



traditional affairs

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EXPLANATORY NOTES ON PROPOSED COMMITTEE AMENDMENTS TO LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL [B19B-2018]

1. The participation of traditional leaders in municipal councils is regulated by section 81 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (hereinafter referred to as the Structures Act). Section 81 must be read with Schedule 6 to the Structures Act which Schedule deals with matters relating to the identification of traditional leaders for the purposes of their participation in municipal councils.
2. The Local Government: Municipal Structures Amendment Bill [B19B-2018] (hereinafter referred to as the Amendment Bill) intends, amongst others, to amend the current section 81 – see clause 24 of the Amendment Bill. The Amendment Bill, through clause 30, also intends to add a Code of Conduct to the Structures Act. This Code of Conduct will be applicable to members of municipal councils and participating traditional leaders. The Code of Conduct is currently part of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).
3. However, the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), through Schedule 3 thereof, replaces section 81. This means that the proposed amendment to the version of section 81 as contemplated in clause 24 of the Amendment Bill will no longer be relevant.
4. Furthermore, the new section 81 as replaced by the Traditional and Khoi-San Leadership Act, 2019, refers to the Code of Conduct in the Systems Act and this has to be corrected in order to refer to the new Code of Conduct that will form part of the Structures Act.
5. The Department of Traditional Affairs therefore drafted proposed amendments to clause 24 of the Amendment Bill for consideration by the Select Committee. The proposed amendments also include an amendment to clause 30 of the Amendment Bill to correct a reference which is necessary due to the move of the Code of Conduct to the Structures Act.

PROPOSED COMMITTEE AMENDMENTS

REPUBLIC OF SOUTH AFRICA

PROPOSED AMENDMENTS

TO

LOCAL GOVERNMENT:

MUNICIPAL STRUCTURES AMENDMENT BILL

[B 19B — 2018]

*(As proposed by the Select Committee on Cooperative Governance
and Traditional Affairs (National Council of Provinces))*

[B 19C—2018]

PROPOSED AMENDMENTS

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL

[B 19B-2018]

CLAUSE 24

Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Amendment of section 81 of Act 117 of 1998, as amended by section 121 of Act 32 of 2000, section 5 of Act 33 of 2000, section 18 of Act 51 of 2002 and section 64 of Act 3 of 2019

24. Section 81 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) “TKLA” means the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019);”;

- (b) by the substitution in subsection (4) for paragraph (d) of the following paragraph:

“(d) is subject to the appropriate provisions of the Code of Conduct contained in Schedule 7 [**1 to the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)**], and the standing rules and orders of the relevant municipality;”;

(c) by the substitution for subsection (10) of the following subsection:

“(10)(a) In the event of any breach of, or non-compliance with, the applicable provisions of the Code of Conduct contained in Schedule 7 **[1 to the Local Government: Municipal Systems Act, 2000,]** by any participating leader, the municipal council concerned must forthwith inform the—

- (i) relevant provincial house of traditional and Khoi-San leaders, if any such house has been established;
- (ii) local houses of traditional and Khoi-San leaders within the area of the municipality, if any such houses have been established; and
- (iii) traditional councils and Khoi-San councils within the area of the municipality,

of the nature of the alleged breach.

(b) Any alleged breach of, or non-compliance with, the applicable provisions of the Code of Conduct referred to in paragraph (a), must be dealt with in accordance with the provisions of item 17 **[15]** of that Code of Conduct.

(c) The findings of any investigation contemplated in item 17 **[15]** of the Code of Conduct referred to in paragraph (a) and any sanctions imposed under that item, must be conveyed by the municipal council or MEC, as the case may be, to—

- (i) the relevant participating leader;
- (ii) the responsible MEC in the case of investigations conducted by the municipal council or a special committee as contemplated in item 16(1) of the Code of Conduct [14(1) of Schedule 1 to the Local Government: Municipal Systems Act, 2000];
- (iii) the municipal council in the case of investigations conducted by a person or committee appointed by the MEC as contemplated in item 17(4) of the Code of Conduct [15(4) of Schedule 1 to the Local Government: Municipal Systems Act, 2000]; and
- (iv) the houses and councils referred to in paragraph (a).

(d) Notwithstanding the provisions of paragraph (a), a participating leader remains subject to the Code of Conduct contained in the Schedule to the TKLA, and any provincial code of conduct provided for in provincial legislation relating to traditional and Khoi-San leadership.”.

