

**Traditional Courts Bill Workshop
Convened with TRAC Mpumalanga: Nelspruit, Mpumalanga
3 & 4 June 2009**

Report transcribed and transcribed by Tanya Charles with additional translation by Sindiso Mnisi and edited by Aninka Claassens

Participants from the following areas in Mpumalanga attended the workshop

Nkomazi, Schoemansdal, Bufflespruit, Mbombela, Moutse, Lydenburg, Dingwanyane, Bushbuckridge, Schagen, Hazyview, Mhiumeni, Mzinti, Mapulaneng, Denilton, Driekoppies.

Community Testimonies

Male speaker from Nkomazi: On the issue of traditional courts, I don't think it's the time that they can take it as a bill. It is too early because we, the communities, have not decided on the way forward yet. This is because all the laws that are being used by traditional leaders are the laws that were decided by them, not the law that we created. So, we want to know - can't they use the precedent of the IDP? With the IDP the community is consulted on how they want things to be, like this or to be like that and then they are prioritised. Let's recall the CLARA, the Communal Land Rights Act. The chiefs are the ones that decided before they consulted us. So we are saying, we as South Africans, in the rural areas or the communal lands, we want the big and small laws that refer to us, to start with us. And then it can become law. Thank you.

(A facilitator explains that this session is for people to talk about their experiences with traditional courts)

Woman from Nkomazi: Hello everyone. My problem concerns my husband. When I met my husband he was destitute. He had no home and told me that he had left his [first] wife and children. He found me with two daughters still at home and I told him that I could no longer have kids. He said that he did not mind. We have been together for 19 years. In 2006 he went home to Maputo claiming that he had to sort something out. On his return he told me that he had found his wife there and she was destitute and he wanted to bring her back to my home. I told him that I had found him with nothing, no stove. No, I had built and sent my kids to school. In 2007 he went back to Maputo and organised a passport for his wife. In 2008 April his wife arrived. He said that his wife should stay.

The neighbours told him that it was not proper for him to bring his first wife to his younger wife's home. He should find her her own home. He said that he was the man and the home was his. When I'd gone to the headmen previously, they told me that - because we'd been living together for so long - it cannot happen that the man not be made the master of the home and so his name was reflected. I lived like that and worked hard to build the home using my disability grant and plastered and tiled with money I got from selling wild fruit.

Now he ignored all that and said I should leave the home for his first wife. I took the matter to the headmen [village level customary court] and it was discussed. They told him that he's not doing the right thing; according to Swati tradition, should he die, he should not be buried from this home because it is the junior wife's house. They said: "You asked for a stand from this woman's children and they gave it to you; it has one room, and now they say they'll build you a two-room, so what's your problem?"

He said he didn't have money; and the other home [my existing home] was already complete - of course, it was completed by my efforts. He then took the case to the chief (who summoned my sons) and the chief said I should get out and leave my home because he had had a child with the other woman; I was therefore nothing and, if we went to the courts, I would have to leave with just my underwear/pinafore. I reported this to the social worker because he had also beaten me. The social worker said that I should not leave. My children told him that there was no way that I was moving.

His complaint was also that my children were not treating him well. At the Magistrate's Court (the famous Room 19) they told him he was old now ... did he mean that in so many years you now fetch that other wife and now you say that these children have beaten you? He said that the kids loved him and there were no problems with the kids, he'd been living in peace with their mother. They therefore told him to fix things; we went back home.

However we were then called back (with my children, who came back from their jobs) to the traditional court. There it was said that this man no longer wants these children; he only wants this woman. The kids asked what changed for this to now be the case.

I went up and down to different courts in my place (kaShongwe) with them ripping me apart, not telling me anything decent. They said that the others (children included) should leave and we should stay just the two of us. I said I couldn't. They asked why not? I said that it seemed that he did not want me.

We returned home, then [local headman] came out and said, look, this woman cannot be evicted; if he wants a polygynous arrangement then he must have two homes, each wife having their own, and he must maintain each. He said my husband and his first wife should accept the offer of my kids to provide her with a room, then two rooms, and buy her pots.

Three months went by and nothing happened; then we were called back to the traditional court. We told the story and they asked if he still loved me; he told them not anymore. He told them he did not want to sleep with me. They told him that even then we could still live together. He said that he no longer wanted me, categorically. The court decided that I should take all my belongings and leave. I refused. I told them that I had aged and had no strength. They threatened me to put me in the women's jail and I said that was ok. They said that my daughters should find me another stand and that I should not take anything from the home and that everything belonged to him as the man, no matter that it was bought by my money.

The social worker was present for all these proceedings. I told them that they have to lock me up. My kids got a car and got all my belongings and I left the home. I am being looked after by the social worker because my husband still refuses to look after me. I obtained no help from the chieftainship – they do things for others but not me. I need a new stand to build but have no strength. The social worker and I call him all the time; we're looking for a lawyer to fight my cause. A lot has happened and it's all in the files. If it weren't for the social worker's constant recording of what befell me as I continue to try and pursue my case, then I wouldn't be in this land, in South Africa, but I am of here by birth.

Woman from Shongwe: I am married into the area of Shongwe, of Diadla. I have not seen the chieftainship's help; they rather put me in trouble, which is how I ended up injured/disabled. In December 1994 my sister, the last born in my family, who drinks, was raped by a neighbour on the side of the road after they had been drinking together. This led to hard feelings with the neighbour's wife.

