill will have on the rights of women, the impact that it will have on existing mechanisms for dispute resolution and so on. This submission, however, does not attempt to describe how the content of the bill will affect communities. It limits its self to objections at a political level.

1. Separation of powers

The fact that all functions are centralised in one person – the chief or his nominee – means that the person who essentially makes/interprets customary is the same person who administers justice and executes the provisions of customary law. This is clearly in conflict with the very important democratic principle of the separation of powers, and is in conflict with our Constitution.

2. Separate legal and governance system imposed on rural people

The fact that a person residing in an area where the Bill applies can not opt out of the customary courts, and may not approach the magistrate's court if they so wish, means that there is effectively a different legal system and a different set of laws for people living in the former homeland areas, and they are governed in a different way from the rest of South Africa. It is our opinion that this bill would constitute an effective re-introduction of the homeland system in South Africa – an offense to all of us who fought against this system (including the Border Rural Committee) in favour of one united South Africa.

3. Implications for land rights

As a land reform organisation, involved for thirty years in the struggles of rural people for security of tenure, the provision of the bill that gives one man the right to strip members of his community of their rights to land and, further, their membership of the community itself, is for us, completely untenable. The provision is open to abuse and misuse, and is vulnerable to arbitrary implementation.

4. Implications for democratic structures

The bill has serious implications for those legal structures set up after the successful settlement of land restitution cases, to hold the land in title and to drive development in the community. In the areas where BRC works, there are fully-functioning Communal Property Associations – democratically elected and accountable to the community. People living in these areas would suddenly be forced to be subject to customary law, and fall under the authority of a chief - very often discredited and unsupported. Our experience is that the voices of women are being heard in CPAs – voices that would effectively be silenced (in conflict with the purported aims of the bill, and in conflict with our Constitution) through the implementation of this bill.

5. No right to legal representation

The right to legal representation is enshrined in our Constitution. An attempt to take this right away from people living in the former homelands is to subject those people to a questionable form of justice and, in our opinion, an inferior form of justice.

Consultation

BRC is not satisfied that the content of the bill has been brought to the attention of those who would be most affected by the proposed legislation. Many people in the rural areas are illiterate and do not have the required access to information. The bill should be publicised in the vernacular and public meetings held at convenient venues across the rural areas that the bill would cover. There should be adequate time given for consultation, and adequate budget for information dissemination.

Conclusion

It is our opinion that this Bill is a serious step backwards for South Africa. It separates the country once again. Those living in the former “white” South Africa have democratic rights as enshrined in our Constitution; those living in the former homelands are subject to an anti-progressive, undemocratic system, from which they have no recourse to the structures of the rest of the country. It is essentially unjust and the Bill should be radically re-drafted to address the issues raised above.

Yours faithfully



Phumeza Grootboom
Managing Director
on behalf of the Border Rural Committee