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## GENERAL NOTICE

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### NOTICE 947 OF 2013

#### DEPARTMENT OF TRADITIONAL AFFAIRS

#### INVITATION TO COMMENT ON THE TRADITIONAL AFFAIRS BILL, 2013

The Department of Traditional Affairs hereby invites any interested person or body to provide written comments on the Traditional Affairs Bill as contained in the Schedule hereto.

The main objects of the Bill are –

- to consolidate existing national legislation dealing with traditional leadership and as a result thereof, to repeal the National House of Traditional Leaders Act, 2009, and the Traditional Leadership and Governance Framework Act, 2003;
- to address the limitations of the two laws that are to be repealed;
- to effect consequential amendments to the Local Government: Municipal Structures Act, 1998, and the Remuneration of Public Office Bearers Act, 1998; and
- to make provision for the recognition of Khoi-San communities and leaders, as well as the establishment of Khoi-San structures.

The closing date for comments on the Bill is 60 calendar days from the date of publication of this notice in the *Gazette*.

Comments may be submitted in writing to:

Postal address: Director-General: Department of Traditional Affairs  
Private Bag X804  
Pretoria  
0001

Fax: 086 766 1184

E-mail: [RinaldiB@cogta.gov.za](mailto:RinaldiB@cogta.gov.za) and [TrishaR@cogta.gov.za](mailto:TrishaR@cogta.gov.za)

**REPUBLIC OF SOUTH AFRICA**

**TRADITIONAL AFFAIRS BILL, 2013**

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*(As introduced in the National Assembly as a section 76 Bill; Bill published in Government Gazette No.      of      ) (The English text is the official text of the Bill)*

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**(MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)**

[B — 2013]

**BILL**

**To provide for the recognition of traditional and Khoi-San communities, leadership positions and for the withdrawal of such recognition; to provide for the functions and roles of traditional and Khoi-San leaders; to provide for the recognition, establishment, functions, roles and administration of kingship or queenship councils, principal traditional councils, traditional councils, Khoi-San councils and traditional sub-councils, as well as the support to such councils; to provide for the establishment, composition and functioning of the National House of Traditional and Khoi-San Leaders; to provide for the establishment of provincial houses of traditional and Khoi-San leaders in terms of provincial legislation; to provide for the establishment of local houses of traditional and Khoi-San leaders for the areas of jurisdiction of local and metropolitan municipalities and to provide for the composition of these houses; to provide for the establishment and operation of the Commission on Traditional Leadership Disputes and Claims, and the Advisory Committee on Khoi-San Matters; to provide for a code of conduct for members of the National House, provincial houses, local houses and all traditional and Khoi-San councils; to provide for regulatory powers of the Minister; to provide for transitional arrangements; to provide for amendments to the Remuneration of Public Office Bearers Act, 1998 and the Local Government: Municipal Structures Act, 1998; to provide for the repeal of legislation; and to provide for matters connected therewith.**

**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa, as follows:—

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## CHAPTER 1 INTERPRETATION, APPLICATION AND PRINCIPLES

### Definitions and application

1. (1) In this Act, unless the context indicates otherwise—
- "**Advisory Committee**" means the Advisory Committee on Khoi-San Matters established in terms of section 59;
- "**area of jurisdiction**" means the area of jurisdiction defined for a kingship or queenship council, principal traditional council, traditional council and traditional sub-council;
- "**branch**" means a branch recognised as such in terms of section 5(5);
- "**branch head**" means a Khoi-San leader who is the head of a branch and who has been recognised as a branch head in terms of section 10;
- "**code of conduct**" means the code of conduct provided for in Schedule 1;
- "**Commission**" means the Commission on Traditional Leadership Disputes and Claims established in terms of section 51;
- "**Department**" means the national department responsible for traditional affairs;
- "**headman or headwoman**" means a traditional leadership position contemplated in section 7 which—
- (a) is under the authority of, or exercises authority within the area of jurisdiction of, a senior traditional leader in accordance with customary law or customs; and
- (b) has been recognised as such in terms of section 8;
- "**headmanship or headwomanship**" means a headmanship or headwomanship recognised in terms of section 3;
- "**Khoi-San community**" means a Khoi-San community recognised as such in terms of section 5;
- "**Khoi-San council**" means a council established in terms of section 18;
- "**Khoi-San leader**" means a person recognised as a senior Khoi-San leader or a branch head in terms of section 10 and includes a regent, acting Khoi-San leader and deputy Khoi-San leader;
- "**king or queen**" means a person recognised as a king or queen in terms of section 8;
- "**kingship or queenship**" means a kingship or queenship recognised in terms of section 3;

**"kingship or queenship council"** means a kingship or queenship council contemplated in section 16;

**"local house"** means a local house of traditional and Khoi-San leaders contemplated in section 50;

**"metropolitan municipality"** means a metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**"Minister"** means the national Minister responsible for traditional and Khoi-San leadership matters;

**"National House"** means the National House of Traditional and Khoi-San Leaders established in terms of section 27;

**"prescribe"** means prescribed by regulation in terms of section 67;

**"principal traditional community"** means a community deemed to be a principal traditional community in terms of section 28(9)(c) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), prior to the repeal of that Act, or as contemplated in section 69(8)(c) of this Act;

**"principal traditional council"** means a council established and recognised in terms of section 16;

**"principal traditional leader"** means a person deemed to be a principal traditional leader in terms of section 28(9)(c) of the Traditional Leadership and Governance Framework Act, 2003, prior to the repeal of that Act, or as contemplated in section 69(8)(c) of this Act, or a successor to such person as contemplated in section 8;

**"provincial house"** means a provincial house of traditional and Khoi-San leaders as contemplated in section 49;

**"regent"** means any person who, in terms of section 12, holds a traditional or Khoi-San leadership position in a temporary capacity until a successor to that position who is a minor, is recognised in terms of this Act;

**"royal family"** means the core customary institution or structure consisting of immediate relatives of the ruling family within a traditional or Khoi-San community, who have been identified in terms of customary law or customs, and includes, where applicable, other family members who are close relatives of the ruling family;

**"rules and orders"** means rules and orders of the National House as contemplated in section 46;

**"Secretary"** means the Secretary of the National House appointed in terms of section 37;

**"senior traditional leader"** means a person recognised as a senior traditional leader in terms of section 8;

**"senior Khoi-San leader"** means a person recognised as a senior Khoi-San leader in terms of section 10;

**"this Act"** includes any regulations made in terms of any relevant provision of this Act;

**"traditional community"** means a traditional community recognised as such in terms of section 3;

**"traditional council"** means a traditional council contemplated in section 16 and includes a traditional sub-council contemplated in section 17;

**"traditional leader"** means a person who has been recognised as a king or queen, principal traditional leader, senior traditional leader or headman or headwoman in terms of section 8 and includes regents, acting traditional leaders and deputy traditional leaders;

**"traditional leadership"** means the institutions or structures established in terms of customary law or customs, or customary systems or procedures of governance, recognised, utilised or practiced by traditional or Khoi-San communities;

**"traditional sub-council"** means a traditional sub-council contemplated in section 17.

(2) Nothing contained in this Act may be construed as precluding members of a traditional or Khoi-San community from addressing a traditional or Khoi-San leader by the customary designation accorded to him or her by custom, but such customary designation does not derogate from or add anything to the status, role and functions of a traditional or Khoi-San leader as provided for in this Act.

(3) Traditional and Khoi-San leaders may acknowledge or recognise the different levels of seniority among themselves in accordance with customs, and none of the definitions contained in subsection (1) must be construed as conferring or detracting from such seniority.

## **Guiding principles**

2. (1) A kingship or queenship, principal traditional community, traditional community, headmanship, headwomanship and Khoi-San community must transform and adapt customary law and customs relevant to the application of this Act so as to comply with the relevant principles contained in the Bill of Rights in the Constitution, in particular by—

- (a) preventing unfair discrimination;
- (b) promoting equality; and
- (c) seeking to progressively advance gender representation in the succession to traditional leadership positions.

(2) The resources of any community, leader, council, house, Commission or committee recognised or established in accordance with a provision of this Act, may not be used to promote or prejudice the interest of any political party.

## CHAPTER 2 LEADERSHIP AND GOVERNANCE

### *Part 1* *Traditional and Khoi-San communities*

#### **Recognition of kingship or queenship, traditional community, headmanship or headwomanship**

3. (1) Traditional communities that are grouped together may be recognised as a kingship or queenship if—

- (a) they are recognised as traditional communities in terms of subsection (4);
- (b) each has a recognised traditional council with a defined area of jurisdiction as contemplated in section 16;
- (c) each has a recognised senior traditional leader as contemplated in section 8;
- (d) they recognise a king or queen in terms of customary law and customs of that traditional community;
- (e) they recognise themselves as a distinct group of traditional communities with a proven history of existence, from a particular point in time up to the present, distinct from principal traditional communities and other traditional communities;
- (f) they have a system of traditional leadership at a kingship or queenship level; and
- (g) they have an existence of distinctive cultural heritage manifestations.

(2) (a) Traditional communities that meet the criteria set out in subsection (1), may apply to the President for recognition as a kingship or queenship which application must be accompanied by a resolution of each traditional council referred to in

subsection (1)(b), indicating that such council forms part of the kingship or queenship being applied for.

(b) An application in terms of paragraph (a) must be accompanied by an application for the recognition of the position of a king or queen of those communities as contemplated in section 8.

(3) (a) The President may, after consultation with the Minister, by notice in the *Gazette* recognise the traditional communities contemplated in subsections (1) and (2) as a kingship or queenship.

(b) The President may, before recognising a kingship or queenship as contemplated in paragraph (a)—

- (i) cause an investigation to be conducted by the Minister to determine whether the relevant traditional communities comply with the criteria set out in subsection (1);
- (ii) direct the Minister to conduct consultations with the relevant Premier, the provincial house in the relevant province, the National House and the senior traditional leaders of traditional communities who fall under the kingship or queenship being applied for; and
- (iii) determine a period within which the Minister must finalise the investigation or consultations contemplated in subparagraphs (i) and (ii).

(4) A community may be recognised as a traditional community if it—

- (a) has a system of traditional leadership at a senior traditional leadership level recognised by other traditional communities;
- (b) observes a system of customary law;
- (c) recognises itself as a distinct traditional community with a proven history of existence, from a particular point in time up to the present, distinct and separate from other traditional communities;
- (d) is acknowledged by other traditional communities as a distinct community;
- (e) occupies a specific geographical area;
- (f) has an existence of distinctive cultural heritage manifestations; and
- (g) where applicable, has a number of headmanship or headwomanship.

(5) (a) A community that meets the criteria set out in subsection (4), may apply to the Premier concerned for recognition as a traditional community.

(b) An application in terms of paragraph (a) must be accompanied by an application for the recognition of the position of a senior traditional leader of that community as contemplated in section 8.

(6) The Premier concerned may, after consultation with the relevant provincial house and by notice in the relevant Provincial *Gazette* recognise the community contemplated in subsection (4) as a traditional community.

(7) A headmanship or headwomanship may be recognised as such if it—

- (a) has a system of traditional leadership at a headmanship or headwomanship level and is recognised as such by the relevant traditional community;
- (b) consists of an area within the area of jurisdiction of the traditional council of the relevant traditional community; and
- (c) will contribute to the more effective and efficient administration of the relevant traditional council.

(8) (a) A portion of a traditional community that meets the criteria set out in subsection (7), may request the relevant traditional council to apply to the Premier concerned for the recognition of such portion of the community as a headmanship or headwomanship.

(b) If the traditional council is of the view that the portion of the traditional community referred to in paragraph (a) does not meet the criteria set out in subsection (7), the traditional council must inform the community and the Premier accordingly and provide reasons for such view.

(9) The Premier concerned may, after consultation with the relevant traditional council and by notice in the Provincial *Gazette*, recognise the headmanship or headwomanship contemplated in subsection (7).

(10) The Minister may, in accordance with the provisions of section 67, make regulations in respect of—

- (a) a process that will allow for sufficient consultations as envisaged in subsections (6) and (9); and
- (b) the period within which a Premier must reach a decision regarding the recognition of communities as envisaged in subsections (6) and (9).

(11) The Premier concerned may cause an investigation to be conducted by the member of the Executive Council responsible for traditional affairs of the relevant province to determine whether a traditional community or portion of a traditional

community, as the case may be, complies with the criteria set out in subsections (4) and (7) respectively.

**Withdrawal of recognition of kingship or queenship, principal traditional community, traditional community, headmanship or headwomanship**

4. (1) The withdrawal of the recognition of a kingship or queenship or principal traditional community, as the case may be, may only be considered where the majority of traditional communities under the jurisdiction of the kingship or queenship or principal traditional community concerned request the President, in the case of a kingship or queenship, or the relevant Premier, in the case of a principal traditional community, to withdraw the recognition of their kingship or queenship or principal traditional community: Provided that such request must be accompanied by the grounds on which the request is based.

(2) The President or relevant Premier, as the case may be, must before taking a decision in terms of subsection (1) cause an investigation to be conducted by the Minister or member of the Executive Council responsible for traditional affairs of the province concerned, as the case may be, in order to establish whether there is sufficient cause for the withdrawal of the recognition of the kingship or queenship or principal traditional community.

(3) (a) The withdrawal of the recognition of a kingship or queenship must be done by the President by notice in the *Gazette* after consultation with the kingship or queenship council, the National House, the Minister, the relevant Premier and the provincial house concerned.

(b) The President may direct the Minister to conduct the consultations referred to in paragraph (a) and determine a period within which such consultations must be finalised.

(4) (a) The withdrawal of the recognition of a principal traditional community must be done by the Premier concerned by notice in the *Provincial Gazette*.

(b) Before the withdrawal of a recognition contemplated in paragraph (a), the Premier concerned must consult the relevant provincial house, any community that may be affected and the senior traditional leaders who form part of the principal traditional community.

(c) The Premier concerned may direct the member of the Executive Council responsible for traditional affairs of the relevant province to conduct the consultations referred to in paragraph (b) and determine a period within which such consultations must be finalised.

(5) The withdrawal of the recognition of a community as a traditional community may only be considered where—

- (a) the community concerned requests the relevant Premier to withdraw its recognition as a traditional community: Provided that such request must be accompanied by the grounds on which the request is based: Provided further that if such traditional community forms part of a kingship or a queenship or a principal traditional community, such withdrawal may only be considered where the relevant kingship or queenship council or principal traditional council requests such withdrawal;
- (b) the Premier concerned is requested by any affected community or communities to review the position of such a community or communities that was or were divided or merged prior to 1994 in terms of applicable legislation; or
- (c) two or more recognised communities request the Premier concerned to merge such communities into a single traditional community.

(6) (a) The withdrawal of the recognition of a community as a traditional community must be done by the Premier concerned by notice in the relevant Provincial *Gazette*.

(b) Before the withdrawal of a recognition contemplated in paragraph (a), the Premier concerned must consult the relevant provincial house, any community that may be affected and, if applicable, the kingship or queenship council or principal traditional council referred to in subsection (5)(a), before the withdrawal of the recognition of a traditional community may be effected by way of a notice in the Provincial *Gazette*.

(7) (a) The Premier concerned must, by notice in the Provincial *Gazette*, recognise a merged traditional community contemplated in subsection (5)(c) and disestablish the individual traditional communities that requested to be merged.

(b) The notice referred to in paragraph (a) must regulate the legal, practical and other consequences of the merger and disestablishment, including—

- (i) if applicable, the transfer of assets, liabilities and administrative and other records of the disestablished traditional community; and



(ii) the leadership position of the merged traditional community and the vacation of office of any office bearer of the disestablished traditional community.

(8) (a) The withdrawal of the recognition of a headmanship or headwomanship may only be considered where the relevant traditional council requests the Premier concerned to withdraw such recognition.

(b) A request referred to in paragraph (a) must be accompanied by the grounds on which the request is based.

(9) The Premier concerned may, after consultation with the relevant traditional council and by notice in the *Provincial Gazette*, withdraw the recognition of the headmanship or headwomanship as contemplated in subsection (8).

(10) The Premier concerned may, before withdrawing the recognition of a traditional community, a headmanship or headwomanship, cause an investigation to be conducted in order to establish whether there is sufficient cause for the withdrawal of such recognition.

(11) The Minister may, in accordance with the provisions of section 67, make regulations in respect of—

(a) a process that will allow for sufficient consultations as envisaged in subsections (4), (6) and (9); and

(b) the period within which a Premier must reach a decision regarding the withdrawal of the recognition of communities as envisaged in subsections (4), (6) and (9).

### **Recognition of Khoi-San community and branch**

5. (1) (a) A community may, subject to paragraph (b), apply to the Premier concerned to be recognised as a Khoi-San community if it—

(i) has a history of self-identification by members of the community concerned, as belonging to a unique community distinct from all other communities;

(ii) observes distinctive established Khoi-San customary law and customs;

(iii) is subject to a system of hereditary or elected Khoi-San leadership with structures exercising authority in terms of customary law and customs of that community;

(iv) has an existence of distinctive cultural heritage manifestations;

(v) has a proven history of coherent existence of the community from a particular point in time up to the present;

- (vi) is acknowledged by other Khoi-San communities as a distinct community; and
- (vii) occupies a specific geographical area or various geographical areas together with other non-community members:

Provided that, all applications for recognition as contemplated in this section must be lodged with the Advisory Committee until such time as the period referred to in section 65(2)(a) has expired whereafter all applications for recognition must be lodged with the Premier in terms of this section.

(b) An application in terms of paragraph (a) must be accompanied by an application for the recognition of the position of a senior Khoi-San leader of that community as contemplated in section 10.

(2) The Premier concerned may cause an investigation to be conducted to determine whether a community meets the criteria set out in subsection (1).

(3) The Premier concerned may, after consultation with the relevant provincial house, if a provincial house has been established, by notice in the relevant Provincial *Gazette* recognise the community contemplated in subsection (1) as a Khoi-San community.

(4) (a) A Khoi-San community may, where applicable, consist of branches recognised in terms of subsection (5).

(b) A branch may be recognised in terms of subsection (5) if it—

- (i) is recognised by the Khoi-San community as a branch of that community;
- (ii) has a reasonable number of members who practice the customs and customary law of the main community, as compared to the number of members of other branches of the main community and branches of other communities, to warrant the recognition of the branch;
- (iii) will contribute to a more effective and efficient administration of the Khoi-San council; and
- (iv) recognises the senior Khoi-San leader in terms of customary law and customs.

(5) (a) A Khoi-San council may, subject to paragraphs (b) and (c), apply to the Premier of the province where the council is situated, for the recognition of a branch if it meets the criteria set out in subsection (4).

(b) If the Premier is of the view that the branch meets the criteria set out in subsection (4), but such branch is situated in a province other than the province where the Khoi-San council is situated, the Premier of the province where the council is

situated must request the Premier of the province where the branch is situated to recognise that branch.

