

**DEPARTMENT OF TRADITIONAL AND LOCAL GOVERNMENT:
TRADITIONAL LEADERSHIP AND GOVERNANCE FRAMEWORK AMENDMENT BILL,
2008**

(30 June 2008)



**SUBMISSION TO THE PROVINCIAL AND LOCAL GOVERNMENT
PORTFOLIO COMMITTEE
PARLIAMENT, CAPE TOWN**

1. Mpumalanga House of Traditional Leaders is an institution established in terms of Mpumalanga Provincial House and Local Houses of Traditional Leaders Act no 3 of 2005. Its main aim is to advise the Premier on matters affecting traditional leadership within the Province and serve as a coordinating office for the affairs of the Traditional Leaders.

2. We wish to make the following submissions on the Traditional Leadership and Governance Framework Amendment Bill for 2008.

Section 2A : Recognition of Kingships

S2A(1) provides that "A number of traditional communities grouped together in terms of custom and customary law may be regarded as a Kingship if they-

a) are recognized as such in terms of applicable provincial legislation;

(f) have a system of traditional leadership at a Kingship level recognized by other traditional communities.

Subsection 1(f) should be deleted in its entirety as what will happen if other communities does not recognize that Kingship as they do not have thorough knowledge of that community's history. With apartheid having abolished most Kingship, this will make it difficult to revive most of the Kingships except for the few that were recognized under the previous regime.

Section 2A(5)(a) provides that *“the withdrawal of the recognition of a community as a Kingship as provided for in this Act, may only be considered where:*

(a) the majority of traditional communities under the jurisdiction of the Kingship concerned request the President that the recognition of their Kingship be withdrawn”

This subsection will promote the under ending conflicts and disputes within the traditional leadership as senior traditional leadership may mobilize other senior traditional leaders to depose the Kings or Queens for no apparent reason. Kingship like any other traditional leadership is a matter of birthright, it does not depend on whether communities need to change traditional leadership or not.

Section 3: Establishment and recognition of traditional councils

Subsection 2(c)(i) provides that the Chairperson shall be the ex-officio member and chairperson. It is submitted that the word **“ex-officio”** should be deleted or rephrased to read as follows:

“.....who shall be the automatic member and Chairperson of the traditional council.....”. In the absence of the Senior Traditional Leader, s/he may appoint a member within the council to act as a Chairperson.

Section 3A: Establishment and recognition of Kingship Councils

Subsection 2(d) provides for *“60% of traditional leaders, including the king or queen who is an ex officio member and as a chairperson and members of the traditional community selected by the king or queen in terms of that community’s customs, taking into account the need for overall compliance with paragraph (b).*

This subsection excludes members of the Inner Royal Family of the King and as such it will further perpetuate the current Inner Royal Family disputes about the Kingship and Kings.

On the question of being an **“ex-officio”** member and chairperson. The sentence should be rephrased to read as follows:

“.....who shall be the automatic member and Chairperson of the Kingship Council.....”. In the absence of the King or Queen, he/she may appoint a member within the council to act as a Chairperson.

Subsection 3 provides that the term should be aligned to the local government term. This downgrades the status of the Kingship Council to a local level and as such *the term of its operation should be aligned with that of members of National Parliament.*

On subsection 8, the word **“Kings Council”** should be replaced by the word **“Kingship Council.”**

On subsections 10(d) & 11, the word **“traditional council”** should be replaced by the **“Kingship Council “**

Section 4A: Functions of Kingship Councils

Subsection 2(d) provides that where a member of a Kingship has to be disciplined for breach of the code of conduct the Premier must inform the President of such fact and also the outcome of the inquiry:

This aspect needs to be left at the hands of the Kingship Council as to how it disciplines its members. The King and not the Premier should be the one that informs the President.

Conclusion

The Bill is shadowed on the Black Administration Act and elevates Premiers to actively participate in the affairs that are sole responsibility of the National Government. The Premiers have a role to play within the provincial houses. Parliament is reminded to consider future problems that are being brought by the Bill and should seek to evade repetition of mistakes made by the previous regimes.

Thank you.



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Ikosi S E Mahlangu

Chairperson

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2. We wish to make the following submissions on the National House of Traditional Leaders Bill for 2008.

Section 1: Definitions

An oath or affirmation should be incorporated under definition section.

House committees – should be incorporated into the definition section.

President – should be incorporated into the definition

Section 2: Establishment of the House

Subsection 2 provides that the term of the National House runs concurrently with the term of office of local government. **It is proposed that the** term for National House should run concurrently with that of National Parliament or National Council of Provinces and not local government. This house should be afforded the status it deserves.

It is suggested that subsection 3 be added which will declare that the House is autonomous from the government's department. It is suggested that it be granted the right to be a separate entity so that it may be able to play its oversight role without hiccups and fear of retribution.

Section 3: Composition of the House

Subsection 4 provides that the Minister may determine a lower threshold if there is an insufficient number of women to serve in the National House, after consultation with the Premiers. The Provincial Houses should be incorporated for consultation and the said subsection should read as follows.

(4) A third of the members of the Houses must consist of women: provided that if the Minister is satisfied that there is an insufficient number of women to participate in the House the Minister must, after consultation with the Premiers and Provincial Houses, determine a lower threshold.

Section 4: Election of members of the House

On subsection 1, 2, 7 & 8 the word "Premier(s)" should be replaced by the Chairperson(s) of the Provincial Houses.

On subsection 1 the word "Minister" should be replaced by "the President".

Subsections 4, 5 & 6 should be deleted as they should be included in the provincial legislation.

On subsection 7, it is proposed that the duties relayed herein should be done by the Secretaries of the Provincial Houses.

Section 6: Vacation of Seats

Subsection 1(h) should read "withdrawn by the respective provincial house"

Section 7: Filling of Vacancies

On subsection 1, the word "Premier" should be replaced by the Chairperson of the Provincial House.

On subsection 2- the vacancy in the National House must be filled within 30 days.

Section 8: Seat and Meetings of the House

Subsection 6 should read as follows – "***The quorum for meetings of the House is fifty percent plus one of the total membership of the House***".

Section 9 Chairperson and Deputy Chairperson of the House

Subsection 9 should read as follows "... ***may be removed from office by a resolution of house which should be supported by two third majority of the House***."

Section 10: Status of members of the House

It is suggested that this section should be rephrased to read as follows:

10. The House may recommend to the President that certain members be full-time members of the House.

Section 12: Administration of the House

It is that the administration of the House be left to the Chairperson and the Executive to regulate the matters of the House including capacitating of the support staff.

The House should have its own support complete staff and units.

Section 18: Privileges and immunities of members of the House

It is suggested that members of the House should be afforded same privileges and immunities as members of the National Parliament or NCOP.

Section 24: Regulatory Powers

Section should read as follows – “The Minister after consultation with the House,

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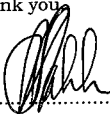
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Conclusion

In conclusion, we wish to remind parliament to hold true to its purpose of harmonization of the three houses. The Chairpersons for Provincial Houses and National Houses should not have ceremonial powers only but also the administrative powers. The role of the Minister should be just oversight on behalf of the President, but should not be too involved that it leads to Black Administration Act period. Some of the powers that are given to the Minister should be given to the Chairperson of the National House. The administrative aspects of the provinces that are given to the Premiers, should be given to Chairpersons of the Provincial Houses such as filling of vacancies in the National House.

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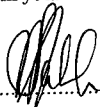
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Ikosi S E Mahlangu

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