CLAUSE 30

1. On page 18, in line 34, to omit “81(3)” and to substitute “81(4)(f)”.

**NEW SECTION 81
AS REPLACED BY
TRADITIONAL AND KHOI-SAN LEADERSHIP ACT, 2019**

Amendment of the Local Government: Municipal Structures Act, 1998

7. (1) The Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), is hereby amended by the substitution for section 81 of the following section: 30

Participation of traditional and Khoi-San leaders in municipal councils

“81. (1) In this section, unless the context indicates otherwise—

- (a) “**branch**” means a branch of a Khoi-San community recognised as such in terms of section 5(5) of the TKLA;
- (b) “**Khoi-San council**” means a Khoi-San council established for a recognised Khoi-San community in accordance with the provisions of section 18 of the TKLA;
- (c) “**TKLA**” means the Traditional and Khoi-San Leadership Act, 2019;
- (d) “**local house**” means a local house of traditional and Khoi-San leaders as contemplated in section 50 of the TKLA;
- (e) “**MEC**” means the member of the Executive Council responsible for local government matters in a particular province;
- (f) “**participating leader**” means the chairperson of a local house, the member or members elected by such local house as contemplated in subsection (2)(a) and (b), and the person or persons nominated as contemplated in subsection (2)(c);
- (g) “**traditional council**” means a traditional council established for a recognised traditional community in accordance with the provisions of section 16 of the TKLA;
- (h) “**traditional sub-council**” means a traditional sub-council as contemplated in section 17 of the TKLA.

(2) (a) Where a local house has been established for the area of jurisdiction of a local or metropolitan municipality, the chairperson of such local house and two other members elected by such local house may participate in the proceedings of the council of such local or metropolitan municipality. 55

- (b) Where a local house has been established for the area of jurisdiction of a district municipality—
- (i) the chairperson of the local house and two members elected by such local house may participate in the proceedings of the council of that district municipality; and 5
 - (ii) the local house may, in respect of each local municipality falling within the area of jurisdiction of the district municipality, elect at least one but not more than two members to participate in the proceedings of the councils of such local municipalities: Provided that the chairperson and members of the local house contemplated in subparagraph (i) may not be considered for the purposes of this subparagraph: Provided further that the person or persons to be elected for the purposes of this subparagraph must be residing within the area of jurisdiction of such local municipality. 10
- (c) Where there are no local houses within the areas of jurisdiction of any local, district or metropolitan municipality, but there are traditional councils and Khoi-San councils— 15
- (i) the MEC must hold a consultative meeting with all the recognised senior traditional leaders and recognised senior Khoi-San leaders falling within the area of jurisdiction of the particular municipality; and 20
 - (ii) the senior traditional leaders and senior Khoi-San leaders present at such meeting must, from amongst themselves—
 - (aa) nominate one person in respect of each such municipality to participate in the proceedings of that municipality; and 25
 - (bb) nominate one person in respect of each such municipality who will fill any vacancy of the position of participating leader which may occur:

Provided that if consensus cannot be reached on the participating leader or the person to fill a vacancy, the leaders must vote for nominated candidates in any manner deemed appropriate by the MEC. 30
- (d) At least a third of the total number of members elected or nominated in terms of paragraph (a), (b) or (c) must be women.
- (e) The chairperson of a local house must, within two weeks from the date of any election contemplated in paragraph (a) or (b), provide the MEC with the full names and surname, identity number and contact details of himself or herself and all elected persons. 35
- (f) The MEC must, in respect of each chairperson and elected or nominated person as contemplated in this subsection, submit to the relevant local, district or metropolitan municipality the information contemplated in paragraph (e). 40
- (g) The election and nomination of participating leaders as contemplated in paragraphs (a), (b) and (c) must commence at least one month prior to the date of election of a municipal council and must be completed prior to such date: Provided that the MEC may determine a longer period which may not be longer than one month after the date of election of the specific municipal council. 45
- (3) (a) A person may not be a participating leader if he or she—
- (i) is under the age of 18; 50
 - (ii) is not a South African citizen;
 - (iii) is not a recognised senior traditional leader or recognised senior Khoi-San leader as provided for in the TKLA;
 - (iv) has been convicted of an offence and is sentenced to imprisonment for more than 12 months without the option of a fine;
 - (v) is impaired to the extent that he or she cannot participate in the proceedings of the municipal council; 55
 - (vi) is an unrehabilitated insolvent or has entered into a compromise with his or her creditors;
 - (vii) is of unsound mind and has been so declared by a competent court;
 - (viii) is an elected councillor of a municipal council; 60
 - (ix) is a member of a provincial legislature;