(c) The recognition of a branch contemplated in paragraph (a) or (b) is subject to subsections (6), (7) and (8).

(6) The Premier of the province where the branch is situated may cause an investigation to be conducted to determine whether a branch meets the criteria set out in subsection (4).

(7) The Premier of the province where the branch is situated may, subject to subsection (8), recognise a branch that meets the criteria set out in subsection (4).

(8) Where the Khoi-San community consists of branches in different provinces, the recognition of such branches must be done by the relevant Premiers by notice in the Provincial *Gazettes* of the provinces where the branches are situated.

#### **Withdrawal of recognition of Khoi-San community and branch**

6. (1) The withdrawal of the recognition of a Khoi-San community or a branch may only be considered where—

(a) a Khoi-San council requests the Premier concerned that the recognition of a Khoi-San community or the recognition of a branch or branches of such community be withdrawn; or

(b) the Khoi-San councils of two or more recognised Khoi-San communities request the Premier concerned to merge such communities into a single Khoi-San community: Provided that such request must be accompanied by the grounds on which the request is based.

(2) (a) Subject to paragraph (b) and subsection (3), the Premier concerned may, after consultation with the relevant provincial house, if a provincial house has been established, by notice in the relevant Provincial *Gazette* withdraw the recognition of a Khoi-San community or a branch as contemplated in subsection (1)(a).

(b) Where the branches of a Khoi-San community which are to be withdrawn, are situated in more than one province, the Premiers of the provinces where the branches are situated must, subject to subsection (3), by notice in the relevant Provincial *Gazettes* withdraw the recognition of the branches.

(3) The Premier or Premiers concerned may, before withdrawing the recognition of the Khoi-San community or branch in terms of subsection (2), cause an investigation to be conducted in order to establish whether the communities to be affected by a request contemplated in subsection (1) were consulted and support such request.

(4) (a) The Premier concerned must recognise a merged Khoi-San community contemplated in subsection (1)(b) and disestablish the individual Khoi-San communities that requested to be merged, by notice in the *Provincial Gazette*.

(b) The notice referred to in paragraph (a) must regulate the legal, practical and other consequences of the merger and disestablishment including—

- (i) if applicable, the transfer of assets, liabilities and administrative and other records of the disestablished Khoi-San community; and
- (ii) the leadership position of the merged Khoi-San community and the vacation of office of any office bearer of a disestablished Khoi-San community.

## **Part 2**

### **Traditional and Khoi-San leaders**

#### **Recognition of leadership positions**

7. (1) There are the following leadership positions:

- (a) King or queen;
- (b) principal traditional leader;
- (c) senior traditional leader;
- (d) senior Khoi-San leader; and
- (e) headman or headwoman and branch head.

(2) The following criteria apply whenever a leadership position is to be recognised:

- (a) A proven history of existence of such leadership position within the community concerned;
- (b) a proven history of acceptance of such leadership position by the community concerned;
- (c) a history of functions and powers of the specific leadership position in terms of the established customary law and customs within the particular community;

- (d) the recognition of the community in terms of this Act; and
- (e) a proven history of either—
  - (i) hereditary leadership in terms of customary law or customs of the community, with or without a customary role for community participation in the determination or confirmation of the individual as leader; or
  - (ii) elected leadership where, in terms of the customary law or customs of the community concerned, the leader is elected.

(3) (a) An application for the recognition of the position of a king or a queen must be submitted to the President.

(b) An application for the recognition of the position of a principal traditional leader, senior traditional leader, senior Khoi-San leader, headman, headwoman or branch head must be submitted to the Premier concerned: Provided that all applications for the recognition of the position of a senior Khoi-San leader or branch head must be lodged with the Advisory Committee until such time as the period referred to in section 65(2)(a) has expired whereafter all applications for recognition must be lodged with the Premier in terms of sections 5 and 10 respectively.

(4) Where there is evidence or an allegation that a leadership position does not comply with the criteria set out in subsection (2), the President or Premier, as the case may be—

- (a) may refuse to recognise such leadership position;
- (b) must cause an investigation to be conducted by an investigative committee designated by the President or Premier, as the case may be, which committee must provide a report on whether the leadership position complies with the said criteria: Provided that in the case of the leadership position of a king or a queen, at least one member of the investigative committee must be a member of the National House and in the case of any other leadership position, at least one member of the investigative committee must be a member of the provincial house concerned, if a provincial house has been established.

(5) The President or the Premier, as the case may be, may, after having considered the report of the investigative committee, recognise the leadership position.

(6) The recognition of a leadership position in terms of this section must be done by notice in the *Gazette* or *Provincial Gazette*, as the case may be.

### **Recognition of king or queen, principal traditional leader, senior traditional leader, headman or headwoman**

8. (1) Whenever the position of a king or queen, or principal traditional leader is to be filled, the following process applies—

- (a) The royal family concerned must, within a reasonable time after the need arises for the position of a king or queen, or principal traditional leader to be filled, and with due regard to applicable customary law and customs—
  - (i) identify a person who qualifies in terms of customary law and customs to assume the position of a king or queen, or principal traditional leader, as the case may be, after taking into account whether any of the grounds referred to in section 9(1) apply to that person; and
  - (ii) apply to the President or relevant Premier, as the case may be, for the recognition of the person so identified as a king or queen, subject to section 3(2), or principal traditional leader which application must be accompanied by—
    - (aa) the particulars of the person so identified to fill the position of a king or queen, or principal traditional leader; and
    - (bb) the reasons for the identification of that person as king or queen, or principal traditional leader.
- (b) The President may, after consultation with the Minister and the Premier concerned, and subject to subsections (3) and (4), recognise as a king or queen a person so identified in terms of paragraph (a)(i), taking into account whether a kingship or queenship has been recognised in terms of section 3.
- (c) The Premier may recognise as a principal traditional leader a person so identified in terms of paragraph (a)(i), taking into account whether a principal traditional community still exists.

(2) Whenever the position of senior traditional leader, headman or headwoman is to be filled, subject to subsection (3)—

- (a) the royal family concerned must, in the event of a hereditary succession, within a reasonable time after the need arises for any of those positions to be filled, identify a person who qualifies in terms of customary law or customs to assume the position in

question, taking into account whether any of the grounds referred to in section 9(1) apply to that person;

- (b) in the event that hereditary succession is not applicable, a person who is to assume the position of headman or headwoman must, in terms of customs or customary law be identified or elected by the community concerned, within a reasonable time after the need arises for such a position to be filled, taking into account whether any of the grounds referred to in section 9(1) apply to that person;
- (c) the royal family in the case of hereditary succession referred to in paragraph (a), through the relevant customary structure, and the traditional council concerned in the case of an identified or elected headman or headwoman referred to in paragraph (b), must apply to the Premier for the recognition of the person so identified or elected and provide the Premier with the particulars of such person; and
- (d) the Premier concerned must, subject to subsection (3), recognise the person so identified or elected as senior traditional leader, headman or headwoman, as the case may be.

(3) Whenever the President recognises a king or queen, or a Premier recognises a principal traditional leader, senior traditional leader, headman or headwoman, the President or the Premier, as the case may be, must—

- (a) publish a notice in the *Gazette* recognising such person as a king or queen, or publish a notice in the relevant Provincial *Gazette* recognising such person as a principal traditional leader, senior traditional leader, headman or headwoman;
- (b) issue a certificate of recognition to such person; and
- (c) inform the National House of the recognition of a king or queen and inform the relevant provincial house of the recognition of a principal traditional leader, senior traditional leader, headman or headwoman.

(4) Where there is evidence or an allegation that the identification of a person as a king or queen, principal traditional leader or senior traditional leader, or the identification or election of a person as a headman or headwoman, was not done in terms of customary law and customs, the President or the relevant Premier, as the case may be—

- (a) may refuse to issue a certificate of recognition;
- (b) must cause an investigation to be conducted by an investigative committee designated by the President or Premier, as the case may be, which committee must,

in the case of a committee designated by the President, include at least one member of the National House and in the case of a committee designated by a Premier, include at least one member of the relevant provincial house, to provide a report on whether the identification or election of the relevant person was done in accordance with customary law and customs and if not, which person should be so identified or whether a new election should be held; and

- (c) must, where the findings of the investigative committee indicate that the identification or election of the person referred to in subsections (1) and (2) was not done in terms of customary law and customs, refer the report contemplated in paragraph (b) to the royal family or relevant traditional council in the case of an elected headman or headwoman, for its comments.

(5) The President or the relevant Premier, as the case may be, may, after having considered the report of the investigative committee as well as the comments of the royal family, subject to subsection (3) recognise a person as king or queen, principal traditional leader, senior traditional leader, headman or headwoman, as the case may be.

(6) The Minister may, in accordance with the provisions of section 67, make regulations in respect of the—

- (a) consultation by the Premier concerned with the traditional council where the position of a senior traditional leader, headman or headwoman is to be filled; and
- (b) procedure to be followed for the identification or election of a senior traditional leader, headman or headwoman in instances where the customs or customary law does not make provision for such identification or election.

#### **Withdrawal of recognition of king or queen, principal traditional leader, senior traditional leader, headman or headwoman**

9. (1) The recognition of a king or queen, principal traditional leader, senior traditional leader, headman or headwoman, subject to subsections (2) and (3)—

- (a) must be withdrawn if he or she—
- (i) has been convicted of an offence with a sentence of imprisonment for more than 12 months without the option of a fine;
- (ii) is declared mentally unfit or mentally disordered by a court; or



- (iii) no longer permanently resides within the area of the kingship or queenship council, principal traditional council or traditional council, as the case may be; or
- (b) may be withdrawn if he or she—
  - (i) has been removed from office in terms of the code of conduct; or
  - (ii) has transgressed customary law or customs, on a ground that warrants withdrawal of recognition.

(2) (a) Whenever in the case of a king or a queen, any of the grounds referred to in subsection (1) come to the attention of the royal family, the royal family must, within a reasonable time and through the relevant customary structure—

- (i) inform the President, the Premier concerned, the Minister and the senior traditional leaders within the kingship or queenship of the particulars of such king or queen and of the particulars relating to the specific ground referred to in subsection (1); and
- (ii) give written confirmation to the President that the Premier concerned and the Minister have been informed accordingly.

(b) Whenever any of the grounds referred to in subsection (1)(b) come to the attention of the royal family, the royal family may recommend the withdrawal of the recognition of the king or queen and must furnish the President with reasons for such recommendation.

(3) (a) Whenever in the case of a principal traditional leader, senior traditional leader, headman or headwoman, any of the grounds referred to in subsection (1) come to the attention of the royal family or, in the case of an elected headman or headwoman, come to the attention of the relevant traditional council, the royal family or traditional council must, within a reasonable time and through the relevant customary structure inform the Premier concerned and the senior traditional leaders within the principal traditional community or traditional community, as the case may be, of the particulars of such principal traditional leader, senior traditional leader, headman or headwoman and of the particulars relating to the specific ground referred to in subsection (1).

(b) Whenever any of the grounds referred to in subsection (1)(b) come to the attention of the royal family or, in the case of an elected headman or headwoman, come to the attention of the relevant traditional council, the royal family or traditional council, as the case may be, may recommend the withdrawal of the recognition

of the principal traditional leader, senior traditional leader, headman or headwoman and must furnish the Premier with reasons for such recommendation.

(4) (a) When the President or relevant Premier is informed of the presence of any of the grounds referred to in subsection (1)(a), the President or Premier must, after consultation with the Minister or member of the Executive Council responsible for traditional affairs in the particular province, as the case may be, and subject to subsections (5) and (6), withdraw the recognition of the relevant king or queen, principal traditional leader, senior traditional leader, headman or headwoman.

(b) When the President or relevant Premier is informed of the presence of any of the grounds referred to in subsection (1)(b), the President or Premier may, after consultation with the Minister or member of the Executive Council referred to in paragraph (a), and—

- (i) after having considered the information referred to in subsection (2)(a)(i); and
- (ii) where applicable, after having considered any recommendation and reasons as contemplated in subsection (2)(b),

withdraw the recognition of the king or queen, principal traditional leader, senior traditional leader, headman or headwoman or refuse to withdraw such recognition: Provided that if the President or Premier refuses to withdraw such recognition, he or she, as the case may be, must in writing provide reasons to the royal family or, in the case of an elected headman or headwoman, to the relevant traditional council: Provided further that if the President refuses to withdraw a recognition, he or she must inform the relevant Premier and the Minister accordingly.

(5) When the President or relevant Premier withdraws the recognition of a king or queen, principal traditional leader, senior traditional leader, headman or headwoman—

- (a) the President must cause a notice with particulars of such king or queen and the date on which such withdrawal takes effect to be published in the *Gazette*;
- (b) the relevant Premier must cause a notice with particulars of such principal traditional leader, senior traditional leader, headman or headwoman and the date on which such withdrawal takes effect to be published in the relevant provincial *Gazette*; and
- (c) the President or Premier, as the case may be, must inform the royal family or traditional council concerned and the relevant king or queen, principal traditional leader, senior traditional leader, headman or headwoman of such withdrawal.

(6) (a) Where there is evidence or an allegation that—

- (i) the withdrawal of the recognition of a king or queen, principal traditional leader, senior traditional leader, headman or headwoman was not based on any of the grounds set out in subsection (1);
- (ii) the information which was brought to the President or Premier's attention in accordance with subsection (2)(a)(i) was provided in bad faith; or
- (iii) a recommendation made by the royal family or relevant traditional council, in the case of an elected headman or headwoman, as contemplated in subsection (2)(b) was done in bad faith,

the President or Premier, as the case may be, must cause an investigation to be conducted by an investigative committee designated by the President or Premier which committee must, in the case of a king or queen include at least one member of the National House and in the case of a principal traditional leader, senior traditional leader, headman or headwoman include at least one member of the relevant provincial house, to provide a report as well as recommendations on whether the withdrawal of the recognition of the person concerned was done in accordance with the grounds set out in subsection (1) or whether the information brought to the attention of the President or Premier was done in bad faith or not, or whether the recommendation of the royal family or traditional council was made in bad faith or not.

(b) Where the report of the investigative committee indicates that

- 
- (i) the withdrawal of the recognition of the king or queen, principal traditional leader, senior traditional leader, headman or headwoman was not done in accordance with any of the grounds set out in subsection (1);
  - (ii) the information brought to the President or Premier's attention was done in bad faith; or
  - (iii) the recommendation of the royal family or relevant traditional council was made in bad faith,

the President or Premier, as the case may be, must refer the report to the royal family or traditional council for its comments and the royal family or traditional council must provide the President or Premier with written comments within 60 days from the date of such referral.

(c) The President or Premier may, after having considered the report of the investigative committee as well as the comments of the royal family or traditional council where applicable—

- (i) refuse to withdraw the recognition of a king or queen, principal traditional leader, senior traditional leader, headman or headwoman if the information provided or the recommendations made by the royal family or traditional council were done in bad faith;
- (ii) by notice in the *Gazette* or provincial *Gazette*, as the case may be, confirm the withdrawal of recognition of the particular traditional leader or revoke such withdrawal of recognition: Provided that if the withdrawal of recognition is revoked, the relevant traditional leader shall consequentially be regarded as reinstated from the date on which the recognition was withdrawn.

(7) Where the recognition of a king or queen, principal traditional leader, senior traditional leader, headman or headwoman is withdrawn, a successor may, subject to section 8 and in accordance with customary law and customs, assume the position, role and responsibilities of king or queen, principal traditional leader, senior traditional leader, headman or headwoman.

### **Recognition of senior Khoi-San leader or branch head**

10. (1) Whenever the position of a senior Khoi-San leader or branch head is to be filled, subject to sections 64, 65 and 66—

- (a) the royal family concerned, in the event of a hereditary succession must, within a reasonable time after the need arises for a position to be filled and with due regard to applicable customary law and customs, identify a senior Khoi-San leader as the hereditary successor;
- (b) the Khoi-San council concerned, in the case of succession by election must, within a reasonable time after the need arises for a position to be filled and with due regard to applicable customary law and customs, elect a senior Khoi-San leader or a branch head to assume the position in question;
- (c) the royal family or the Khoi-San council, as the case may be, must apply to the Premier for the recognition of the person identified or elected in terms of paragraphs (a) or (b).

(2) A branch head elected in terms of subsection (1)(b) is elected for a period of five years which term must coincide with the term of the Khoi-San council concerned.

(3) An election referred to in subsection (1)(b) must be conducted in terms of rules and procedures adopted by the Khoi-San council concerned.

(4) The royal family or Khoi-San council, as the case may be, must inform the Premier concerned of the particulars of the person identified or elected as contemplated in subsection (1).

(5) The Premier concerned must, subject to subsection (6), where a senior Khoi-San leader or branch head has been identified or elected—

- (a) by notice in the relevant Provincial *Gazette* recognise the person identified or elected in terms of subsection (1);
- (b) issue a certificate of recognition to the person so identified or elected and indicate the term of office of an elected person; and
- (c) inform the Minister and the relevant provincial house of the particulars of the person referred to in paragraph (a).

(6) (a) Where a branch head who has been elected resides in a province other than the province where the relevant Khoi-San council is situated, the Premier of the province within which the branch is situated must, by notice in the relevant Provincial *Gazette* and after consultation with the Premier of the province where the Khoi-San council is situated, recognise the branch head concerned.

(b) The provisions of subsection (5)(b) and (c) apply to the recognition of a branch head in terms of paragraph (a).

(7) Where there is evidence or an allegation that the election or identification of a person referred to in subsection (1) was not done in accordance with the rules and procedures contemplated in subsection (3) or customary law and customs, the Premier concerned—

- (a) may refuse to issue a certificate of recognition;
- (b) must cause an investigation to be conducted by an investigative committee designated by the Premier which committee must include at least one Khoi-San member of the provincial house, if a provincial house has been established, to provide a report on whether the identification or election of the person referred to in subsection (1) was done in accordance with customary law and customs or the rules

and procedures contemplated in subsection (3) and if not, which person should be so identified or whether a new election should be held; and

- (c) must, where the findings of the investigative committee indicate that the identification or election of the person referred to in subsection (1) was not done in terms of customary law and customs or the rules and procedures contemplated in subsection (3), refer the report contemplated in paragraph (b) to the royal family or Khoi-San council, as the case may be, for its comments.

(8) The Premier concerned may, after having considered the report of the investigative committee as well as the comments of the royal family or Khoi-San council—

- (a) recognise a person as a senior Khoi-San leader or a branch head; or  
(b) advise the Khoi-San council that the election of a senior Khoi-San leader or branch head was not done in terms of customary law and customs or in accordance with the rules and procedures contemplated in subsection (3) and that a re-election must be held within the time determined by the Premier.

