

**Traditional Courts Bill Workshop  
Meeting in Madikwe North West with LAMOSA  
(Land Access Movement of South Africa)  
25 and 26 February 2009**

Report translated and transcribed by Naledi Seripe and edited by Advice Lolwana

**OPENING PRAYER**

**WELCOME AND INTRODUCTION BY FACILITATORS:** A leader from LAMOSA officially welcomes and introduces LAMOSA and other delegates to the workshop.

**LAMOSA – Connie Mogale:** Thank you and welcome to everyone. My name is Connie Mogale and I represent LAMOSA. My task for now is to facilitate the opening of the workshop and further introduce other people who will facilitate in further stages of the workshop. I thus introduce to you delegates from Legal Resources Centre, who bring in expertise on legal matters.

**LEGAL RESOURCES CENTRE introduces its staff**

**Connie:** I would like to reiterate the reason for the workshop, and that is to discuss the Traditional Court Bill, which is a platform for the community to hand in their thoughts before the Bill can become law i.e. Act.

**LAMOSA leader:** So, there is a thought that there should be a law that governs traditional courts, thus the reason we are here. The intention of such a law would be to define the power that the traditional courts should and could have as compared to mainstream courts. The main reason also, as we spoke of communal land rights, is we realized that most people that are affected are women and it is shown that, in the past, women have been excluded from a lot of activities in any community including the traditional courts, so much that when laws were put in place, the law itself was more oppressive to women.

On that note, this meeting is especially for women. It is imperative that there is a change where women participate more in such issues, which explains the reason why a lot of women were invited to this workshop - even though we also have men amongst us, which is fine. Moreover, we need women to understand how the law that is being discussed affects them - will it still be oppressive to women or not? That is what will be a main focus.

Should anyone have queries, I advise that they voice them out right here so that those issues are noted down and discussed in preparation for the Provincial workshops so when you go to those workshops you have an understanding of what is the subject for the day.

*All delegates introduces themselves and the communities/organizations they represent*

**LRC:** We would like to start by hearing your experiences with traditional courts. The pros, the cons, good, bad, problems and views. Later we will look into the Bill itself. I think it is best that you divide into three groups and discuss your views and feelings about the courts according to your experience. Furthermore, we would like the permission of the delegates to use the tape recording at a later stage as a form of reference and confirmation of consultations with the concerned communities. This will also enable us to make a report.

*Permission was granted by the delegates to the facilitators to record the discussions.*

I think it would be best if these discussions are held in groups and presented by chosen individuals. Not taking anything away from the views of the men here and their experiences but the main issue at hand is to know how the women feel about the traditional courts and their own roles in them. That is really the bone of contention at the moment.

**Leader from LAMOSA:** One thing is that, we are discussing the Courts and not the chiefs, and that should be clear. We need to hear about the experiences women face with the traditional courts "makgotla". Do they feel adequately represented? For example, what is the

procedure if a single woman needs a stand to build a house for her family? Is she given the same treatment as a man or a chance for that matter? Those are the issues we are here to discuss, and I believe the women here should use this opportunity to address their issues with the courts and NOT the chief.

**Delegate:** I think that it would be unfair if we were to separate the role of the traditional courts from that of the chiefs. The truth is in every traditional court, the chief will be the ultimate decision maker, in essence, no court can take any decision without the chief's permission or blessings.

**Connie:** I agree but it is important that when we say traditional court, we mean the whole collective organization which also includes the chief. It would be unfair to look at the chief as an individual away from the court, when in fact he is part of it.

**LRC:** I would like to advise that when the delegates express their views on the courts to please state the place and period of the court. We want to really understand who forms part of the court. Is the chief always there? How many times do they meet? For what offences do they hand out sentences? How do people get charged? It is important because it is going to vary from place to place and we need to know all the details. Our primary objective is the role that the women play in these courts or lack of, for that matter.

**Woman Delegate:** Greeting to everyone and all the visitors from all the villages represented. I am from De Braak. Where I come from, like in many rural areas where there a traditional court, women are largely marginalized. However, I am glad that you facilitators are here to educate us on the roles we should be playing in these courts and the community at large. I am one of only two women who are part of the court in my area. For some time we have been fighting tirelessly for the court to level the field as far as gender representation is concerned. There need to be equal numbers of women as compared to men in the court.