- (x) is a member of the National Assembly;
- (xi) is a permanent delegate in the National Council of Provinces; or
- (xii) is a full-time member of any house of traditional and Khoi-San leaders.
- (b) A participating leader may no longer participate in the proceedings of a municipal council if—
- (i) any of the circumstances referred to in subparagraphs (ii) to (xii) of paragraph (a) becomes applicable to such participating leader; or
- (ii) he or she tenders his or her resignation as participating leader.
- (c) A participating leader may not be elected or nominated for participation in the councils of more than one category of municipality.
- (d) The death of a participating leader or any of the circumstances referred to in paragraph (b) will result in a vacancy of the position of participating leader which vacancy must be filled in accordance with the provisions of subsection (2)(a), (b) or (c), as the case may be, and subject to subsection (2)(d), (e) and (f).
- (4) A participating leader may participate in the proceedings of the local, district or metropolitan municipality, as the case may be, and—
- (a) must perform such official or ceremonial duties as the municipal council may request him or her to do;
- (b) must attend and participate in any meeting of the municipal council and may, subject to the rules and orders of the municipal council, submit motions, make proposals and ask questions: Provided that the non-attendance or non-participation of any participating leader will have no effect on any municipal council proceedings;
- (c) must attend and participate in any meetings of a committee of the relevant municipal council to which such leader has been co-opted in terms of section 79(2)(d) of this Act;
- (d) is subject to the appropriate provisions of the Code of Conduct contained in Schedule 1 to the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and the standing rules and orders of the relevant municipality;
- (e) is not entitled to vote in any meeting of the municipal council or council committee and cannot be included for the purpose of establishing a quorum in the municipal council or council committee; and
- (f) may address the municipal council on—
- (i) any matter directly or indirectly affecting traditional or Khoi-San leadership or the relevant traditional or Khoi-San council or community; or
- (ii) any other matter involving traditional or Khoi-San communities in the area of jurisdiction of the relevant municipal council.
- (5) A participating leader—
- (a) may participate in the proceedings of the specific municipal council for the duration of the term of such council as contemplated in section 24 of this Act;
- (b) may not serve consecutive terms: Provided that if there are no other recognised senior traditional leaders or recognised senior Khoi-San leaders available to be considered for election or nomination as contemplated in subsection (2) when a new municipal council is elected, a participating leader who has previously been elected or nominated may serve consecutive terms;
- (c) may not request any other person to participate in the proceedings of a municipal council on his or her behalf.
- (6) A participating leader must, within three weeks from the date of a municipal council meeting, prepare a report on all matters affecting the relevant traditional and Khoi-San communities, as discussed and decided on by such municipal council, and submit the report to the local house and traditional and Khoi-San councils falling within the area of jurisdiction of such municipality: Provided that where more than one participating leader participate in the proceedings of any municipal council, such leaders must,

within two weeks from the date of a municipal council meeting, meet to prepare the report referred to in this subsection.

(7) A committee of a municipal council as referred to in subsection (4)(c), may invite any recognised traditional leader or any recognised Khoi-San leader other than a participating leader, to address such committee on any matter affecting the relevant traditional or Khoi-San community or communities.

(8) A participating leader must act in an impartial manner and must—

- (a) support municipal councils in the identification of the specific needs of the traditional and Khoi-San communities falling within the area of the municipality;
- (b) facilitate the involvement of the traditional and Khoi-San communities in the development or amendment of the integrated development plan of the relevant municipality;
- (c) support the relevant municipality in promoting integrated local economic development and planning;
- (d) facilitate the participation of the relevant traditional and Khoi-San communities in any affairs of the municipality that requires or allows for public participation, including the affairs of ward committees;
- (e) make recommendations and propose appropriate interventions in respect of service delivery within the defined areas of jurisdiction of the relevant traditional councils;
- (f) participate in the development of policy and by-laws at a municipal level;
- (g) participate in relevant development programmes of the municipality;
- (h) promote the ideals of co-operative governance, integrated development planning, sustainable development and service delivery;
- (i) promote indigenous knowledge systems;
- (j) participate and ensure the participation of traditional and Khoi-San communities in any environmental programmes of the municipality;
- (k) alert the municipality to any current or threatening hazard or calamity which affects or may affect the municipal area;
- (l) support the relevant municipality with the implementation of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013), as far as that Act makes provision for the involvement of traditional leadership or structures,

and may advise the relevant municipal council on matters concerning the heritage, language, customs and traditions of the relevant traditional and Khoi-San communities.

