

Reflections on the TCB campaign and methodologies used, in the light of future challenges

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Speaking out against all odds – reflections on the Traditional Courts Bill provincial public hearings

This reflection will focus on the provincial public hearings on the Traditional Courts Bill (B1-2012) which occurred in April and May of 2012. These hearing were a really important point in the campaign. Not only were they around which to rally and mobilise people. They also taught us really important positive and negative lessons. Before delving into the actual hearings themselves it is important to speak briefly about the climate within which the hearings took place. A key factor that should be borne in mind in this regard is the impact of the traditional that have been enacted since 2003. The public hearings took place 7 years after the Traditional Leadership and Governance Framework Act (TLGFA) was enacted. This law coupled with the provincial laws enacted in 2005 has had a real impact in upping chiefly power and eliciting arrogant behaviour from some chiefs. It is this reality and people's experience of it that contributed to community members being so concerned and prepared to challenge the bill. Perhaps if the TCB had come before these laws resuscitated chiefly power, people would not have seen it as a threat to their rights and citizenship. Although the hearings were an important point in the campaign they were fraught with problems. The ordinary rural people who attended the hearings in an attempt to exercise their right to participate in our democracy had to overcome a number of challenges. Some of which are discussed below.

The problems and obstacles

1. Inadequate advertising and venue changes

In certain provinces there were serious problems with the manner in which the hearings were advertised. It was sometimes the case that those who would be most affected by the bill did not know about the hearings. In fact this was exactly the case in Mpumalanga, where monitors discovered that many people did not know that public hearings were going to be taking place, as there had been inadequate advertising. Community members in the Northern Cape expressed dissatisfaction with both the manner in which the hearing was publicised and the location of the venue. The hearing in this province was advertised at very short notice. One member of the community described how they had found out about the hearing as follows *'I was walking in town today and saw posters saying there is a public hearing. The advert was put up yesterday. Today I'm told that I have 10 minutes to read through it and vote on the bill. This bill says I can work for free for a chief. How can such a decision be done in 10 min?'*

Added challenges were the sudden venue changes; at the hearing in Badplaas, Mpumalanga there was a change of venue that was not publicised. Members of the surrounding communities travelled to the venue given by the Mpumalanga legislature to attend the hearing. After waiting for more than an hour it came to light that the venue had been changed to the Mpfuluzi Hall in Mayflower some 40 kilometres away. This meant that for those who could not travel the 40 kilometres at the drop of a hat, there would be no access to the hearing. In KwaZulu Natal too there was a venue change for the hearing in Port

Shepstone. Here some community members heard about the change en route and were able to alter their travel plans. The venue change in Port Shepstone was doubly disadvantageous because the new venue was located in the city centre, while the old venue had been more accessible to those in the rural areas.

2. Manner in which the Bill was explained and the stifling of peoples inputs

While the explanations of the bill varied somewhat in length the effect was generally the same, the Bill would be portrayed in a glowing light with many of its shortcomings being glossed over. This ended up influencing people's perceptions of the bill. A monitor at the hearings in Mthatha, Eastern Cape observed that *'It is important to note that the positive light in which the Legislature's Legal Representative interpreted the contents of the Bill helped in creating the apparent positive light the Bill was viewed in throughout the hearing.'*

On many occasions those chairing the proceedings would try to restrict people's input by requiring that they speak to a particular provision in the bill, this would be difficult to do if you are not familiar with the bill. Such instructions would mean that only those who knew with certainty that their input was directly relevant to the bill, or those speaking to a specific provision could speak freely. These instructions did not apply to traditional leaders, who were able to speak freely regardless of relevance and specificity. This difficulty was aggravated by the fact that many rural people had not had an opportunity to engage with the bill prior to the hearings. In many other provinces, including those that had public education, people attending the hearings often complained that they had not been given adequate time to engage with and understand the Bill. In addition people wanted to make general submissions in which they spoke of how the bill would exacerbate their situations. When they tried to do this their inputs were ruled to be irrelevant. An example of this was observed at the hearing in Bronkhorstspuit, Gauteng where a monitor recorded the following: *'...old men spoke of land dispossession and were really pleading and lamenting, but after listening for a few minutes the chairperson advised him that this is not the forum saying: "We feel for you baba, but we cannot do anything about this – we are discussing the TCB.'*