My sister went to the headman to lay a charge against this woman for going around telling people that she slept with her husband. My sister's husband was not there. They convicted my sister of seducing the man and said it was R300 for this matter not to be discussed until it reaches her husband. Unfortunately, with people who drink, the matter finally reached my brother-in-law. He was upset that my husband had gone with his wife to go and resolve the case before the headman, yet there was no one else from the family to go with her. I told my brother-in-law I didn't know anything, and he should speak to my husband. My brother-in-law said that 'a stick in the back will be sore'. On August 25th, my brother-in-law came and took my child and went and raped her. I went to go and report him and when I did so they had to remove the person from here, in Nelspruit; the person who had raped this child.

My husband went to call the chieftainship which came to look at her as if she were a wizard at her own home. He also then took me to the chieftainship [customary court] to advise it that he did not want me any longer. The chieftainship wrote this down. After that, when we returned from there, he broke my belongings and took a gun and shot me. He took a car and crashed into me. I went to the court to get a protection order but it didn't help me; the chieftainship went there also and helped him.

Even now, I have those [protection] papers; yet my child is dead [from HIV after the rape]. I don't have a place to live. And now he's taken the other child, the smaller one. The papers I got from the court and the customary court have been no help at all. I have papers which say that he should leave the home and I should return to the home, and papers that say he should no longer harass me – yet even now, he was there yesterday to harass me where I'm now living. The court doesn't help, the chieftainship doesn't either.

Input from Community Advice Centre director: To add to what has been said: this woman has been abused by the chieftainship, and abused at the Magistrate's court. Her problem is that she doesn't have money and can't do anything for herself. She has a lot of papers on maintenance that were never paid. Her husband bribes his way out of cases; sometimes he bribes people right in front of her and he doesn't even deny it; he admits to everything, saying to her 'you don't have money; the people here want money.' He bribes with crates of vegetables in front of her eyes then he'll turn and say, 'what will you give them? I have given them this.' So she has been abused a lot: she was abused by the chieftainship and abused by the law. There is no one who does not abuse her. And to add to that, the child that died, she died because she was raped and she became HIV positive. The person who raped this woman's daughter knew her very well and he knew what his HIV status was. But he still raped her and that child ended up dying.

Woman from Shongwe again: I went to the chieftainship and I asked them to bring us together to meet with my sister and they refused to bring us together to meet...And there is witchcraft in the midst; done before the chieftainship. The letters of the chieftainship, I've got them all. My husband has destroyed my belongings – things that I had worked for – I have nothing now; he burnt my things ... Other things, he would fetch from my family and come burn right in front of me. On Saturday, he took a child and put her in the car, then went to go crash into a pole with her, whether she is alive or what, I don't know. There's nowhere that the child can report.

Advice Centre Director: At the end of it all, she opened a rape case for her child while she was alive. But the child is now dead. On the day of the hearing, the police went to her not knowing who she was. They told her - don't worry we will win. She looked and found that the lawyer who was supposed to represent her was not wearing his gown. The officer thought that he was telling the perpetrator when in fact he was talking to the victim that 'don't worry, things are all good, we shall win this case'. The other policeman, when he saw him, told him that he was telling the wrong person. But it was too late. But the case ended there. It went nowhere after that. She has everything, case number... documents...

Man from Mzinti Nkomazi:

I want to present a case which involves a lot of people who are members of different sections of the community: that is the livestock farmers, the sugar cane farmers as well as the community in general. We as Litemba Land Farmer's Association were granted land rights to farm sugar cane. We are 37 farmers who were granted more than 500ha of land by the Matsamo Tribal Council (MTC) in 2001. Before that, there was a community resolution which was taken because the land, the entire land, I will say, about 80% of the land in that particular area it's under the hands of, or is contracted to MTPA. That is the Mpumalanga Tourism and Parks Agents. So, MTPA granted us the rights to farm on that land. Unfortunately, we could not fence the whole area as the area by then was fenced by the contractors who built the road from Kamhlushwa to Donga, and it did not make sense for us to fence the already fenced area. Over time however fencing was stolen and the area was left open for vandalism, for cattle grazing and all this.

In 2007 the Matsamo Traditional Council allocated residential and business sites to community members within our project area without consulting us as farmers - neither the stock farmers nor the crop and sugar cane farmers. That resulted in us engaging with them telling them that this is our land and the land belongs to us. We said they had no right to allocate sites to other people without our consent. They promised to investigate this thing but unfortunately the situation that we found there was that the very same people we reported the matter to were the people who went there to allocate the sites. See?

It's a situation whereby you are assaulted by a policeman only to find him in the police station to report the case to him. So we decided to engage the senior Matsamo councillors. We went to them. They suspended that *induna*, the Mzinti *induna* for doing such. We had submitted this letter of complaint to Matsamo Traditional Council (*shows the gathering the letter*).

Six months later the suspension of the *induna* was lifted and the *induna* returned to his duty. Now the situation was like this. We who had put in these complaints were targeted and victimised. He even said to me in particular that he wanted to see what will happen when I had a problem that required his services. (*Interjections from others indicating that such threats from tribal leaders are commonplace*).

So I took the matter to KaMatsamo's office, that is, to their seniors. When I went there I found the brothers to the very *induna*. In the chieftaincy situation you find that there are *Shongwes* or *Ngomanes* depending on which traditional council or authority you go to. In this case they were all *Shongwes*. So the *induna* told us - you are very stupid, you are laying a charge against me before my fathers. What do you expect? Do you think my fathers can kill me?

