

NEGOTIATION MANDATES: TRADITIONAL LEADERSHIP AND GOVERNANCE FRAMEWORK AMENDMENT BILL [B57B OF 2008] AND THE NATIONAL HOUSE OF TRADITIONAL LEADERS BILL, 2008 BILL [B56B OF 2008]

INTRODUCTION

The Select Committee met on 6 October 2009 to consider the negotiating mandates of the various provinces on the Traditional Leadership and Governance Framework Bill [B57B - 2008] and the National House of Traditional Leaders Bill [B56B - 2008]. During the consideration of the negotiating mandates a number of issues were raised by the provinces. The table below sets out the issues raised and the response of the Department to those issues. The Department did not comment on issues raised that do not relate to the two Bills.

PROVINCE	ISSUE		COMMENTS	SUGGESTION
	Traditional Leadership and Governance Framework Amendment Bill	The National House of Traditional Leaders Bill,		
FREE STATE		<p>Clause 10 (2)</p> <p>All members of the NHTL to be full-time instead of only the Chairperson and Deputy Chairperson. Clause 10 of the Bill.</p>	<p>1. Clause 10(2) of the Bill provides that the President may designate certain members to be full time.</p>	<p>Amend clause 10(2) to make it clear that the President may designate certain or all members of the NHTL to be full time.</p>

			<p><b>Clause 4(3)</b> Elections proceedings to be conducted by an independent body instead of the Premier or a designated person.</p>	<p>2. Clause 4(3) provides that the Premier may designate a person to conduct the election, and such a person may be a member of an Independent electoral commission.</p> <p>The Premier or his/her designate is bound by the election procedures to be prescribed by the Minister.</p>	No amendment recommend
			<p><b>Clause 11(2)(b) &amp; (c)</b> Substitution of the word "may" for the word "must" in clause 11. Powers and duties must not be left to the discretion of the NHTL, it must be peremptory.</p>	<p>3. Certain powers and duties of NHTL should be at the discretion of NHTL and should not be an obligatory, otherwise this could lead to a situation where NHTL cannot perform its responsibilities.</p>	No amendment recommended
			<p><b>Clause 12(1) &amp; (2)</b> The NHTL in consultation with the Minister must appoint staff to discharge the work of NHTL.</p>	<p>4. The Public Service prescripts provide that all officials are seconded to NHTL and are under the authority and control of the NHTL and not the Department.</p>	No amendment recommended
			<p><b>Clause 8</b> Substitution of the word "may"</p>	<p>5. This obligation should be</p>	No amendment

	for the word "must" relating to support to traditional councils		at the discretion of government as it could be influenced by factors outside the control of government such as the lack of capacity and finances.	recommended
NORTHERN CAPE	Clause 23(1) and Clause 26A President to appoint commissioners and not the Minister		1. The appointment of commissioners and members of committees by the President is not supported because it would result in a cumbersome process due to the fact that there could be as many as eight provincial committees.	No amendment recommended
	Clause 23(1) and Clause 26A  Commissioners to be interviewed rather than nominated		2. Due to the fact that the duties of the Commission and committees are of a highly specialized nature and that the appointment of commissioners and committee members is done by two different functionaries, the involvement of the public in the appointment process of commissioners and committees is not supported.	Amend Bill to include a provision which sets out qualifications and experience required for appointment to the Commission and committees. <i>Clause 23 already provides that commissioners must be knowledgeable regarding customs and the maintenance of traditional leadership.</i>

EASTERN CAPE		<p>Clause 3(1)(a) Headmen/women should not be excluded to be members of the NHTL. They may have more qualities and knowledge than senior traditional leaders.</p>	<p>1. Clause 3(1)(a) provides that where on good grounds shown a headman/woman may be elected as a member of the NHTL.</p>	<p>No amendment recommended</p>
	<p>Clause 2B, 3B,8 and 10A. Provision for the recognition of a fourth category of traditional leadership (principal traditional leadership) not supported</p>		<p>2. The recognition of a principal traditional leader, community and council is not compulsory. However, the Bill provides that where a principal traditional leader and community exist in terms of custom and customary law, such leader and community may be recognized by the Premier of the province concerned.</p>	<p>No amendment recommended</p>
NORTH WEST	<p>Clause 2B, 3B,8 and 10A. Provision for the recognition of a principal traditional leader, community and council is not supported as it is not a customary position.</p>		<p>1. See comment 2 under Eastern Cape.</p>	<p>No amendment recommended</p>
	<p>Clause 26A(9) The authority of paramountcies and paramount chiefs that did not qualify to be kingship/queenship and</p>		<p>2. The Bill provides that paramountcies and paramount chiefs that did not qualify to be</p>	<p>No amendment recommended</p>

	kings/queens over other traditional leaders needs to be clarified.		kingship/queenship and kings/queens will be deemed to be kingships/queenships or principal traditional communities subject to transitional arrangements. They will exercise authority over the same communities as before.	
GAUTENG Portfolio Committee	Clause 3B(3), 4 and 4B. Alignment of the term of office of the NHTL with the term of office of municipal councils		1. There appears to be no compelling reason why the term of office of traditional institutions should be aligned with the term of office of National Parliament, Provincial Legislatures and local government. The term of office of traditional institutions should be linked to that of the NHTL of traditional leaders only. This will ensure effective functionality, uniformity and will enhance cooperation between these institutions.	No amendment recommended
	Section 1 of Act 41 of 2003 Clear definition of who constitutes non traditional leaders within traditional		2. A traditional leader is defined. Therefore anybody who is not a traditional	No amendment recommended.

