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## FACSIMILE TRANSMITTAL SHEET

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**Message:**

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**14 February 2012**

**Submission: Traditional Court Bill**

Due to challenges the Organisation confronted and also of being a newly formed movement. The ECCLRO faced some enormous difficulties in conducting many public hearings regarding the 2008 TCB which in another eye through the hole of a needle is to destroy the activities of our democracy of which it became a legacy to the South African people especially the disadvantaged rural communities to where Traditional Court Bill refers. Those detrimental movements of that mammoth (TCB) that are savage intimidating the innocent people should be cynically pushed away.

These movements are clearly seen in the Legislative processes of the TCB 2008 whereby it is said the justice portfolio committee held public hearings, but without or not specifying the results of the hearings in June 2011. The Portfolio Committee of the National Assembly withdrew the bill. Wonderingly the Bill with no signs of Amendments subsequently will be introduced in Parliament in February 2012.

Besides the composed 2008 TCB together with its misery features, there are also some other merciless movements made to destabilise the working of other legal formulated community organizations like Communal Property Associations Act 28 of 1996

Thirdly Green Paper on Land Reform 2011 under Section 6 of Trajectory for Land reform, subsection 6.4(d) which says "the Communal Land Tenure the(4<sup>th</sup> tier) because of (a) its complexity (needs for extensive consultations and constitutional compliance) and (b) the recent Nullification of the Communal Land Rights Act(CLARA) by the Constitutional Court, will be treated in a separate Policy articulation. Meaning that hence the question of communally owned Land its Policy articulation is not successful, the passing of the TCB will derail the processes of Development in the communal owned Land or Homelands.

Deeply entering in commenting with TCB other people will wonder why the people of South Africa are always reluctant to respond positive to issues raised by our Legislative Institutions, it's just because our Parliamentarians do not stick firm to the stipulated guidelines such as Policies, Regulations, Rules and Procedures of our Democracy. People complained that they were not consulted when the Bill was formulated in 2008 and even before that time. In fact the whole process should be treated as null and void. Appointment of any Traditional Leadership figure in the position of a Presiding Officer of a Traditional court is very much unfair to our Democratic Country. The appointment of a Traditional

Leader as Presiding Officer will mean the application of reverse gear back to the defunct laws of Apartheid Regime.

### Human Rights Violations

- Right of transformation of current Traditional Courts a necessity
- Right to elect person of their choice
- Right to respond to consultations
- Right to observe Transparency
- Right of accountability to their own land.

People complained of being victims of unnatural systems of governance applied to them i.e. systems like when the objects the government want to fulfill people will be called citizens but coming to the point of administration and beneficitation people become the subjects of Traditional leaders.

It is an offence in South Africa to stay in rural areas because those people will be the victims of a Traditional Court of which even to Magistrate Court they are expected to appear before them. This statement has got another meaning that the rural community is developing a habit of recidivism hence the people in urban areas are not affected. This serve to the people as a contradictory statement to the vision for Land Reform "(a Re- configured single, coherent four-tier system of Land Tenure, which ensures that all South Africans, particularly rural blacks, have a reasonable access to fulfill their basic needs for housing and productive livelihoods)"

### Extracts on controversial clauses from Traditional Courts Bill 2008

- Memorandum on the objects of Traditional Courts Bill 2008 whereby certain government departments, bodies and persons were consulted in the drafting of the Bill.
- Consultations with the structures of Traditional Leadership took place at National and Provincial levels.
- At National level a conference of Magistrates to which National house of Traditional Leaders was invited took place during September 2007.
- The Policy Framework of the Bill supporting the Policy was drafted in consultation with the Constitutional Affairs Committee of the National House of Traditional Leaders.

### Comments

- In a point of fact anyone who can apply sense of reasoning concerning the above extracts statements can apprehend that the Traditional Leaders are really proverbial oppressors, because since the Traditional Court Bill was in place no Traditional Leader hinted this Bill to the people. The prevailing faction between the Traditional Leaders and the people currently in Provocative by those elements who give individuals the status of being the heirs of the land.

- Attempts to subdue tensions between Traditional Leaders and the Community seem to be impossible. The Leadership styles of Traditional Leaders do not conform with the leadership styles idealism since these days even those elected should have qualitative styles of leadership.

### **Composition of Traditional Courts Bill Proposals**

Since is necessary to transform the Traditional Justice, in line with Constitutional imperatives and values including the right to human dignity the achievement of equality and freedom; and since it is necessary to have a single statute applicable throughout the republic regulating all courts including the Traditional Courts. Be it therefore enacted by the Parliament of the Republic of South Africa as Follows:

The people demand the democratic right to elect the Presiding Officer together with the Traditional Courts Council members themselves

### **Matters of Concern**

- Question of marriage separation
- Formation of wills
- Property disputes

### **Recommendations**

- The term of office for the Presiding Officer should be two (2) years in office and five years of Traditional Courts Council members.
- Both the Presiding Officer and Traditional courts shall have equal powers to run these courts same as the magistrate Courts, powers like to lay a charge, subpoena, summon, prosecution and processes and passing of judgments.
- Undergoing trainings and attending workshops should be a necessity.
- Traditional Courts should be given opportunity to discuss marriage matters and in this process relevant stakeholder should be invited e.g. Department of Social development and Department of Home affairs.
- Traditional Courts should play a major role in property disputes and keep record of the results
- In case of administration of will, Traditional Court should be involved to control any dispute that may erupt between concerned families.

### **Conclusion**

The TCB 2008 at current stage reveals its sentimentality in bringing back Traditional Justice, therefore should the above proposals and recommendations be not considered the people shall opt-out and array to defend the next step.

Prepared by