**Connie:** I just need to know from everyone if it would be best to continue just giving anyone a platform to speak now just as the previous speaker has done or should we break into groups as earlier suggested!

*The delegates decide it would be best to work in groups first and then come back with collective presentations after discussing and deliberating.*

#### **Group 1. Presentation by woman from Baphalane ba Mantserre.**

**Woman Delegate:** I would first like to say that the courts have in fact done a lot of good for the community and I would like to share those first. I must acknowledge the fact that a lot of the development in our areas such as building of offices etc. is due to their tireless work and engagement with higher authorities.

However, one of the downsides of these courts is how they allocate land to women. At the moment a woman has to be at least 45 years old for her to be given a piece of land to build a house on. One other thing is that the court meets once a week and normally when I as a woman go to lay a charge at the court, I will be sent back to "kgosana badikgoro" (advisors to the king) to report the charge to them instead.

Most of these "kgosana" are old and sickly, which then automatically means I have to wait longer for my case to be heard as the old men do not have the energy to help me immediately. At times you would find that because there is no proper women representation in the court, a lot of men members would intimidate the women who have laid a charge against a man.

Another issue is that, as a single woman I now decide to have a male partner who comes to live with me. At a later stage my partner needs the court to approve a proof of residence document for him, which he will use to open accounts at banks or stores. Now, they always turn them down based on the fact that he is not originally from here and has now "shacked-

up" with a local woman. I think should tables be turned, women who have now moved in with a local man would not go through the same hassle.

Widowers are allowed to lay charges in courts while a widow is not allowed anywhere near the courts during her mourning period. If you are a single woman, you are not allowed in court whereas it does not apply to single men. Somehow, daughters-in-law are also marginalized by their marital families in their new communities.

**Group 2 Presentation by woman from Ramatlabama:** Although there are women in our court, women are outnumbered by the men. There is also a general distrust and lack of co-operation between the court and the community.

The court authorities seem to take decisions based on what they feel is okay without acknowledging the suggestions and advice of the community members – and this is not gender specific (it applies to men & women).

Women are always marginalized when it comes to discussions about development in the area as they are always the last to be told of the developments. Women are at loggerheads with men in the courts due to men's involvement in local taverns which they allow to operate 24 hours a day, and which encourages substance abuse. Youth walk in the streets even on Sundays past the church, and the traditional council sees all this misbehaviour, yet fails to control the behaviour of our youth.

The courts also refuse our own youth permission to utilize the hall and other recreational facilities and yet let youth from Mafikeng use our facilities in Ramatlabama in exchange for money. It is a problem in that, in as much as the authorities are receiving some monetary income in secret towards rental of the hall; nothing goes towards re-developing/fixing it (for example windows are broken and it looks like a dungeon).

**LRC (Interjects):** I just need to know if you as a community have in fact taken this matter to the traditional court "lekgotla" or even "kgosana" to alert them of your disapproval with regard to the running of the hall and other facilities – as to why the Mafikeng youth can easily access the hall but not the youth in Ramatlabama.

**Back to the group:** No, we have not taken it any further due to the fact that we, as women, are not given the opportunity to voice our concern. For example in meetings such as this one, when a woman has her hand up she gets ignored and instead a man right in the back who just raised his hand will be given an opportunity to talk – eventually you would leave the meeting in shame and disappointment yet you went to the meeting to try to raise your concerns. That is why we are so discouraged to even engage with the traditional court. These courts are just failing us, generally.

**Male delegate:** Thanks for the opportunity. I am from Batloug. Yes, I would like to confirm the lack of co-operation from these courts, just as the lady has said. I am a farmer and so are many of us. I have a herd of cattle and we normally base our cattle just outside our village for grazing and breeding purposes. Due to a lot of theft we have now been forced to move our cattle into our own yards. Not too long ago, we received letters from the courts, informing us that we should remove them from our yards and back into the outskirts of our village. We were not consulted on the decision taken; we were not even given an opportunity to voice our concerns on the matter. This is clearly the type of people we are dealing with here. I believe the court should allocate a safe suitable place for our cattle. The same type of behaviour of non-consultation was apparent recently when a fence was built around the new cemetery. The community was forced to contribute money for the fence and yet an old fence was used - it is basically rusty and old. The courts just do as they please and do not have respect for the community at large.