(9) The councillors of a municipal council and the participating leaders must—

- (a) recognise and respect each other's status and roles within the affairs of the municipality;
- (b) recognise and respect the local sphere of government as a distinctive, interdependent and interrelated sphere of government as contemplated in the Constitution; and
- (c) co-operate with one another in mutual trust and good faith by—
 - (i) fostering sound working relations with one another; and
 - (ii) assisting and supporting one another in the execution of their roles and responsibilities.

(10) (a) In the event of any breach of, or non-compliance with, the applicable provisions of the Code of Conduct contained in Schedule 1 to the Local Government: Municipal Systems Act, 2000, by any participating leader, the municipal council concerned must forthwith inform the—

- (i) relevant provincial house of traditional and Khoi-San leaders, if any such house has been established;
- (ii) local houses of traditional and Khoi-San leaders within the area of the municipality, if any such houses have been established; and
- (iii) traditional councils and Khoi-San councils within the area of the municipality,

of the nature of the alleged breach.

(b) Any alleged breach of, or non-compliance with, the applicable provisions of the Code of Conduct referred to in paragraph (a), must be dealt with in accordance with the provisions of item 15 of that Code of Conduct.

(c) The findings of any investigation contemplated in item 15 of the Code of Conduct and any sanctions imposed under that item, must be conveyed by the municipal council or MEC, as the case may be, to—

- (i) the relevant participating leader;
- (ii) the responsible MEC in the case of investigations conducted by the municipal council or a special committee as contemplated in item 14(1) of Schedule 1 to the Local Government: Municipal Systems Act, 2000;
- (iii) the municipal council in the case of investigations conducted by a person or committee appointed by the MEC as contemplated in item 15(4) of Schedule 1 to the Local Government: Municipal Systems Act, 2000; and
- (iv) the houses and councils referred to in paragraph (a).

(d) Notwithstanding the provisions of paragraph (a), a participating leader remains subject to the Code of Conduct contained in the Schedule to the TKLA, and any provincial code of conduct provided for in provincial legislation relating to traditional and Khoi-San leadership.

(11) The MEC—

- (a) must, through any means deemed appropriate, monitor the implementation of this section in the province and make recommendations on such implementation to any relevant house of traditional and Khoi-San leaders, all relevant municipalities and all relevant participating leaders; and
- (b) may delegate any of his or her powers referred to in this section, except the power to determine a longer period as contemplated in subsection (2)(g), to the Director-General of the department responsible for traditional and Khoi-San matters in the particular province, or to any official of such department.

(12) A Premier may by notice in the *Provincial Gazette* make regulations on any matter that is necessary for the proper implementation of this section: Provided that such regulations may not be inconsistent with the provisions of this section.

(13) (a) A participating leader may, from the budget of the relevant municipal council, be reimbursed for any out of pocket expenses: Provided that for the purposes of this section, “out of pocket expenses” means actual and necessary expenses incurred by a participating leader in respect of own transport, public transport and parking, which expenses must be related to a meeting or event arranged by a municipal council or a committee of such council, or any ceremonial or official duties which such participating leader has been requested to attend to by the municipal council.

(b) Out of pocket expenses must be authorised by the municipality prior to the meeting or event referred to in paragraph (a).

(c) Out of pocket expenses do not include any salaries, allowances or benefits as contemplated in the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), or resources as contemplated in the Independent Commission for the Remuneration of Public Office-Bearers Act, 1997 (Act No. 92 of 1997).

(d) To ensure uniformity across provinces, the Minister may, after consultation with the Premiers and by notice in the *Gazette*, make regulations on out of pocket expenses.”

(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 the date of commencement of the Traditional and Khoi-San Leadership Act, 2019.