

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
TRADITIONAL COURTS BILL**

[B 1—2017]

*(As agreed to by the Portfolio Committee on Justice and Correctional Services
(National Assembly))*

[B 1A—2017]

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AMENDMENTS AGREED TO

TRADITIONAL COURTS BILL

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CLAUSE 1

1. On page 4, in line 9, to omit “and custom”.
2. On page 4, from line 23, to omit “in accordance with an Act of Parliament”.
3. On page 4, in line 23, after “position” to insert “and is recognised in terms of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003).”.
4. On page 4, after line 24, to insert the following:

“Traditional Leadership and Governance Framework Act”
means the Traditional Leadership and Governance Framework Act, 2003(Act No. 41 of 2003).”.

CLAUSE 2

1. Clause rejected.

NEW CLAUSE

1. That the following be a new Clause 2:

Objects of Act

2. The objects of this Act are to—
 - (a) affirm the values of customary law and customs in the resolution of disputes, based on restorative justice and reconciliation and to align them with the Constitution;
 - (b) affirm the role of traditional courts in terms of customary law by—
 - (i) promoting co-existence, peace and harmony in the community;
 - (ii) enhancing access to justice by providing a forum for dispute resolution in accordance with the principle that recognises participation by all parties; and
 - (iii) promoting and preserving those traditions, customs and cultural practices that are beneficial to communities, in accordance with constitutional values;
 - (c) create a uniform legislative framework regulating the structure and functioning of traditional courts in the resolution of disputes, in accordance with constitutional imperatives and values;
 - (d) enhance the effectiveness, efficiency and integrity of traditional courts in the resolution of disputes; and
 - (e) facilitate the full and meaningful participation without discriminating against any member of a community in a traditional court in order to create an enabling environment which promotes the rights enshrined in Chapter 2 of the Constitution.

CLAUSE 3

1. On page 5, in line 23, to omit “and voluntary”.
2. On page 5, from line 31, to omit paragraph (d) and to substitute:

“(d) the principles applied in the resolution of disputes in terms of customary law in terms of this Act are not, in all respects, the same as those applied or understood in other courts in the judicial system; and”.

CLAUSE 4

1. Clause rejected.

NEW CLAUSE

1. That the following be a new Clause 4:

“Institution of proceedings in traditional courts

4. (1) (a) Any person may, subject to subsection (3), institute proceedings in respect of a dispute in any traditional court.

(b) A traditional court may hold a session thereof at a place other than where sessions of the traditional court in question ordinarily take place and, for that purpose, the traditional leader who ordinarily presides over the traditional court may, where necessary, in the presence of members of the community in the traditional court, delegate a person or persons to preside over such a session and indicate who may participate therein.

(2) (a) A traditional court may, subject to subsection (3), only hear and determine a dispute contemplated in Schedule 2—

- (i) that is not being dealt with by any other person or structure recognised in terms of customary law for purposes of the resolution of disputes; or
- (ii) that has been dealt with by any person or structure in terms of subparagraph (i) but there has not been any resolution of that dispute.

(b) A traditional court may not hear and determine a dispute which—

- (i) is being investigated by the South African Police Service;
- (ii) is pending before any other traditional court or any other court; or
- (iii) has already been finalised by a court, which means that a verdict has been given in a criminal matter or final order has been made by the court in a civil matter.

(3) A traditional court may only determine or make an order in terms of section 8 in respect of any matter referred to in Schedule 2 to this Act: Provided that if a person approaches the traditional court for any relief in respect of any matter not referred to in Schedule 2 and the matter is placed before the court, nothing precludes such a traditional court from—

- (a) counselling, assisting or guiding a party to the dispute who has approached it; or
- (b) facilitating the referral of the matter to another traditional court, court or an appropriate institution or organisation, and provided it is done in a manner that does not have the potential of influencing the proceedings or outcome of the matter in a court or forum which has jurisdiction to hear the matter.

(4) (a) The clerk of the traditional court must, if a party, after having been duly summoned to appear in and attend the proceedings

of the traditional court, fails to so appear and attend such proceedings, make a determination to that effect and must thereafter refer the matter to a justice of the peace appointed by the Minister in terms of section 2 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963), for purposes of this Act, who must deal with the matter in terms of the powers and duties as may be conferred or imposed on him or her under section 3 of the Justices of the Peace and Commissioners of Oaths Act, 1963.

(b) The role of the justice of the peace referred to in paragraph (a) is to facilitate compliance with the summons and for this purpose the justice of the peace has the following powers:

- (i) If non-compliance is not due to fault on the part of the party against whom the summons was issued, the power to negotiate with the party to comply with the summons; and
- (ii) if non-compliance is due to fault on the part of the party against whom the summons was issued, the power to request the traditional court to have the matter transferred to the Magistrate's Court having jurisdiction, as contemplated in section 14(1)(a).".

CLAUSE 5

1. On page 7, in line 6, to omit "Members of a" and to substitute "A"
2. On page 7, in line 9, to omit "convened" and to substitute "presided over".
3. On page 7, in line 49, to omit "convening" and to substitute "presiding over".

CLAUSE 6

1. Clause rejected.

NEW CLAUSE

1. That the following be a new Clause 6:

"Nature of traditional courts

6. (1) Traditional courts—

- (a) are courts of law the purpose of which is to promote the equitable and fair resolution of certain disputes, in a manner that is underpinned by the value system applicable in customary law; and
- (b) function in accordance with customary law, subject to the Constitution.

(2) Traditional courts must be constituted and function under customary law so as to—

- (a) promote access to justice;
 - (b) prevent conflict;
 - (c) maintain harmony; and
 - (d) resolve disputes where they have occurred,
- in a manner that promotes restorative justice, Ubuntu, peaceful co-existence and reconciliation, in accordance with constitutional imperatives and the provisions of this Act.

(3) The traditional court system is made up of the following levels of traditional leadership as contemplated in the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) and recognised in terms of customary law:

- (a) a headman or headwoman's court;