#### **Withdrawal of recognition of senior Khoi-San leader or branch head**

11. (1) The recognition of a senior Khoi-San leader or branch head, subject to the provisions of subsection (2)—

- (a) must be withdrawn if he or she—  
(i) has been convicted of an offence with a sentence of imprisonment for more than 12 months without the option of a fine;  
(ii) is declared mentally unfit or mentally disordered by a court; or  
(b) may be withdrawn if he or she—  
(i) has been removed from office in terms of the code of conduct; or  
(ii) has transgressed customary law or customs,  
on a ground that warrants withdrawal of recognition.

(2) (a) Whenever any of the grounds referred to in subsection (1) come to the attention of the royal family or Khoi-San council, as the case may be, the royal family or Khoi-San council must, within a reasonable time and through the relevant customary structure inform the Premier of the province where the royal family or branch is situated, of the particulars of such senior Khoi-San leader or branch head and of the particulars relating to the specific ground referred to in subsection (1).

(b) Whenever any of the grounds referred to in subsection (1)(b) come to the attention of the royal family or Khoi-San council, the royal family or Khoi-San council may recommend the withdrawal of the recognition of the senior Khoi-San leader or branch head and must furnish the Premier with reasons for such recommendation.

(3) (a) When the Premier is informed of the presence of any of the grounds referred to in subsection (1)(a), the Premier must, subject to subsections (4) and (5), withdraw the recognition of the relevant senior Khoi-San leader or branch head.

(b) When the Premier is informed of the presence of any of the grounds referred to in subsection (1)(b), the Premier may—

- (i) after having considered the information referred to in subsection (2)(a); and
- (ii) where applicable, after having considered any recommendation and reasons as contemplated in subsection (2)(b),

withdraw the recognition of the senior Khoi-San leader or branch head or refuse to withdraw such recognition: Provided that if the Premier refuses to withdraw such recognition, he or she must in writing provide reasons to the royal family or Khoi-San council, as the case may be.

(4) When the Premier withdraws the recognition of a senior Khoi-San leader or branch head, the Premier must—

- (a) cause a notice with particulars of such senior Khoi-San leader or branch head and the date on which such withdrawal takes effect to be published in the *Provincial Gazette*; and
- (b) inform the royal family or Khoi-San council concerned and the senior Khoi-San leader or branch head concerned of such withdrawal.

(5) (a) Where there is evidence or an allegation that the withdrawal of the recognition of a senior Khoi-San leader or branch head was not based on any of the grounds set out in subsection (1) or that the information which was brought to the Premier's attention in accordance with subsection (2)(a) was provided in bad faith or that a recommendation made by the royal family or Khoi-San council as contemplated in subsection (2)(b) was done in bad faith, the Premier must cause an investigation to be conducted by an investigative committee designated by the Premier which committee must include at least one Khoi-San member of the relevant provincial house, if a provincial house has been established, to provide a report as well as recommendations on whether the withdrawal of the recognition of the senior Khoi-San leader or branch head was done in

accordance with the grounds set out in subsection (1) or whether the information brought to the attention of the Premier was done in bad faith or not, or whether the recommendation of the royal family or Khoi-San council was made in bad faith or not.

(b) Where the report of the investigative committee indicates that the withdrawal of the recognition of the senior Khoi-San leader or branch head was not done in accordance with any of the grounds set out in subsection (1) or that the information brought to the Premier's attention was done in bad faith or that the recommendation of the royal family or Khoi-San council was made in bad faith, the Premier must refer the report to the royal family or Khoi-San council, as the case may be, for its comments and the royal family or Khoi-San council must provide the Premier with written comments within 60 days from the date of referral.

(c) The Premier may, after having considered the report of the investigative committee as well as the comments of the royal family or Khoi-San council where applicable—

- (i) refuse to withdraw the recognition of a senior Khoi-San leader or branch head if the information provided or the recommendations made by the royal family or Khoi-San council were done in bad faith;
- (ii) by notice in the *Provincial Gazette*, confirm the withdrawal of recognition of the senior Khoi-San leader or branch head concerned or revoke such withdrawal of recognition: Provided that if the withdrawal of recognition is revoked, the relevant senior Khoi-San leader or branch head shall consequentially be regarded as reinstated from the date on which the recognition was withdrawn.

(6) If a senior Khoi-San leader or branch head whose recognition has been withdrawn—

- (a) occupied a position of hereditary leadership as contemplated in section 7(2)(e)(i), a successor must be identified by the royal family in accordance with the provisions of section 10; or
- (b) was elected as contemplated in section 7(2)(e)(ii), a successor must be elected by the Khoi-San council in accordance with the provisions of section 10: Provided that a person elected in terms of this paragraph is elected for the unexpired term of his or her predecessor.

(7) (a) Where the royal family or Khoi-San council, as the case may be, recommended the withdrawal of the recognition of a branch head who resides in a



province other than the province where the Khoi-San council is situated, the Premier of the province where the Khoi-San council is situated must request the Premier of the province that recognised the branch head to withdraw the recognition of such branch head.

(b) The provisions of subsections (4) and (5) apply to a withdrawal in terms of paragraph (a).

## **Recognition of regent**

12. (1) Where the successor to the position of a king, queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader identified in terms of sections 8 or 10, as the case may be, is regarded as a minor in terms of applicable customary law or customs—

(a) the royal family concerned must, within 30 days of the death of a king, queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader—

(i) identify a regent to assume leadership in the place and stead of the minor; and

(ii) through the relevant customary structure and with due regard to applicable customary law and customs, inform the Premier concerned of the particulars of the person identified as regent and the reasons for the identification of that person; and

(b) the Premier concerned must, with due regard to applicable customary law or customs and subject to subsections (2) and (3), recognise the regent identified by the royal family in respect of the position of a king, queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader:

Provided that the recognition of a regent must be reviewed by the Premier concerned at least every three years.

(2) Where the royal family fails to identify a regent as contemplated in subsection (1), the Premier must, after consultation with the royal family, identify a suitable person as regent.

(3) Whenever a Premier recognises a regent as contemplated in subsection (1), he or she must—

- (a) publish a notice in the relevant Provincial *Gazette* recognising the person identified as regent in terms of subsection (1);
- (b) issue a certificate of recognition to the identified regent; and
- (c) inform the relevant provincial house of the recognition of a regent.

(4) A regent is responsible for the performance of the functions that are attached to the relevant kingship, queenship, principal traditional leadership, senior traditional leadership, headmanship, headwomanship or senior Khoi-San leadership and is entitled to the salary and allowances attached to the relevant position.

(5) The provisions of section 10(7) apply with the necessary changes in respect of a regent identified for a senior Khoi-San leader.

(6) Where there is evidence or an allegation that the identification of a person as regent was not done in accordance with customary law or customs, the Premier concerned –

- (a) may refuse to issue a certificate of recognition;
- (b) must cause an investigation to be conducted by an investigative committee designated by the Premier which committee must include at least one member of the relevant provincial house, to provide a report on whether the identification of the person referred to in subsection (1) was done in accordance with customary law and customs and if not, which person should be so identified; and
- (c) must, where the findings of the investigative committee indicate that the identification of the person referred to in subsection (1) was not done in terms of customary law and customs, refer the report contemplated in paragraph (b) to the royal family for its comments.

(7) The Premier concerned may, after having considered the report of the investigative committee as well as the comments of the royal family, recognise a person as a regent.

(8) As soon as the successor to the position of a king, queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader ceases to be a minor in terms of customary law, the regent recognised in terms of subsection (1) must relinquish his or her position as regent, and the rightful successor—

- (a) in the case of a king or queen, must be recognised by the President after consultation with the Minister as contemplated in section 8(1)(b), and a certificate of

recognition as contemplated in section 8(3)(b) must be issued after his or her name has been published in the *Gazette*;

- (b) in the case of a principal traditional leader, senior traditional leader, headman or headwoman, must be recognised by the Premier concerned in terms of section 8(1)(c) or 8(2)(d), as the case may be, and a certificate of recognition contemplated in section 8(3)(b) must be issued after his or her name has been published in the relevant Provincial *Gazette*; or
- (c) in the case of a senior Khoi-San leader, must be recognised by the Premier concerned in terms of section 10(5)(a), and a certificate of recognition contemplated in section 10(5)(b) must be issued after his or her name has been published in the relevant Provincial *Gazette*.

(9) Where a regent has been recognised in respect of the position of a king or queen, the Premier concerned must inform the President and the Minister –

- (a) of the particulars of the regent;
- (b) when the regent is supposed to relinquish his or her position as regent; and
- (c) if applicable, of the withdrawal of the recognition of the regent.

### **Recognition of acting traditional and Khoi-San leaders**

13. (1) Within 30 days of becoming aware of any of the instances mentioned in paragraphs (a), (b) and (c), a royal family must identify a suitable person to act as a king, queen, principal traditional leader, senior traditional leader, headman or headwoman, or a royal family or Khoi-San council, as the case may be, must identify a suitable person to act as a senior Khoi-San leader or branch head, as the case may be, where—

- (a) a successor—
  - (i) to the position of a king, queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader has not been identified by the royal family concerned in terms of section 8 or 10, as the case may be; or
  - (ii) to the position of senior Khoi-San leader or branch head has not been elected by the Khoi-San council as contemplated in section 10(1)(b);
- (b) the identification of a successor to the position of a king, queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or

branch head is being dealt with in terms of section 8(4) or 10(7), as the case may be; or

- (c) a king, queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or branch head, as the case may be, is unable to perform his or her functions under circumstances other than those provided for in section 14 and for a period of more than six months for—
- (i) the treatment of illness;
  - (ii) study purposes; or
  - (iii) any other lawful purpose.

(2) Where the royal family or Khoi-San council fails to identify a suitable person as contemplated in subsection (1), the Premier must, after consultation with the royal family or Khoi-San council, as the case may be, identify a suitable person to act as a king, queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or branch head, as the case may be.

(3) Where a person has been identified to act as a king, queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or branch head, the royal family or Khoi-San council, as the case may be, must, within seven days of the identification of an acting person, inform the Premier concerned of the particulars of the person so identified and the reasons for the identification of that person.

(4) A person identified to act as a king, queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or branch head must be recognised by the Premier concerned by notice in the relevant Provincial *Gazette* and the Premier must—

- (a) issue a certificate of recognition to the person identified to act in a particular position; and
- (b) inform the Minister of the recognition of an acting king or queen and inform the relevant provincial house of the recognition of any other acting leader:

Provided that an acting recognition must be reviewed at least every three years by the Premier concerned.

(5) (a) Where there is evidence or an allegation that the identification of a person as acting king, queen, principal traditional leader, senior traditional leader, headman or headwoman was not done in accordance with customary law or customs, the Premier concerned—

- (i) may refuse to issue a certificate of recognition;
- (ii) must cause an investigation to be conducted by an investigative committee designated by the Premier which committee must include at least one member of the relevant provincial house, to provide a report on whether the identification of the person referred to in subsection (1) was done in accordance with customary law and customs and if not, which person should be so identified; and
- (iii) must, where the findings of the investigative committee indicate that the identification of the person referred to in subsection (1) was not done in terms of customary law and customs, refer the report contemplated in paragraph (b) to the royal family for its comments.

(b) The provisions of section 10(7) apply with the necessary changes in respect of the identification of an acting senior Khoi-San leader or branch head.

(6) A person who has been recognised as an acting king, queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or branch head in terms of this section, is responsible for the performance of the functions that are attached to the relevant kingship, queenship, principal traditional leadership, senior traditional leadership, headmanship, headwomanship, senior Khoi-San leadership or branch headship and is entitled to the salary and allowances attached to the relevant position: Provided that the king, queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader and branch head in whose stead a person has been recognised to act in terms of this section, is not entitled to any salary and allowances attached to the relevant position for the duration of the recognition of the person so acting.

(7) Where a person has been identified as an acting king or queen, the Premier concerned must inform the President and the Minister of—

- (a) the acting recognition; and
- (b) if applicable, the withdrawal of recognition of the person who has been identified as an acting king or queen.

(8) Whenever the successor to a leadership position has been identified or elected as contemplated in subsection (1)(a), or an investigation as contemplated in subsection (1)(b) has been finalised, or the circumstances referred to in subsection (1)(c) are no longer applicable, any relevant acting recognition shall automatically lapse on the date on which the relevant leader referred to in subsection (1)(a) or (b) is recognised by

notice in the *Gazette* or *Provincial Gazette*, as the case may be, or the date on which the leader referred to in subsection (1)(c) resumes his or her functions.

### **Recognition of deputy traditional and Khoi-San leader**

14. (1) A king, queen, principal traditional leader, senior traditional leader, headman or headwoman, as the case may be, must, with the concurrence of the relevant royal family, within 30 days of any of the circumstances set out in paragraphs (a) to (e) occurring, identify a deputy to act in his or her stead whenever that king, queen, principal traditional leader, senior traditional leader, headman or headwoman—

- (a) becomes a full-time member of a municipal council;
- (b) is elected as a member of a provincial legislature;
- (c) is elected as a member of the National Assembly;
- (d) is appointed as a permanent delegate in the National Council of Provinces; or
- (e) holds a full-time position in any house of traditional leaders.

(2) Where the king, queen, principal traditional leader, senior traditional leader, headman or headwoman fails to identify a suitable person as contemplated in subsection (1), the Premier must, after consultation with the relevant leader, identify a suitable person as deputy.

(3) A hereditary senior Khoi-San leader may, with the concurrence of the relevant royal family, and an elected senior Khoi-San leader may, with the concurrence of the relevant Khoi-San council, within 30 days of any of the circumstances set out in subsection(1)(a) to (e) occurring, identify a suitable person as deputy to act in the stead of that senior Khoi-San leader.

(4) Where the royal family or Khoi-San council fails to identify a suitable person as contemplated in subsection (3), the Premier must, after consultation with the royal family or Khoi-San council, as the case may be, identify a suitable person as deputy.

(5) (a) A royal family referred to in subsection (1) must, within seven days of the identification of a deputy and through the relevant customary structure, inform the Premier concerned of the particulars of the person identified as deputy traditional leader in terms of subsection (1) and the reasons for the identification of that person.

(b) A royal family or Khoi-San council referred to in subsection (3), as the case may be, must within seven days of the identification of a deputy inform the

Premier concerned of the particulars of the person identified as deputy senior Khoi-San leader and the reasons for the identification of that person.

(6) The Premier concerned may, with due regard to applicable customary law or customs, recognise the deputy identified by the royal family in terms of subsection (1) and must—

- (a) issue a certificate of recognition to such deputy traditional leader; and
- (b) inform the Minister of the recognition of a deputy king or queen and inform the relevant provincial house of the recognition of any other deputy leader:

Provided that the recognition of a person as a deputy shall automatically lapse with effect from the date that the king, queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader ceases to occupy a position referred to in subsection (1).

(7) (a) The Premier concerned may, with due regard to applicable customary law or customs and subject to paragraph (b), recognise the deputy identified by the royal family or the Khoi-San council in terms of subsection (3).

(b) The provisions of subsection (6) and section 10(7) apply with the necessary changes in respect of the identification of a deputy senior Khoi-San leader.

(8) Where there is evidence or an allegation that the identification of a person as deputy king, queen, principal traditional leader, senior traditional leader, headman or headwoman was not done in accordance with customary law or customs, the Premier concerned—

- (a) may refuse to issue a certificate of recognition;
- (b) must cause an investigation to be conducted by an investigative committee designated by the Premier which committee must include at least one member of the relevant provincial house, to provide a report on whether the identification of the person referred to in subsection (1) was done in accordance with customary law and customs and if not, which person should be so identified; and
- (c) must, where the findings of the investigative committee indicate that the identification of the person referred to in subsection (1) was not done in terms of customary law and customs, refer the report contemplated in paragraph (b) to the royal family for its comments.

(9) Any recognition in terms of this section must be reviewed by the Premier concerned at least every two years in order to establish whether the reasons for having identified and recognised a deputy are still applicable.

(10) A person who has been recognised as a deputy in terms of this section is responsible for the performance of the functions that are attached to the relevant kingship, queenship, principal traditional leadership, senior traditional leadership, headmanship, headwomanship or senior Khoi-San leadership and is entitled to the salary and allowances attached to the relevant position: Provided that the king, queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader in whose stead a person has been recognised as deputy in terms of this section, is not entitled to any salary and allowances attached to the relevant position for the duration of the recognition of such deputy.

### **Functions of traditional and Khoi-San leaders**

15. A traditional or Khoi-San leader performs the functions provided for—
- (a) in terms of customary law and customs of the traditional or Khoi-San community concerned; and
  - (b) in terms of any applicable national or provincial legislation.

### ***Part 3***

#### ***Traditional and Khoi-San councils***

#### **Establishment of kingship or queenship council, principal traditional council or traditional council**

16. (1) Once the President has recognised a kingship or a queenship, or a community has been deemed to be a principal traditional community as contemplated in section 69(8)(c), or the Premier has recognised a traditional community as contemplated in section 3, that kingship or queenship, principal traditional community or traditional community must, within a period of five years of such recognition or any such further period as the Minister, in the case of a kingship or a queenship, or a Premier, in the case of a principal traditional community or a traditional community, may determine by notice in the



*Gazette* or provincial *Gazette*, as the case may be, establish a kingship or queenship council, principal traditional council or traditional council, as the case may be.

(2) (a) A kingship or queenship council, a principal traditional council and a traditional council consists of the number of members as determined by the Minister, by formula published by notice in the *Gazette* after consultation with—

- (i) in the case of a kingship or queenship council or principal traditional council—
  - (aa) the king or queen, or principal traditional leader, as the case may be;
  - (bb) a forum of not more than five members of the royal family designated by the royal family; and
  - (cc) a forum of not more than 20 senior traditional leaders under the kingship or queenship or principal traditional community, designated by the senior traditional leaders from amongst themselves;
- (ii) in the case of a traditional council, all Premiers and provincial houses.

(b) At least a third of the members of a kingship or queenship council, principal traditional council or traditional council must be women: Provided that where it has been proved that no sufficient number of women is available to participate in such a council, the Minister may determine a lower threshold for the particular kingship or queenship council or the relevant Premier may determine a lower threshold for the particular principal traditional council or traditional council.

(c) The membership of a kingship or queenship council, principal traditional council or traditional council comprises—

- (i) 60% of traditional leaders and members of the traditional community selected, subject to subsection (3) and in terms of that community's customs, by the king or queen, principal traditional leader or senior traditional leader who is an *ex officio* member and chairperson of the relevant council, taking into account the need for overall compliance with paragraph (b): Provided that if, in the case of traditional councils, there are no recognised headmen or headwomen, only community members must be selected; and
- (ii) 40% of members elected in terms of paragraph (f) in the case of a kingship or queenship council or principal traditional council, or elected in terms of section 21 in the case of a traditional council.