	communities		leader as defined (king/queen, principal traditional leader, senior traditional leader and headman or woman) is regarded as a non-traditional leader.	
SALGA	Clause 13(1) (c) is replaced by clause 26A(9) Premier to recognize an acting paramount chief while the commission is still investigating the position.		3. The latest proposed amendment to the Bill deals with the paramount chiefs and paramountcies that did not qualify to be kings/queens and kingships/queenships. See also comment 2 under North West.	No amendment recommended.
	Clause 1 Define sub-traditional council		4. Proposed amendments to Bill provide a definition of sub-traditional council	No amendment recommended.
	Clause 14 Designation of non-traditional leader members of the traditional council must not be differentiated.		5. There is no differentiation between members of the council in terms of their roles and functions. The differentiation is only for purpose of paying sitting allowances because non-traditional leaders are not remunerated.	No amendment recommended

	<b>No Clause</b> Retirement age of Dikgosi (senior traditional leader)		6. Bill does not deal with retirement of Dikgosi	No amendment recommended
	<b>No Clause</b> Parity regarding benefits of Dikgosi (senior traditional leader)		7. The benefits of senior traditional leaders are the same throughout the country.	No amendment recommended
	<b>Clause 8</b> Substitution of the word "may" for the word "must" in clause 8		8. See comment 5 under Free State.	No amendment recommended
	<b>Section 5 and clause 7 and 4B</b> Partnership between organized local government and traditional institutions.		9. The Bill and the principal Act provide for partnerships between municipalities and traditional councils, principal traditional councils and kingships/queenship council. The NHTL Bill also provides for the formation of cooperative relations and partnerships with government at national level. Clause 11(2)(g) of the NHTL Bill. Not clear on what basis traditional institutions should partner with SALGA.	No amendment recommended

		<p><b>Section 17 and clause 10</b> Threshold of five senior traditional leaders to establish a local house to be revisited</p>		<p>10. The Bill provides that where there is more than one traditional council within a district/metro, a local house of traditional leaders must be established or if there is only one traditional council within a district/metro, such traditional council performs the functions of a local house. The minimum number of members to constitute a local house is five.</p>	<p>No amendment recommended</p>
			<p><b>Clause 3(4)</b> The delegation from the province to the NHTL must include woman</p>	<p>11. The Bill provides that at least a third of the members of the NHTL must be women. Provincial legislation also provides for women to be elected as members of the NHTL.</p>	<p>No amendment recommended</p>
			<p><b>Clause 8(1)(b)</b> President to open the NHTL</p>	<p>12. Clause 8 makes provisions for such.</p>	<p>No amendment recommended</p>
			<p><b>Clause 20 (2)(a)</b> Each province to be represented in the executive committee of the NHTL</p>	<p>13. Clause 20 provides for the representation of all provinces in the executive committee</p>	<p>No amendment recommended</p>

Department of Local Government and Housing			<b>Clause 11</b> The long title does not correspond with clause 11 of the Bill	14. Long title refers to "powers, duties and responsibilities" and clause 11 refers to "powers and duties"	Long title to be amended to correspond with clause 11.
			<b>Clause 10(B57B-2008)</b> Align the terms of local and provincial houses with that of the NHTL	15. Clause 10 of the Bill aligns the term of local houses with that of the NHTL. Section 16 of the Act should be amended to provide for the alignment of the term of provincial houses with that of the NHTL	Section 16 of principal Act to be amended
			<b>Clause 6</b> Member of NHTL to vacate seat if recalled by the provincial house.	16. Not supported as members are elected for a term of five years. The membership should only be subject to the provisions of clause 6	No amendment recommended
			<b>Clause 8(6)</b> Quorum to be increased from 51% to two thirds	17. No motivation provided for this proposal	No amendment recommended
			<b>Clause 9(5)</b> Only a member of exco to be acting chair.	18. No motivation provided. NHTL should have the discretion to decide who should act as chair	No amendment recommended

			<p><b>Clause 10(1)</b> Chair and deputy chair to be full-time and the status of other members to be at discretion of the President, after consultation.</p>	19. Clause 10 of the Bill provides for what is suggested	No amendment recommended
			<p><b>Clause 15</b> Where no provincial house has been established, provision should be made for relationship between the NHTL and local house/traditional council. <b>Clause 14</b></p>	20. Agreed	Clause 15 to be amended
			<p><b>Clause 4B</b> No limit on number of traditional sub-councils to be established</p>	21. The establishment of a traditional sub-council must comply with the provisions of the proposed section 4B	No amendment recommended
			<p><b>Clause 4B</b> Government should not be required to support traditional sub-councils in addition to traditional councils</p>	22. Support should be provided to traditional sub-councils after consultation with the main traditional council as this will enhance the functionality of the sub-council	Amend clause 4B