I just also need to say that despite all the negative stuff, there has been some positive too. For example, we have been able to have access to clean and purified water. It is also a good thing to have street lights, which has helped us in decreasing the level of crime in our area, as a lot of violent crimes happen during dark hours. Some of our children have been helped in

getting employment in certain government departments such as the South African Police Services.

**LRC:** I just need to understand the source of most these problems. Are the problems with the traditional authority or the tribal court? What is happening with the tribal court itself? Are there good things that the courts have done?

**Connie:** There is obviously a difference between a traditional authority and a tribal court. We need to be discussing the functions of the tribal court. For example, a speaker earlier spoke about the fact that their cattle had to be moved and the court did not consult them on that issue.

**Leader from LAMOSA:** We need to acknowledge that when it comes to services such as water, electricity, roads etc., the tribal court or traditional authority are not the ultimate driving organization, the municipality is. Yes, they may have an influence in ensuring that those services are implemented and executed but do not hold the deciding power. What the tribal court deals with are cases among the community and over their assets. For example, the issue of the cattle where the court failed to consult the community and yet want to use the SAPS to enforce their rulings. We need to discuss cases which affect our households.

The cases we want to hear of are for example cases of conflicts at home, for example a woman goes to court injured and yet she would be referred to the kgosana and the kgosana would easily tell the woman that there would be a kgotla on Monday following week instead of dealing with the matter immediately. These are the issues we feel are part of the oppression of women in traditional courts.

But maybe with time we will hear more from you – let's continue.

**Back to the group:** The court also deals with civil cases. For example, should a single woman inherit some belongings such as cattle, sheep etc. As the sole surviving member of the family, the daughter is the rightful beneficiary of the estate. Yet, when such matters are brought to the court, the woman will be undermined and asked if she could be accompanied by uncles or any other male relatives.

**LAMOSA leader:** Yes, I acknowledge that. We need to remember that traditionally a woman child was not allowed to inherit anything from her parents. She was instead encouraged to get married and together with her new husband build their own wealth. Nowadays we live in a new society, where we should all have equal rights and yet women are still subjected to this type of treatment. The tribal courts are thereby undermining equal rights.

**Back to the group:** When you raise a point as a woman, most men (if not all) do not agree with a point you make. One of the big problems is that there are not set procedure for certain problems. We do not know who to consult for certain problems. At times when we need the support of men in the community to help us with the problems at the tribal court, they do not come in numbers. I think they are reluctant and scared of victimization and intimidation.

Other problems and points are:

- Also, letters do get to the chief, but do not get to the community.
- Are chiefs elected?
- Could we have a female chief?

**LAMOSA leader:** I would like to hear more experiences about the tribal court, as a court where people are charged and tried. We need to hear how these cases are heard and resolved.

#### ***Back to the group***

I would like to add to the point one of the women has raised so far. It is indeed true that we are being oppressed. For example; I am a member of a committee which is responsible for water affairs in my area. We are tasked with collecting payments from the community for

water used. The fee is R5 a month. We encounter problems with collecting the money owed. We have sought the tribal courts help and yet we are not assisted adequately. Even with serious issues such as water, we are constantly overlooked and undermined. There is also alcohol abuse and it doesn't help how much women can complain, the chief doesn't do much to help us as women

**LAMOSIA leader:** I hear your points, but I need to make a point that we should understand that the traditional council is the steering council for the community. Now our main focus is to look at the courts and whether they handle cases and reports accordingly. Are the judgments and conclusions oppressive to other groups and in support to particular individuals/groups?

We are going to hand over to the Men's group.

**Facilitator:** *Asked whether the courts are still operating just like in the past where men and women used to be divided into groups (where men would sit alone on one side alone and women on the other side) .And also when a woman is not married, whether her point is taken even less seriously than that of a married woman. He also asked if the traditional courts are creating any room for change or whether change is sluggish.*

**Back to group:** To come back to the question of whether a woman can lead or become a headman or principal, the reason we, as women, consider this important is because of the way in which things are dragging at present. Yesterday we had a meeting discussing the state of the things in our community. Most developments in our area are really sad in that secondary schools are closing down and as we are watching that, there was computer theft. Can women not be given an opportunity to take over the leadership for a while so that we see if their leadership leads to changes.

