

**COMMENTS BY THE NATIONAL HOUSE OF TRADITIONAL LEADERS ON
THE ONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA 1996**

BACKGROUND

In terms of section 45(1) of the Constitution of the Republic of South Africa, 1996, the Constitutional Review Committee must review the Constitution annually. Members of the public are therefore invited to make written submissions to the committee on specific sections of the Constitution that they feel need to be reviewed.

Therefore the National House of Traditional Leaders is also invited to make written submissions to the Constitutional review Committee on specific sections of the constitution.

The due date for the submission of comments was 28 May 2010.

INTRODUCTION

The National House of Traditional Leaders has studied the Constitution and deliberated on it, and it is the view of the House that Chapter 12 of the constitution which deals with the recognition of the Institution Traditional Leadership be amended.

CHAPTER 12

Section 211

Recognition

The Institution, status and role of traditional leadership is recognized in Chapter 12 of the Constitution and the extent to which the recognition is supervised by other provisions of the Constitution is not clear. Therefore the National House of Traditional Leaders recommends that the proposed amendments be considered:

The National House of Traditional Leaders proposes that this section be amended with the inclusion of the following.

4. The institution of traditional leadership is hereby guaranteed.
5. Parliament shall not enact any legislation which confers on any authority the right to withdraw the recognition of the Institution of Traditional Leadership.

Sec 212

Role of Traditional Leaders

The National House of Traditional Leaders is of the view that the roles, functions and powers of traditional leaders should be clearly stated in the Constitution.

It is suggested that the role and functions of traditional leaders be included in the Constitution as provided for in the Traditional Leadership and Governance Framework Act, 2003 as amended.

Functions of traditional leaders

A traditional leader performs the functions provided for in terms of customary law and customs of the traditional community concerned, and in applicable legislation.

1. National government or a provincial government, as the case may be, may through legislative or other measures, provide a role for traditional councils or traditional leaders in respect of

- (a) arts and culture;
- (b) land administration;
- (c) agriculture;
- (d) health;
- (e) welfare;
- (f) the administration of justice;
- (g) safety and security;
- (h) the registration of births, deaths and customary marriages;
- (i) economic development;
- (j) environment;
- (k) tourism;
- (l) disaster management;
- (m) the management of natural resources; and
- (n) the dissemination of information relating to government policies and programmes.

2. Whenever an organ of state within the national government or a provincial government considers allocating a role for traditional councils or traditional leaders in terms of subsection (1), that organ of state must –

- (a) Seek the concurrence of –
 - (i) The Minister if it is an organ of state in the national sphere of government; or
 - (ii) The Member of the Executive Council responsible for traditional affairs in the province concerned if it is an organ of state of that province;
- (a) consult with –
 - (i) the relevant structures of traditional leadership; and
 - (ii) the South African Local Government Association;

- (a) ensure that the allocation of a role or function is consistent with the Constitution and application legislation;
- (b) take the customary law and customs of the respective traditional communities into account;
- (c) strive to ensure that the allocation of a role or function is accompanied by resources and that appropriate measures for accounting for such resources are put in place;
- (d) ensure, to the extent that is possible, that the allocation of roles or functions is implemented uniformly in areas where the institution of traditional leadership exists; and
- (e) promote the ideas of co-operative government, integrated development planning, sustainable development and service delivery through the allocation of roles and functions.

3. Where an organ of state has allocated a role or function to traditional councils or traditional leaders as envisaged by subsection (1), the organ of state must monitor the implementation of the function and ensure that –

- (a) The implementation of the function is consistent with the constitution; and
- (b) The function is being performed.

4. Where a traditional council does not perform an allocated function as envisaged in subsection (3), any resources given to traditional council to perform that function may be withdrawn.

Chapter 7

Local Government

This chapter deprives traditional leaders of their right to govern their own communities.

It is therefore proposed that the powers, functions and duties of the Local Government be performed by traditional leaders so as to ensure that service delivery takes place rapidly in traditional communities

The National House of Traditional Leaders further proposes that traditional Leaders be represented in all legislative-making bodies, including Parliament.