

NEWS FROM:



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UCT helps rural people fight law that could promote abuse of power by tribal leaders "Only bad chiefs need laws like this," says opponent of Traditional Courts Bill

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The Law, Race and Gender Unit (LRG) at the University of Cape Town is working with the Legal Resources Centre and local community-based organisations to ensure that people living in rural villages will have an opportunity to speak out against the proposed passage of the controversial Traditional Courts Bill, which is considered unconstitutional by legal experts. A consultative workshop involving 100 rural delegates from different provinces came together to discuss the bill and the way forward in Johannesburg on 16-17 January 2012.

The Traditional Courts Bill, introduced by government in 2008, was withdrawn from the National Assembly last year after pressure from opponents. Its imminent reintroduction in the National Council of Provinces (NCOP) was announced in mid-December, giving rural people two months to submit their comments by 15 February. Tabling took place on 26 January 2012. After tabling, members of the select committee will take it to their provinces for rural consultations. Once the NCOP has made amendments and a decision about the bill, it will return to the National Assembly.

LRG set up the Rural Women's Action Research Project (RWAR) to provide support to rural people, especially women, who live under systems of customary law and traditional governance. The RWAR has played a key role in educating rural people about the Traditional Courts Bill. It has also facilitated the ability of many rural people and groups to make submissions directly to Parliament on the proposed legislation.

According to Dr Sindiso Mnisi Weeks, a senior researcher in RWAR, the project found that many rural people were not aware of the pending bill, nor were they consulted about how it would affect them. Dr Mnisi Weeks said: "The bill would centralise power with traditional leaders, and would allow them to singlehandedly decide a dispute. It was drafted in consultation with traditional leaders only." She said: "As the bill now stands, women in particular would be affected, because they would not be assured of their right to self-representation. Should a woman's husband die, she would not be protected against those who would want to grab her property."

Other abuses of power that could be supported by the bill included allowing traditional leaders to summon people who do not submit to the traditional leaders' authority and punish them if they failed to appear before them. The bill could even be understood to mean that in civil cases people could be banished, said Dr Mnisi Weeks.

Patric Mashego, a community leader from Limpopo, is one of the rural people working with the RWAR to oppose the Traditional Courts Bill. Mashego said: "This bill and laws such as the Limpopo Traditional Leadership and Institutions Act destroy the dream we fought for over many years. Instead of making rural people equal citizens in a unitary South Africa, they make us subjects of chiefs who are given the coercive power to get rid of those who try to hold them to account. You may say that not all chiefs are bad. That is true, but only bad chiefs need laws like this."

Mashego said the bill would create a crisis around the issue of tribal levies. "Currently we are experiencing a serious problem with tribal levies and the bill will make the problem into a serious crisis if it is enacted," he said.

Aninka Claassens, the RWAR project leader, said: "If people don't pay those levies, traditional leaders refuse to give them the proof of addresses that are necessary in applications for identity documents, pension and child grants."

LRG is calling for new legislation to be drafted based on the views and needs expressed by ordinary rural people in the process of their consultation. This new legislation would replace the Traditional Courts Bill. The director of LRG, Associate Professor Dee Smythe, said the approach taken by the RWAR Project provided an opportunity to build models of practice in legislation that are inclusive and participatory.

The RWAR Project was one of the 2011 recipients of the UCT Distinguished Social Responsiveness Award. The award was established by Vice-Chancellor Dr Max Price to promote the university's commitment to social responsiveness as an important institutional activity.

List of objections to the bill

1. It permits a presiding officer (the senior traditional leader) to have single-handed and final say on what is customary law;
2. It excludes forms of community participation, other dispute resolution forums and accountability mechanisms;
3. It reinforces contested colonial and apartheid tribal boundaries as jurisdictional boundaries;
4. It prohibits opting out of traditional courts' jurisdiction, even by people with legitimate objections;
5. It would negatively affect the rights of women, especially by not providing for them to represent themselves; and
6. It allows for forced labour and deprivation of customary benefits to be imposed as punishments.

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