Yes, indeed we were very stupid because this belongs to them. So then we wrote a letter to the national Minister of Land Affairs, Lulu Xingwana, requesting the government's intervention because we realised that we have nowhere else to go now, except to take it to the highest authority in the country.

We also referred this matter to TRAC [NGO]. I went with them all over the place and showed them where they are digging sand illegally. They are selling this sand. They are digging this sand that belongs to the community. They are selling it to the community. The very same. You buy your own stuff. (*Gathering exclaims in shock*). And the damage that is there, yo! It's so huge that I can't even imagine how is it ever going to be rehabilitated. TRAC communicated with the Provincial Land Affairs Department. We invited the Land Affairs Department to come down there and investigate. The Land Affairs has issued letters to stop the process. But the process is continuing, even as I am standing here now there are people building houses in the very same area where there is this complaint.

We went to local government, thinking that local government it's going to have an impact or maybe stop them, only to find that the very officials we went to are also *Shongwes*. You see? (*gathering laughs*) Mark that one of them told us point blank that they are not going to mediate, they are going to defend the the chiefs and traditional court, against us. So we asked him: Are you in a government that represents us or a government that represents the chiefs? He said no that's what we are going to do.

As I am standing here, as I am speaking now, we are in that situation whereby we don't know where to go because people are building. And mind you, I may find my child allocated in the same place, you see, my cousin or whosoever in my family. Some have been allocated stands there. Now imagine what kind of a situation is that? This is the situation where we find ourselves as communities of Mzinti.

I have got all documents here pertaining to the area. This (*lifts up map to show group*) is the map of the farms, the plots here and this is the map, Mzinti map, which shows which areas and sites that should have been allocated to people for housing. And this site, the green part of it, it belongs to us, you can see the green part. It belongs to us. Yet that is where they put these sites, you see. And another thing. We were informed that some of the people who work at the Magistrate's court, who are in the justice system, have been allocated sites there. So now we can't go there because we don't even know if we will be speaking to people who have benefitted from this very process.

Man from Mapulaneng Heritage Council in Bushbuckridge: *Our problem concerns the Bushbuckridge brick making factory. A company came to our area and entered into negotiations to establish a brick factory, presumably with the Bushbuckridge municipality and two tribal leaders. With respect, I am not going to disclose the name of the tribal leaders because the matter is still awaiting judgment. There was no Environmental Impact Assessment and they did not respect land rights and land tenure laws. The motive was just to make money for themselves, regardless of the impact on the community.*

The Land Restitution Act makes provisions that the people who want to develop land that is under claim have to consult and they must get the necessary authority from government. That was never done. And then came the developers. There is a river flowing downwards and it passes many villages. Near the project there is a dam with hippos, fish, and animals. The same dam is being used by the local communities for livestock purposes to drink the water there and also to use the water for their own irrigations. Along the same project there are graves. Now these guys came in. They exhume those graves without engaging the families involved and they decided to throw the bones wherever they feel it's proper and that became fiasco number one. Fiasco number two is the sewerage system of the project. The drainage of the water system from the production plant is also not in line with the required standards. The end result was that the river became polluted. The chemicals are destroying whatever species is living in the dam and that became a problem for everybody.

So the community took the issue up with the tribal leaders and to the *indunas* and to the local municipalities. However the truth did not come to the surface. We took it up with the Tribal leaders around our area. We could not get the results we wanted. We went to the Castel Multipurpose Centre for their assistance. We went to the Bushbuckridge Municipality. But nothing – so ultimately we decided to create dust. You know when there is dust people start to take notice of problems they have long ignored. Then we created dust. Strike! Strike! Strike! We managed to stop that project.

What we need is to get the truth from the tribal leadership. What type of monetary compensation did they get from this company? Two, we want to get the department of Environmental Affairs to give us any records of any environmental impact assessment. Whether it was done and who approved it. And then we need to establish the consequences of the pollution of the dam to the livelihood of the people. We need a specialist who can test that particular dam and check the density of the problem to the species living in the water and to the people who are drinking that particular water. That's what we demand.

Advice Office Director Nkomazi: I will start with what is good about traditional courts and tribal structures. Our tribal authority tries to help people when they need documents, like widows claiming death benefits. But the problem is that you need R200 first which needs to be paid by the widow. So if you don't have it then, you have to promise that when you get that money, you will pay. We have a problem and a question - where does that money go? Second, we have the problem of women in unregistered customary marriages, because you can't force a man to register a marriage if he does not want to. But the day that man dies, any woman he had a relationship with can come and claim she is the wife. Maybe there is only one registered wife, whereas you were many. And even if you are the first wife, you cannot do anything.

The other thing that is a problem is the tribal tax that is supposed to be paid. It is called *naganl*. It started off as R2, then R4. In 2007 it went to R7. Now it's R50 per year. And nobody is told what this money is for. The tribal courts will not hear cases if this amount is not paid. You have to produce a receipt of this payment. You can't run away from that R50 because you have problems that need to go to the court. What is this money for?

In addition if one requires a letter from the tribal courts, say to open a bank account, they charge R50. If you don't have R50 - no way. The other problem is this issue of stands. The allocation of stands is not fair. There is a lot of bribery. Some people pay up to R3000 to get a stand. The biggest problem is the crime in our area because they don't care if you have a letter of recommendation from your previous area or not. They don't even look at your letter of transfer to see why you were chased from your previous residence before allocating you a site. All they care about is how much money you have. Crime is rife in the area and the criminals are never caught because they have identity documents which have no finger prints. They use their foreskin to make finger prints.