(d) The selection of the members of a kingship or queenship council, principal traditional council or traditional council as contemplated in this section

must be finalised before the election of members as contemplated in this section, and the names of such selected members must be made public: Provided that any election in the case of a kingship or queenship council or principal traditional council must take place within 21 days of the names of the selected members having been made public.

(e) A kingship or queenship, principal traditional community or traditional community must, within 21 days of the date of an election, submit the names of the members that have been selected and elected to the Premier concerned.

(f) Each traditional council falling within the area of jurisdiction of the kingship or queenship or principal traditional community concerned, must elect one person from the elected members of that council, to serve as a member referred to in paragraph (c)(ii): Provided that where the number of persons so elected are less than the number of members contemplated in paragraph (c)(ii), the traditional councils must each elect one additional person from amongst the elected members of that council: Provided further that where the number of persons so elected exceed the number of members contemplated in paragraph (c)(ii), the persons elected by the traditional councils must elect from amongst themselves the number of persons contemplated in paragraph (c)(ii).

(3) (a) Before a selection contemplated in subsection (2)(c)(i), the royal family concerned must designate from amongst its members a forum of not less than five and not more than 10 members to assist in the selection.

(b) The selection of the members contemplated in subsection (2)(c)(i) by a king or queen, principal traditional leader or senior traditional leader is subject to the concurrence of the forum referred to in paragraph (a).

(c) If there is no concurrence as referred to in paragraph (b), the king or queen, principal traditional leader or senior traditional leader, as the case may be, must submit the names of the persons who were nominated for selection as contemplated in paragraph (a) to the Premier concerned and the Premier must, after consultation with such leader and the forum referred to in paragraph (a), select the required number of members as contemplated in subsection (2)(c)(i).

(4) (a) The term of office of the members of the kingship or queenship council, principal traditional council or traditional council, excluding the king or queen, principal traditional leader or senior traditional leader, is not more than five years and must be aligned to the term of office of the National House: Provided that, notwithstanding anything to the contrary contained in any law, the term of any kingship or queenship

council, principal traditional council or traditional council that was established and constituted prior to the commencement of this Act, will expire on 31 March 2017: Provided further that any subsequent term of office of any such council shall expire on 31 March of the fifth year following the establishment of such council.

(b) The selection of members in terms of subsection (2)(c)(i) must, in the case of a kingship or queenship council or principal traditional council, be finalised at least 60 days prior to the expiry of the term of office of members of such council, and in the case of a traditional council, at least 45 days prior to the expiry of the term of office of the members of such council.

(5) The Premier concerned must, by notice in the relevant Provincial *Gazette* and in accordance with this Act, recognise a kingship or queenship council, principal traditional council or traditional council for such kingship or queenship, principal traditional community or traditional community and define its area of jurisdiction, having regard to the provisions of section 3(1)(b) and (2)(a) in the case of a kingship or queenship: Provided that the Premier must inform the President and the Minister of any recognition of a kingship or queenship council: Provided further that the area of jurisdiction of a traditional council must include the area of a traditional sub-council, where applicable.

(6) A kingship or queenship council, a principal traditional council and a traditional council convenes at the administrative seat of the particular council.

(7) The quorum of a kingship or queenship council, principal traditional council or traditional council consists of the majority of the total number of members of such council.

(8) A kingship or queenship council, principal traditional council or traditional council must elect one of its members as a deputy chairperson who will act as the chairperson in the absence of the king or queen, principal traditional leader or senior traditional leader, as the case may be.

(9) A kingship or queenship council or principal traditional council must meet once every three months and a traditional council must meet every two months: Provided that the king or queen, principal traditional leader or senior traditional leader, as the case may be, may, with the concurrence of the relevant Premier, convene any additional ordinary or any special meeting of the relevant council.

(10) A king or queen, principal traditional leader or senior traditional leader, as the case may be, must, for purposes of convening a special meeting, give notice of not

less than seven days to members of the kingship or queenship council, principal traditional council or traditional council.

(11) A member of a kingship or queenship council, principal traditional council or traditional council must vacate his or her office if—

- (a) he or she ceases to be a South African citizen;
- (b) he or she has been convicted of an offence and sentenced to imprisonment for more than 12 months without the option of a fine;
- (c) he or she tenders his or her resignation;
- (d) he or she is declared mentally unfit or mentally disordered by a court;
- (e) the period for which the member was selected or elected, as the case may be, has expired;
- (f) he or she becomes disqualified in terms of subsection (14);
- (g) he or she has been removed from office in terms of the code of conduct;
- (h) he or she no longer resides within the area of jurisdiction of the kingship or queenship council, principal traditional council or traditional council, as the case may be; or
- (i) he or she is a selected member and his or her recognition as a traditional leader has been withdrawn.

(12) If a member of a kingship or queenship council, principal traditional council or traditional council dies or vacates his or her office before the expiration of his or her term of office, such a vacancy must be filled in the manner referred to in subsection (2)(c)(i) or (ii), as the case may be, within 14 days of the vacancy having arisen.

(13) A person who has been appointed to fill a vacancy in a kingship or queenship council, principal traditional council or traditional council as contemplated in subsection (12), holds office for the unexpired period of his or her predecessor's term of office.

(14) A person is not eligible to be elected or selected as a member of a kingship or queenship council, principal traditional council or traditional council if that person—

- (a) is not a South African citizen;
- (b) is under 18 years of age;
- (c) has been convicted of an offence in respect of which he or she was sentenced to imprisonment for more than 12 months without the option of a fine;

- (d) is an unrehabilitated insolvent or has entered into a compromise with his or her creditors;
- (e) is of unsound mind and has been so declared by a competent court;
- (f) is or becomes a full-time member of a municipal council;
- (g) is elected as a member of a provincial legislature;
- (h) is elected as a member of the National Assembly;
- (i) is appointed as a permanent delegate in the National Council of Provinces; or
- (j) is elected to a full-time position in any house of traditional leaders.

(15) (a) The withdrawal of the recognition of a kingship or queenship, principal traditional community or traditional community in terms of section 4, automatically results in the disestablishment of the relevant kingship or queenship council, principal traditional council or traditional council and the withdrawal of the recognition of the relevant king or queen, principal traditional leader or senior traditional leader.

(b) The withdrawal of a kingship or queenship council, principal traditional council or traditional council must be done by the Premier concerned by a notice in the relevant *Provincial Gazette*.

### **Establishment of traditional sub-council**

17. (1) (a) Notwithstanding the provisions of section 16, the Premier concerned may at the request of a traditional council, in cases where a traditional community occupies two or more geographical areas within a province, establish a traditional sub-council for the geographical area which is located outside the area where the administrative seat of the traditional community is situated, if the Premier is of the view that such establishment will improve the effective administration of the traditional community.

(b) A traditional sub-council consists of the number of members as determined by the Premier concerned, after consultation with the main traditional council.

(2) The Premier concerned must, subject to the provisions of section 16(5), recognise a traditional sub-council as part of the main traditional council and define its area of jurisdiction by notice in the relevant *Provincial Gazette*.

(3) (a) At least a third of the members of a traditional sub-council must be women.

- (b) The members of a traditional sub-council must comprise of—
- (i) 60% traditional leaders and members of the traditional community, selected by the traditional council concerned, in terms of that community's customs, taking into account the need for overall compliance with paragraph (a): Provided that if there are no recognised headmen or headwomen, only community members must be selected; and
  - (ii) 40% of members of the traditional community who are elected by members of the traditional community in accordance with the provisions of section 21.

(4) The provisions of section 16(2)(b) and (d) apply to the constitution and composition of a traditional sub-council and any reference in the said paragraphs to members of a traditional council shall be construed as a reference to traditional leaders and members of a traditional community.

(5) The chairperson of a traditional sub-council must be designated by the traditional council.

(6) A chairperson designated in terms of subsection (5) must be a member of the traditional council.

(7) The term of office of members of a traditional sub-council must be aligned to the term of office of the members of the main traditional council.

(8) (a) A traditional sub-council must meet every two months and performs the functions referred to in section 20 as may be delegated to it by the traditional council concerned.

(b) A traditional sub-council must, in the format and within the timeframes as determined by the traditional council, submit a report to the traditional council on the performance of the functions delegated to it.

(9) (a) The withdrawal of the recognition of a community as a traditional community in terms of section 4, automatically results in the disestablishment of the traditional sub-council concerned.

(b) If, after consultation with a traditional council, a Premier is of the opinion that a traditional sub-council is no longer contributing to the effective administration of that traditional community, the Premier may withdraw the recognition of such traditional sub-council.

(c) The withdrawal of the recognition of a traditional sub-council must be done by the Premier concerned by notice in the relevant *Provincial Gazette*.

## Establishment of Khoi-San council

18. (1) Once a Premier has recognised a Khoi-San community that community must within a period of five years of such recognition or any further period as the Premier may determine by notice in the Provincial *Gazette*, establish a Khoi-San council.

(2) (a) A Khoi-San council consists of the number of members determined by the Minister by formula published in the *Gazette*, after consultation with the Premiers of the provinces where Khoi-San communities have been recognised.

(b) The members of a Khoi-San council must comprise of—

(i) 60% of members which consists of—

(aa) the senior Khoi-San leader concerned who is an *ex officio* member and chairperson of the Khoi-San council; and

(bb) where the main community has branches, branch heads: Provided that if the senior Khoi-San leader together with the branch heads is less than the required number of members, the senior Khoi-San leader must select the remainder from the members of the main community after consultation with the branch heads and, where there is a royal family, must also select from members of the royal family with the concurrence of a forum as contemplated in subparagraph (cc): Provided further that if the number of branch heads are more than the required number of members, the branch heads must elect the required number from amongst themselves, ensuring provincial representation; or

(cc) where the main community has no branches, the senior Khoi-San leader must, where applicable, with the concurrence of a forum of not less than five and not more than 10 members designated by the royal family, select the required number of members from the members of the royal family and members of the main community, or where there is no royal family, the senior Khoi-San leader must select the required number of members from the main community only: Provided that the provisions of section 16(3)(c) shall apply with the necessary changes to instances where there is no concurrence;

(ii) 40% of members which consist of members of the main community who are democratically elected by the main community.

(c) The election of members in terms of paragraph (b)(ii) must be done in accordance with the provisions of section 21.

(3) The Premier concerned must, by notice in the relevant Provincial *Gazette*, recognise a Khoi-San council for a Khoi-San community and indicate the administrative seat of such Khoi-San council.

(4) The jurisdiction of a Khoi-San council will apply only to the members of the Khoi-San community contemplated in section 5(1) and (3).

(5) The provisions of section 16(2)(b) and (d), (4), (7), (8), (11), (14) and (15) apply to a Khoi-San council and any reference in the said section to a traditional council, senior traditional leader and headmen or headwomen shall, respectively, be construed as a reference to a Khoi-San council, senior Khoi-San leader and branch head.

#### **Functions of kingship or queenship council and principal traditional council**

19. (1) A kingship or queenship council and principal traditional council have the following functions—

- (a) Administering the affairs of the kingship or queenship or principal traditional community in accordance with customary law and customs;
- (b) assisting, supporting and guiding senior traditional leaders and traditional councils falling within the jurisdiction of the kingship or queenship or principal traditional community concerned in the performance of their functions;
- (c) assisting the king or queen, or principal traditional leader in performing customary functions in relation to the recognition of senior traditional leaders, where applicable;
- (d) assisting the king or queen, or principal traditional leader in mediating disputes between senior traditional leaders falling within the jurisdiction of the kingship or queenship or principal traditional community;
- (e) promoting unity between traditional communities falling under the jurisdiction of the kingship or queenship or principal traditional community; and
- (f) assisting the king or queen, or principal traditional leader in performing his or her roles and functions conferred upon him or her in terms of regulations made in accordance with the provisions of section 67.



- (2) A kingship or queenship council or principal traditional council must—
- (a) keep proper records;
  - (b) have its financial statements audited;
  - (c) disclose the receipt of gifts to the Premier concerned;
  - (d) adhere to the code of conduct; and
  - (e) advise and support all traditional councils falling under its authority.

### **Functions of traditional council, traditional sub-council, Khoi-San council and branch**

20. (1) A traditional council, a traditional sub-council subject to section 17(8), a Khoi-San council and a branch have the following functions—
- (a) Administering the affairs of the traditional or Khoi-San community in accordance with customs and tradition;
  - (b) assisting, supporting and guiding traditional and Khoi-San leaders in the performance of their functions;
  - (c) supporting municipalities in the identification of community needs;
  - (d) facilitating the involvement of the traditional or Khoi-San community in the development or amendment of the integrated development plan of a municipality in whose area that community resides;
  - (e) recommending, after consultation with the relevant local and provincial houses, appropriate interventions to government that will contribute to development and service delivery within the area of jurisdiction of the traditional or Khoi-San council;
  - (f) participating in the development of policy and legislation at a municipal level;
  - (g) participating in development programmes of the local, provincial and national spheres of government;
  - (h) promoting the ideals of co-operative governance, integrated development planning, sustainable development and service delivery;
  - (i) promoting indigenous knowledge systems for sustainable development and disaster management;
  - (j) alerting any relevant municipality to any hazard or calamity, and contributing to disaster management in general;

- (k) sharing information and co-operating with other traditional and Khoi-San councils; and
- (l) performing the functions conferred by customary law, customs and statutory law consistent with the Constitution.

(2) A traditional and Khoi-San council must—

- (a) keep proper records;
- (b) have its financial statements audited;
- (c) disclose the receipt of gifts to the Premier concerned; and
- (d) adhere to the code of conduct.

(3) A traditional and Khoi-San council must—

- (a) co-operate with any relevant ward committee established in terms of section 73 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); and
- (b) meet at least once a year with its traditional or Khoi-San community to give account of the activities and finances of the traditional or Khoi-San council.

### **Election of members of traditional council, traditional sub-council and Khoi-San council and filling of vacancies**

21. (1) Whenever a member of a traditional council, traditional sub-council or Khoi-San council is to be elected, the Premier concerned after consultation with the relevant provincial house, if a provincial house has been established, may have such elections conducted—

- (a) by the Electoral Commission established in terms of the Electoral Commission Act, 1996 (Act No. 51 of 1996): Provided that this provision does not apply to the filling of a vacancy that occurs during the term of office of the council concerned; or
- (b) subject to subsection (2)—
  - (i) by way of a community meeting; or
  - (ii) by a body consisting of one or more persons appointed by the Premier.

(2) A Premier may, by notice in the relevant Provincial *Gazette*, make regulations in respect of—

- (a) elections as contemplated in subsection (1)(b) relating to the procedure to be followed and timeframes within which such elections must be conducted; and
- (b) subject to the provisions of this Act, the filling of vacancies.

**Administration of kingship or queenship council, principal traditional council, traditional council, Khoi-San council and traditional sub-council**

22. (1) A kingship or queenship council, principal traditional council, traditional council, traditional sub-council and a Khoi-San council (in this section jointly referred to as a council) must endeavor to perform its statutory and customary obligations in the best interest of its community and is accountable to the Premier concerned for the efficient and effective performance of such obligations.

(2) A Premier must monitor a council situated within his or her province so as to ensure the effective and efficient performance of that council's statutory and customary obligations.

(3) If a Premier is of the view that a council does not or cannot fulfill a statutory or customary obligation binding on that council, the Premier must –

- (a) by written notice, request the council to provide the Premier with the information relating to the council's performance in respect of the obligation required in the notice; or
- (b) if the Premier considers it necessary, designate a person or persons to investigate the matter.

(4) If a Premier is satisfied that a council does not or cannot fulfill its statutory or customary obligations, the Premier may intervene by appointing any person for a period determined by the Premier in writing—

- (a) to assist the council concerned to perform any or all of the statutory and customary obligations assigned to such council; or
- (b) to assume responsibility for any or all the statutory and customary obligations of such council.

(5) If a person is appointed in terms of subsection (4), the council concerned is divested of the specific or all of its statutory and customary obligations, as the case may be.

(6) A person appointed in terms of subsection (4) must be competent to exercise the specific or all of the statutory or customary obligations of such council, as the case may be.

(7) A person appointed in terms of subsection (4) must submit monthly written reports to the Premier concerned setting out the steps taken and progress made in respect of the performance of the specific or all of the council's statutory and customary obligations, as the case may be.

(8) An appointment made in terms of subsection (4) must be reviewed before the expiry of a period of 180 days: Provided that such a period may, as many times as the Premier concerned deems necessary to ensure the efficient and effective performance of the specific or all of the relevant council's statutory and customary obligations, be renewed for a further period of 180 days and must be reviewed before the expiry of any such period of 180 days.

**Support to kingship or queenship council, principal traditional council, traditional council, Khoi-San council and traditional sub-council**

23. (1) The national government or a provincial government, as the case may be, may adopt such legislative or other measures as may be necessary to support and strengthen the capacity, including the financial and administrative capacity, of kingship or queenship councils, principal traditional councils, traditional councils, Khoi-San councils and traditional sub-councils, to fulfill their functions.

(2) A kingship or queenship council, principal traditional council, traditional council or a Khoi-San council may appoint suitable persons to perform the administrative, financial and related duties relevant to the functions of the specific council: Provided that the number of posts, remuneration levels of such posts and any other conditions of service must be determined by the Premier concerned after consultation with the relevant council.

**Partnerships between municipalities and kingship or queenship council, principal traditional council, traditional council, Khoi-San council and traditional sub-council**

24. (1) The national government and provincial governments must promote partnerships between local or metropolitan municipalities and kingship or queenship councils, principal traditional councils, traditional councils, Khoi-San councils and traditional sub-councils through legislative or other measures.

(2) Any partnership contemplated in subsection (1) must—

(a) be based on the principles of mutual respect and recognition of the status and roles of the respective parties; and

(b) be guided by and based on the principles of co-operative governance.

(3) Any council contemplated in subsection (1), may enter into a service delivery agreement with a municipality in accordance with the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and any other applicable legislation.

**Allocation of roles to kingship or queenship council, principal traditional council, traditional council, Khoi-San council, traditional sub-council and traditional and Khoi-San leaders**

25. (1) A department within the national or provincial sphere of government, as the case may be, may, through legislative or other measures provide a role for a kingship or queenship council, principal traditional council, traditional council, Khoi-San council, traditional sub-council and traditional and Khoi-San leaders in respect of any functional area of such department.

(2) The process and procedure to be followed for the provision of a role contemplated in subsection (1) to any of the councils or leaders contemplated in that subsection, as well as the extent of and conditions attached to any such provision, may be determined by the department concerned.

(3) Where a department has made provision for a role for any council or leader contemplated in subsection (1), such department must monitor the execution of the role and ensure that—

(a) the execution of the role is consistent with the Constitution; and

(b) the role is being executed efficiently and effectively.

