REFLECTIONS ON THE TCB CAMPAIGN IN LIMPOPO

Shirhami Shirinda
Legal Resources Centre (Legal Researcher)

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My name is Shirhami Shirinda from Shitaci village. Shitaci village is a traditional community situated in the former Gazankulu Bantustan under Bungeni Traditional Authority, currently part of the Vhembe district of Limpopo province.

I am the chairperson of Shitaci royal family and have extensive practical experience on how customary dispute resolutions operate. Shitaci village is part of communities that have been incorporated in 1956 into Bungeni Tribal Authority following the promulgation of the Bantu Authority Act 50 of 1951. I am an admitted advocate, currently employed as a Legal Researcher with the Legal Resources Centre.

This paper presents a reflection of the outcome of a successful campaign launched by communities of Limpopo on the Traditional Courts Bill. I hope to show how communities, particularly, when they are united around a burning issue can be heard, even when the authorities try to supress their views. I hope, too, that it will serve as a lesson for how communities can successfully use the parliamentary public

participation mechanisms to democratise the legislative process.

I shall begin by giving some background on Limpopo.

Limpopo traditional communities consist of three ethnic groups distinguished by mostly language; the Northern Sotho (Sepedi), Shangaan (Tsonga) and Venda (Tshivenda). The incorporation of these people into Bantustans has its origin from the 1913 Land Act that forced rural people in the country to live in the 8% of land as reserves which was only increased for the use by Africans by 5% in 1936.

In Limpopo much of the land remained in the ownership of the state through the South African Development Trust held in trust for tribes under 'recognised' chiefs. Other Black people, who were evicted outside the reserves, were again dumped into the crowded Bantustans.

In Limpopo customary dispute resolution is practiced in various levels started from the family, clan to other village forums, before a headman and/or chief is involved. The process usually takes place under trees. Headmen and chiefs are not in charge of the process. Their role includes ensuring that resolutions taken by community members are followed, rules fairly applied and the headman or chief confirms decisions taken at the end of the proceedings. This practice is

continuing today. Its main objective is amongst others, towards reconciliation and maintenance or even improvement of social relationships.

The Black Administration Act 38 of 1927 was the first legal interference with the customary disputes resolution mechanisms wherein selected traditional leaders were promoted into status of chiefs while some were given status of independent headmen and others demote to no status. In terms of the provisions of this Act, 'recognized' chiefs have authority to adjudicate criminal and civil matters through imposed westernized tribal courts. These courts are held at tribal offices established in terms of the Bantu Authority Act of 1951. Limpopo has many such selected chiefs that were and still recognized by the government. They perform their duties as per the instructions of the government who pays them salaries.

The democratic government has in 2003 promulgated Traditional Leadership Government and Framework Act, thus confirming the tribal boundaries that were established and enforced by the apartheid government. The Act reinforces the recognized chiefs and their crony headmen's power and they continue to perform duties over subjects including communities who were incorporated by force into their jurisdiction by the apartheid government. In addition the TLGFA ban the Community Authorities wherein the structure was established in a way that chairmanship thereon was

elected every five years. These authorities had some elements of democracy.

The Kgatla Commission for Limpopo, as it is known, is in the process of investigating 568 disputes involving senior traditional leaders, headmen and headwomen in the province. These disputes are really about boundary, succession and recognition of traditional leaders.

In 2008 the government introduced the Traditional Courts Bill that was withdrawn after it was first introduced in the National Assembly. In 2012 the Bill was again introduced in the National Council of Provinces. Like in other provinces, rural communities of Limpopo had no information about the bill because the government only consulted with state recognized chiefs. No effort was made to disseminate information to the ordinary people on the ground.

As a result, the LRC and CLS held briefing and scoping meetings with various organizations and groups that work in different parts of Limpopo province. A steering committee was established at a LRC/ CLS briefing meeting, which, with funding from Magi, organized 2 follow up information dissemination workshops with other community members who weren't able to attend the initial briefing meeting. The workshops were held in Polokwane. Participants included members of CPAs, representatives of unrecognized traditional leaders, CBOs and land forums from five municipal districts.

In the workshops participants expressed themselves on the content of custom, living customary law including the customary dispute resolution mechanisms that their respective communities utilize. The discussion brought to the surface how the content of customary law is determined, interpreted and applied customarily. It became clear that chiefs have very specific ceremonial powers but that customary dispute resolution processes are exercised at layered levels of authority including at family, village and sub-group levels.

Some community members spoke about the bill on local radio stations. ETV covered a live customary hearing with communities at Mahatlani village that was broadcast on number of times on national television. The German TV also covered customary dispute resolution meeting that was held at Njhakanjhaka village.

In contrast, the provincial legislature's so called public hearings were held in three, hard to reach, urban venues, far from where rural people actually live. People were left to make their own way to these meetings.

In addition, the meetings were held in an intimidating manner; chairpersons of the hearings constantly interrupted speakers who were speaking against the bill, they forced participants to mention their names and warned them to respect chiefs when making comments. People who identified themselves as from royal families and traditional

councils had preferential treatments; they were given more time to deliberate on their views and encouraged to talk of advantages that the bill would offer. Chiefs were greeted by name, showing their comrade-type relationship to the legislature, making them feel welcome. The atmosphere was one where ordinary people did not feel that they were on equal footing to the officially recognized chiefs.

In the Thohoyandou venue where the Vhembe district hearing took place, a recognized chief was given time at the end of the hearing to respond to what people had said as if participants were addressing their submissions to the recognized chiefs, whereas it was, of course, the legislature who should have been responding. This gave them the impression that the legislature was almost apologetic for the presence of the rural people at the meetings. At the same hearing, there was a person who was given a slot, claiming to be a representative of a network of CBOs in the district. She, of course, spoke positively about all the provisions in the bill. I am very familiar with all the CBO networks in the province, and this woman was unknown to me. I have never even heard of the network she referred to. Meanwhile, Sonke gender justice, a nationally known network with representatives in the hearings, was not given an opportunity to speak.

Towards the end, an announcement was made informing recognized chiefs, who have used their own cars, to collect forms that they were to complete to claim kilometers they have travelled to attend the hearing. Clearly, then, the parliamentary legislature incurred the costs of transporting them to the hearing.

Had it not been for the efforts of the Legal Resources Centre (LRC) and the Centre for Law and Society (CLS) who assisted Limpopo communities to access community mobilization funding, rural communities who are generally poor, would not have been able to organize themselves through workshops where they effectively refresh their understanding of the TCB and able to participate at the public hearings.

That funding also made it possible for a number of communities and individuals to produce written submissions for the NCOP hearings in Cape Town. In addition, Hosi Mahatlani from Mahatlani community, Andries Sihlangu from Manyeleti Land Claim community, Lamson Maluleke from Makuleke CPA and Patrick Mashego from Sekhukhune Land Forum gave oral submissions at the NCOP in Cape Town.

Without funding that enabled Limpopo communities to meet, their views would remain unknown to parliamentarians and the Limpopo legislature would have voted favorably to the passing of the bill.