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| **EASTERN CAPE:** Supports the Bill with proposed amendment | | |
| Clause 1 | The one year period for the establishment of new queenship/kingship councils must be retained. | The following should be noted with regards to the proposed periods of two years as reflected in both paragraphs (a) and (b) of section 3A of the principal Act (as contained in clause 1 of the Bill):  Proposed section 3A(1)(b):  The kingship and queenship councils referred to in this paragraph, are the councils to be established for those kingships that were recognised in 2010 by the President following a decision of the then Commission on Traditional Leadership Disputes and Claims (CTLDC).  However, before a kingship or queenship council can be established, a formula must be developed to determine the number of members of such council and such formula is subject to consultation with the kingships and queenships. Although the development of the formula has been completed, the consultations may take a while to be completed. Furthermore, the selection of the 60% components and the election of the 40% components of the councils may also be time-consuming.  It is for this reason that a period of one year may not be sufficient and therefore two years is proposed in the Bill. The DTA is of the view that it should remain two years.  Proposed section 3A(1)(a):  This paragraph refers to kingships or queenships that were not part of the CTLDC decisions, but recognised at a later stage. There is one such case namely the Balobedu queenship (also known as the Modjadji queenship). This queenship was recognised on 20 May 2016. This means that the period of one year as contained in the principal Act has already lapsed and in fact, the period of two years as proposed in the Bill will now also not be sufficient to allow this queenship to establish a queenship council. While the proposed amendment as contained in the Bill will be relevant to kingships or queenships that may be recognised after commencement of the Amendment Bill, it will no longer cater for the Balobedu queenship. The DTA is therefore proposing that the Select Committee considers the addition of a paragraph (c) after line 17 on page 2 of the Bill to make provision for the Balobedu queenship as follows:  **DTA proposed amendment for consideration by Select Committee:**  “*(c)* A kingship or a queenship other than a kingship or queenship contemplated in paragraph *(b)* that has been recognised before the commencement of the Traditional Leadership and Governance Framework Amendment Act, 2018, must, within two years of such commencement establish a kingship or queenship council.” |
| **FREE STATE:** Supports the Bill without amendments | | |
| NA | NA | NA |
| **GAUTENG** | | |
| NA | NA | *At the time of preparing this document, the Department has not yet received the Gauteng negotiating mandate.* |
| **KWAZULU-NATAL:** Supports the Bill with proposed amendment | | |
| General | Wherever there is a use of the term “traditional council” it must be deleted and substituted by the term “traditional authority”. The rationale for this input was that that is the terminology that is used in s211(2) of the Constitution. | Section 211(2) of the Constitution reads as follows:  “(2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs.”  The term is interpreted as referring to all traditional authorities that existed at the time (paramountcies, tribal authorities, community authorities, regional authorities, councils of chiefs, Ibandla Lamakhosi, ward authority, etc) and not to only one of those authorities such as tribal authorities.  The term “traditional council” as it is used in the principal Act, replaced the term “tribal authority” (thus only one specific structure) and did not replace the term “traditional authority”. It should also be noted that the term “traditional council” is not introduced by this Amendment Bill but was already introduced by the principal Act of 2003. The term is also found in provincial legislation, including the KZN Act – see the KwaZulu-Natal Traditional Leadership and Governance Act, 2005 (Act No. 5 of 2005).  The DTA is therefore of the view that the terminology should remain as it is in both the principal Act and the Amendment Bill. |
| **LIMPOPO:** Consider inputs before Bill is passed | | |
| General | The Bill is also not clear on the actual implications on the decisions of untransformed councils. Considering that traditional councils were considered operating outside the law until the passing of the Bill, this might imply that even council decisions taken, especially decisions that involve commercial transactions, might be invalid and challenged in a court of law. | The DTA agrees that there may be uncertainty regarding the status of traditional councils. This is one of the main reasons why this Amendment Bill was drafted. The extension of timeframes as contained in this Bill is necessary to enable provinces to reconstitute the traditional councils in compliance with the statutory requirements and also to ensure that such councils can perform their statutory functions once reconstituted. |
| General | Where legal costs arise from such decisions as indicated above, such costs should not be borne by traditional leaders. | Noted. |
| Clause 3 | The one year extended timeframe to reconstitute tribal councils might not be enough considering that some traditional leadership disputes are still not resolved which may cause further delays. Therefore, timeframe should be extended where such disputes still exists. | This comment refers to the proposed amendments to section 28(4) of the principal Act as contained in clause 3 of the Amendment Bill.  The proposed amendments make provision for the Minister to take steps to reconstitute traditional councils if the original period of one year is not met. This must be done within a further period of one year. The total available period available is thus two years. All other proposed amendments to section 28(4) are aimed at making it as easy as possible for provinces to reconstitute the councils and the total available period of two years should be sufficient.  Kindly note that the Mpumalanga Legislature also commented on this period and proposed that it be amended to two years – see Mpumalanga comments hereunder. |