(4) Where any of the councils or leaders contemplated in subsection (1) does not execute a role as envisaged in subsection (3), any resources provided to such a council or leader to perform that role may be withdrawn by the department concerned.

**CHAPTER 3**  
**HOUSES OF TRADITIONAL AND KHOI-SAN LEADERS**

***Part 1***

***Houses of traditional and Khoi-San leaders***

**Houses of traditional and Khoi-San leaders**

- 26.** The houses of traditional and Khoi-San leaders are—
- (a) a National House of Traditional and Khoi-San Leaders established in terms of section 27;
  - (b) provincial houses of traditional and Khoi-San leaders established in terms of provincial legislation and in accordance with the principles set out in section 49; and
  - (c) local houses of traditional and Khoi-San leaders established in accordance with the principles set out in section 50.

***Part 2***

***National House of Traditional and Khoi-San Leaders***

**Establishment and term of office of National House**

**27.** (1) There is hereby established a National House to be known as the National House of Traditional and Khoi-San Leaders.

(2) The term of office of the National House is five years: Provided that, notwithstanding anything to the contrary contained in any law, but subject to section 69(12), the term of the National House that was established in terms of the National House of Traditional Leaders Act, 2009 (Act No. 22 of 2009), prior to the commencement of this Act, will expire on 31 May 2017: Provided further that any subsequent term of office of the National House shall expire on 31 May of the fifth year following the establishment of such house.

## Composition of National House

28. (1) The National House consists—
- (a) of three persons who are senior traditional or Khoi-San leaders elected by each provincial house: Provided that where senior Khoi-San leaders are members of a provincial house, at least one senior Khoi-San leader must be elected as a member of the National House; and
  - (b) where relevant, of persons identified in terms of subsection (2).
- (2) The provisions of subsection (1)(b) apply only in cases where a provincial house has not been established, and will be implemented as follows—
- (a) Where there are more than three traditional and Khoi-San councils performing functions of a local house, the chairpersons of such councils must elect from amongst themselves three representatives to the National House; or
  - (b) where there are three or a lesser number of traditional and Khoi-San councils performing functions of a local house, the chairpersons of such traditional or Khoi-San councils are *ex officio* members of the National House; or
  - (c) where there are one or more local houses, the senior traditional leaders and senior Khoi-San leaders from within the province must elect from amongst themselves three representatives to the National House.
- (3) The chairperson of a traditional or Khoi-San council or a local house referred to in subsection (2) must be a senior traditional or Khoi-San leader and if he or she is not a senior traditional or Khoi-San leader, the traditional or Khoi-San council or the local house concerned must elect another member who is a senior traditional or Khoi-San leader.
- (4) At least a third of the members of the National House must consist of women: Provided that if the Minister is satisfied that there is no sufficient number of women to participate in the National House, the Minister must, after consultation with the Premiers concerned and the relevant provincial houses, determine a lower threshold in respect of the representation of women in the National House.

## **Election and designation of members to National House**

29. (1) The Minister must, at least 60 days before the expiry of the term of office of the National House, request the Premiers to notify provincial houses to elect subject to section 28, senior traditional leaders and where applicable senior Khoi-San leaders to serve as members in the National House.

(2) The members of a provincial house referred to in section 28(1) must be elected, within 21 days after having received the notice from the Premier concerned in terms of subsection (1), by members of that provincial house in a meeting called for that purpose and attended by at least two-thirds of the members of the house concerned: Provided that the members of a provincial house referred to in section 28(1)(a), may not be full-time members of such provincial house.

(3) The election proceedings referred to in subsection (2) must be managed and chaired by the Premier concerned or a person designated by such Premier, and must be observed by officials of the National House and the provincial department responsible for traditional affairs.

(4) An election contemplated in subsection (2) must be by secret ballot by members of the provincial house concerned in the same meeting where the nominations take place.

(5) Each provincial house must designate one of the members elected as contemplated in subsection (2) as leader of the elected members.

(6) A Premier must submit to the Minister, in respect of every person elected and designated, such person's—

- (a) acceptance of the election or designation;
- (b) full name and surname;
- (c) identity number; and
- (d) contact details.

(7) In the event that a provincial house fails to elect one or more of its members to serve in the National House within the period referred to in subsection (2), the Premier concerned must designate members of the relevant provincial house to serve in the National House.

(8) A member of the National House may not serve more than two consecutive terms as a member of the National House.



## Disqualification for membership of National House

30. A person is disqualified from becoming a member of the National House if that person—

- (a) is a member of a municipal council, a member of a provincial legislature or a member of Parliament;
- (b) at the time of the election of members of the National House, is serving a sentence of imprisonment;
- (c) is an unrehabilitated insolvent;
- (d) is of unsound mind and has been so declared by a competent court;
- (e) has been convicted of a criminal offence and sentenced to more than 12 months imprisonment without the option of a fine, either in the Republic or outside the Republic, if the conduct constituting the offence would have been an offence in the Republic, but no-one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined or until the time for an appeal has expired: Provided that a disqualification under this paragraph ends five years after the sentence has been completed;
- (f) is not a member of a provincial house;
- (g) is not a South African citizen; or
- (h) is not permanently resident within the Republic.

## Vacation of seats

31. The seat of a member of the National House becomes vacant—

- (a) upon the death of a member;
- (b) if the member resigns by written notice to the Minister;
- (c) if the member becomes disqualified in terms of section 30;
- (d) if the member becomes a full-time member of a municipal council, a member of a provincial legislature or a member of Parliament;
- (e) if a member is convicted of an offence with a sentence of imprisonment for more than 12 months without the option of a fine;
- (f) if the member is removed from office for a breach of the code of conduct; or

- (g) in the case of a member contemplated in section 28(1), if the member ceases to be a member of a provincial house that elected him or her, or ceases to be a chairperson or member of a local house, as the case may be.

### **Filling of vacancies**

32. (1) Where a vacancy occurs in the National House the Minister must, within 14 days after being informed of such a vacancy by the Secretary, inform the relevant Premier of such a vacancy.

(2) A vacancy in the National House must, subject to sections 28 and 29, be filled within 45 days after it became vacant, by the election of a member for the unexpired portion of the term of office of the member in whose place he or she is elected, and in the same manner in which the previous member was elected or designated.

### **Seat and meetings of National House**

33. (1) (a) The first meeting of the National House after its constitution in terms of sections 28 and 29, must take place at a time and place determined by the Secretary, subject to subsection (5).

(b) The President or a person designated by him or her must address the annual official opening of the National House.

(2) Ordinary meetings of the National House may, subject to subsection (5), take place at a time and place determined by the Secretary in consultation with the Chairperson.

(3) Special meetings of the National House may be held at a time and place determined by the Executive Committee of the National House or, if authorised thereto by the Executive Committee, by the Chairperson of the National House: Provided that the Minister may at any time summon the National House to a special meeting for the purposes of attending to urgent business.

(4) The National House must meet at least once in every quarter during the sitting of Parliament.

(5) The administrative seat of the National House is located at the same place where the head office of the Department is located and meetings of the National House may take place either at the administrative seat or at the seat of Parliament.

(6) The quorum for meetings of the National House is fifty-one per cent of the total membership of the National House.

(7) The decisions of the National House must be taken by consensus, or where a vote is taken, subject to subsection (6), two-thirds of the members present and voting in the meeting.

### **Chairperson and deputy chairperson of National House**

**34.** (1) At its first meeting after it has been constituted in terms of sections 28 and 29, the National House must, with the President or any person designated by the President presiding, elect one of its members to be the chairperson and must thereafter elect another of its members to be the deputy chairperson.

(2) The chairperson is vested with all powers and functions assigned to a chairperson in terms of this Act and the rules and orders of the National House.

(3) The chairperson presides over meetings of the National House.

(4) If the chairperson is absent or for any reason unable to exercise or perform the powers or functions vested in the office of the chairperson, or when the office of the chairperson is vacant, the deputy chairperson must act as chairperson during the chairperson's absence or inability or until a chairperson is elected.

(5) If both the chairperson and the deputy chairperson are absent, a member of the National House designated in terms of the rules and orders of the National House must act as chairperson while the said circumstances prevail.

(6) The deputy chairperson or the member designated in terms of this Act, while acting as a chairperson, may exercise the powers and must perform the functions vested in the office of the chairperson.

(7) While presiding at a meeting of the National House, a member of the House designated as a chairperson has a deliberative vote as well as a casting vote in the case of an equality of votes.

(8) The chairperson or deputy chairperson must vacate office if he or she becomes disqualified in terms of section 30.

(9) If the position of chairperson becomes vacant, the Minister or a person designated by the Minister must preside over the election of a member of the National House to fill the vacancy.

(10) If the position of deputy chairperson becomes vacant, the chairperson must preside over the election of a member of the National House to fill the vacancy.

(11) If the positions of both chairperson and deputy chairperson of the National House become vacant, the National House must, with the Minister or a person designated by the Minister presiding, elect members of the National House to fill the vacancies.

(12) A chairperson or deputy chairperson is eligible for re-election: Provided that no member may serve as a chairperson or deputy chairperson of the National House for more than two consecutive terms.

### **Status of members of National House**

35. (1) The chairperson and deputy chairperson shall be full-time members of the National House.

(2) The Minister may, after consultation with the National House and subject to subsection (1), determine that certain members are full-time members of the National House.

### **Duties of National House**

36. (1) The duties of the National House are—
- (a) to cooperate with the provincial houses of traditional leaders, to promote—
- (i) the role of traditional leadership within a democratic constitutional dispensation;
  - (ii) nation building;
  - (iii) peace, stability and cohesiveness of communities;
  - (iv) the preservation of the moral fiber and regeneration of society;
  - (v) the preservation of the culture and traditions of communities;
  - (vi) socio-economic development and service delivery;
  - (vii) the social well-being and welfare of communities; and

- (viii) the transformation and adaptation of customary law and customs so as to comply with the provisions of the Bill of Rights in the Constitution, in particular by—
  - (aa) preventing unfair discrimination;
  - (bb) promoting equality; and
  - (cc) seeking to progressively advance gender representation in the succession to traditional leadership positions; and
- (b) to enhance co-operation between the National House and the various provincial houses with a view to address matters of common interest.
  - (2) The National House—
    - (a) must consider Parliamentary Bills referred to it by the Secretary to Parliament in terms of section 39;
    - (b) may advise the national government and make recommendations in respect of—
      - (i) matters relating to policy and legislation regarding traditional leadership;
      - (ii) the role of traditional leaders;
      - (iii) customary law; and
      - (iv) the customs of communities observing a system of customary law;
    - (c) may investigate and make available information on traditional leadership, traditional communities, customary law and customs;
    - (d) must, at the request of a member of the National Cabinet, advise him or her in connection with any matter referred to in this section;
    - (e) must complement and support the work of government at national level;
    - (f) may form cooperative relations and partnerships with government at national level in respect of development and service delivery;
    - (g) may participate in international and national programmes geared towards the development of rural communities;
    - (h) may participate in national initiatives meant to monitor, review and evaluate government programmes in rural communities; and
    - (i) must perform tasks as may be determined by a member of the National Cabinet or as may be provided for in national legislation.
  - (3) Any member of the National Cabinet who is responsible for national government development programmes that affect or may affect traditional communities,

must consult the National House before any such programme is implemented, amended or discontinued.

### **Administration of National House**

**37.** (1) The Minister may, with the approval of the National House and subject to the laws governing the public service, second as many officers from the Department as he or she considers necessary, to discharge the administrative work of the National House.

(2) The Minister must, in terms of the laws governing the public service and with the approval of the House, appoint a person as Secretary to the House, who must—

- (a) exercise or perform the powers and functions conferred upon or assigned to the Secretary by this Act and the rules and orders of the National House; and
- (b) subject to the directions of the National House, perform such work as is incidental to the exercise or performance by the National House of its powers and functions.

(3) The Secretary must be supported in the exercise or performance of his or her powers and functions by officers of the Department designated in terms of subsection (1) for that purpose.

### **Responsibilities of National House**

**38.** (1) The National House must—

- (a) prepare a strategic plan for a period of five years and review it annually;
- (b) prepare an annual performance plan;
- (c) keep proper records;
- (d) in addition to quarterly meetings, hold an annual meeting with provincial houses to give account of the activities and finances of the National House;
- (e) enforce the code of conduct;
- (f) establish clear relationships with provincial houses and facilitate co-operation and communication between itself and provincial houses, as well as between the various provincial houses;

- (g) assign clear responsibilities for the management and co-ordination of the administration of the National House to the Secretary of the National House and hold him or her accountable for the overall administration of the National House;
- (h) maximise the efficiency of communication and decision-making within the administration of the National House;
- (i) involve the Secretary of the National House in decisions impacting on the overall management of the National House, as far as is practicable;
- (j) promote an equitable, fair, open, non-discriminatory and supportive environment for all provincial houses; and
- (k) provide an equitable, fair, open, non-discriminatory and supportive environment for the National House.

(2) (a) The strategic plan and annual performance plan referred to in subsection (1)(a) and (b) must be submitted to the Minister for approval, before a date determined by the Minister.

(b) The National House must submit a quarterly report to the Minister on the implementation of the strategic plan and annual performance plan.

(c) The National House must, within 60 days after the Minister has approved the strategic plan or any revised strategic plan as contemplated in subsection (1)(a), table the strategic plan in Parliament.

### **Referral of Bills to National House**

**39.** (1) (a) Any Parliamentary Bill pertaining to customary law or customs of traditional or Khoi-San communities or pertaining to any matter referred to in section 154(2) of the Constitution must, before it is passed by the house of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House for its comments.

(b) The National House must, within 60 days from the date of such referral, make any comments it wishes to make and submit such comments to the Secretary to Parliament: Provided that if the National House has no comments on any Bill referred to it, the National House must inform the Secretary to Parliament accordingly.

(2) A provincial legislature or a municipal council may adopt the same procedure referred to in subsection (1) in respect of the referral of a provincial Bill or a draft by-law to a provincial house or a local house, as the case may be.

### **Relationship between National House and kings and queens**

40. The National House may meet with all recognised kings and queens to discuss—

- (a) the activities and programmes of the National House;
- (b) matters of interest to kings and queens;
- (c) matters relating to service delivery and the development of traditional communities; and
- (d) any other business identified and proposed by either party and agreed to by both parties.

### **Relationship between National House and provincial houses**

41. (1) The National House must investigate matters referred to it by a provincial house and make recommendations thereon.

(2) The National House must advise provincial houses regarding the administration of their affairs.

(3) The National House may hold a meeting with a provincial house to discuss progress on matters relating to the general interest and welfare of traditional communities.

(4) Where the National House wishes to interact with a local house or a traditional or Khoi-San council, such interaction must be done in consultation with the relevant provincial house: Provided that where no provincial house has been established, the National House may interact directly with a local house or traditional or Khoi-San council.

(5) The chairperson of the National House must establish a body of chairpersons of provincial houses to interact with the National House on a regular basis on issues of mutual interest.



(6) The Secretary of the National House must establish a body of Secretaries of provincial houses to interact with the National House on a regular basis on issues of mutual interest.

### **Support to National House**

42. (1) The Minister must provide support to the National House so as to enable the National House to perform all the functions assigned to it, and such support—

(a) may include the provision of—

- (i) infrastructure;
- (ii) human resources as contemplated in section 37(1);
- (iii) skills development programmes; and
- (iv) administrative systems; and

(b) must include financial support.

(2) For the purposes of subsection (1)(b), the National House must submit to the Minister, before a date determined by the Minister, annual estimates of expenditure for the next financial year.

### **Annual report of National House**

43. (1) The National House must annually by no later than 30 June of a particular year, submit to the Minister a report in respect of the preceding financial year, complying with the provisions of subsection (2), in respect of its activities and programmes and must, within 30 days after the Minister has approved the report, table it in Parliament.

(2) The information to be contained in the report contemplated in subsection (1), include but are not limited to, information on—

- (a) the composition of the National House;
- (b) the filling of any vacancies;
- (c) the disqualification of any member;
- (d) meetings of the National House, with specific reference to the meetings held with kings and queens, and the meetings held with provincial houses;
- (e) the consideration of any Bills referred to the National House;
- (f) the exercising of any duties of the National House as contemplated in section 36;

- (g) the responsibilities of the National House as contemplated in section 38;
- (h) the budget and expenses of the National House;
- (i) any matter as may be directed by the President or Minister; and
- (j) any other matter deemed necessary by the National House.

(3) (a) The Minister may, before approving a report submitted to him or her as contemplated in subsection (1), request a meeting with the National House to discuss the content of the report.

(b) Any house of Parliament may, once a report contemplated in subsection (1) has been tabled in Parliament, request a meeting with the National House to discuss the contents of the report.

### **Privileges and immunities of members of National House**

44. (1) The National House has the authority to control, regulate and dispose of its internal affairs and has all such privileges and immunities as may, subject to the Constitution, be prescribed.

(2) (a) Members of the National House have freedom of speech in the National House and its committees, subject to the rules and orders of the National House.

(b) Members of the National House are not liable to civil or criminal proceedings, arrest, imprisonment or damages for—

- (i) anything that they have said in, produced before or submitted to the National House or any of its committees; or
- (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the National House or any of its committees.

### **Remuneration and benefits of members of National House**

45. The remuneration and benefits of members of the National House are determined in terms of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998).

## Rules, orders and committees of National House

46. (1) The National House must make rules and orders in connection with the conduct of its business and proceedings, including rules and orders regulating—

- (a) subject to subsection (2), the establishment, constitution, powers and functions, procedures and lifespan of committees of the National House;
- (b) the procedure to be followed in meetings of the National House and its committees;
- (c) restrictions on access to such committees;
- (d) the competency of any such committee to perform or dispose of its business and proceedings at venues other than the administrative seat of the National House;
- (e) the designation of members to preside over meetings of the committees of the National House; and
- (f) the attendance of any meeting of the National House by any person who is not a member of the House and the status of such a person at such a meeting.

(2) There may be an executive committee consisting of the chairperson and deputy chairperson and those members contemplated in section 29(5).

## Dissolution of National House

47. (1) The National House must be dissolved—

- (a) on the expiry of the term of office of the National House; or
- (b) after a vote supported by a two-thirds majority of the full complement of the members of the National House in a meeting of the National House called for that purpose: Provided that in such instance the National House must be reconstituted in accordance with the provisions of sections 28 and 29, and such reconstituted National House shall function for the unexpired term of the dissolved National House as contemplated in section 27(2).

(2) Notwithstanding the dissolution of the National House, the Minister may summon the National House to an extraordinary meeting to attend to any urgent business, during the period following such dissolution until the day before the first meeting of the next National House and for this purpose—

- (a) every person who on the date of the dissolution of the National House is a member, remains a member of the House; and

- (b) the National House remains competent to function.