3. The intimidating atmosphere and the presence of Chiefs

Across the hearings officials would defend the bill and made very intimidating remarks. For example in Nkomazi, Mpumalanga people were told that if they did not like the bill they should leave the country. In the same province at the hearings in Kabokweni all people who stood up to speak were photographed up close from all angles. When people said that the bill would undermine their rights as it was in conflict with the Constitution, the response was that this was a contradiction as no legislation can be contrary to the Constitution.

The presence of chiefs at some hearings had a clear impact on the atmosphere of the hearing. There were a fair amount of hearings in various provinces at which people were warned to take note of how they spoke in the presence of Chiefs and how they referred to the Chiefs. This was particularly pertinent in the Eastern Cape and Mpumalanga. In KwaZulu Natal this special treatment of chiefs was characterised by shows of great deference towards them. Proceedings would be put on hold in order for chiefs who had arrived late to be introduced. Members of the provincial legislature would often express gratitude to chiefs for taking the time to attend these hearings.

At hearings in Matatiele and Mthatha the Chair allowed the chiefs in attendance to make the closing statements. The chairperson in Mthatha went so far as to say that to speak after the chief has spoken would be disrespectful thus the hearing must end. This can be contrasted with the Potchefstroom, NW hearing where no chiefs were noted as being present. When the Chair attempted to close the meeting, because there were no voices speaking out in favour of the bill, people insisted on continuing and kept on speaking. In Bushbuckridge, MPL there were further differences in the treatment of chiefs and rural people. Here the seating arrangements separated the chiefs and the members of the public. An observer at this hearing noted that this created an intimidating environment.

Small victories

Through the mobilisation work done by our rural partners and rural community leaders people attended the hearings and they spoke out against the bill. Despite the various problems people made efforts to attend. The hearings showed that once people were there, very little was going to stop them from speaking out. Rural people exercised ownership over the provincial hearing process in a variety of ways:

- The hearings were all conducted in the vernacular languages of the various provinces this immediately broadened the scope of who could participate.
- People spoke about the Constitution and how this is not the democracy that they fought for. They emphasised that this was a battle that they had already fought and won. This contradicts assertions by some leaders that the Constitution is a foreign, Western document that people cannot relate to their lives.
- A deep sense of betrayal emerged as people expressed surprise at the fact that the bill flew in the face of all that they had fought for.
- In attending the hearings and speaking out against the bill in the presence of their traditional leaders people showed a willingness to take risks in order to be heard. Given the very real power relations on the ground speaking out in this way meant going out on a limb for many community members.
- People would challenge attempts by officials to stifle or direct their input this is illustrated in various instances. In Bushbuckridge, Mpumalanga for example the Chair was twice told by members of the public to allow people to make their submissions, and not to dictate to them.
- The majority of people who spoke were rural community members as opposed to NGO's. The speakers were the men and women who live in the communities that will be affected by the bill. This lends credibility and authenticity to the opinions expressed at the hearings something that one hopes cannot be ignored by the law-makers.

Ultimately even though the provincial hearings were flawed they were a positive experience for many rural people and they sent a strong message to Parliament. Four provinces: Gauteng, Western Cape, Eastern Cape and the North West are opposed to the bill. Limpopo, Free State, Northern Cape and KwaZulu Natal voted in favour of the bill, but all suggested various conflicting amendments. Mpumalanga requested an extension as it had not yet formulated a

negotiating mandate. These negotiating mandates should be claimed by rural people as a small victory, they are the result of their commitment to protecting their rights and citizenship. Currently the Select Committee is yet to consider the mandates that emerged from the provinces. If these negotiating mandates are not considered that would be unfair to the rural people who attended the hearings against all odds and voiced their views. We can only hope that the Committee will consider the negotiating mandates and assign to them the authority that they deserve given the fact that the people have spoken.