Male speaker from Nkomazi (Municipal councillor): The problem with traditional courts is that they do not use the customary law which was agreed upon. They use whatever they are thinking at that particular time, not what was laid down or agreed upon. Often they end up in problems because they don't know the origins of customary law. The chiefs and the traditional councillors we have also don't know this law. They found it there. We have a problem with this. When one has a case they just tell you that you have broken a law. When you ask which law, and what the law said, and how many you have broken, they can't answer.

When you are sentenced they decide in private to how much you should be fined. They require you to pay regardless of whatever problems you may be having, the accounts you have to pay or whether you are employed or not. They don't care how much you get paid a month. They don't care. This defies the constitutional rights of people.

We ask that before this bill is passed, different communities should be involved such as SiSwati, Ndebele, Sepedi, so that the customary laws of the different communities are addressed and observed. We therefore say that we don't want this traditional court bill. It does not help us. We are losing.

We now have foreigners who get allocated stands ending up with five people being allocated one stand because they would have taken money from these people. Then there is this tribal tax called

nagane. We don't want to be taxed twice. We pay 14% already. Chiefs get cars, stationary for the office and salaries for staff. So what do they use the tribal tax for? It is still being taken to this day. Can this tribal tax be stopped? We need to get together to construct this law. The law should promote people's cultures. We as Africans have to observe respect. People must be taught the customary laws. Protect the community and make them aware what's right and wrong. We should get title deeds for the business sites and the residential sites. We don't want these temporary permits. We don't want the PTOs because they are just permission to occupy someone else's land. You cannot get a bank loan against them. We have no addresses.

You can start a business at a place and later be chased away. This bill is theirs, not ours. They should start with us at our local level not impose it on us. We don't want to be double taxed. They cannot change a law after consulting only a minority. We want democracy. There are equal rights. The local government should teach them how to lead because we are not happy with the way they lead. Street kids evicted from their land when their parents die. We don't want this law from the tribal authorities. Thank you.

Male speaker: I will touch on the issue of the Musobobo [?] Tribal Authority where we experienced a gruesome infant murder because of a false judgement against a young gentlemen who was accused of not maintaining an infant. That gentleman was uncertain about the paternity of the infant. When he was told he must maintain the infant he became angry and outside the court he requested the mother of that child to actually give him the child so that he can also carry the child. They gave him the child and he took out a gun and shot that child. Yet I have never heard of any intervention by the head of justice in our country to call that Tribal Authority and review the judgement.

What we have seen and also you know is that youth and women cannot easily access tribal land if they want stands. Sometimes the excuse of the Tribal Authority is that unmarried women will fall in love with all the men staying around there. And the same applies to youth that they cannot get access to stands. So we need a proper justice system for tribal authorities. Thanks.

Male advice office worker from Bushbuckridge: In our office sometimes we do get cases whereby people will want to apply for identity documents. But Home Affairs will say they need supporting documents in terms of assisting that particular person to acquire an identity document. I have noted that the government recognises traditional authorities. Because they will say go to the traditional authority where you stay and get some sort of proof from them. That is one thing.

The other thing is when you find that two families are fighting about maybe a goat that has gone to the neighbour and caused damage. They will go to the Magistrate's Office and then the Magistrates Office will say, "We can't help you - go to sort this thing out at home because it's not a serious matter". They will come to our office. Then we ask where they stay and then we will write the letter to the traditional authority and say can you please attend to this matter. It's very serious. Then they will attend to that matter and give us a feedback and say our case has been resolved. We are now able to talk to one another. That's a good thing that I have observed.

But there are also bad things that I have observed in terms of the tribal courts. When it comes criminal cases that they are not meant to handle. But they will attempt to work on a criminal case and it will end up, you know, costing, so many people. Because they will want to solve that criminal case unprofessionally and then that will lead to those people being affected. They will end up killing one another because they did not get a solution. So that's one other thing which I have observed. And then in terms of judgements. They don't judge a person by understanding the nature of the case. They look at how much money you have (*participants expressed their agreement*). Are you coming from a very big house? Where do you work? If it happens, as in some cases, that you work in the Magistrate's office, you are likely to get a lighter sentence because they are scared that you may challenge them. So now, if you have a case against a person who is well known, then you lose the case just because you do not have influence.

When it comes to cases and judgements, the judgements are not fair. The key example is of land and residential sites. If I am rich, I can get 3 or 4 people's sites. But when we go to the chief with the dispute, because it is the chief who allocates sites, the chief will check out how much more I can add to him. So poor people end up with nowhere to live just because they don't have anything. This issue of land and sites has been raised by nearly all of us. The way in which sites are allocated is not in line

with what the government is intending to do. They allocate sites in an inappropriate way. Traditional courts are not handling this issue in a fair way. But somewhere, somehow, they do assist the advice offices that have got good relationships with them. But we feel there are certain cases which they cannot assist us. So I think that's end my presentation.

Male speaker from Mzinti: I think we are dealing with two things that should be separated. According to my knowledge the land issue and traditional matters are not the same thing. According to my knowledge it was the duty of the Dept. of Agriculture and Land Administration to give land or to allocate land to communities under the chiefs. But now it looks like the department has been relegated or sidelined. I don't know how because we no longer see the department allocating sites to people. What we see now is the traditional *induna* with his council giving sites to people and the department is no longer there, which is a problem. And it brings us back to the question of the ownership of the land and whether the department of land affairs in fact owns the land. Because there is this word "The Trust." Was it trusted to the chiefs for the administration and allocation to those communities? But now it's almost fifteen or sixteen years later. There is no change to that. But all laws in this country have already been changed. But with this one, it's still there. And the worst part of it is that the traditional council or the traditional chiefs are not monitored in what they are doing. There is no government monitoring them. It's just that they are free to do whatever they want to do with the land. And now coming to this thing now, the other part. The traditional court now, You lay a complaint yet while your case is still on, or the very same day you are laying a complaint, you are also being charged or fined. They fine both of you, the complainant and the respondent.