### **Oath or affirmation by members of National House**

48. The members of the National House must, before they begin to perform their functions in the National House, take an oath or solemn affirmation as set out in Schedule 2 to this Act, before the Chief Justice or a judge designated by the Chief Justice.

### **Part 3**

#### ***Provincial and local houses of traditional and Khoi-San leaders***

#### **Provincial houses of traditional and Khoi-San leaders**

49. (1) Provincial houses must be established in terms of provincial legislation.
- (2) The provincial legislation contemplated in subsection (1) must at least provide for—
- (a) mechanisms or procedures that would allow a sufficient number of women—
    - (i) to be represented in the provincial house concerned; and
    - (ii) to be elected as representatives of the provincial houses to the National House;
  - (b) the term of provincial houses to be five years: Provided that, notwithstanding anything to the contrary contained in any law, but subject to section 69(13), the term of a provincial house that was established and constituted in terms of provincial legislation prior to the commencement of this Act, will expire on 30 April 2017: Provided further that any subsequent term of office of the provincial houses shall expire on 30 April of the fifth year following the establishment of such houses;
  - (c) where applicable, the membership of both traditional leaders and Khoi-San leaders in provincial houses;
  - (d) the election of senior traditional leaders and where applicable, senior Khoi-San leaders as contemplated in section 28(1)(a);
  - (e) where applicable, a relationship between the provincial house and any kingship or queenship council or principal traditional council within the particular province,

including meetings with such councils or the respective recognised traditional leaders; and

(f) full-time and part-time members of the provincial house, and may provide for a code of conduct for members of a provincial house that complements the code of conduct contained in Schedule 1 to this Act.

(3) (a) The membership contemplated in subsection (2)(c) must be composed in such a way that both traditional leaders and Khoi-San leaders represented in local houses are represented in the provincial house in substantially the same proportion they are represented in the local houses concerned: Provided that if a local house has only one Khoi-San leader as a member, that Khoi-San leader must be a member of the provincial house concerned.

(b) The fact that only traditional leaders or only Khoi-San leaders are recognised in a province does not preclude a province from establishing a provincial house.

(4) The members of a provincial house must, before they begin to perform their functions in the provincial house, take an oath or solemn affirmation as set out in Schedule 2 to this Act, before a judge of the High Court designated by the relevant Judge President for this purpose.

### **Local houses of traditional and Khoi-San leaders**

50. (1) Subject to the provisions of this Act and any regulations relating to local houses as contemplated in subsection (11), a Premier must by notice in the relevant Provincial *Gazette* establish a local house of traditional and Khoi-San leaders for the area of jurisdiction of a local municipality or a metropolitan municipality where there are one or more traditional councils or Khoi-San councils.

(2) A local house must consist of not less than five members, of which at least one member must be a senior traditional leader or a senior Khoi-San leader.

(3) All senior traditional leaders and senior Khoi-San leaders who reside within the area of jurisdiction of a local municipality or a metropolitan municipality are members of a local house established for that area.

(4) Where within the area of a local municipality or a metropolitan municipality there—

(a) is only one traditional council or only one Khoi-San council, the local house consists of four members elected by that traditional council or Khoi-San council and the senior traditional leader or senior Khoi-San leader who is *ex officio* a member and chairperson of the local house;

(b) are in total more than one and less than five traditional councils, Khoi-San councils, traditional sub-councils or branches, the local house consists of—

(i) all senior traditional leaders and senior Khoi-San leaders;

(ii) all chairpersons of such traditional sub-councils; and

(iii) all branch heads of such branches:

Provided that where there is more than one—

(aa) branch of the same Khoi-San community, the Khoi-San council must elect one branch head;

(bb) traditional sub-council of the same traditional community, the traditional council must elect one chairperson,

as a member of the local house: Provided further that where in total the senior traditional leaders, senior Khoi-San leaders, branch heads and chairpersons of traditional sub-councils are less than five, the senior traditional leaders and senior Khoi-San leaders must designate the required number of members from amongst their councils: Provided further that where more than one senior traditional leader or senior Khoi-San leader is required to make a designation, such designation must be made with the concurrence of all relevant senior traditional leaders and senior Khoi-San leaders;

(c) are in total more than five traditional councils, Khoi-San councils, traditional sub-councils or branches, the local house consists of—

(i) all senior traditional leaders and senior Khoi-San leaders;

(ii) all chairpersons of such traditional sub-councils; and

(iii) all branch heads of such branches:

Provided that where there is more than one—

(aa) branch of the same Khoi-San community, the Khoi-San council must elect one branch head;

(bb) traditional sub-council of the same traditional community, the traditional council must elect one chairperson,

as a member of the local house.

(5) Where the area of a traditional council is situated within more than one local municipality or within a local and metropolitan municipality—

- (a) the senior traditional leader is a member of the local house where he or she resides; and
- (b) the traditional council must elect a headman or headwoman from the areas situated in the local or metropolitan municipalities other than where the senior traditional leader resides, to be a member of the relevant local house.

(6) The functions of a local house are—

- (a) to advise the local municipality or the metropolitan municipality on—
  - (i) matters pertaining to customary law, customs, traditional and Khoi-San leadership and the traditional and Khoi-San communities within the local municipality or the metropolitan municipality;
  - (ii) the development of planning frameworks that impact on traditional and Khoi-San communities; and
  - (iii) the development of by-laws that impact on traditional and Khoi-San communities;
- (b) to participate in local programmes that have the development of traditional and Khoi-San communities as an object; and
- (c) to participate in local initiatives that are aimed at monitoring, reviewing or evaluating government programmes in traditional and Khoi-San communities.

(7) A local house must meet at least four times a year.

(8) The term of a local house is five years: Provided that, notwithstanding anything to the contrary contained in any law, but subject to section 69(14), the term of a local house that was established and constituted in terms of national or provincial legislation prior to the commencement of this Act, will expire on 31 March 2017: Provided further that any subsequent term of office of the local houses shall expire on 31 March of the fifth year following the establishment of such houses.

(9) The chairperson and other members of a local house that participates in the proceedings of a municipal council as contemplated in section 81 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), must provide the relevant local house with a report on the matters discussed and decided on by the municipal council, pertaining to the traditional and Khoi-San councils of which such local house is comprised.

(10) A province may provide administrative support to local houses within the area of a district municipality jointly which support may include, but is not limited to, office accommodation and support staff.

(11) The Minister may, in accordance with the provisions of section 67, make regulations in respect of—

- (a) the disqualification of members of a local house;
- (b) the privileges and immunities of members of a local house;
- (c) where applicable, the election of representatives to the relevant provincial house;
- (d) meetings of a local house, including the quorum and requisite majorities;
- (e) the vacation of seats and the filling of vacancies;
- (f) subject to subsection (6), the powers, functions and duties of a local house;
- (g) subject to subsection (4)(a), the chairperson and deputy chairperson of a local house;
- (h) the rules and orders of a local house;
- (i) moneys and allowances payable to members of a local house;
- (j) subject to subsection (10), the administrative support to be provided to a local house;
- (k) the relationship between provincial and local houses having regard to the provisions of section 41;
- (l) mechanisms or procedures that would allow a sufficient number of women to be members of local houses; and
- (m) a code of conduct for members of local houses that complements the code of conduct contained in Schedule 1 to this Act.

(12) The members of a local house must, before they begin to perform their functions in the local house, take an oath or solemn affirmation as set out in Schedule 2 to this Act, before a judge of the High Court designated by the Judge President for this purpose.



## CHAPTER 4 COMMISSION AND ADVISORY COMMITTEE

### *Part 1*

#### *Commission on Traditional Leadership Disputes and Claims*

#### **Establishment of Commission**

51. (1) Subject to section 69(10), there is hereby established a Commission known as the Commission on Traditional Leadership Disputes and Claims.

(2) The Commission must carry out its functions in a manner that is fair, objective and impartial.

#### **Appointment of members of Commission**

52. (1) (a) The Minister must, after consultation with the National House, appoint a chairperson, deputy chairperson and not more than three persons who are knowledgeable regarding customary law, customs and the institution of traditional leadership, as members of the Commission, for a period not exceeding five years as contemplated in section 56(4)(b) or any further period as the Minister may determine by notice in the *Gazette*.

(b) The Minister must publish in the *Gazette* the names of the chairperson, the deputy chairperson and of every person appointed as a member of the Commission, together with the date from which the appointments take effect.

(2) A member of the Commission is either a full-time or part-time member, as may be determined by the Minister.

(3) The deputy chairperson of the Commission must act as chairperson in the absence of the chairperson of the Commission.

(4) If a member of the Commission dies or vacates his or her office before the expiry of the period for which he or she was appointed, the Minister must appoint, in accordance with the provisions of subsection (1), a person to fill the vacancy for the unexpired term for which such member had been appointed.

(5) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the Minister may remove a member of the Commission on the grounds of—

- (a) having been convicted of an offence with a sentence of imprisonment for more than 12 months without the option of a fine;
- (b) such member having been declared insolvent by a court;
- (c) such member having been declared mentally unfit or mentally disordered by a court; and
- (d) misconduct, incapacity or incompetence.

(6) (a) A decision to remove a member of the Commission on the grounds of misconduct or incompetence must be based on a finding to that effect by an investigative committee appointed by the Minister.

(b) The Minister may suspend a member of the Commission who is under investigation in terms of paragraph (a).

## **Vacancies**

53. A vacancy occurs whenever a member of the Commission—

- (a) resigns by giving written notice to the Minister;
- (b) is removed in terms of section 52(5); or
- (c) becomes a member of the National Assembly, a member of a provincial legislature, a full-time member of a municipal council or a permanent delegate to the National Council of Provinces.

## **Conditions of appointment of members of Commission**

54. (1) The Minister must, after consultation with the Minister of Finance, determine the conditions of appointment of the members of the Commission, taking into account—

- (a) the role, duties and responsibilities of the members of the Commission;
- (b) affordability in relation to the responsibilities of the Commission; and
- (c) the level of expertise and experience required from the members of the Commission.

(2) Conditions of appointment may differ in respect of—

- (a) the chairperson and other members of the Commission;
- (b) full-time and part-time members; and
- (c) any other appropriate circumstances.

### **Support to and reports by Commission**

55. (1) (a) The Department must provide administrative and financial support to the Commission so as to enable the Commission to perform all the functions assigned to the Commission.

(b) The Commission may, subject to the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), appoint a person or an institution to conduct research on its behalf.

(2) The Commission must quarterly, or when requested by the Minister, provide the Minister with a comprehensive report on its activities.

### **Functions of Commission**

56. (1) The Commission operates nationally in plenary and provincially in committees and has the authority to investigate and make recommendations on any traditional leadership dispute and claim contemplated in subsection (2).

(2) (a) The Commission must investigate and make recommendations on—

- (i) cases where there is doubt as to whether a kingship or queenship, a principal traditional leadership, a senior traditional leadership, a headmanship or headwomanship was established in accordance with customary law and customs;
- (ii) a traditional leadership position where the level of such position or any rights of the incumbent is contested;
- (iii) claims by communities to be recognised as kingships, queenships, principal traditional communities, traditional communities, or headmanships or headwomenships;
- (iv) the legitimacy of the establishment or disestablishment of "tribes" or headmanship or headwomenship;

- (v) disputes resulting from the determination of traditional authority boundaries as a result of the merging or division of "tribes";
- (vi) all traditional leadership claims and disputes lodged during the period from 1 September 1927 to the coming into operation of provincial legislation dealing with traditional leadership and governance matters: Provided that the Commission may consider any events applicable to a dispute or claim that predates 1 September 1927; and
- (vii) gender-related disputes relating to traditional leadership positions arising after 27 April 1994.

(b) A dispute or claim as contemplated in this Act may be lodged by any person and must be accompanied by information setting out the nature of the dispute or claim and any other relevant information.

(c) The Commission may decide not to consider a dispute or claim on the ground that the person who lodged the dispute or claim has not provided the Commission with relevant or sufficient information.

(3) (a) When considering a dispute or claim, the Commission must consider and apply customary law and the customs of the relevant traditional community as they applied when the events occurred that gave rise to the dispute or claim.

(b) The Commission must—

- (i) in respect of a kingship or queenship, be guided by the relevant criteria set out in sections 3 and 8; and
- (ii) in respect of a principal traditional leadership, a senior traditional leadership, a headmanship or a headwomanship, be guided by the customary law and customs and the relevant criteria relevant to the establishment of a principal traditional leadership, a senior traditional leadership, a headmanship or a headwomanship, as the case may be, as set out in this Act.

(c) Where the Commission investigates disputes resulting from the determination of traditional authority boundaries and the merging or division of "tribes", the Commission must, before making a recommendation in terms of section 57, consult with the Municipal Demarcation Board established by section 2 of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998), where the traditional council boundaries straddle municipal and or provincial boundaries.

(4) Subject to subsection (5) the Commission—

- (a) may only investigate and make recommendations on those disputes and claims that were before the Commission on 20 July 2010; and
- (b) must complete the matters contemplated in paragraph (a) within a period of five years, which period commences on the date of appointment of the members of the Commission in terms of section 52, or any such further period as the Minister may determine.

(5) The Commission—

- (a) may delegate any function contemplated in this section, excluding a matter related to kingships or queenships, to a committee referred to in section 58; and
- (b) must coordinate and advise on the work of the committees referred to in section 58.

(6) Sections 2, 3, 4, 5 and 6 of the Commissions Act, 1947 (Act No. 8 of 1947), apply, with the necessary changes, to the Commission.

(7) The Commission may adopt rules for the conduct of the business of the Commission as well as committees referred to in section 58.

(8) (a) Any traditional leadership dispute relating to a king, queen, principal traditional leader, senior traditional leader, headman, headwoman, kingship, queenship, principal traditional community, traditional community, headmanship or headwomanship, other than a dispute that has to be dealt with by the Commission in accordance with the provisions of this Act, must be dealt with by the President in the case of a king, queen, kingship or queenship and by the Premier concerned in the case of any other dispute and the President or Premier, as the case may be, must—

- (i) cause an investigation to be conducted by an investigative committee designated by him or her which committee must, in the case of a dispute concerning a king, queen, kingship or queenship include at least one member of the National House and in the case of any other dispute include at least one member of the relevant provincial house, to provide a report as well as recommendations on the matter in dispute;
- (ii) refer the report to the relevant royal family or, where applicable, relevant traditional council for its written comments which must be submitted to the President or Premier, as the case may be, within 60 days from the date of such referral.

(b) After having considered the report of the investigative committee and the comments of the royal family or traditional council, the President or relevant Premier, as the case may be, must take a decision on the matter in dispute and inform the parties to the dispute in writing of his or her decision.

## Recommendations of Commission

57. (1) A recommendation of the Commission must be agreed to by at least two-thirds of the members of the Commission.

(2) A recommendation of the Commission must, within 30 days of the recommendation having been made, be conveyed to—

- (a) the President and the Minister where the position of a king or queen or of a kingship or queenship is affected by such a recommendation; and
- (b) the relevant provincial government and any other relevant functionary to which the recommendation of the Commission applies in accordance with applicable provincial legislation, in so far as the consideration of the recommendation does not relate to the recognition or withdrawal of recognition of the kingship or queenship in terms of section 3, or of the king or queen in terms of section 8.

(3) (a) The President or the other relevant functionary to whom the recommendations have been conveyed in terms of subsection (2) must, within a period of 90 days from receipt of the recommendation, make a decision on the recommendation.

(b) The Minister must convey any decision taken by the President in terms of paragraph (a) to the Commission and the relevant claimant.

(c) Any decision taken by any other relevant functionary in terms of paragraph (a) must be conveyed to the Commission and relevant claimant by such functionary.

(4) If the President or the relevant functionary takes a decision that differs with the recommendation of the Commission, the President or the relevant functionary, as the case may be, must provide written reasons to the Commission for such decision.

(5) (a) All Premiers concerned must, on an annual basis or when requested by the Minister, provide the President and the Minister with a report on the implementation of the decisions of the President as contemplated in this section .

(b) A copy of the report referred to in paragraph (a), must be submitted to the relevant provincial house for noting.

## Provincial committees of Commission

58. (1) (a) A Premier may, after consultation with the Minister and the Commission, establish a provincial committee for the particular province, to deal with disputes and claims relating to traditional leadership, or disestablish an existing provincial committee.

(b) For the purposes of paragraph (a), the Premier concerned must take into account the advice of the Minister and the Commission, and any relevant factor relating to such disputes and claims, including the number of relevant disputes and claims lodged and the complexity of such disputes and claims.

(c) Where no provincial committee has been established or where a provincial committee has been disestablished, the Commission must deal with the disputes and claims relevant to such province.

(d) Any provincial committee which has been established prior to the date of coming into operation of this Act, is deemed to have been established in accordance with the provisions of paragraph (a).

(2) (a) Each provincial committee contemplated in subsection (1) consists of as many members as the Premier concerned may determine after consultation with the Minister and the Commission, and such members are appointed by the Premier, by notice in the *Provincial Gazette*, for a period not exceeding five years.

(b) The term of office of members of provincial committees must be aligned to that of members of the Commission contemplated in section 52(1)(a).

(c) The members of provincial committees must have the same knowledge as the members of the Commission as contemplated in section 52(1)(a).

(3) Each provincial committee contemplated in subsection (1), must be chaired by a member of the Commission designated by the Commission after consultation with the Premier concerned: Provided that a member of the Commission may chair more than one committee.

(4) The provisions of sections 52(4), (5) and (6), 53, 54, 55 and 56(2) to (4) and (6) and 57(1), apply to provincial committees and any reference in the said sections to the Minister, the Commission, the Minister of Finance and the National Department responsible for traditional affairs shall, respectively, be construed as a reference to the relevant Premier, the provincial committee established in accordance with the provisions of

this section, the member of the Executive Council responsible for finance in the province and the provincial department responsible for traditional affairs in the province.

(5) A provincial committee must perform such functions as delegated to it by the Commission in terms of section 56(5).

(6) A provincial committee may make final recommendations on all matters delegated to it in terms of section 56(5): Provided that where a committee is of the view that exceptional circumstances exist, it may refer the matter to the Commission for advice.

(7) The provisions of section 57(2)(b) apply to the recommendations of a provincial committee and any reference in the said section to the Commission shall be construed as a reference to the provincial committee concerned.

(8) Each provincial committee must, on a quarterly basis or when requested by the Commission, submit a report to the Commission on all disputes and claims dealt with by such provincial committee during the previous quarter or for the period as requested by the Commission.

## ***Part 2***

### ***Advisory Committee on Khoi-San Matters***

#### **Establishment of Advisory Committee**

59. (1) There is hereby established an Advisory Committee on Khoi-San Matters.

(2) The Advisory Committee must carry out its functions in a manner that is fair, objective and impartial.