I think there is generally a lack of good leaders in these courts. I believe these leaders just do not have the necessary skills to lead the community. Some of them are corrupt and dishonest. For example, a school was recently closed down and yet the leaders wanted to take the computers from the school and use them for their own benefits.

**Group 3 (Men's group):** I have two points to make and these points are relevant to the question you are asking. It is that, when one has a point to make – s/he has to be given a chance to make his/her point.

Our courts are unlike formal courts in that when judgment is given, it is founded on creating peace between the conflicting parties, rather than influencing the parties to have even more serious fights. This is an advantage of our courts.

I think that the court gives people an opportunity to voice their own version of events. I love the fact that the court upholds traditional values. For example, should one person steal a cow from another person, that person will have to return not one cow but two, and there is a Setswana idiom which supports that act.

One of the downsides of tribal courts is that they do not have enough power to pursue certain issues. For example, the municipality would offer a services tender to an outside person who would employ locals. Yet this person would not pay the locals and the tribal court would not be able to prosecute an outsider. Instead this person would rock-up in his fancy car (*Pajero*), and as the courts fear the status indicated by the car, they tend to let such outsiders go scot-free without paying the locals.

Another thing is that the courts charge you R50 to hear your case and yet drag their feet to solve it. You lost your R50, your case hasn't be attended to and you know nothing about the verdict of the case. Then one day they decide to close the case without you knowing about this decision.

**LRC:** How does the court fine you should you be found guilty? Do you just pay the person you owe or is there a fine also for the court?

**Back to the group:** Yes there are monetary fines or even part of your herd (cattle). But you do not pay both the court fees and the fines (e.g.: if you are found guilty for stealing a cow, you'll just give the cow back and partner it with one from your kraal - that's all).

**LRC:** When we visited KwaZulu- Natal, we met a lot of women groups. They said that a good thing about the courts is that they are close by, even though they wanted more women representations in these courts. Over here, I am getting a feeling that the courts are considered to be ineffective and incompetent. Is that how you feel about it?

**Back to the group:** Yes the courts are ineffective because they are not transparent. When a person who has done wrong in the community is fined say e.g.: a cow or even money, we as the community are not made aware of the where the fine goes to. The fine basically goes into a dark hole because it is not recorded anywhere or reported back to the community.

They undermine the women and the community at large. They are dictatorial. The courts also drag their feet on the easiest of cases and solve the difficult ones more quickly.

**Leader from LAMOSA:** Are you thus saying you would rather use the magistrate's court than the tribal court?

**Back to the group:** Yes, because these courts are not being run properly. There is a lot of preferential treatment as far as gender and status. There is just no equality. I think it would be better if there could be uniform legislation to guide us on how the tribal courts should be run. There is just no expertise and there is a lack of interpersonal skills from the people in the courts.

I think the courts must be dissolved and rebuilt. There is a lot of chopping and changing of members in the courts. A lot of the court members bring their friends and have them as fellow members. They end up not following the traditional ways and do just as they please. There is also a lot of corruption among the court members. They have become too dishonest and disloyal to the values and morals of the community.

**Another group member:** I am a member of the court and yes we have our advantages and disadvantages. We need to work closely with the community. We need to engage more women in our courts, because we will not have a successful nation without the mothers and sisters.

I believe we do not have a proper chieftaincy and that is why the courts can be incompetent. There are courts that are so corrupt that they would steal from the community. The chieftaincy does not care because their household is run with our tax and levies money. A lot of people in the chieftaincy do not deserve to be there because traditionally you need to be born into chieftaincy and not chosen into it. I was once in the *kgotla* and I was in a situation where I had to resign from my position, because I realized that I was made to bask at the fire that is made to even burn me – for there was selfishness in the whole entire leadership.

There are a lot of common folk in chieftaincy institutions and matters. More and more of these people consider themselves advisors to the chieftaincy and yet are only there for ulterior motives. The chieftaincy needs to be dissolved. I think it is total autocracy even in these times of democracy.