I have a particular case. My father laid a charge against a certain community member. Our young brothers were herding cattle so they went to somebody's farm. And somebody who is not the owner of the farm locked those children there, in that particular farm. And my father discovered that and went to report the case to the traditional court. What happened is that both my father and that man were charged and fined. This shows the problem as to how they actually function. And they want money now, not later. So in fact they want money, nothing else. I have a lot of examples because I once worked with them. If somebody brings a case and does a lot of talking, they don't like that. They want a person who will come and ask for a site. A person who comes with money to buy a site - then they are happy. They will quickly help that particular person, but when you come with your stories, come with your complaints, it will take years. They can even not complete the case as such.

So I think we can say, let the land go back to its original place - administered by Land Affairs and Land Administration. Rather than these two functions belonging to the traditional chiefs.

INPUT ON THE TRADITIONAL COURTS BILL

Comment by councillor from Nkomazi Municipality: The thing is that we in South Africa, we are one. We who live in the rural areas and in the towns and in the townships and in the farms. We are all South Africans. When we vote we use the same ballot papers. But then why do we remain outside democracy? We are saying that we don't want this law. We repeat. We don't like it and we have never been comfortable with it. (*Participants exclaim in agreement*) When we look back at the Black Administration Act of 1927 we were never protected when we were given land. Now we have voted and we have a parliament which allows us to talk. Who told them we want this bill? We don't want this law of 1952. If they want us to follow them they should do the right thing. We don't want to be double taxed. It seems like there are two governments in South Africa. If a person has a criminal case the case goes to the Magistrates and he deals with it democratically. Traditional courts are run by families. We should be talking about land ownership. We want title deeds and these matters must be dealt with by the Magistrate who is aware of the South African constitution. Thank you.

Group Discussion:

Participants were asked to break up into groups according to language and region and answer four questions that were set out by the facilitators. These questions were:

1. *What are the good and bad things about traditional courts?*
2. *What should be changed about customary courts?*
3. *What are your concerns with the current traditional courts bill?*
4. *What do you think should be the way forward?*

Only one focus group was recorded and transcribed consisting of SiSwati people from the areas of Nkomazi, Mzinti and Nkazi.

Man: Let's start. We have to discuss what's good about this Bill and what's not good about it.

Woman: The good thing about this Bill is that we can appeal the decisions made. We can challenge, we can appeal in fact, in the court of law. We can appeal the decisions made in the tribal courts to the Magistrate. Although our chances are slim.

Another woman: Ah no, we are going to get rid of this Bill!

First woman: Another good thing is the fact that it is written.

Different women: At least we have a document that can guide traditional leaders, that's a start. When you need to challenge them at least we will have something in hand.

First woman: They have trainings. Even if they have a choice. The fact that there are even trainings. That is good.

Second man: No I disagree, yes the trainings are there but they are not compulsory. It affects this law because the traditional leaders undermine it because they don't have to attend the trainings. It is supposed to be compulsory. Those we appoint as judges have to train or things won't be okay. It's a weakness that one, not a strength.

Man: Before we even discuss the trainings, the traditional courts must first be specific with the bill. Because when we talk of the matrimonial court, it must look at the customary law which concerns me getting married.

Another man: On the good side it is close to the people. The things are being dealt with by people whom you know there in the rural areas. I think that is one good thing that I can put forward.

First man: On the issue of trainings, the Bill that we are discussing today is something that we didn't know right? (*Participants agree*) But that's why we are saying we don't want this bill. We want it to start with us, to come from us. You see the example that we gave of the IDP. The IDP plans and budgets first. This must be planned by us and take into account our views and then we can have this bill. Those people who created it, how did they do it? Because we need to say this is wrong or this is right. Then it will become an act. Do we agree?

Man: Another comment, the bill is undermining our democracy. On the basis that everybody in South Africa has the right to representation but the bill does not allow you to have a lawyer in the traditional courts. So that's undermining our democracy.

Woman: The bad thing about customary courts is that we don't have female councillors represented. And yet most of the cases handled there involve the problems between man and wife. But in the courts, it's just men who decide the outcomes.

Woman: I think that the bad thing about the court is that there is no policy. The traditional leaders are not guided. They just decide. They make decisions based on who you are. They are biased. It's a bad thing.

Man: Another bad thing that I have identified is that the officers are not trained, as well as those who make decisions in the court, they are not trained.

Man: Another bad thing, we find that officials and judges are from the same family.

Man: It's a family thing.

Woman: The courts are all family members.

Woman: From generation to generation.

Woman: It's a family thing.

Man: Another bad thing is that at times one is asked to pay a bribe

Woman: The bad thing is that we have to pay double taxes.

Woman: The good thing is that they help us with Home Affairs. It's good because we need proof of residential letters and they give them to us.

There are smaller simultaneous discussions as to whether or not they do this.

Man: But can you help me with this. This business with the proof of residential, we can't put it under good because before they give you the letter they want you to pay up if you owe them money or you owe *nagani* or anything like that.