| General | There are no consequences stated in the Bill in case of failure by traditional authorities to meet the deadline and this is the key reason why most traditional structures are still not reconstituted. | It should be noted that government has certain responsibilities in respect of the reconstitution of traditional councils such as the issuing of a formula by the relevant Premier to determine the number of members of the councils. The proposed amendments to section 28(4) of the principal Act are aimed at making the process as easy as possible for provincial governments. |
| Clause 3 | Though the Minister is empowered to take the necessary steps to ensure that tribal authorities and tribal councils are properly reconstituted if the proposed timeframe of one year is not met, traditional leaders should still be consulted when such steps are taken. | The Amendment Bill does not do away with the requirement of selected and elected members. In other words, even if it is the Minister that takes steps to ensure reconstitution, the traditional leaders and the community will still be involved in the selection and election processes as prescribed by section 3 of the principal Act. In fact, the proposed section 28(4) specifically requires compliance with section 3 of the principal Act. |
| **MPUMALANGA:** Supports the Bill with proposed amendments | | |
| Clause 2 | On page 3, line 27, reference is made to “principal traditional community”. It is proposed that this item be defined accordingly. | The principal Act, in section 1, already contains a definition for “principal traditional community”. |
| Clause 3(a) | On page 3, line 47, the period be changed from [one year] to **two years** of the commencement of the Traditional Leadership and Governance Framework Amendment Act, 2017. | A similar comment was made by the Limpopo Legislature.  ***Select Committee to decide on the possible amendment of one year to two years.*** |
| **NORTHERN CAPE** | | |
| NA | NA | *At the time of preparing this document, the Department has not yet received the Northern Cape negotiating mandate.* |
| **NORTH WEST:** Recommends that the Bill be **rejected** | | |
| General | The extensions provided for the reconstitution of the Tribal Authorities and CPAs in the Bill will not be met. A 2009 Amendment Act extended the timeframe to seven years from when the principal Act became law, this lapsed in 2011. Even with these extension, traditional structures in their form have failed to transform. | The reference to CPAs is not clear – neither this Bill nor the principal Act deals with CPAs.  The reasons for not complying with the initial extension of timeframes are set out in the Objects Memorandum of the Bill. Without a further extension, these structures (including those in the North West province) cannot be reconstituted and therefore they cannot perform their functions provided for in the principal Act. |
| N/A | The Bill does not set out the legal consequences for failing to meet reconstitution of CPAs and Tribal Authorities requirements and the proposed timeframes. | The Bill makes provision for the Minister to take the necessary action in instances where provinces do not meet the extended timeframes. |
| 1(a) | Section 1(a) of the Amendment Bill [B8B-2017] does not include the concept of “Paramount Chief” so as to accommodate the wishes of communities/clan/tribes which finds them relevant to exist. | The phrase “paramount chief” was provided for in old order legislation. It was changed in post-1994 legislation to “king”. It is therefore not something which is introduced by this Amendment Bill. |
| 3(a) | Section 3 (a) of the Amendment Bill [B8B-2017] should provide for reconstitution of traditional councils to be completed in one year and the Traditional Council should be elected for 1 term only. | The reconstitution must be completed in one year - see the proposed amendment to section 28(4)(a) of the principal Act as contained in clause 3(a) of the Bill. However, the Limpopo and Mpumalanga Legislatures proposed that the period of one year be changed to two years.  In terms of law, the term of a traditional council must be aligned to that of the houses of traditional leaders which are 5-year terms. Therefore the term cannot be one year. Also, reconstitution has financial implications (especially in respect of the elected component) and provinces will not be able to afford such expenditure on an annual basis. |
| N/A | The amendments on the Bill do not relate to the National Development Plan component of Traditional Affairs in relation to cooperative governance, integrated development planning, sustainable development and service delivery by structures in traditional leadership. | The proposed amendments are of a technical nature. The only purpose is to provide the enabling provisions in terms of which traditional leadership structures can be established and reconstituted. |
| N/A | Traditional leaders are complaining that thy were not consulted before the Bill was drafted in terms of the law-making processes and previous challenges were not addressed including the impending Traditional and Khoi-San leadership Bill | Traditional leaders were consulted through their official structures – see paragraph 5.3 of the Objects Memorandum. |
| N/A | CPA financial Records are not audited, records are misplaces and there are no copies submitted to the office of the Premier for monitoring. The Auditor-General has admitted that financial statements of traditional authorities in the North-West have not been audited since 1994. In terms of clause 4(2)(b) of the Amendment Bill [B8B-2017, a traditional council is required to have its financial statements audited. | There is no clause in this Bill that deals with auditing [there is also no clause 4(2)(b) as referred to in the provincial mandate document].  Also, as stated earlier, this Bill does not deal with CPAs. |
| **WESTERN CAPE: Abstain** | | |
| NA | Confers on the Western Cape delegation in the NCOP the authority to abstain from providing parameters for negotiation because there are no recognised traditional councils in the Western Cape. | NA |
| **GENERAL COMMENT:** | | |
| Various clauses of Bill | Various clauses of the Bill refers to the Bill as the Traditional Leadership and Governance Framework Amendment Act, **2017** | It is proposed that all such references be amended to **2018.** |