#### **Input on the Traditional Courts bill by the LRC**

**Response from Group 1:** The Chief is given too much power and it is not right. This will lead to a lot of exploitation. We won't be given a chance to voice out our opinions. The government should encourage the Chief to work more closely with the CPA and other civil associations in the community.

The chief should also lead the community in an equal manner.

Response from Group 2

The Chief must consult with the people a lot more. The Bill must be discussed with the Chief and his subjects. However, the Chief holds too much power as he plays judge and prosecutor and he might just abuse the power.

Rural communities need to have a larger role in guiding the government on how justice must work for them. The community feels much neglected and yet all laws in the country directly affect them. There should be more consistent communication in the form of meetings between the government and rural communities.

**LRC:** We need to comment more on the content of the Bill. We need to say what is wrong and what should be improved.

Some of you are representatives of certain constituencies and will need to report back to them. We need to rigorously know the reason for being in favour or against the Bill. It is important to know the details and the content of the Bill.

### **Back to the group**

**Input 1:** We need to distinguish what type of issues should be handled locally and which should go to the magistrate's court. It is important to also think about our priorities so that we know how we should look at the Bill.

**Input 2:** This law of the tribal courts is too protective of the courts. It offers no protection to the community. We need to make recommendations about the Bill and be promised that we get feedback before the law comes into effect.

**Input 3:** We all know that the Chief is our most senior person and was born into the Chieftaincy. I think we as the community should stop taking our own personal vendettas against the Chief. The Chief will always be there. There are certain types of problems which the tribal courts should deal with. For example, family disputes, because the Chief knows the people who live in his area and should be a perfect mediator. Little civil issues like disputes with a neighbour should not be taken to a magistrate's court. The magistrate's court should be dealing with more serious criminal matters. The convenience of tribal courts is also good, because of the mere fact that in our areas we have a lot of old people who hardly know how to get to these magistrate's courts which are far off from our rural areas. The tribal court cases should be open to the community and should not be done behind closed doors so as to promote transparency.

**Input 4:** I think there should be some sort of legislation that will govern how the Chiefs run the courts. The Chiefs should be in a position where they can be held accountable for the functions of the tribal court. If this is not done there will be continued exploitation and abuse of power by the tribal courts. The courts should consist of the chiefs and members of the community. There should be a code of conduct or a constitution of some sort.

Even though we feel neglected by the Chiefs, we cannot live without them as they will always be there. When it comes to the judgements in the tribal courts, we only see biased judgements. That is because in the olden days the punishments and judgements were handed down by the members of the community and not the Chief. The Chief should be there to mediate and arbitrate. We should make this work because some of us won't be able to live in the suburban areas and townships.

If there is a dispute in a family it should be solved with the family members involved because each family and tribe is unique and has its own values, morals and principles which are normally known and understood by the Chief and/or local tribal authority.

The tribal court should comprise of local knowledgeable people and not necessarily professionals. The power should not rest too much on the Chief, because should he/she have a personal vendetta against you, you are bound to have an unfair biased trial. The Chief must act according to the law and Constitution of the Republic of South Africa. The well-learned

people should not trample over those that are less-learned just because they are members of the court. The Chief should be of the people, and the people should be of their Chief. We should work hand in hand. The Bill must reflect those fundamental principles of trust, co-operation, integrity and loyalty to the law of South Africa.

The way that the olden day courts used to operate was effective. The only change that should be brought in is the inclusion of women on an equal basis. The court should consist of the community at large, presided by the Chief.

**Input 5:** I have been a victim of cattle theft and have experienced bad treatment from the Chiefs. As a woman I think we need to have more representation so we can have a fair voice in the running of the community. We need the Chief to be accountable, the court to be more representative - then only can we support the Bill. We need to have a way forward and be well-prepared at the provincial meeting.

We should voice out our concerns about the Bill as much as possible. There are a lot of organizations such as the Gender Commission that are mandated to pursue the interests of women. We should approach these so that we can have more voice in the matter. The Legal Resource Centre can also assist us with information on the legalities with regard to the Bill.

**Closure**