Man: The other bad thing with these courts is that when you report a case you have to take out money. And you pay on both sides.

Woman: Yes, it came with King George. The claimant and the perpetrator, they both have to pay. They are both charged.

Man: The good thing is that they promote our culture and traditions.

Other man: No they don't do that anymore.

Others agree

For example, with *nombathi*. They don't do it at all. They are not promoting the culture because they are not teaching what boys should do when they become men and what girls should do when they become women as what used to happen before.

Woman: Can I say, we cannot focus on one traditional officer. We have many traditional courts and they practice cultural activities, let's not say they don't. If the Matsamo Traditional Council does not do it, we can't say they all don't. Because in different areas they do. When you go to Mnisi, they do it. When you go here, they do it. So let's not say that they don't.

Another woman: And again this issue of the documents from Home Affairs. We have a problem with the courts because they don't actually give the documents.

Another woman: You mean proof of residence?

Woman: Yes proof of residence.

Previous woman: The people who are supposed to give proof of residence letters know that they will earn something by doing it.

Man: The people who are in courts, they have legislative, judicial and executive functions. It's the same people. You cannot separate them. You report to the same person who may preside over your case. Everything is the same person.

Another man: Another bad thing is the charges that they make. When a person gets fined and they cannot pay they are made to work without pay. How can a person work without pay? That is bad.

Previous man: Fines are supposed to be fixed. But they look at the person and decide. The same cases have different fines.

Woman: Chairperson, that's why I raised the point that there is no policy that is guiding these courts.

Another woman: When we talk about a policy document it involves many things. The tribal courts use what they feel at the time. They favour who they like. That is why a guiding policy is needed.

Man: Can I say that the traditional courts we have, they don't have provision for first time offenders.

Woman: And they don't keep records.

Man: Let's discuss the money we pay for stands and the money we pay every year. We started with R350 for stands. Then it went up to R900 increase for the stands if you are a resident. If you come from outside, the money is not the same. Some people pay R2800 per stand, for thirty by forty metres squared. And the other money that we pay annually, it went from R7 (*others argue it started at R2*). Ok, so it went from R2 and it went to R50, without it being discussed by us. The other thing is that if you apply for a stand in Mzinti, they can give you number 22. That's your stand number. Then the next person is number 23. Then you come from Bevula or Chappies, you become number 24. Then someone from Phiva becomes number 25 (*participants exclaim in shock*).

Man: Ok we have finished with number 2. Let's talk about number 3.

Woman: For changes, can we please have women represented in the traditional courts. Because that is something we can change.

Another woman: We demand. We don't ask. We demand.

Woman: Can we develop a policy that can guide. If there is a stand for sale, this is how much it is. If there is this it must be charged accordingly.

Man: We must not be confused here. There is an issue here with Land Affairs.

Woman: Title deeds.

Man: They have no right to allocate land. So they wrote a letter saying that they must stop allocating land. Then, today, we are talking about the chiefs. We are saying the chiefs must not decide on allocation of land. The allocation of land must be governed by the Department of Land Affairs.

Man: It seems like we don't understand customary law. That's the starting point. We have to understand. We can't say with customary law, we develop a policy. There was a decision which my learned colleagues can confirm or can attest. Customary law, it's unwritten. That's one element. It's passed from generation to generation. It must be in existence for a long time. I forget the fourth element. So, we, now we have customary law like the one in this bill, not like the one in Section 166 of the constitution. That's the starting point. We need to be clear about what exactly we are talking about. We are talking about cultural laws. Not the positive law to say it is written or elected by the minister.

Woman: People, now, we are not talking about customary law but we are talking about customary courts. What do we feel about them? When we talk about the courts, we are talking about where we go for our grievances. We are not talking about law. We are talking about traditional customary courts. Let's talk about the courts now.

Man: My concern is the process of judgement. If a person is not happy they go to the magistrate but they still have to come back and interact with the tribal council. How will you get treated? You can be treated unfairly for everything. They can make your life difficult. That is how it is.

Woman: He is saying that after that case, when you go back you are going to be treated unfairly in everything.

Another Woman: And to add on that. In the case of the woman whose daughter was raped they said that she has to go back to the same court. So whatever problem she will encounter, they will be unfair. Do you see that? They will make her life very difficult if she ever needs anything.

Man: If you have been tried and gone to a magistrate's court you can be chased by the courts from your land. I don't know how we can fix that.

Man: Can I say something? On this issue of payments with regards to the stands. There is no law around this and we are being treated badly and we need to do something. We should not have to pay because it is a communal land. Today there are three types of land. There is state land, there is private property owned land. There is communal land. We are in communal land. That is why we want the title deeds for this land. And yet the people in the courts are getting paid with the tax money we pay. Yet it was agreed in 1995 that we are not paying double tax. Let's talk about that. Does anyone remember this here?

Man: My other concern with this bill is that the courts are given powers.

Man: My concern is that in tribal courts the traditional leaders had the final say. For the first time, with this bill, we can challenge them.

Man: I think that it is in our hands. We got our freedom here in South Africa. We now live in a democracy. And we from the rural areas, we should be equal to all others from South Africa. I think we must talk about the way forward.

Man: Way forward number one is that training must be compulsory for judges.

Unknown person: My concerns and suggestion as a way forward is that there is no monitoring mechanism.

Woman: But do we want the bill first. Does it have to exist?

Man: Are you asking us if we want the bill?

Man: Yes we do. We want something to guide these courts.

