

Traditional Courts Bill

Are we citizens or subjects?

The Traditional Courts Bill (TCB) centralises power in the hands of chiefs, distorts custom, enables corruption, undermines local government and brings back apartheid boundaries, argues the **South African Municipal Workers Union**.

The TCB is meant to support customary courts in rural areas. Yet it says nothing about the role and participation that ordinary people currently have in the village level hearings (*kgotla*, *ibandla*) that resolve dispute in rural areas. Instead, it changes their nature by centralising all power to the presiding officer who must be a senior traditional leader or his delegate.

Judgements by traditional leaders would have the same legal status as magistrate courts' rulings. The chief as presiding officer is given the autocratic power to order anyone in his area to perform unpaid labour, and to strip people of customary entitlements, such as land rights and community membership.

In many ways the Bill is similar to the Bantu Authorities Act of 1951, of which Chief Albert Luthuli (African National Congress president from 1952 to 1967) wrote: 'The modes of government proposed are a caricature, they are neither democratic nor African. The Act makes our chiefs, quite straightforwardly and simply, into minor puppets and agents of the Big Dictator. They are answerable to him and to him only, never to their people.'

The Bill, by centralising power to senior traditional leaders, is out of step with traditional practices that involve a wide range of people participating in family and village level meetings to debate and resolve problems.

WHY AUTOCRATIC?

The Bill reflects the interests of those who had a say in drafting it. The Bill itself explains that it was drafted together with the National House of Traditional Leaders. Chiefs have long complained about their power and status being undermined by the Constitution. In particular they oppose elected local government having power in the former homelands, and insist that government should restore the powers they lost with the end of apartheid.

They have won some significant 'victories'. In 2003 the Traditional Leadership and Governance Framework Act resuscitated the contested tribal boundaries created by the Bantustan Authorities Act of 1951. The TCB uses these old tribal boundaries to define the jurisdiction of traditional courts.

The Communal Land Rights Act of 2004 would have given chiefs power over 'communal' land and enabled all privately-owned

land within the homelands (including land reform land) to be converted to 'tribal property' managed by chiefs. However, the Act was struck down by the Constitutional Court in 2010.

The rural communities who won that case are under threat, again from the TCB. The Bill makes it a criminal offence to stay away when summoned by the senior traditional leader. Those who complain about abuse of power, or challenge corruption could be summoned by the very people involved, whom the Bill empowers to unilaterally get rid of their accusers.

DOUBLE DISCRIMINATION

Black women have long borne the brunt of distorted customary law - suffering double discrimination. But from 1994 the balance of power in rural areas changed and many women began to participate actively in community forums, and even to claim and get residential sites for themselves. The symbolic victory of equality over racism, and democracy over apartheid created an environment that supported women's struggles.

The TCB and the Framework Act send the message that government has swung its support behind chiefly claims to

autocratic powers within the former homelands boundaries. This undoing changed the balance of power that enables women to speak for themselves in many rural areas.

The Bill entrenches the problems that women are often not allowed to speak for themselves in customary courts, but must depend on male relatives. It says men can represent women and vice versa, according to customary law. It therefore pretends to put men and women in an equal position, but nobody has ever heard of a wife representing her husband according to customary law.

This has serious consequences especially for widows, in cases involving distribution of assets belonging to their late husbands. Widows have to be represented by the same male relatives who are threatening them with eviction, or claiming their property. The Bill also does not ensure that women will be involved in debating cases, even though this would make the courts less intimidating for women and would also address the common problems of male elders siding with other men.

LOCAL GOVERNMENT

The Framework Act provides that traditional leaders and councils can be given roles in a wide range of areas in which government functions. It also provides that traditional councils can deliver services to rural people through 'service delivery agreements' with municipalities.

Effectively the new laws create a fourth tier of government headed by chiefs. In addition, the TCB creates a separate legal regime for such areas. People living in rural areas become tribal subjects rather than South African citizens.

Those living within the tribal boundaries of the Bantustans established by the Bantu Authorities Act 1951 will be affected. These areas are by far the poorest in South Africa and the majority of the people who live there are women who make up 59%. The Bill also affects people not living in these areas who may be summoned before the traditional court if accused of a local offence. Refusal to appear is considered a criminal offence.

It is not surprising that rural people complain that government is throwing them away because they are poor.

In the process it is throwing away the vision of a unitary South Africa with equal citizenship that was achieved in 1994, and trading it for the old Bantustan map of authoritarian chiefly power. So we are all affected. ■

Disturbing ANCYL goings on

The African National Congress Youth League (ANCYL) has lost its way by divorcing itself from the mother body, writes **Mothusi Tsitsing**.

The ANCYL of today is unlike that of comrade Tata Nelson Mandela, Walter Sisulu, Oliver Tambo and Anton Lembede. The ANCYL of Ronald Lamola continuously mobilises against policies and organisational principles of its mother body, the ANC.

It is evidently clear that this thorny behaviour is a danger to our organisation. It is like a stupid son who keeps on abusing his mother in the name freedom of expression and demands for change to his own family structure.

We can illustrate this through national elections which we won by 62.6% in 1994, 66.4% in 1999 and 65.9% in 2009. In the elections the voice of young people through the ANCYL and the Progressive Youth Alliance structures were central in mobilising young people around the banner of the ANC.

But since Julius Malema took over the leadership reins as president of the Youth League, the voice of the ANCYL was replaced by that of Malema the individual. The ANCYL deteriorated badly, declining to a dangerous anarchic state towards its mother body. One would be forgiven for mistaking it to be the youth league of the Democratic Alliance (DA).

The decline of the Youth League has reached such low levels that if things remain the way they are we are not going to produce leaders who will take the ANC to the 'promised land'; that united, non-