#### **Appointment of members of Advisory Committee**

60. (1) (a) The Minister must, subject to paragraphs (b) and (c) and after inviting nominations from the general public, appoint a chairperson, deputy chairperson and not more than five other persons, as members of the Advisory Committee for a period not exceeding three years or any such further period as the Minister may determine by notice in the *Gazette*.



(b) A member of the Advisory Committee must be a South African citizen and have a qualification or experience in or knowledge appropriate to—

- (i) anthropology;
- (ii) history relating to the Khoi-San;
- (iii) customs and customary law and the institutions of Khoi-San leadership; or
- (iv) law.

(c) The members of the Advisory Committee referred to in paragraph (b)(i), (ii) and (iii) must collectively represent a pool of knowledge concerning issues relevant to the five main Khoi-San groupings, namely the Cape Khoi, Nama, Korana, San and Griqua.

(d) The names of the chairperson, deputy chairperson and members appointed in terms of paragraph (a), together with the date from which the appointment takes effect, must be published in the *Gazette*.

(2) A member of the Advisory Committee is either a full-time or part-time member, as determined by the Minister.

(3) If a member of the Advisory Committee dies or vacates office before the expiry of the term for which he or she has been appointed, the Minister must, in accordance with the provisions of subsection (1), appoint a person to fill the vacancy for the unexpired term for which such member was appointed.

(4) The Minister may remove a member of the Advisory Committee on the grounds of—

- (a) having been convicted of an offence with a sentence of imprisonment for more than 12 months without the option of a fine;
- (b) such member having been declared mentally unfit or mentally disordered by a court;
- (c) such member having been declared insolvent by a court; or
- (d) misconduct, incapacity or incompetence.

(5) (a) A decision to remove a member of the Advisory Committee on the grounds of misconduct or incompetence must be based on a finding to that effect by an investigative committee appointed by the Minister.

(b) The Minister may suspend a member of the Advisory Committee who is under investigation in terms of paragraph (a).

## **Vacancies**

61. A vacancy occurs whenever a member of the Advisory Committee—
- (a) resigns by giving written notice to the Minister;
  - (b) is removed in terms of section 60(4); or
  - (c) becomes a member of the National Assembly, a member of a provincial legislature, a full-time member of a municipal council or a permanent delegate to the National Council of Provinces.

## **Conditions of appointment of members of Advisory Committee**

62. The provisions relating to the conditions of appointment of members of the Commission as referred to in section 54(1)(a) and (c) and (2), apply, with the necessary changes, to members of the Advisory Committee.

## **Support to and reports by Advisory Committee**

63. (1) (a) The Department must provide administrative and financial support to the Advisory Committee so as to enable it to perform all the functions assigned to it.

(b) The Advisory Committee may, subject to the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and with the approval of the Director-General of the Department, appoint a suitable person or persons to conduct research on its behalf.

(2) The Advisory Committee must quarterly, or when requested by the Minister, provide the Minister with a comprehensive report on its activities.

## **Application for recognition of Khoi-San communities, branches, senior Khoi-San leaders and branch heads**

64. (1) A community that meets the criteria set out in sections 5 and 10, may lodge a detailed application in writing for the recognition of that community and if

applicable, the branches of that community as well as the position of a senior Khoi-San leader and if applicable the branch head, to the Advisory Committee.

- (2) An application contemplated in subsection (1) must—
- (a) (i) be lodged by a member of the community duly authorised by such community or the royal family concerned, as the case may be; and
- (ii) be accompanied by information setting out the details of the application and any other relevant information; and
- (b) (i) be accompanied by information setting out the details on which the claim for the recognition of the community as well as the leadership positions are based;
- (ii) be accompanied by details of the geographical area or areas referred to in section 5(1)(a)(vii), as well as the number of members of the community occupying such areas;
- (iii) be submitted within the period of two years referred to in section 65(2)(a); and
- (iv) if the community referred to in subsection (1) has a proven history of hereditary or elected leadership, be accompanied by details of the hereditary or elected leadership position.

(3) When considering an application, the Advisory Committee must consider and apply customary law and customs of the Khoi-San community concerned.

(4) The Advisory Committee must, in respect of an application for the recognition of—

- (a) a community and branches, apply the criteria set out in section 5; and
- (b) hereditary or elected senior Khoi-San leaders, apply the criteria set out in section 10.

(5) The Advisory Committee must, on a quarterly basis, inform the Premiers concerned of the applications received in terms of this section.

### **Functions of Advisory Committee**

65. (1) The Advisory Committee must investigate and make recommendations to the Premiers on the recognition of—

- (a) Khoi-San communities;

- (b) hereditary senior Khoi-San leaders;
- (c) elected senior Khoi-San leaders; and
- (d) branches and branch heads.

(2) The Advisory Committee—

- (a) may only investigate and make recommendations in respect of those applications that have been lodged with the Advisory Committee in terms of section 64, within a period of two years from a date to be determined by the Minister by notice in the *Gazette*, or any such further period as the Minister may determine by notice in the *Gazette*; and
- (b) must complete the investigations and make recommendations as contemplated in paragraph (a) within the period of three years referred to in section 60(1)(a), or any such further period as the Minister may determine.

(3) Any application that has not been lodged with the Advisory Committee by the period referred to in subsection (2)(a), may not be dealt with by the Advisory Committee and must be dealt with in accordance with the provisions of sections 5 or 10, as the case may be.

(4) Any dispute that may arise after the period referred to in subsection (2)(a), must be dealt with by the relevant Premier and for this purpose the provisions of section 56(8) apply with the necessary changes.

### **Recommendations of Advisory Committee**

**66.** (1) A recommendation of the Advisory Committee must be agreed to by at least two-thirds of the members of the Advisory Committee.

(2) A recommendation of the Advisory Committee must, within a period of two weeks of the recommendation having been made, be conveyed to the relevant Premier.

(3) A Premier to whom the recommendations have been conveyed in terms of subsection (2) must, within a period of 60 days, make a decision on the recommendation.

(4) If a Premier takes a decision that differs with the recommendation conveyed in terms of subsection (2), the Premier must provide written reasons for such decision to the Advisory Committee and the Minister.

(5) (a) Premiers must on an annual basis, or when requested by the Minister, provide the Minister with a report on the implementation of the decisions of the Premiers in terms of this section.

(b) A copy of the report referred to in paragraph (a), must be submitted to the relevant provincial house for noting.

## CHAPTER 5 GENERAL PROVISIONS

### Regulations

67. (1) The Minister may, by notice in the *Gazette*, make regulations regarding—

- (a) any matter that must or may be prescribed in terms of this Act;
- (b) the traditional, ceremonial and any other roles and functions of a king or queen, or principal traditional leader, after consultation with a delegation consisting of not more than two members of each kingship or queenship council or principal traditional council, as the case may be, designated by such councils;
- (c) any matter that may be necessary to ensure the effective functioning of any local house, including a matter referred to in section 50(11); and
- (d) any ancillary or administrative matter that is necessary to prescribe for the proper implementation or administration of this Act.

(2) Before any regulations are made under this section, the Minister must—

- (a) in respect of regulations as contemplated in subsection (1)(a), (c) and (d), consult—
  - (i) the members of the Executive Councils responsible for traditional and Khoi-San leadership matters of the provinces concerned; and
  - (ii) the relevant provincial houses; and
- (b) in respect of regulations as contemplated in subsection (1)(b), consult—
  - (i) the Premiers concerned;
  - (ii) the members of the Executive Councils responsible for traditional and Khoi-San leadership matters of the provinces concerned;
  - (iii) the National House; and

- (iv) the provincial houses concerned.

### **Delegation of powers and duties by Premier**

**68.** (1) A Premier may, subject to such conditions as he or she may determine, in writing, delegate any power or duty conferred on him or her under this Act, to the member of the Executive Council responsible for traditional affairs of the province concerned.

(2) A delegation in terms of subsection (1) does not prevent the exercise of the relevant power or the performance of any duty by a Premier.

(3) A Premier may at any time, in writing, withdraw or amend a delegation contemplated in subsection (1).

(4) A member of the Executive Council to whom a power has been delegated, may not further delegate such power or duty, without the written authority of the Premier concerned.

### **Transitional arrangements**

**69.** (1) Any traditional leader who was appointed or recognised as such in terms of applicable provincial legislation and was still recognised as a traditional leader immediately before 24 September 2004, is deemed to have been recognised as such in terms of section 8 of this Act, subject to a recommendation of the Commission in terms of section 57 where applicable.

(2) A person who, immediately before 24 September 2004, had been appointed and was still recognised as a regent, or had been appointed in an acting capacity or as a deputy, is deemed to have been recognised as such in terms of section 12, 13 or 14 of this Act, as the case may be.

(3) Any "tribe" that, immediately before 24 September 2004, had been established in terms of applicable legislation and was still recognised as such, is deemed to be a traditional community contemplated in section 3 of this Act, subject to—

- (a) the withdrawal of its recognition in accordance with the provisions of section 4; or
- (b) a recommendation of the Commission in terms of section 57 where applicable.

(4) A tribal authority that, immediately before 24 September 2004, had been established and was still recognised as such, is deemed to be a traditional council contemplated in section 16 of this Act and must perform the functions referred to in section 20: Provided that such a traditional council must comply with section 16(2) by no later than 23 September 2014: Provided further that if the timeframe of 23 September 2014 is not met, the Minister may take the necessary steps to ensure that the provisions of section 16(2) are met.

(5) Any community authority that had been established in terms of applicable legislation and still existed as such immediately before 24 September 2004, continues to exist until it is disestablished in accordance with provincial legislation, which disestablishment must take place by no later than 23 September 2014, except where the traditional leadership related to that community authority is still under investigation by the Commission in terms of section 56(2) in which case the community authority concerned must be administered as if the relevant establishing legislation had not been repealed.

(6) (a) The member of the Executive Council of a province responsible for traditional affairs must, by notice in the *Provincial Gazette*, within one year of the commencement of this Act disestablish any regional authority, Ibandla Lamakhosi, Council of Chiefs and ward authority functioning under tribal authorities that have been established in terms of applicable legislation before the commencement of this Act.

(b) The notice disestablishing a regional authority, Ibandla Lamakhosi, Council of Chiefs or ward authority must regulate the legal, practical and other consequences of the disestablishment, including—

- (i) the transfer of assets, liabilities and administrative and other records to an appropriate provincial department, a municipality or local house of traditional leaders, as circumstances may require;
- (ii) the vacation of office of any office bearer of such a regional authority; and
- (iii) the transfer of staff of such a regional authority in accordance with applicable legislation.

(c) If the timeframe of one year referred to in paragraph (a) is not met in respect of any regional authority, Ibandla Lamakhosi, Council of Chiefs or ward authority, the Minister may take the necessary steps to ensure that the provisions of this subsection are met.

(7) (a) Where, pursuant to an investigation conducted in terms of section 28(7) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), the Commission decided that a paramountcy qualifies to be recognised as a kingship or queenship, such a paramountcy is deemed to be recognised as a kingship or queenship in terms of section 3 of this Act.

(b) The incumbent paramount chiefs, in respect of the kingships and queenships contemplated in paragraph (a), are deemed to be recognised as kings or queens in terms of section 8 of this Act.

(8) (a) Where, pursuant to an investigation conducted in terms of section 28(7) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), the Commission decided that a paramountcy does not qualify to be recognised as a kingship or queenship, such a paramountcy will, notwithstanding the decision of the Commission and subject to paragraph (c), be deemed to be recognised as a kingship or queenship in terms of section 3 of this Act.

(b) Where, pursuant to an investigation conducted in terms of section 28(7) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), the Commission has decided that a paramount chief does not qualify to be recognised as a king or queen, such a paramount chief, regent or acting paramount chief will, notwithstanding the decision of the Commission and subject to paragraph (c), be deemed to be recognised as a king or queen in terms of section 8 or a regent or acting king or queen in terms of section 12 or 13 of this Act, respectively.

(c) A kingship or queenship and a king or queen recognised in terms of paragraphs (a) and (b) lapses—

- (i) if, on 1 February 2010, the position was vacant;
- (ii) on the death of the incumbent king or queen where the position of such king or queen is occupied by a permanent incumbent;
- (iii) where the position of the incumbent king or queen is occupied by a regent or an acting incumbent, on the death of such regent or acting incumbent or on the date of the recognition of a successor,

whereafter the kingship or queenship and the king or queen, as the case may be, will be deemed to be a principal traditional community and principal traditional leader respectively: Provided that when a leader or a community becomes a principal traditional leader or principal traditional community in terms of this paragraph, the Premier concerned must



publish a notice in the relevant Provincial *Gazette* recognising such principal traditional leader and principal traditional community, and issue a certificate of recognition to such principal traditional leader.

(9) If a kingship or queenship council has been established for a kingship or queenship referred to in subsection (8)(a) and the recognition of such kingship or queenship lapses in terms of subsection (8)(c), the kingship or queenship council shall be deemed to be a principal traditional council.

(10) (a) The Commission established by section 51 of this Act, (hereinafter referred to as "new Commission"), is the successor in law of the Commission established by section 22 of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), (hereinafter referred to as "old Commission"), as it existed immediately before 1 February 2010.

(b) All disputes and claims that were before the old Commission are deemed to have been lodged with the new Commission.

(11) All claims and disputes that have not been disposed of on 1 February 2010, shall be deemed to comply with the provisions of section 21(1) and (2) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), notwithstanding the repeal of that Act by this Act, and such claims and disputes must be dealt with in accordance with the provisions of sections 56, 57 and 58 of this Act.

(12) Notwithstanding the provisions of section 28, the traditional leaders who, on the date of commencement of this Act were members of the National House of Traditional Leaders established in terms of the National House of Traditional Leaders Act, 2009 (Act No. 22 of 2009), remain members of that House and continue as such as if that Act had not been repealed, until 31 May 2017 whereupon that House must be reconstituted in terms of this Act.

(13) Notwithstanding the provisions of section 49, the traditional leaders who, on the date of commencement of this Act were members of a provincial house of traditional leaders established and constituted in terms of provincial legislation, remain members of the provincial house concerned, until 30 April 2017 whereupon that house must be reconstituted in compliance with section 49.

(14) Notwithstanding the provisions of section 50, a local house of traditional leaders that was established and constituted in terms of applicable national or provincial legislation on the date of commencement of this Act, continues to exist and must

be administered in terms of the applicable legislation, until 31 March 2017 whereupon that house must be reconstituted in compliance with section 50.

(15) Any formula or guidelines determined or issued in terms of a provision of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), prior to the commencement of this Act, continues to apply until it is replaced by a formula issued in terms of the applicable provision of this Act.

### **Amendment of legislation**

70. The legislation mentioned in Schedule 3 to this Act, is hereby amended to the extent set out in that Schedule.

### **Repeal of legislation and savings**

71. (1) The legislation specified in Schedule 4 to this Act, is repealed to the extent indicated in the third column of that Schedule.

(2) Anything done or deemed to have been done under any provision of a law repealed by subsection (1) and which may or must be done in terms of this Act, is regarded as having been done in terms of the corresponding provision of this Act.

### **Short title and commencement**

72. This Act is called the Traditional Affairs Act, 2013 and comes into operation on the date to be determined by the President by proclamation in the *Gazette*.

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**SCHEDULE 1**  
**Code of conduct**

1. Definitions
2. General conduct of members
3. Attendance of meetings
4. Sanctions for non-attendance of meetings
5. Disclosure of interests
6. Personal gain
7. Declaration of interests
8. Rewards, gifts and favours
9. Unauthorised disclosure of information
10. Breach of code by a member of the National House
11. Breach of code by a member of a provincial house, a local house or a council

## Definitions

1. In this Schedule, unless the context indicate otherwise—
- (a) "**House**" means the National House of Traditional and Khoi-San Leaders, a provincial house of traditional and Khoi-San leaders and a local house of traditional and Khoi-San Leaders;
  - (b) "**member**" means a member of a House or a council;
  - (c) "**council**" means a kingship or queenship council, principal traditional council, traditional council, traditional sub-council, Khoi-San council and a branch.

## General conduct of members

2. A member—
- (a) must perform his or her functions in good faith and in an honest, non-discriminatory and transparent manner;
  - (b) must at all times act in the best interest of the House or council and in such a way that the credibility and integrity of the House or council are not compromised;
  - (c) may not deliberately do anything calculated to unjustly or unfairly injure the reputation of another member;
  - (d) may not use the power of his or her office to seek or obtain special advantage for personal benefit that is not in the public interest; and
  - (e) may not disclose confidential information acquired in the course of his or her duties, unless required by law to do so or by circumstances to prevent substantial injury to third persons.

## Attendance of meetings

3. A member must attend each meeting of the House or a council and of a committee of the House or a council of which he or she is a member, except when—
- (a) leave of absence is granted in terms of an applicable law or as determined by the rules and orders of the House or council; or
  - (b) that member is required in terms of this code of conduct to withdraw from a meeting.

## Sanctions for non-attendance of meetings

4. (1) A member who, without leave of absence, is absent from three or more consecutive meetings of the House or a council which that member is required to attend, must be removed from office as a member of the House or such council.

(2) The removal of a member from office in terms of sub-item (1), is subject to the provisions of item 10 in the case of a member of the National House and item 11 in the case of a member of a provincial house, a local house or a council.

## Disclosure of interests

5. (1) A member must—
- (a) disclose to the House or a council, or to any committee of the House or a council of which he or she is a member, any direct or indirect personal or private business interest that that he or she, or any spouse, partner, business associate or close family member of that member, may have in any matter before the House or a council or before a committee of the House or a council; and
  - (b) withdraw from the proceedings of the House or a council or committee of the House or a council when a matter as contemplated in paragraph (a) is considered by the House, council or committee, unless the House or a council or a committee thereof decides that the member's direct or indirect interest in the matter is trivial or irrelevant.

(2) A member who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the House or a council, must disclose full particulars of the benefit of which that member is aware of, at the first meeting of the House or a council at which it is possible for the member to make such disclosure.

## Personal gain

6. (1) A member may not, subject to item 2(e), use the position or privileges of being a member, or confidential information obtained as a member, for private gain or to improperly benefit another person.

(2) Except with the prior consent of the House or a council, a member may not—

- (a) be a party to or a beneficiary under a contract for the provision of goods or services to the House or a council; or
- (b) obtain a financial interest in any business of the House or a council; or
- (c) for a fee or other consideration appear on behalf of any other person before the House or a council or a committee of the House or a council.

(3) If more than one-quarter of the members of the House or a council object to consent being given to a member in terms of sub-item (2), such consent may only be given to the member with the approval of the Minister in the case of the National House and the relevant Premier in the case of a provincial house, a local house or a council.