Man: If we don't agree to this bill it means they have the one from 1951. We would rather agree to this bill and have a say in it. Which means we agree with this bill.

Woman: So that we can challenge them.

Man: Yes so that we can challenge them. Is it alright?

Participants: Agreed.

Unknown man: But how? How do we challenge them?

Man: We can challenge them with this act.

Woman: Like we do with the Constitution.

Man: There are traditional councils that are selected democratically today. Right now, yes. These are the people who we should talk to nicely now. We can use them better than these traditional courts that exist today. I think we should look at these traditional courts term of office. They should not grow old until they have problems. Do we agree? (*Participants agree*) It is a term of office. Do you see this as right? So now let's discuss the way forward.

Man: We were happy that the traditional councillors were elected democratically. But we had problems when it came to these past elections. I remember during elections there were 60% from the chieftainship, 40% from ordinary people. It was found that the 40% was overtaken by the 60%. So we are no longer represented. How can we fix this structure? So how can we trust these existing structures?

Woman: I think that being passive in the communities leads to these results that we got with this traditional council. If we had been more active, and supported the initiative of the government when we started, then this would not have happened. They are elected. The term of office is five years. After five years comes another election. We are already involved. There is nothing we can do. Even if we say we don't support them. An act is there. They are gazetted. They are supposed to preside over the disputes. They are in office. There's nothing we can do.

Man: Ok let's discuss the way forward. We don't want tribal courts made up of the same surname and the same family. We want different people. They must represent the people, not families. Because we are saying as a way forward, we don't want people from the same family acting as members of the courts. We want different people. There in the Matsamo Tribal Authority, it has changed from being a place for community service to becoming a home. People leave their jackets there. It's now a home with pots and pans. That's where he eats. We don't want that. They should work with the people. When we talk about chiefs we want to talk about one chief who represents his clan. There are chiefs and tribal authorities. Traditionally the chief is the chairperson for the tribal authority. There is this big house from where he comes from, which he represents. His clan is there to groom him so that he is likeable to the people. But the traditional council is his workplace. That is why we want a democratically elected traditional council. We don't want families. Families must go to their homes. What do you think of that point?

Woman: That's what we are saying. It is not about a family but a community. But on the other hand it must be people from the area.

Woman: I am getting more confused because how can we change that when it is the chiefs who appoint headmen. How can we change them?

Man: That's why we are discussing the way forward.

Woman: I am saying that the way it is the powers are vested with the chief. We want to change that power of appointment to us. He appoints the headmen and we need to stop this.

Participants: Yes we do.

Man: It only changed now that a chief is appointed by a chief. A chief is supposed to be chosen by its people. Just like how we select councillors. People choose and when his term has finished, they leave and they choose someone else. Even area headmen are not made but chosen. This should remain like that. The chief should not elect councillors and the committee. These should be elected democratically. He should not choose his friends.

Man: We need to choose them. And the councillors too. Because people have hidden agendas.

Woman: To add onto that, the chief who is selected must select new councillors. Those that were there must leave. Because as with the last chief. If you took a case to him, his councillors would tell him to keep quiet as he does not know.

Man: I think that's why we are saying councillors should be elected democratically. Chiefs come from the homelands and answer to the tribal authority. He can have someone from his clan come and write down the minutes. But these minutes do not work at the tribal authority. There is already a person who takes minutes for the tribal authority. When there is something wrong that the chief does, his assistant can report back. It can happen that a chief gets drunk and hits people at meetings. His people can come and bring a cow's skin, beat him up and cover him with the skin and take him home. And then they apologise to the people for his deeds and they suspend him for days and then he has to pay a fine like a cow. He apologises and thanks the people for allowing him back. And he asks to come back and work.

The problem is that these chiefs who are there now reign over us because we allow it. What they do is not new to all of us. This law is of old. But they have changed it now. Most times, I told them in 1993 that I don't pay them money. I pay like 14% tax to the government already. So this is not law. We are representing our communities. We should take these documents home, and read them, amend them. The amendments should come from us. Today we meet to discuss this law from 1951 which is about black administration. Now if we are getting rid of it we must have a substitute. We agree to the act but we have to make amendments. They have to come from us. When it's on the table we will fix this bill.

Woman: So that's the way forward.

More discussions which are inaudible as people are talking simultaneously. Then the scribes discuss what they have written and the group summarises the points that they have put forward. The points are that problematic with regards to traditional courts are that women are not represented in the tribal courts and that there are no women representatives in tribal courts; presiding officers are not trained; nepotism takes place; bribery; the bill is contradictory to the constitution; there are no records of court proceeding. The good things are that they uphold customary practices, traditional courts are accessible. Then there was more debate as to women's involvement:

Unknown man: Please repeat that point on women.

Scribe: Women must be involved in structures or in making decisions.

Unknown man: I think it must be rephrased.

Woman: Women must be involved in traditional courts.

Unknown woman: Women councillors.

Unknown man: That's why we are saying in our comment today: women must form part of the courts.

Workshop facilitator: You have to decide at what level. Should they be traditional leaders? Should they be allowed to be *indunas*? Should they be allowed to represent themselves?

Woman: Yebo!

Woman: We are saying women should be involved in all. If you go to the traditional act, those councillors who are elected, there is 30% in it. It's a given.

Man: Sorry in all decision making?

Woman: Because we are explaining what we want to be changed in traditional courts.

Facilitator: So women must be councillors? Is that what you are saying?

Woman: Ja.

Facilitator: Women must be allowed to represent themselves?

All: Yes.

Facilitator (female): So when I have a problem I must be allowed to address the court?

