



# EASTERN CAPE PROVINCIAL LEGISLATURE

OFFICE OF THE CHAIRPERSON: PORTFOLIO COMMITTEE ON  
CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

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Date: 20 November 2019

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Ref: Traditional Courts Bill

## NEGOTIATING MANDATE

To : The Chairperson:  
Select Committee on Security and Justice

Name of Bill : Traditional Courts Bill

Number of Bill : [B1B-2017]

Date of Deliberation : 20 November 2019

### 1. Vote of the Legislature

The province votes in favour of the Bill and mandates the Eastern Cape delegate to the NCOP to negotiate within the following parameters:

#### (a) Ensuring respect for the structures of traditional leadership

- (i) The Committee is of the view that in some instances where the Bill stipulates that "after consultation with the National House of Traditional Leaders the Minister may proceed" undermines the institution of traditional leadership.
- (ii) The Committee thus proposes that to accord the necessary respect to the institution of traditional leadership, the Minister must do what he/she is permitted to do in terms of section 16 and 17 of the Bill "in consultation with the National House of Traditional Leaders" and not "after consultation"

#### (b) Legal representation

- (i) The committee is of the view that whilst the Bill seeks to ensure that traditional courts' processes are not complicated unnecessarily by the involvement of legal practitioners. In its current form, the Bill does not deal sufficient with the exclusion of legal practitioners who may come as relatives of those appearing before the traditional courts.
- (ii) The committee proposes that the Bill must be specific that a person who is a legal practitioner may not represent a person in a traditional court even if he/she is a relative.

(iii) Section 7 (4) of the Bill must therefore be amended as follows:

“ 7 (4) (a) Subject to paragraph (b), a party to a dispute before a traditional court may be assisted by any person of his or her choice in whom he or she has confidence. **Provided that such a person is not a legal practitioner as defined in section 1 of the Legal Practice Act, No 28 of 2014.**

(b) No party to any proceedings before a traditional court may be represented by a legal practitioner acting in that capacity”.

(c) **Funding of traditional courts**

(i) The Committee is of the view that in order for traditional courts to be integrated into the court system of this country, they would need to be funded for personnel and other requirements as stated in this report.

(ii) The Committee therefore recommends a new section 17, the existing section 17 being made section 18 as follows:

**“Funding of Traditional Courts**

Traditional Courts shall be funded through money appropriated by Parliament for that purpose.”

(d) **Responsible person for overseeing taking of pledge**

(i) Section 5 (5) is not clear in terms of who will be responsible to administer the pledge.

(ii) The committee is of the view that this must be clarified and if it is the clerk of the court, it be specified as such.

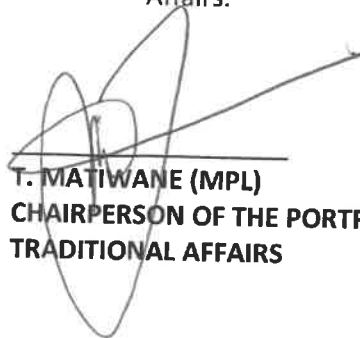
(e) **Orders that may be made by traditional courts**

(i) The committee notes that section 8 stipulates orders that a traditional court may make. The committee is however concerned that there is no separate section that stipulates orders that a traditional court may not make. This is motivated by the fact that the members of traditional courts are not legally trained to know which orders may not be made and also because over the years, orders such as banishment and corporal punishment would have been made and executed.

(ii) The committee is therefore of the view that “orders which a traditional court may not make” must be clearly specified.

2. General Comments

- (a) The report of the Portfolio Committee attached hereto highlights other issues raised by the stakeholders, relating to the Bill before the Portfolio Committee and are matters that ought to be given consideration by the Department of Traditional Affairs.



T. MATIWANE (MPL)  
CHAIRPERSON OF THE PORTFOLIO COMMITTEE ON CO-OPERATIVE GOVERNANCE AND  
TRADITIONAL AFFAIRS

02/12/2019  
DATE