### **Declaration of interests**

7. (1) When elected or appointed, a member must within 60 days of his or her election or appointment, declare in writing to an officer of the House or of a council, designated by the Minister in the case of the National House or by the relevant Premier in the case of a provincial house, a local house or a council, the following financial interests held by such member—

- (a) Shares and securities in any company;
- (b) membership of any close corporation;
- (c) interest in any trust;
- (d) directorships;
- (e) partnerships;
- (f) other financial interests in any business-undertaking;
- (g) employment and remuneration;
- (h) interest in property;
- (i) pension; and
- (j) subsidies, grants and sponsorships by any organisation.

(2) Any change in the nature or detail of the financial interests of a member must annually be declared in writing to the officer referred to in sub-item (1).

(3) Gifts received by a member with a value above an amount as may be determined by the Minister by notice in the *Gazette*, must also be declared in accordance with sub-item (1).

(4) The House or a council must determine which of the financial interests referred to in sub-item (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

### **Rewards, gifts and favours**

8. A member may not request, solicit or accept any reward, gift or favour for—
- (a) voting or not voting in a particular manner on any matter before the House or a council or before a committee of the House or a council, of which he or she is a member;
  - (b) persuading the House or a council or any committee of the House or a council with regard to the exercise of any power, function or duty;
  - (c) making a representation to the House or a council or any committee of the House or a council; or
  - (d) disclosing privileged or confidential information.

### **Unauthorised disclosure of information**

9. (1) A member may not without the permission of the House or a council or a committee of the House or a council, disclose any privileged or confidential information of the House or a council or such committee to any unauthorised person.

(2) For the purposes of this item "privileged or confidential information" includes any information—

- (a) classified by the House or a council or a committee of the House or a council, to be privileged or confidential;
- (b) discussed in closed session by the House or a council or a committee of the House or a council;
- (c) of which the disclosure would violate a person's right to privacy; or
- (d) declared to be privileged, confidential or secret in terms of law.

(3) This item does not derogate from the right of any person to apply for access to information in terms of relevant national legislation.

### **Breach of code by a member of the National House**

10. (1) If the National House, on reasonable grounds, is of the opinion that a provision of the code of conduct has been breached by one of its members, the National House must—

- (a) authorise an investigation of the facts and circumstances of the alleged breach; and
- (b) give the member of the National House a reasonable opportunity to reply in writing regarding the alleged breach.

(2) The National House must inform the Minister of the outcome of any investigation.

(3) The Secretary must ensure that each member of the National House, when taking office, is given a copy of this code of conduct and that a copy of the code is available in every room or place where the National House or a committee of the National House meets.

(4) If the National House has authorised an investigation, it must establish an investigative committee—

- (a) to investigate and make a finding on any alleged breach of the code of conduct; and
- (b) to make recommendations in respect of an appropriate sanction or sanctions to the National House.

(5) If an investigative committee appointed by the National House to conduct an investigation finds that a member of the National House, including the chairperson or deputy chairperson, has breached a provision of the code of conduct, the National House may—

- (a) issue a formal warning to such member;
- (b) reprimand such member;
- (c) suspend such member for a period specified by the National House; or
- (d) remove such member from office.

(6) (a) Any member of the National House who has been warned, reprimanded, suspended or removed in terms of paragraph (a), (b), (c) or (d) of sub-item



(5) may, within 14 days of having been notified of the decision of the National House, appeal to the Minister in writing setting out the reasons on which the appeal is based.

(b) A copy of the appeal must be provided to the National House.

(c) The National House may, within 14 days of receipt of the appeal referred to in paragraph (b), make any representation pertaining to the appeal to the Minister in writing.

(d) The Minister may, after having considered the appeal, confirm, set aside or vary the decision of the National House and inform the relevant member of the National House as well as the House of the outcome of the appeal.

(7) (a) The Minister may appoint a person or a committee to investigate any alleged breach of a provision of this code of conduct by a member of the National House and to make recommendations as to the appropriate sanction in terms of sub-item (5), if the National House does not have an investigation conducted as contemplated in sub-item (1) and the Minister considers it necessary.

(b) If the Minister is of the opinion that a member of the National House has breached a provision of this code of conduct, and that such contravention warrants a suspension or removal from office, the Minister may—

- (i) suspend the member of the National House for a period and on conditions determined by the Minister; or
- (ii) remove the member of the National House from office.

(8) Any investigation in terms of this item must be conducted in accordance with the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

### **Breach of code by a member of a provincial house, a local house or a council**

11. (1) If a provincial house, a local house or a council, or any member of such a house or council, on reasonable grounds, is of the opinion that a member of such house or council, excluding the chairperson, has breached a provision of this code of conduct, that house or council must establish an investigative committee—

- (a) to investigate and make a finding on any alleged breach of this code of conduct; and
- (b) to make recommendations to the relevant house or council.

(2) If an investigative committee finds that a member of a provincial house, a local house or a council has breached a provision of this code of conduct, the relevant house or council may—

- (a) issue a formal warning to such member;
- (b) reprimand such member;
- (c) request the relevant Premier to suspend the member for a period determined by the Premier; or
- (d) request the Premier to remove the member from office.

(3) (a) A Premier may appoint a person or a committee to investigate any alleged breach of a provision of this code of conduct and to make recommendations as to the appropriate sanction in terms of sub-item (2), if the relevant provincial house, local house or council does not have an investigation conducted as contemplated in sub-item (1) and the Premier considers it necessary: Provided that in the event of an alleged breach of the code of conduct by the chairperson of a provincial house, a local house or a council, the provisions of this item must be applied by the Premier.

(b) If a Premier is of the opinion that a member of a provincial house, a local house or a council has breached a provision of this code of conduct and that such contravention warrants a suspension or removal from office, the Premier may—

- (i) issue a formal warning to such member;
- (ii) reprimand such member;
- (iii) suspend the member for a period and on conditions as he or she may determine; or
- (iv) remove a member from office: Provided that in the case of the chairperson of a council, any such removal from office is subject to the relevant provision of the Act dealing with the withdrawal of recognition of the leadership position concerned.

(4) The Commissions Act, 1947 (Act No. 8 of 1947), or where appropriate, applicable provincial legislation, may be applied to an investigation in terms of sub-item (3).

(5) Any investigation in terms of this item must be conducted in accordance with the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

**SCHEDULE 2****PART A****OATH BY MEMBERS OF THE NATIONAL HOUSE, PROVINCIAL HOUSES AND LOCAL HOUSES**

I, ..... (name of member), do swear that I will be faithful to the House and do solemnly and sincerely promise at all times to promote that which will advance, and to oppose all that may harm, the House; to obey, observe, uphold and maintain the laws, rules, orders and procedures of the House and all other laws of the Republic of South Africa; to discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience; to do justice unto all; and to devote myself to the well-being of the House and its members.

May the Almighty God by His Grace and/or the ancestors guide and sustain me in keeping this oath with honour and dignity.

So help me God.

.....

Signature of Member

Date:

**PART B**  
**AFFIRMATION BY MEMBERS OF THE NATIONAL HOUSE, PROVINCIAL HOUSES**  
**AND LOCAL HOUSES**

I, ..... (name of member),  
do solemnly affirm that I will be faithful to the House and do solemnly and sincerely  
promise at all times to promote that which will advance, and to oppose all that may harm,  
the House; to obey, observe, uphold and maintain the laws, rules, orders and procedures  
of the House and all other laws of the Republic of South Africa; to discharge my duties with  
all my strength and talents to the best of my knowledge and ability and true to the dictates  
of my conscience; to do justice unto all; and to devote myself to the well-being of the  
House and its members.

May the ancestors guide and sustain me in keeping this affirmation with honour and  
dignity.

.....

Signature of Member

Date:

**SCHEDULE 3**  
**AMENDMENT OF LEGISLATION**  
**Section 70**

**Amendment of the Remuneration of Public Office Bearers Act, 1998**

1. The Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), (hereinafter referred to as the Remuneration Act), is hereby amended by the substitution for the long title of the following long title:

**"To provide for a framework for determining the salaries and allowances of the President, members of the National Assembly, permanent delegates to the National Council of Provinces, Deputy President, Ministers, Deputy Ministers, traditional leaders, Khoi-San leaders, non-traditional leader members and members of houses [of traditional councils, non-traditional leader members of kingship or queenship councils, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; members of local Houses of Traditional Leaders, members of provincial houses of Traditional Leaders and members of the National House of Traditional Leaders]; to provide for a framework for determining the upper limit of salaries and allowances of Premiers, members of Executive Councils, members of provincial legislatures and members of Municipal Councils; to provide for a framework for determining pension and medical aid benefits of office bearers; to provide for the repeal of certain laws; and to provide for matters connected therewith."**

2. Section 1 of the Remuneration Act is hereby amended—  
(a) by the substitution for the definition of "**benefits**" of the following definition:

**" 'benefits' means in respect of a traditional leader, Khoi-San leader, non-traditional leader member and member of a house [of a traditional council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; a member of a kingship or queenship council; non-traditional members of kingship or queenship councils, a member of a local House of**

**Traditional Leaders, a member of a provincial house of Traditional Leaders and a member of the National House of Traditional Leaders]**

those benefits which the President may determine in terms of section 5(3), and in respect of all other office bearers, the contributions contemplated in sections 8(2) and (5) and 9(2) and (5);";

- (b) by the insertion after the definition of "**Executive Council**" of the following definitions:

" **'Khoi-San leader'** means a Khoi-San leader as defined in section 1 of the Traditional Affairs Act, 2013;

" **'member of a house'** means a member of the National House of Traditional and Khoi-San Leaders, a provincial house of traditional and Khoi-San leaders and a local house of traditional and Khoi-San leaders as established in accordance with the relevant provisions of the Traditional Affairs Act, 2013, or any applicable provincial legislation";

- (c) by the insertion after the definition of "**Minister**" of the following definition:

" **'non-traditional leader member'** means a non-traditional leader member of any kingship or queenship council, principal traditional council, traditional council, traditional sub-council, Khoi-San council or branch established in accordance with the relevant provisions of the Traditional Affairs Act, 2013";

- (d) by the substitution for the definition of "**office bearer**" of the following definition:

" **'office bearer'** means a Deputy President, a Minister, a Deputy Minister, a member of the National Assembly, a permanent delegate, a Premier, a member of an Executive Council, a member of a provincial legislature, a traditional leader, a Khoi-San leader, a non-traditional leader member, a member of a house [of a traditional council, a member of a kingship or queenship council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; a member of a local House of Traditional Leaders, a member of a provincial house of Traditional Leaders, a member of the National House of Traditional Leaders] and a member of a Municipal Council;"; and

- (e) by the substitution for the definition of "**traditional leader**" of the following definition:  
" '**traditional leader**' means a traditional leader as defined in section 1 of the Traditional [Leadership and Governance Framework Act, 2003] Affairs Act, 2013."

3. The following section is hereby substituted for section 5 of the Remuneration Act, 1998:

**"Salaries, allowances and benefits of traditional leaders, Khoi-San leaders, non-traditional leader members and members of houses [of traditional councils, members of kingship or queenship councils, members of local Houses of Traditional Leaders, members of provincial houses of Traditional Leaders and members of National House of Traditional Leaders]**

5. (1) Traditional leaders, Khoi-San leaders, non-traditional leader members and members of houses [of any traditional council, non-traditional leader members of any kingship or queenship council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; members of any local House of Traditional Leaders, members of any provincial house of Traditional Leaders and members of the National House of Traditional Leaders] shall, despite anything to the contrary in any other law contained, be entitled to such salaries and allowances as may from time to time be determined by the President after consultation with the Premier concerned by proclamation in the *Gazette*, after taking into consideration—

- (a) any recommendations of the Commission;
- (b) the role, status, duties, functions and responsibilities of different categories of traditional leaders, Khoi-San leaders, non-traditional leader members and different members of houses [of traditional councils, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; members of kingship or queenship councils, non-traditional members of kingship or queenship councils, different members of the local Houses of Traditional Leaders, different members of the Houses of Traditional Leaders in the various

**provinces and different members of the National House of Traditional Leaders];**

- (c) the affordability of different levels of remuneration of public office bearers;
- (d) the current principles and levels of remuneration in society generally;
- (e) the need for the promotion of equality and uniformity of salaries and allowances for equal work performed;
- (f) the enhancement of co-operation, unity and understanding between traditional communities and Khoi-San communities nationally;
- (g) the extent of the role and functions of traditional leaders and Khoi-San leaders across provincial borders; and
- (h) inflationary increases.

(2) Despite the provisions of subsection (1), a traditional leader, a Khoi-San leader, a non-traditional leader member and a member of a house [of a traditional council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils, a member of a kingship or queenship council, a member of a local House of Traditional Leaders, a member of a provincial house of Traditional Leaders or a member of the National House of Traditional Leaders] who holds different public offices simultaneously, is only entitled to the salary, allowances and benefits of the public office for which he or she earns the highest income, but—

- (a) this subsection shall not preclude the payment of out of pocket expenses for the performance of functions other than those for which such office bearer receives such highest income; and
- (b) where only an allowance has been determined in terms of subsection (1) in respect of a traditional or Khoi-San leader's membership of a local House of Traditional and Khoi-San Leaders, a provincial house of Traditional and Khoi-San Leaders or the National House of Traditional and Khoi-San Leaders, such a traditional leader or Khoi-San leader shall be entitled to such an allowance in addition to his or her salary, allowances and benefits as a traditional leader or Khoi-San leader.

(3) (a) The President may, if he or she deems it expedient after consultation with the Minister and the Premier concerned, by proclamation in the *Gazette* determine any benefits to which a traditional leader, a Khoi-San leader, a



non-traditional leader member or a member of a house **[of a traditional council, a member of a kingship or queenship council, non-traditional leader members of kingship or queenship councils, a member of any local House of Traditional Leaders, a member of any provincial house of Traditional Leaders or a member of the National House of Traditional Leaders]** shall be entitled, subject to such conditions as the President may prescribe.

(b) If the President decides to determine such benefits, the criteria listed in paragraphs (a) to (h) of subsection (1) shall be applicable, with the necessary changes.

(4) The amount payable in respect of salaries, allowances and benefits to traditional leaders, Khoi-San leaders, non-traditional leader members and members of houses **[of a traditional council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils, members of a kingship or queenship council, non-traditional leader members of kingship or queenship councils; members of local houses of Traditional Leaders, members of provincial houses of Traditional Leaders and members of the National House of Traditional Leaders]** shall be paid from monies appropriated for that purpose by Parliament in respect of the National House of Traditional and Khoi-San Leaders and by a provincial legislature in respect of traditional leaders, Khoi-San leaders, non-traditional leader members **[of traditional councils, the members of kingship or queenship councils, non-traditional leader members of kingship or queenship councils]**, members of local houses of Traditional and Khoi-San Leaders and members of provincial houses of Traditional and Khoi-San Leaders, as the case may be.

(5) .....

(6) Despite the provisions of subsection (1), a member of the National House of Traditional and Khoi-San Leaders shall be entitled to an allowance as determined by the President by proclamation in the *Gazette* for actual work performed with effect from 10 April 1997 until a determination is made in terms of subsection (1)."

4. Section 8 of the Remuneration Act, 1998, is hereby amended by the substitution for subsection (6) of the following subsection:

"(6) The provisions of this section shall, subject to section 5(3), not apply to a traditional leader, a Khoi-San leader, a non-traditional leader member or a member of a house [**of a traditional council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils, a member of a kingship or queenship council, non-traditional leader members of kingship or queenship councils, a member of a local House of Traditional Leaders, a member of a provincial house of Traditional Leaders and a member of the National House of Traditional Leaders**].".

5. Section 9 of the Remuneration Act, 1998, is hereby amended by the substitution for subsection (6) of the following subsection:

"(6) The provisions of this section shall, subject to section 5(3), not apply to a traditional leader, a Khoi-San leader, a non-traditional leader member or a member of a house [**of a traditional council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; a member of a kingship or queenship council, non-traditional leader members of kingship or queenship councils, a member of a local House of Traditional Leaders, a member of a provincial house of Traditional Leaders and a member of the National House of Traditional Leaders**].".

#### **Amendment of the Local Government: Municipal Structures Act, 1998**

6. (1) Section 81 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections respectively:

"(1) In this section, unless the context indicates otherwise—  
**'branch head'** means a branch head as defined in the Traditional Affairs Act, 2013;

'local house' means a local house as defined in the Traditional Affairs Act, 2013; and

'traditional sub-council' means a traditional sub-council as defined in the Traditional Affairs Act, 2013.

(2) (a) The chairperson of a local house and two other members elected by such local house situated in the area of a local or metropolitan municipality, or, where a local house has not been established, the chairpersons of the traditional sub-councils and branch heads situated in the area of a local or metropolitan municipality, may participate in the proceedings of the council of that municipality: Provided that where within the area of a local or metropolitan municipality, there is more than one branch from the same Khoi-San community or traditional sub-council from the same traditional community, the MEC responsible for local government in a province must—

- (i) designate one branch head and one chairperson of a sub-council to participate in the proceedings of the council of that municipality; and
- (ii) determine a system for the rotation of those chairpersons and branch heads.

(b) The election or designation of persons contemplated in paragraph (a) is for a term of five years, commencing from the date of the reconstitution of a local house, sub-council or branch as the case may be, in terms of the Traditional Affairs Act, 2013.

(c) The MEC responsible for local government must submit to the local or metropolitan municipality, in respect of every person elected or designated as contemplated in paragraph (a), such person's—

- (i) full name and surname;
- (ii) identity number; and
- (iii) contact details.

(d) The persons contemplated in paragraph (a) must be allowed to attend and participate in the proceedings of the municipal council concerned.";

(b) by the insertion after subsection (2) of the following subsection—

"(2A) The chairpersons of local houses in the area of a district municipality may, on a quarterly basis, participate in the proceedings of the executive committee or mayoral committee, as the case may be, of that municipality."

(c) by the substitution for subsection (3) of the following subsection—

"(3) Before a municipal council takes a decision on any matter directly affecting the area of a traditional **[authority]** or Khoi-San council, the municipal council must give the **[leader of that authority]** persons referred to in subsection (2), the opportunity to express a view on that matter."; and

(d) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

"The **[MEC for local government in a province]** Minister, after consulting the **[provincial]** National House of Traditional and Khoi-San Leaders and the MEC's responsible for local government, may by notice in the **[Provincial]** Gazette—".

(2) Schedule 6 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), is hereby repealed.

(3) The provisions of subsections (1) and (2) come into operation on 31 March 2017.

**SCHEDULE 4**  
**REPEAL OF LEGISLATION**  
*(Section 71)*

<b>No</b>	<b>Title, number and year of law</b>	<b>Extent of repeal</b>
1	Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003)	The whole
2	Traditional Leadership and Governance Framework Amendment Act, 2009 (Act No. 23 of 2009)	The whole
3	National House of Traditional Leaders Act, 2009 (Act No. 22 of 2009)	The whole