Woman: Yes. And another thing, which we forgot to discuss, was this issue of widows. They say that they are not allowed in tribal authorities. And when she gets there, she has to stay at the gate and someone else has to take her issue to the chief. Now when he gets there, he takes the a, e, i, o, u that this woman had told him and says sa, se, si, so, su. He does not report on the correct thing. This has to change because it must come from the horse's mouth rather than from another person.

Man: I think that on this issue, we talked about it already. *(A woman seems agitated by his statement. She grunts)*. Widows are allowed in the tribal authorities. Where they are not allowed is *empakhati* (in the traditional courts). They are allowed to see the tribal authorities. They have services to provide. That is why the government gives them stationary to work, transport, payments and offices. Because that is a place of work. This means then that this is not a problem. We don't really have to write it down.

Woman: No, we need to include it.

Man: Ok let's move fast because there is tea being served and I am hungry. I have a big stomach.

Woman: What about this issue on the suppression of widows from the day to day programme. Where the go between is a messenger to court. The widows are not able to talk for themselves. I think it falls within the bad things done by traditional courts. The widow is a human being, a respectable female. I wonder if they dealt with a business man's widow in the same way they would with an ordinary person's widow. So there is also some discrimination of some sort. A widow of a poor person is treated differently.

Another woman: No. As long as you are wearing black as a widow you cannot go into the offices, you sit outside. And the messenger then comes and asks you what you want and then he goes inside to tell them. By the time he gets there the messenger is distorted. He tells them what he wants. You find then that there is more than one widow. And another thing we forgot to raise is the issue of certificates which are issued after the husbands die. The tribal authorities should force the community to sort out things nicely so that if a husband dies a Death Certificate should be issued. That's where there is a problem. One of my neighbours was given a certificate and went to claim money for a man who was never her husband. But she got all the money. But the dead man's brother was clever enough. He took over the brother's wife (*ukungena*) so that they could not stop her from taking the money. But how did she manage to get his brother's death benefits of his brother? Because she got a lady saying she was the wife when she never was. So the tribal authority had given her a letter. So they should be careful with these things. Each man should make sure that the woman he lives with is registered even if there are 20 women. At the end of the day we are the ones who have to pay the R200 fine if he dies without registering the marriage. And yet it would not be the woman who did not want to marry. The man would not have wanted to register the marriage.

Man: And you pay not only the R200 but the tribal fee and the stand fee and they go back to check your debts. This is unlawful.

Woman: And by the time they add up all these debts, it's too much. You can't. Isn't it they are supposed to promote our culture? So they should give the man a time limit to register marriages with the women they live with and bring their certificates there. That would be in order. Now they don't do that.

Man: In these courts, January to January they try cases. When they come to you they say you have broken the law. Which law? Who gave you? How many laws? That is why I asked them at one time when they said I had broken the law. How many laws? Who gave me this law? How many have I broken? How many have I lost? I took my books and left.

Some more discussions which are inaudible because they are speaking simultaneously. People by now have dispersed and left for tea.

Man: So it is important for them to know that we are part of South Africa and that South Africa is a democracy. Each person has rights. We should read all the government documents, especially those concerning self governance. The chiefs are always hungry and they want money from us. That is why I say I have nothing. I have come with nothing.

Woman: And there was this woman lived with a man for 26 years full. She found the man with nothing. When they now had a tavern, a farm and everything – and he says she must go. For this man had been married beforehand had left his wife because of witchcraft because they found his underpants in her bag. The case was tried at the tribal court. So she left and they parted. This was settled at the tribal court. This man told the current woman that he has a registered marriage with his first wife. Unfortunately they had no children. The first born from the previous wife came to live with them. So she brought him up as her own child. He knew everything, even the pin codes to the bank accounts. When the father died the boy took all the bank cards. While she was in mourning, she discovered that he had withdrawn R50,000 and R20,000 from the accounts. So after the father's death, the boy went and collected his mother and they went to the bank. They then went to the Home

Affairs and got the marriage certificate. So they got everything. Simply because she had that certificate.

Man: Yes but...

Woman: Wait let me finish because this thing troubles me. The tribal courts failed to protect that woman. The first wife had left and the second one had worked for everything. That first wife was not even staying with the man. So everything should have been shared between them even though the one had a certificate, the new one had worked for everything. She came out with zero.

Another woman: She worked for 26 years within that marriage and got nothing.

Previous woman: That's what I am saying. She left with nothing.

Man: We as Africans, brothers used to protect our sisters. Now there is a gap which we should be aware of in the family. I will give you an example. My sister was married. Her husband got another woman and decided to beat up my sister and chase her from their home so that the new wife can move in. My sister is sick. They tried to get her out and they failed. She reported the matter. The husband went back to work. I took her to the hospital, bought food because there was no food at home. Her husband came back at the end of the month and I went there to see him. I asked him if he was aware that my sister was sick. He replied that she was disrespectful and sleeping. I said to him do you see that she is ill and there is no food? I bought the food. And she has come from the hospital. I took her and yet it is your job. I said that if he thinks that she will die and we will bury her and that will be the end of it that is not it. I told him that I will bury my sister when she is cold but that I would bury him while he is hot. I told him that I would carry him like a dog and bury him and defecate on his grave because he is like a dog. They went and reported me. They thought I was hiding the matter. I told them that this person whose life they are playing with is my sister. Once she dies, we are one short at home. She has her job cut out for her so she must live. He left the stand and my sister is still there. He left.

End of tape.